

COPY

ALVARADOSMITH
A PROFESSIONAL CORPORATION
SANTA ANA

1 RUBEN A. SMITH (CA Bar No. 118815)
rsmith@AlvaradoSmith.com
2 KEVIN A. DAY (CA Bar No. 222560)
kday@AlvaradoSmith.com
3 ALVARADOSMITH
A Professional Corporation
4 1 MacArthur Place, Suite 200
Santa Ana, California 92707
5 Tel: (714) 852-6800
Fax: (714) 852-6899

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 26 2018

M. Criel

6 Attorneys for Defendant and Cross-Complainant
7 Moulton Niguel Water District

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF RIVERSIDE

10 CENTRAL DISTRICT

11 SOUTH ORANGE COUNTY WASTEWATER
AUTHORITY, a California Joint Powers
12 Authority; CITY OF LAGUNA BEACH, a
California municipal corporation; SOUTH
13 COAST WATER DISTRICT, a county water
district; and EMERALD BAY SERVICE
14 DISTRICT, a community services district,

CASE NO.: RIC 1721240

JUDGE: Hon. John W. Vineyard
DEPT: 01

JUDGE: Hon. Daniel A. Ottolia
DEPT: 04 [Law & Motion]

15 Plaintiffs,

16 v.

17 MOULTON NIGUEL WATER DISTRICT, a
California water district,

18 Defendant.

FIRST AMENDED CROSS-COMPLAINT
OF DEFENDANT/CROSS-
COMPLAINANT MOULTON NIGUEL
WATER DISTRICT FOR: RESCISSION,
BREACH OF CONTRACT AND
DECLARATORY RELIEF

19 AND RELATED CROSS-ACTION

20
21 CROSS-COMPLAINT

22 Defendant and Cross-Complainant Moulton Niguel Water District ("Moulton Niguel")
23 alleges:

24 INTRODUCTION

25 1. Moulton Niguel and Cross-Defendants Emerald Bay Services District ("Emerald
26 Bay"), City of Laguna Beach ("Laguna Beach"), and South Coast Water District ("South Coast") are
27 member agencies of South Orange County Wastewater Authority ("SOCWA"), a joint powers
28

FAXED

1 authority, organized for the purpose of coordinating a regional approach to wastewater treatment and
2 reclamation, and to provide operational and administrative efficiencies to its member agencies.

3 2. SOCWA is organized under project committees that are intended to allocate the costs
4 of capital projects to the ratepayers that receive the benefits. Moulton Niguel and Cross-Defendants
5 Emerald Bay, South Coast and Laguna Beach are parties to one such project committee, commonly
6 known as PC 15, which was formed pursuant to joint powers agreements and an agreement
7 commonly known as the PC 15 Agreement, which oversees construction, continuing operation, and
8 maintenance of a wastewater treatment facility known as the Coastal Treatment Plant.

9 3. As part of its long-term strategic planning and to ensure safe, uninterrupted treatment
10 of south Orange County wastewater, Moulton Niguel acquired Coastal Treatment Plant capacity in
11 anticipation of planned development in its service area and an operational requirement for the
12 capacity. However, through no fault of Moulton Niguel or its ratepayers, such development and
13 operational needs never materialized, and as a result, Moulton Niguel does not and will not use the
14 Coastal Treatment Plant.

15 4. Moulton Niguel is unwavering in its commitment to protecting the public, preserving
16 our environment and guaranteeing the safe treatment of wastewater. That commitment has been
17 fulfilled by Moulton Niguel's continued funding of operations and maintenance, including repairs, of
18 the Coastal Treatment Plant. In 2016, SOCWA was in the process of completing a comprehensive
19 review of the Coastal Treatment Plant that called for significant investments in the Coastal
20 Treatment Plant that addressed capital improvements that were not necessary for the operation of the
21 plant through November 22, 2026, but rather were intended to modify, improve, rehabilitate the use
22 of the plant beyond that date. At that time, the agreement was to expire within ten years. The PC 15
23 committee attempted to introduce and approve budgets for the above expenditures at the Coastal
24 Treatment Plant for capital improvement projects that were not "necessary" to the operation of the
25 facility through the fifty-year term of the PC 15 Agreement. The term of the PC 15 Agreement
26 expires on November 22, 2026, and the other PC 15 members are attempting to bill Moulton Niguel
27 ratepayers for capital improvements that will extend the useful life of the Coastal Treatment Plant
28 and its assets well beyond that date. Notably the enabling documents for the construction,

1 maintenance and funding of the Coastal Treatment Plan contemplate a termination date for the
2 Coastal Treatment Plant's operation, absent a unanimous agreement to continue its use. Moulton
3 Niguel does not use the Coastal Treatment Plant and will not vote to continue its use at the
4 conclusion of the term. As a result, Moulton Niguel's ratepayers should not be obligated to fund
5 unnecessary capital improvements that *extend the useful life of the Coastal Treatment Plant and its*
6 *assets beyond the expiration of the stated term of the existing agreements.*

7 5. To fund unnecessary capital expenditures for a Coastal Treatment Plant that Moulton
8 Niguel ratepayers do not and will not use is not fair or appropriate for its ratepayers. Nonetheless,
9 Moulton Niguel proposed to Cross-Defendants a plan for Moulton Niguel's timely divestiture from
10 the Coastal Treatment Plant that even offered capital funding through the end of the PC 15
11 Agreement for capital improvements, and further offered to continue funding its allocation of the
12 operations and maintenance expenses through the termination of the PC 15 Agreement.

13 6. Unfortunately, Cross-Defendants' response was not only to refuse to negotiate but to
14 also illegally impose unauthorized and unnecessary capital improvement project costs upon Moulton
15 Niguel; conceal or otherwise ignore serious SOCWA management accounting issues harming
16 Moulton Niguel; refusing to accept a Moulton Niguel payment under protest of invalid and unlawful
17 capital costs; and suing Moulton Niguel in this action for the Cross-Defendants' unlawfully
18 approved capital improvement project costs which they seek to force upon Moulton Niguel. Cross-
19 Defendants even tried to manipulate the outcome of their lawsuit by attempting to change the
20 applicable SOCWA capital improvement project budget definitions which in their native form
21 actually support Moulton Niguel in its defense of Cross-Defendants' lawsuit.

22 7. In June 2016, a budget for PC 15 was proposed that included capital improvements
23 that would further *extend* the Coastal Treatment Plant's useful life beyond the expiration of the
24 existing PC 15 Agreement's term; these capital improvements therefore do not qualify as
25 "necessary" as defined in The Joint Exercise of Powers Agreement creating SOCWA ("SOCWA
26 JPA"). The SOCWA JPA is clear that capital improvements fall within one of two categories: (1)
27 all necessary capital improvement costs to operate the Coastal Treatment plant through the
28 contractual term must be approved by a two-thirds vote of the participating agencies, and (2) all

1 capital improvement costs for modifications, improvements and rehabilitations of existing projects
2 must be approved by unanimous consent of the agencies participating in the project.

3 8. Moulton Niguel noted there was no identification of the capital improvement projects
4 within the proposed 2016 O&M budget for PC 15, and as a result asked for a separate vote on the
5 O&M and capital budgets. This request was refused by SOCWA and the PC 15 Three. As a result,
6 Moulton Niguel withheld its consent to the proposed project budget for PC 15 capital improvements
7 for the obvious reasons that Moulton Niguel does not and will not use the Coastal Treatment Plant,
8 and Moulton Niguel will not financially burden its ratepayers by their having to pay for unnecessary
9 projects to extend a facility that they do not use and beyond the stated term of the applicable
10 agreement. Thus, there was no presentation or proof that the 2016 capital improvement budget was
11 solely to be used for “necessary” projects, nor was there unanimous approval of the PC 15 capital
12 improvement project budget for the rehabilitation, improvement or modification of the Coastal
13 Treatment Plant. Moulton Niguel is not required or obligated to pay for for capital improvement
14 project costs to rehabilitate, modify or improve the Coastal Treatment Plant when such costs are not
15 lawfully approved by a unanimous vote of the four PC 15 member agencies. Moreover, SOCWA
16 and the PC 15 Three have failed to comply with the mandate in the SOCWA JPA that all SOCWA
17 Project facilities be maintained in an “efficient and economical manner, and in a manner not
18 detrimental to the Participating Member Agencies” per § 9.1 of the SOCWA JPA.

19 9. SOCWA and the other three PC 15 members, Cross-Defendants Emerald Bay, South
20 Coast and Laguna Beach, have acknowledged that unanimous consent of the PC 15 participating
21 agencies is required for capital improvement project budgets that rehabilitate, improve or modify the
22 Coastal Treatment Plant to be legal, valid and binding, when Cross-Defendants caused SOCWA
23 management to describe the agreements in correspondence to the Joint Legislative Audit Committee
24 on June 27, 2017, “Response to State Audit Request Letter Statements,” as “contractual agreements
25 requiring unanimous agreement.”

26 10. Cross-Defendants manipulate and exert undue influence upon SOCWA’s
27 management to the detriment and harm to Moulton Niguel. In violation of the Joint Powers
28 Agreement and its unanimous consent requirement, Cross-Defendants proceeded with the invalid

1 budget and caused Moulton Niguel to be illegally invoiced for the capital improvement project costs
2 that were either not “necessary” or not approved properly (by unanimous consent).

3 11. In recent years, SOCWA management – by its own admission – has engaged in
4 questionable financial practices, sloppy accounting, fiscal improprieties and poor retention of
5 financial records, all of which are under investigation and review by independent State of California
6 auditors. In correspondence to the Joint Legislative Audit Committee on June 27, 2017, “Response
7 to State Audit Request Letter Statements,” SOCWA management admitted that the agency does not
8 maintain complete and accurate financial records -- with “substantial amounts of accounting” that
9 are “difficult to know what records are accurate and which are simply drafts, notes or work in
10 progress.” SOCWA management has admitted that it has failed to file timely audits with appropriate
11 monitoring agencies. SOCWA management blamed its failure to file timely audits “on the departure
12 under embezzlement allegations of the Finance Officer in 2012.”

13 12. SOCWA management’s financial issues have harmed Moulton Niguel and
14 undermined confidence in SOCWA management’s ability to manage taxpayer funds. On June 28,
15 2017, the Joint Legislative Audit Committee unanimously approved a request by two state legislators
16 to conduct a state audit of SOCWA’s financial records to ensure accountability and transparency.
17 Given SOCWA management’s financial irregularities, which are as serious as they are numerous,
18 Moulton Niguel staff have attempted to scrutinize all SOCWA invoices and accounting materials,
19 including those pertaining to the Coastal Treatment Plant.

20 13. For example on August 3, 2017, when asked to explain a \$78,667 discrepancy
21 between general fund invoices and funds approved under the 2017-18 SOCWA budget, SOCWA
22 management stated, “We were working on the fly in the meeting... We all said that was done very
23 quickly... We did make a mistake.” Later that day, the Los Angeles Times described the action as
24 “budget manipulation.” ([http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-lb-moulton-](http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-lb-moulton-niguel-accusations-20170803-story.html)
25 [niguel-accusations-20170803-story.html](http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-lb-moulton-niguel-accusations-20170803-story.html)) Rather than bring that nearly \$80,000 “budget
26 manipulation” back to the SOCWA Board of Directors for the requisite approval, SOCWA
27 management decided it was more expedient to simply conceal it, “We ran the numbers again with
28 the right numbers.”

1 14. Prior to the state audit conducted in 2017 and 2018, SOCWA management could not
2 identify the capital improvement funds it held for the Coastal Treatment Plant, how much was
3 contributed by each agency, or the intended use of those funds already collected from Moulton
4 Niguel. This lack of fund identification further undercuts the invalid capital expenditures that
5 SOCWA seeks Moulton Niguel to fund for unnecessary capital improvements.

6 15. Following the filing of their lawsuit against Moulton Niguel, Cross-Defendants
7 recently attempted to insert self-serving and punitive budget definition revisions in a SOCWA
8 budget document, and after the SOCWA Board of Directors had publicly considered the budget.
9 The revised budget definitions conflict with the applicable definitions in the joint powers agreements
10 and are a blatant effort to rewrite applicable budget definitions in order to help Cross-Defendants'
11 lawsuit against Moulton Niguel. The only explanation offered by SOCWA management as to why
12 these manipulated budget definitions were added without any discussion or consideration by the
13 SOCWA Board of Directors was "budget clean-up." Fortunately, the SOCWA Board of Directors
14 approved, with a 7 to 3 vote, to remove the manipulated budget definitions from the budget
15 document. The only three votes cast to allow the budget definition revisions to remain in the budget
16 document were by the three Cross-Defendants.

17 16. Such egregious actions – the willful "manipulation" and disregard of appropriate
18 public deliberation and approval by the SOCWA Board of Directors of budget documents that
19 support Moulton Niguel in its defense of this action – have also materially breached the Cross-
20 Defendants' agreements including their good-faith performance obligations and duties.

21 17. Moulton Niguel, on behalf of itself, its ratepayers and the south Orange County
22 public, seeks the aid of the court to protect its ratepayers and the public at large in south Orange
23 County from Cross-Defendants' continued breaches of contract, violations of law and the public's
24 trust, and to end the unfair and legally abusive use of the PC 15 Agreement by finding that Cross-
25 Defendants have materially breached the contract and that the PC 15 Agreement is rescinded.

26
27
28

I.

PARTIES

18. Cross-Complainant Moulton Niguel is a California water district, organized pursuant to the California Water District Law, Water Code section 34000 et seq.

19. Moulton Niguel is informed and believes and on that basis alleges that SOCWA is a Joint Powers Authority organized under Government Code § 6500 et seq.

20. Moulton Niguel is informed and believes and on that basis alleges that cross-defendant Laguna Beach is a California municipal corporation, organized pursuant to the laws of the State of California.

21. Moulton Niguel is informed and believes and on that basis alleges that cross-defendant South Coast is a county water district organized pursuant to the County Water District Law, Water Code section 30000 et seq.

22. Moulton Niguel is informed and believes and on that basis alleges that cross-defendant Emerald Bay is a community services district organized pursuant to the Community Services District Act, Government Code section 61000 et seq.

23. Moulton Niguel is unaware of the true identities of Cross-Defendants Roes 1 through 30, inclusive, and therefore sues these cross defendants by such fictitious names. Moulton Niguel will amend its cross-complaint to allege true identities and capacities once ascertained.

24. Moulton Niguel is informed and believes and thereon alleges that all times herein mentioned, cross-defendant Roes 1 through 30 were agents, servants, and employees, and with the permission and consent of their other Cross-Defendants.

II.

GENERAL FACTS AND ALLEGATIONS

Aliso Water Management Agency Joint Powers Agreement

25. On March 1, 1972, Moulton Niguel, South Laguna Sanitary District, El Toro Water District, Los Alisos Water District and Laguna Beach formed the Aliso Water Management Agency (AWMA). The purpose of the AMWA was to “[coordinate] regional planning of waste disposal, reclamation, and total water management within the Aliso Valley Watershed Basin and areas

1 logically related thereto.” (Joint Exercise of Powers Agreement Creating Aliso Water Management
2 Agency [AWMA JPA].)

3 26. An addendum was added to the AWMA JPA on August 10, 1972 whereby Emerald
4 Bay and Santa Ana Mountains County Water District joined as member agencies. The AWMA JPA
5 was further amended on November 10, 1976 at which time it recognized the withdrawal of Santa
6 Ana Mountains County Water District in 1975 and the dissolution of South Laguna Sanitary District,
7 with South Coast as its successor. A true and correct copy of the AWMA JPA and its amendments
8 are appended hereto as **Exhibit A** and incorporated by reference as though fully set forth herein.

9 ***Project Committee 15 Agreement***

10 27. The AWMA JPA provided for the creation of “project committees” for the
11 acquisition, construction, maintenance, rehabilitation, and operation of specific projects if fewer than
12 all members of the AWMA participate in the project. Pursuant to the AWMA JPA, AWMA,
13 Moulton Niguel, South Laguna Sanitary District, Emerald Bay, and Laguna Beach, among others,
14 entered into an “Agreement for the Design, Construction, Use, Operation, Repair, and Replacement
15 of Coastal Treatment Plant for and on behalf of Project Committee No. 15, Aliso Water
16 Management Agency” on or about November 9, 1976. (The Project Committee 15 is referred to as
17 “PC 15” hereinafter and the agreement referred to as the “PC 15 Agreement”). A true and correct
18 copy of the PC 15 Agreement is appended hereto as **Exhibit B** and incorporated by reference as
19 though fully set forth herein.

20 28. PC 15 was created “for the purpose of preparing an engineering report, construction
21 plans and specifications, environmental impact report, grant application, and acquisition of permits
22 and rights-of-way relative to the Coastal Treatment Plant.” (PC 15 Agreement, recitals.) The PC 15
23 Agreement also provided that “the scope and purpose of [PC 15] may be modified subsequently to
24 include the construction, operation, maintenance, repair, and replacement of the Coastal Treatment
25 Plant.” (*Ibid.*)

26 29. The PC 15 Agreement had an effective date based upon the execution of various
27 agreements: (1) The agreement for the construction for the North Coastal Interceptor Sewer on
28 behalf of Project Committee 7-A (executed on November 4, 1976); (2) The agreement to construct

1 the Ocean Outfall on behalf of Project Committee 11-A (executed on November 22, 1976) ; and (3)
2 Amendments 1, 2 and 3 to the agreement to construct the Ocean Outfall on behalf of Project
3 Committee 11-A (Amendment 3 executed on November 22, 1976). Therefore, the effective date of
4 the PC 15 Agreement was November 22, 1976, the latest of the three execution dates outlined above.

5 30. The PC 15 Agreement Amendment No. 2 further provided that the term of the PC 15
6 Agreement “shall be for a period of fifty (50) years and may be extended for a like period or
7 rescinded or modified by the unanimous written consent of all parties to this Agreement.” (¶ 10.)
8 Using November 22, 1976 as the effective date of the PC 15 Agreement, combined with the fifty-
9 year term in Amendment No. 2, the term of the Coastal Treatment Plant is through November 22,
10 2026.

11 31. The PC 15 Agreement has been amended eight times over the years for various and
12 sundry purposes. In particular, the PC 15 Agreement was modified pursuant to Amendment No. 2
13 on or about February 19, 1980. At that time, the scope and purpose of PC 15 was modified “to
14 include the construction, operation, maintenance, repair, and replacement” of the Coastal Treatment
15 Plant. (Recitals, p. 4.) Pursuant to the PC 15 Agreement, AWMA, Moulton Niguel, Irvine Ranch
16 Water District, South Coast, Laguna Beach, and Emerald Bay agreed that AWMA would construct,
17 own, operate and maintain the Coastal Treatment Plant for the use and benefit of Irvine Ranch Water
18 District, Laguna Beach, Emerald Bay and South Coast but not Moulton Niguel.

19 32. As of the date of the PC 15 Agreement Amendment No. 2, Moulton Niguel ceased to
20 be a participating member agency of PC 15 but continued to be a member agency of AMWA, and
21 the PC 15 Agreement Amendment No. 2 further provided that the Coastal Treatment Plant would
22 receive, treat and dispose of Moulton Niguel’s wastewater pursuant to a separate agreement.

23 33. Several years after ceasing to be a participating member agency of PC 15, and in
24 anticipation of planned development in Moulton Niguel’s service area, Moulton Niguel sought to
25 acquire additional waste water treatment capacity. Accordingly, on April 1, 1999, Amendment No.
26 7 of the PC 15 Agreement was adopted and it provides for (i) Moulton Niguel’s renewed
27 membership in PC 15 and (ii) approval of transfers of excess Coastal Treatment Plant service
28 capacity from member agencies to Moulton Niguel. (Recitals, ¶ C.) Amendment No. 7 provided for

1 Moulton Niguel to acquire 29.25 percentage capacity ownership in the Coastal Treatment Plant. (¶
2 2.4, Table 3.)

3 34. Consistent with Amendment No. 7, Moulton Niguel and Laguna Beach entered into
4 an agreement whereby Moulton Niguel acquired excess capacity rights in the Coastal Treatment
5 Plant from Laguna Beach on September 16, 1999. Specifically, Moulton Niguel acquired 1.25
6 million gallons per day (mgd), average dry weather flow of treatment capacity and corresponding
7 solids transport capacity during all annual periods from and including July 1 through August 30.
8 (Agreement for Assignment of Sewage Treatment Capacity for the AWMA Coastal Treatment Plant
9 Between Moulton Niguel Water District and the City of Laguna Beach, a true and correct copy of
10 which is appended hereto as **Exhibit C** and incorporated by reference as though fully set forth
11 herein.) In addition, Moulton Niguel acquired from 1.5 mgd, average dry weather flow of treatment
12 capacity and corresponding solids transport capacity during all annual periods from and including
13 September 1 through June 30, from Laguna Beach.

14 35. Moulton Niguel and South Coast entered into a substantially similar agreement
15 whereby Moulton Niguel acquired excess capacity rights in the Coastal Treatment Plant from South
16 Coast. (Agreement for Assignment of Sewage Treatment Capacity for the AWMA Coastal
17 Treatment Plant Between Moulton Niguel Water District and South Coast Water District, a true and
18 correct copy of which is appended hereto as **Exhibit D** and incorporated by reference as though fully
19 set forth herein.) Specifically, Moulton Niguel acquired 0.5 mgd treatment capacity and
20 corresponding solids transport capacity.

21 36. The acquisition of the excess capacity rights from Laguna Beach and South Coast
22 gave Moulton Niguel a 29.25 percentage capacity ownership in the Coastal Treatment Plant. The
23 percentage of ownership is to be a determinative factor when valuing the asset, and at the
24 termination of the PC 15 Agreement for the allocation of the cash on hand as well as the value of the
25 assets.

26 37. The PC 15 Agreement was never further amended to extend the fifty-year term of the
27 Coastal Treatment Plant beyond November 22, 2026.

28

South Orange County Wastewater Authority Joint Powers Agreement

1
2 38. On July 1, 2001, all AWMA member agencies, South East Regional Reclamation
3 Authority and South Orange County Reclamation Authority decided to consolidate the three joint
4 powers authorities (“JPAs”) into a single joint powers authority, the South Orange County
5 Wastewater Authority (“SOCWA”). The Joint Exercise of Powers Agreement Creating South
6 Orange County Wastewater Authority (“Joint Powers Agreement” or SOCWA JPA”) is appended
7 hereto as **Exhibit E** and incorporated by reference as though fully set forth herein.

8 39. The purpose of consolidating the three JPAs into one JPA was “in the interests of
9 furthering a regional approach to wastewater treatment and reclamation, and additional operational
10 and administrative efficiencies.” (Recitals, ¶ G.) In forming SOCWA, the parties agreed that,
11 “[g]enerally, the terms and conditions include the continuation of all existing AWMA, SERRA and
12 SOCWA project committees, and corresponding project agreements, including but not limited to the
13 rights, duties and liabilities of the respective Member Agencies under such project committees and
14 agreements.” (Recitals, ¶ L.)

15 40. With respect to existing project committee agreements such as the PC 15 Agreement,
16 the Joint Powers Agreement provided that “except as agreed upon by the parties after the Effective
17 Date [of the SOCWA JPA], the rights, duties, obligations and liabilities of the parties . . . under and
18 pursuant to the JPAs’ project committees and project agreements, and any other agreements and
19 budgetary procedures arising out of or in connection with the project committee structure or the
20 JPAs generally . . . shall remain intact and unchanged by the consolidation of the JPAs, the
21 formation of Authority and its’ assumption of the aforesaid obligations, agreements, liabilities and
22 assets, or the execution of this Agreement.” (Joint Powers Agreement, ¶ 3.8.)

23 41. The SOCWA JPA defines “project” as “the facilities owned, constructed or operated
24 and maintained by the Authority pursuant to the project budget procedure.” (Joint Powers
25 Agreement, ¶ 1.1(n).)

26 42. The Joint Powers Agreement provided for the adoption of a General Budget (¶ 6.1), a
27 Project Budget (¶ 6.2) and Operations and Maintenance Budgets. (¶ 6.3.) The General Budget
28 includes “(a) the general administrative expenses of the Agency to be incurred during the period

1 covered by the General Budget; and (b) the allocation among the Member Agencies of the amounts
2 necessary to cover the General Budget expenditures.” (§ 6.1) The Joint Powers Agreement further
3 provides that “[i]f the General Budget provides an allocation to the Member Agencies on some basis
4 other than equal amounts, the General Budget must be approved by the unanimous consent of all of
5 the Member Agencies.” (*Ibid.*)

6 43. The Joint Powers Agreement also authorizes the preparation of project budgets “for
7 the study, implementation or construction of any specific Project proposed to be constructed by the
8 Authority (“Project Budget”).” (§ 6.2.) A project budget is subject to the approval of all member
9 agencies that propose to participate in the project (the Participating Member Agencies). (*Ibid.*)

10 44. The Joint Powers Agreement also provides for the preparation of an operations and
11 maintenance budget (“O&M Budget”). (§ 6.3.) The O&M Budget includes:

- 12 (a) the estimated expenses of operating the Project;
- 13 (b) the estimated expenses of maintaining the Project;
- 14 (c) the estimate of income from operations, if any; and
- 15 (d) the allocation of operation and maintenance expenses among the Participating
16 Member Agencies in accordance with the formula set forth in the approved
17 Project Budget. (*Ibid.*)

18 45. O&M Budgets must be approved by two-thirds (2/3) of the directors of the
19 Participating Member Agencies. (*Ibid.*)

20 46. Under the Joint Powers Agreement, proposed capital improvement project costs that
21 rehabilitate, improve or modify the Coastal Treatment Plant are different from O&M budgets and
22 require a unanimous vote by the project committee members. Pursuant to paragraph 8.2, “No project
23 shall be acquired or constructed by the Authority without the unanimous consent of every Member
24 Agency or, if it is a project of less than all of the Member Agencies, unanimous consent of all of the
25 Participating Member Agencies. . . . In the event any individual Participating Member Agency or
26 combination of such agencies desires to modify, rehabilitate or otherwise improve the Project, and
27 those Participating Member Agencies agree to pay all the costs associated with the modifications,
28 rehabilitations or other improvements, . . . such agency or agencies may proceed with the

1 modifications, rehabilitations or other improvements upon approval of a simple majority vote of all
2 Participating Member Agencies. No Participating Agency shall unreasonably withhold or condition
3 its approval of a Project modification, rehabilitation or improvement which is proposed to be wholly
4 funded by other Participating Member Agencies.”

5 **Moulton Niguel Does Not Use And Will Not Need The Coastal Treatment Plant**

6 47. The Coastal Treatment Plant was constructed to provide for the treatment and
7 disposal of wastewater on behalf of the PC 15 member agencies. The current PC 15 member
8 agencies are Moulton Niguel, and Cross-Defendants Laguna Beach, South Coast and Emerald Bay.
9 Cross-Defendants have at times relevant herein referred to themselves collectively as the “PC 15
10 Three,” “PC 15 Partner Agencies” “SOCWA PC 15” and “PC 15 Partners.”

11 48. SOCWA owns the Coastal Treatment Plant for the benefit of the PC 15 member
12 agencies. However, all management and operations decisions for the Coastal Treatment Plant are
13 made exclusively by the four PC 15 member agencies. SOCWA does not have a financial interest in
14 the Coastal Treatment Plant, and SOCWA is responsible for implementing the agreements and
15 policies as established by the particular project’s member agencies for the operation, maintenance, or
16 capital improvements for the Coastal Treatment Plant.

17 49. Moulton Niguel has paid its share of the PC 15 O&M costs. Moulton Niguel also
18 paid for Coastal Treatment Plant capital improvement costs from April 1, 1999 through June 30,
19 2016 because there were unanimous approvals by the PC 15 members as required by the Joint
20 Powers Agreement.

21 50. During that time and continuing to the present, however, Moulton Niguel did not
22 require use of the Coastal Treatment Plant. Notwithstanding that Moulton Niguel’s ratepayers
23 received no benefit from the Coastal Treatment Plant, Moulton Niguel has paid over \$9 million in
24 operations and maintenance, and capital improvement costs to maintain the Coastal Treatment Plant.

25 51. At present, Moulton Niguel and its ratepayers continue to fund the PC 15 operation
26 and maintenance costs since April 1, 1999.
27
28

The PC 15 Capital Budget Was Not Lawfully Approved for Fiscal Year 2016/2017

52. On June 28, 2016, the SOCWA Board of Directors held its public meeting at which the annual General Budget, Project Budgets and O&M Budgets were to be approved.

53. The Project Budget for the Coastal Treatment Plant included capital improvement projects that are designed to modify, rehabilitate or otherwise improve the Coastal Treatment Plant for the purpose of extending the life of the Coastal Treatment Plant beyond the termination of the PC 15 Agreement - November 22, 2026. These capital improvement projects could not be approved using the Joint Powers Agreements Paragraph 6.3.1., as they could not qualify as "necessary" capital improvement projects because their purpose is to extend the life of the plant beyond the fifty-year term.

54. Additionally, the Project Budget for the Coastal Treatment Plant included capital improvement projects that were intended to improve, rehabilitate or modify the Coastal Treatment Plant such that it could operate beyond the remaining term of the PC 15 Agreement, November 22, 2026

55. In accordance with the Joint Powers Agreement's paragraph 8.2, the budget for these capital improvement project expenditures (as described in Paragraphs 53 and 54 above) must have been approved by a unanimous vote of the member agencies who are participating in the project and who desire to modify, rehabilitate or otherwise improve the project and who agree to pay all the costs associated with the modifications, rehabilitations or other improvements.

56. The SOCWA annual General Budget, which was the so-called "Administration Budget," Project Budgets, and O&M Budgets were all bundled together into one proposed budget (the "Budget Book") and submitted to the SOCWA Board for a single vote, notwithstanding that each budget has a different voting requirement, and that each project budget has different sets of participating member agencies.

57. Moulton Niguel requested that the individual budgets be subject to separate votes, but this request was denied. The PC 15 Budget, which included the O&M budget (containing no capital projects) and the separate capital improvement project budget to modify, rehabilitate or otherwise improve the Coastal Treatment Plant, was then included in the bundled Budget Book.

1 58. Because Moulton Niguel does not require capacity in the Coastal Treatment Plant and
2 does not intend to use capacity in the Coastal Treatment Plant at any time in the future, Moulton
3 Niguel voted not to approve the proposed Budget Book, in part, because the PC 15 component of the
4 Budget Book contained capital improvement projects that would extend the life of the Coastal
5 Treatment Plant beyond the term of the PC 15 Agreement, with said projects not qualifying as
6 “necessary” capital improvements. All other SOCWA Board members voted to approve the Budget
7 Book. Because Moulton Niguel voted not to approve the Budget Book, the budget for the PC 15
8 unnecessary capital improvements, which required unanimous approval, was not legally approved.

9 59. Because both the General Budget and the Project Budget for PC 15 require
10 unanimous approval of the SOCWA member agencies, or participating agencies in the case of
11 Project Budgets, and Moulton Niguel did not approve the Budget Book, neither the General Budget
12 nor the Project Budget for PC 15 was validly adopted at that time.

13 **MNWD Receives Unlawful Invoices For The Coastal Treatment Plant**

14 60. Beginning on or about July 1, 2016, SOCWA submitted invoices for payment to
15 Moulton Niguel of its alleged share of administrative costs for SOCWA, operations and maintenance
16 expenses, and capital improvement project costs for the project committees, including both the
17 General Budget and PC 15.

18 61. On July 28, 2016, Moulton Niguel submitted payment under protest to SOCWA, by
19 check in the amounts of \$2,069,222 for capital improvement costs excluding PC 15, \$1,855,839 for
20 O&M costs excluding the General Budget.

21 62. At the public PC 15 meeting held on August 22, 2016, Moulton Niguel informed
22 Cross-Defendants of Moulton Niguel’s desire to withdraw from PC 15 and to be released from the
23 PC 15 Agreement. Moulton Niguel offered to fund a proportional share of capital improvement
24 project costs through the termination of the PC 15 Agreement in 2026.

25 63. On August 29, 2016, Moulton Niguel sent a written request to Cross-Defendants to
26 negotiate Moulton Niguel’s release from the PC 15 Agreement. Moulton Niguel offered to fund a
27 proportional share of the Coastal Treatment Plant capital improvement project costs through the
28 fiscal year ending 2026. Additionally, Moulton Niguel committed to fund its annual share of

1 operations and maintenance expenses for the Coastal Treatment Plant through the end of fiscal year
2 2026.

3 64. On September 23, 2016, Moulton Niguel further paid under protest the amount of
4 \$229,472 for an invoice received on or about July 1, 2016, even though the General Budget had not
5 yet been approved by the SOCWA Board of Directors.

6 65. On October 21, 2016, Moulton Niguel submitted its payment under protest to
7 SOCWA, by check in the amount of \$2,085,311 for the O&M for the second quarter of fiscal year
8 2016/2017, and in the amount of \$1,696,148 for the second quarter's Capital Billing for fiscal year
9 2016/2017. The latter payment did not include PC 15 because its capital improvements budget had
10 not been validly adopted.

11 **The Cross-Defendant PC 15 Members Refuse Moulton Niguel's Payment Under Protest**

12 66. At a special meeting on October 26, 2016, the SOCWA Board of Directors agreed to
13 submit the budgets compiled in the Budget Book to separate votes. The annual General Budget, or
14 so-called "administrative budget", and each O&M and Project Budget for each Project committee
15 were voted on separately at the Board of Directors meeting on November 3, 2016 . SOCWA did
16 continue to bundle O&M and Project Budgets for each Project Committee vote.

17 67. At the November 3, 2016 Board of Directors meeting, Moulton Niguel voted to
18 approve the annual General Budgets, or so called "Administrative Budget," and all project budgets
19 except the PC 15 bundled budget. Moulton Niguel voted not to approve the PC 15 bundled budget.

20 68. Subsequently, on November 14, 2016, in light of the new votes on the separate annual
21 General Budget and individual project budgets, Moulton Niguel withdrew its protests pursuant to
22 which its above-described payments were made.

23 69. On November 18, 2016, PC 15 acting chair Michael Dunbar submitted a letter to the
24 Moulton Niguel, rejecting Moulton Niguel's request to initiate negotiations for its withdrawal from
25 PC 15 and release from the PC 15 Agreement unless Moulton Niguel paid \$391,816, the amount
26 Cross-Defendants claimed was owed by Moulton Niguel for the first two quarters of fiscal year
27 2016/2017 for PC 15 capital improvement project costs unlawfully allocated to Moulton Niguel.
28

1 70. On December 16, 2016, Moulton Niguel advised PC 15 acting chair Michael Dunbar
2 that Moulton Niguel was prepared to remit payment in the amount of \$391,816 for the PC 15 capital
3 improvement project costs, subject to the following conditions:

- 4 (a) That any payment of PC 15 capital improvement project costs made by
5 MNWD during fiscal year 2016/2017 be applied to Moulton Niguel's
6 contributions as part of a comprehensive divestment plan; and
7 (b) That SOCWA's PC 15 10-Year Plan would form the basis of negotiations of a
8 comprehensive divestment plan.

9 71. On February 3, 2017, Cross-Defendants demanded that Moulton Niguel remit
10 payment without any condition in the amount of \$521,248, representing the PC 15 capital
11 improvement costs unlawfully allocated to Moulton Niguel for first three quarters of fiscal year
12 2016/2017, before Cross-Defendants would negotiate with Moulton Niguel on its withdrawal from
13 PC 15, and Cross-Defendants rejected Moulton Niguel's offer to remit payment pursuant to the
14 terms of Moulton Niguel's offer on December 16, 2016.

15 72. At the public SOCWA meeting on May 12, 2017, Moulton Niguel General Manager
16 Joone Lopez attempted to remit payment to SOCWA by check in the amount of \$755,870,
17 representing the PC 15 capital improvement project costs allocated to Moulton Niguel for fiscal year
18 2016/2017. The payment, while made under protest, was made without conditions.

19 73. On May 12, 2017, SOCWA and Cross-Defendants rejected Moulton Niguel's
20 remittance.

21 74. Upon information and belief, on or about June, 2017, at the SOCWA Board of
22 Directors meeting, the SOCWA Board of Directors voted on the budget for fiscal year 2017/2018.
23 At that meeting, Moulton Niguel voted to approve:

- 24 (a) SOCWA General Fund Budget
25 (b) Project Committee 02 operations and maintenance budget and project budget
26 (c) Project Committee 05 operations and maintenance budget and project budget
27 (d) Project Committee 08 operations and maintenance budget and project budget
28 (e) Project Committee 17 operations and maintenance budget and project budget

- 1 (f) Project Committee 21 operations and maintenance budget and project budget
2 (g) Project Committee 24 operations and maintenance budget and project budget.

3 75. Moulton Niguel did not approve the bundled budget for PC 15 because it included a
4 capital improvement project budget to modify, rehabilitate or improve the facilities that would
5 extend the life of the Coastal Treatment Plant beyond the PC 15 Agreement termination date.
6 Therefore, the budget for PC 15 capital improvements, which requires unanimous approval pursuant
7 to Joint Powers Agreement paragraph 8.2, was not validly adopted. Nonetheless, Moulton Niguel
8 has remitted payment for the PC 15 operations and maintenance budget for fiscal year 2017/2018
9 because there was a valid two-thirds majority approval under the Joint Powers Agreement.

10 76. On July 1, 2017, SOCWA submitted inaccurate accounting invoices to Moulton
11 Niguel for its alleged share of SOCWA administrative costs, operations and maintenance expenses,
12 and capital improvements for various project committee projects. In addition to being in the wrong
13 amount, the invoices improperly and unlawfully included capital improvement costs for PC 15,
14 which budget had not been validly adopted by SOCWA.

15 77. On August 9, 2017, in response to invoices submitted by SOCWA, Moulton Niguel
16 remitted its payments to SOCWA as follows:

- 17 (a) O&M for the first quarter billing (Invoice No. 284) in the amount of
18 \$2,232,384 for Project Committees 2, 5, 8, 12, 15, 17, 21 and 24
19 (b) Large Capital first quarter billing (Invoice No. 259) in the amount of \$617,001
20 for Project Committees 2, 5 and 17
21 (c) Non-Capital first quarter billing (Invoice No. 267) in the amount of \$34,244
22 for Project Committees 2 and 17
23 (d) Small Capital first quarter billing (Invoice No. 275) in the amount of \$160,027
24 for Project Committees 2, 5 and 17

25 78. On May 30, 2017, Cross-Defendants filed a complaint for breach of contract and
26 declaratory relief against Moulton Niguel.

27 79. On July 25, 2017, Cross-Defendants filed a First Amended Complaint for Breach of
28 Contract and Declaratory Relief.

FIRST CAUSE OF ACTION

Claim for Rescission Based on Material Breach of Contract

(Against Cross-Defendants Laguna Beach, South Coast and Emerald Bay)

1
2
3
4 80. Moulton Niguel by this reference incorporates and re-alleges paragraphs 1 through 79
5 as if fully set forth fully herein.

6 81. Moulton Niguel seeks rescission of the PC 15 Agreement because of Cross-
7 Defendants' repeated and continued material breach of contract including their refusal to have
8 Moulton Niguel pay only those costs that are lawfully approved.

9 82. Cross-Defendants and SOCWA have continued to willfully invoice Moulton Niguel
10 with unlawful capital improvement project costs which were not unanimously approved by the PC
11 15 members in accordance with the Joint Powers Agreement. Moulton Niguel has a responsibility to
12 its ratepayers to not waste their funds and Moulton Niguel paying an invoice that it knows to contain
13 unapproved capital improvement project costs would be a breach of Moulton Niguel's responsibility
14 and duty to its ratepayers.

15 83. Cross-Defendants and SOCWA have continued, even after numerous objections by
16 Moulton Niguel, to bill Moulton Niguel for the capital improvement project budget which was not
17 approved unanimously by the PC 15 Member Agencies, Cross-Defendants have stated that they will
18 continue to attempt to force Moulton Niguel to pay for costs it is not legally required to pay, and to
19 hold unlawful bundled votes in an attempt to have Moulton Niguel pay for capital improvement
20 budget costs it does not intend to approve or use in the future.

21 84. Moulton Niguel intends that this cross-complaint and its service upon Cross-
22 Defendants serve as notice of rescission of the PC 15 Agreement. Moreover, Cross-Defendants
23 received notice on August 29, 2016 that Moulton Niguel wanted to negotiate its early release from
24 the PC 15 Agreement and that it was willing to continue funding a proportional share of the capital
25 improvement project costs through the end of the PC 15 Agreement, which occurs November 22,
26 2026. Moulton Niguel had offered to fund its annual share of operations and maintenance expenses
27 for the Coastal Treatment Plant through the end of the PC 15 Agreement. On November 8, 2016, the
28 PC 15 Chair informed Moulton Niguel that Cross-Defendants were prepared to negotiate Moulton

ALVARADOSMITH
A PROFESSIONAL CORPORATION
SANTA ANA

1 Niguel’s rescission of the PC 15 Agreement so long as the other PC 15 members were “made
2 whole.”

3 85. Cross-Defendants should bear the costs of facilities that they use and Moulton Niguel
4 has already subsidized their use by Moulton Niguel paying approximately \$9 million. Moulton
5 Niguel hereby demands that Cross-Defendants, and each of them, restore such amounts as necessary
6 to restore Moulton Niguel to the position it was in prior to the PC 15 Agreement.

7 86. As a direct and proximate result of Cross-Defendants’ material breach of contract,
8 Moulton Niguel prays for judgment against Cross-Defendants, and each of them, including
9 rescission and cancellation of the PC 15 Agreement, that any obligations that Moulton Niguel has
10 under the PC 15 Agreement are excused by Cross-Defendants’ breach of contract or have been
11 performed by Moulton Niguel, and for damages in an amount to be proven at trial as an offset to
12 Cross-Defendants’ claims for damages.

13 87. Section 13(B) of Amendment 2 of the PC 15 agreement provides for the recovery of
14 all costs of suit, including a reasonable amount for attorneys’ fees, by the prevailing party. Moulton
15 Niguel, therefore, is entitled to an award of attorneys’ fees and costs.

16 **SECOND CAUSE OF ACTION**

17 **Rescission Based on Public Interest or Policy- Civil Code Section 1689(b)**
18 **(Against Cross-Defendants Laguna Beach, South Coast and Emerald Bay)**

19 88. Moulton Niguel by this reference incorporates and re-alleges paragraphs 1 through 87
20 as if fully set forth fully herein.

21 89. The public interest will be prejudiced if the PC 15 Agreement is permitted to stand in
22 that Moulton Niguel ratepayers will continue to subsidize and pay for the Coastal Treatment Plant.
23 Moulton Niguel acquired Coastal Treatment Plant capacity in anticipation of planned development
24 in its service area and an operational requirement for the capacity. However, through no fault of
25 Moulton Niguel or its ratepayers, such development and operational needs never materialized, and as
26 a result, Moulton Niguel does not and will not use the Coastal Treatment Plant.

27 90. The PC 15 Agreement expires on November 22, 2026, however, Moulton Niguel
28 ratepayers are now being billed for capital improvements that will extend the useful life of the

1 Coastal Treatment Plant and its assets well beyond the stated term of the existing agreements.
2 Moulton Niguel's ratepayers should not be obligated to fund such projects.

3 91. To fund capital expenditures for the Coastal Treatment Plant that Moulton Niguel
4 ratepayers do not and will not use is not fair or appropriate for its ratepayers. Nonetheless, Moulton
5 Niguel proposed to Cross-Defendants a plan for Moulton Niguel's timely divestiture from the
6 Coastal Treatment Plant that even offered capital funding through the end of the PC 15 Agreement,
7 and further offered to continue funding its allocation of the operations and maintenance expenses
8 through the termination of the PC 15 Agreement.

9 92. Unfortunately, Cross-Defendants' response was not only to refuse to negotiate but
10 they illegally imposed unauthorized capital improvement project costs upon Moulton Niguel;
11 concealed or otherwise ignored serious SOCWA management accounting issues harming Moulton
12 Niguel; refused to accept a Moulton Niguel payment under protest of invalid and unlawful capital
13 costs; sued Moulton Niguel in this action for the Cross-Defendants' unlawfully approved capital
14 improvement project costs they seek to force upon Moulton Niguel; and Cross-Defendants even tried
15 to manipulate the outcome of their lawsuit by attempting to change the applicable SOCWA capital
16 improvement project budget definitions which support Moulton Niguel in its defense of Cross-
17 Defendants' lawsuit.

18 93. In June 2016, a budget for PC 15 was proposed that included capital improvements
19 that would further *extend* the Coastal Treatment Plant's useful life beyond the expiration of the
20 existing PC 15 Agreement's term. The Joint Exercise of Powers Agreement creating SOCWA is
21 clear: all capital improvement costs to improve, rehabilitate or modify the Coastal Treatment Plant
22 must be approved by unanimous consent of the agencies participating in the project. Moulton
23 Niguel withheld its consent to the proposed Project Budget for PC 15 capital improvements for the
24 obvious reasons that Moulton Niguel does not and will not use the Coastal Treatment Plant, and
25 Moulton Niguel will not financially burden its ratepayers by their having to extend a facility that
26 they do not use and beyond the stated term of the applicable agreement. Thus, there was no
27 unanimous approval of the PC 15 capital improvement Project Budget and Moulton Niguel is not
28

1 and should not be financially responsible for capital improvement project costs not lawfully
2 approved by a unanimous vote of the four PC 15 member agencies.

3 94. Section 13(B) of Amendment 2 of the PC 15 agreement provides for the recovery of
4 all costs of suit, including a reasonable amount for attorneys' fees, by the prevailing party. Moulton
5 Niguel, therefore, is entitled to an award of attorneys' fees and costs.

6 95. Moulton Niguel prays for judgment against Cross-Defendants, and each of them,
7 including rescission and cancellation of the PC 15 Agreement, and that any obligations that Moulton
8 Niguel has under the PC 15 Agreement are excused by Cross-Defendants' breach of contract.

9 **THIRD CAUSE OF ACTION**

10 **Breach of Contract**

11 **(Against Cross-Defendants Laguna Beach, South Coast and Emerald Bay)**

12 96. Moulton Niguel by this reference incorporates and re-alleges paragraphs 1 through 95
13 as if fully set forth fully herein.

14 97. Cross-Defendants' assessment of capital improvement project costs to Moulton
15 Niguel without the required unanimous consent of all the PC 15 Member Agencies frustrated the
16 principal purpose of the applicable contract, which was a basic assumption on which the contract
17 was made.

18 98. Creating a mechanism to operate and improve the sewage treatment facility is the
19 primary purpose of the PC 15 Agreement. Pursuant to the Joint Powers Agreement, operating and
20 maintenance ("O&M") budgets and project budgets must be approved by a two-thirds and a
21 unanimous vote, respectively. This voting standard is so important to the legitimate management of
22 the facilities that paragraph 8.2 of the Joint Powers Agreement even allows Project Committee
23 members to make capital improvements to modify, improve or rehabilitate when a member has
24 voted against a capital improvement, so long as the member who does not want the improvement is
25 not required to pay for the improvement. That member also does not receive the benefit of the
26 improvement. By subverting the voting rules which allow for the operation of the facility, and by
27 denying Moulton Niguel's right to refuse to pay capital improvement costs for which it voted
28 against, Cross-Defendants frustrated the primary purpose of the PC 15 Agreement and the Joint

1 Powers Agreement, and have forced Moulton Niguel to bear the burden of a contractually
2 impermissible expense.

3 99. The unanimous vote required for capital improvement costs was a basic assumption
4 on which the Joint Powers Agreement and PC 15 Agreement were made as the budgeting votes
5 allow for the basic operation and possible improvement, if desired by all parties, of the facilities
6 which make up SOCWA. By forcing a member to pay capital improvement costs which did not
7 receive the requisite number of votes, Cross-Defendants and SOCWA are setting a precedent that
8 capital improvement costs can be forced upon any member agency regardless of their vote for or
9 against such costs, effectively creating a tyranny of the majority where the agreement contemplated
10 the requirement of unanimity. This is of particular concern when one party has provided notice that
11 it will not renew participation in the project committee agreement, yet the Project Budget proposes
12 to modify, rehabilitate, or improve facilities beyond the term of the agreement.

13 100. As a direct and proximate result of Cross-Defendants' breach of contract including by
14 frustration of purpose, Moulton Niguel prays for judgment against Cross-Defendants, and each of
15 them, for a rescission and cancellation of the PC 15 Agreement, and damages in an amount to be
16 proven at trial as an offset to Cross-Defendants' claims for damages.

17 101. Section 13(B) of Amendment 2 of the PC 15 Agreement provides for the recovery of
18 all costs of suit, including a reasonable amount for attorneys' fees, by the prevailing party. Moulton
19 Niguel, therefore, is entitled to an award of attorneys' fees and costs.

20 **FOURTH CAUSE OF ACTION**

21 **Breach of Contract (Anticipatory Breach)**

22 **(Against Cross-Defendants Laguna Beach, South Coast and Emerald Bay)**

23 102. Moulton Niguel by this reference incorporates and re-alleges paragraphs 1 through
24 101 as if fully set forth fully herein.

25 103. At the public SOCWA Board of Directors meeting on June 14, 2017, the SOCWA
26 board voted on a budget for fiscal year 2017/2018. Cross-Defendants and SOCWA again bundled
27 both operational and management ("O&M") budgets and project budgets into one proposed budget
28 for a single vote, notwithstanding that the Joint Powers Agreement requires that the O&M budget

1 receive a two-thirds majority vote while the project budget receive a unanimous vote. (Paragraph
2 8.2, SOCWA Joint Powers Agreement). Thus, when Moulton Niguel voted to reject the bundled
3 Budget Book for PC 15, the Project Budget, which included the capital improvements did not
4 receive the requisite number of votes and was not legally approved.

5 104. Cross-Defendants have anticipatorily breached the Joint Powers Agreement and PC
6 15 Agreement as Cross-Defendants' complaint admits that they will invoice Moulton Niguel for
7 costs that were not properly approved under the Joint Powers Agreement.

8 105. Cross-Defendants continue to incorrectly allege that Project Budgets only require a
9 two-thirds majority vote to justify their past incorrect invoices and their proposed current invoice.
10 Cross-Defendants have not provided any assurances that they will not charge Moulton Niguel for
11 unapproved capital improvement project budgets.

12 106. Moulton Niguel has attempted to pay SOCWA in full, under protest, on multiple
13 occasions only to be rebuffed by Cross-Defendants and SOCWA. Accordingly, Moulton Niguel
14 performed all conditions, covenants and promises required to be performed by them in accordance
15 with the terms and conditions of the Joint Powers Agreement, except those terms, conditions, or
16 covenants which Moulton Niguel was prevented or excused from performing, as they were not
17 legally required.

18 107. Moulton Niguel has requested that Cross-Defendants cure their breach of contract,
19 whether by stating that the votes for the Project Budgets are not receiving the adequate number of
20 votes for passage or by requesting revised invoices omitting the Project Budget items that were not
21 legally approved. Cross-Defendants continue to breach the Joint Powers Agreement by passing
22 Project Budgets which did not receive unanimous vote of the project members and by invoicing a
23 dissenting member for Project Budget costs which it did not approve. By approving a Project
24 Budget including capital improvements to rehabilitate and improve the facilities with a less than
25 unanimous vote, the Cross-Defendants are in breach of the Joint Powers Agreement and the PC 15
26 Agreement.

27
28

1 between Moulton Niguel and Cross-Defendants requires that the Court determine the
2 termination date of the PC 15 Agreement which governs the operations of the Coastal
3 Treatment Plant as a threshold matter.

4 (b) **Determination Of “Necessary” Capital Improvement Projects:**

5 Per §6.3.1 of the SOCWA JPA, the members of PC 15 must determine the
6 “necessary” capital improvement projects annually, and adopt a Maintenance &
7 Operations Budget to address these project by a two-thirds vote. Beginning in 2016,
8 Moulton Niguel raised the issue to SOCWA and the PC 15 committee that the capital
9 improvement projects included within the PC 15 budget included projects that
10 extended the term of the Coastal Treatment Plant beyond its termination on
11 November 22, 2026.

12 A capital improvement project cannot qualify as a “necessary” project if the
13 improvements are being constructed to extend the use and operation of the Coastal
14 Treatment Plan beyond November 22, 2026. As a result, the proposed projects are
15 “rehabilitations, improvements or modifications” to the Coastal Treatment Plant as
16 defined by § 8.2 of the SOCWA JPA. Therefore, such improvements cannot be
17 approved using the procedure set forth in § 6.3.1 in the SOCWA JPA and must be
18 approved using § 8.2, requiring a unanimous vote of the PC 15 members, or an
19 agreement from the Participating Members to fully fund the improvement.

20 Moulton Niguel voted against the 2016 and 2017 Maintenance & Operations
21 Budget for PC 15 due to the inclusion of projects that did not qualify as “necessary”.
22 The remaining members of PC 15 (Cross-Defendants) maintain that the entirety of the
23 projects listed on the Operations & Maintenance Budgets for 2016 and 2017 for the
24 Coastal Treatment Plant qualify as “necessary” capital improvements. Additionally,
25 Cross-Defendants have indicated that the dispute regarding the approval of capital
26 improvement projects will continue to be ongoing through the term of the Coastal
27 Treatment Plant, as evidenced by the proposed ten-year Capital Improvement Project
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

that contains numerous proposed capital improvements projects that will extend the useful life of the assets beyond November 22, 2026.

(c) **Determination Of Distribution Of Assets Of The Coastal Treatment Plant Upon Termination:**

Pursuant to § 11.2 of the SOCWA JPA and the applicable PC 15 Agreements, at the expiration of the fifty-year term of the Coastal Treatment Plant, the project facilities and any funds in possession of SOCWA shall be distributed in kind or sold. The expiration of the term is set to occur on November 22, 2026, and Moulton Niguel has indicated to Cross-Defendants that it intends to terminate the use and operation of the Coastal Treatment Plant as of that date because it has not used the facility and has no intention of ever using the facility. Moulton Niguel is informed and believes, and on that basis alleges that Cross-Defendant must continue to operate the Coastal Treatment Plant following the expiration of its term. The SOCWA JPA and applicable PC 15 Agreements require unanimous consent to extend the term of the Coastal Treatment Plant; consent which Moulton Niguel will not provide.

Therefore, there is a dispute between Moulton Niguel on the one hand, and Cross-Defendants on the other hand, as to the distribution, transfer and valuation of the Coastal Treatment Plant following the expiration of the contractual term such that Moulton Niguel will be made whole for its contribution into the Coastal Treatment Plant during its contractual term, according to its percentage ownership of the asset.

113. Moulton Niguel desires a judicial determination of its rights and duties, and a declaration as to the correctness of its contentions.

114. A judicial declaration is appropriate at this time under the circumstances in order that Moulton Niguel and Cross-Defendants may ascertain the collective rights and duties of all parties under the Joint Powers Agreement and PC 15 Agreement.

///
///
///

1 **WHEREFORE**, cross-complainant Moulton Niguel Water District prays for judgment
2 against Cross-Defendants, and each of them, as follows:

- 3 1. For rescission and cancellation of the PC 15 Agreement;
4 2. For damages in an amount to be determined as an offset to Cross-Defendants' claims
5 for damages, but in excess of the jurisdictional minimum of the court;
6 3. For attorney fees and costs of suit herein to the extent allowed by law; and
7 4. For such other relief as the court may deem proper.

8
9 DATED: June 25, 2018

ALVARADOSMITH
A Professional Corporation

10
11
12 By: 

RUBEN A. SMITH
KEVIN A. DAY
Attorneys for Defendant and Cross-
Complainant
Moulton Niguel Water District

ALVARADOSMITH
A PROFESSIONAL CORPORATION
SANTA ANA

EXHIBIT "A"

5571

BK12660PG 873

FREE RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

\$ **EXEMPT**
C2

ALEXANDER BOWIE
A Law Corporation
610 Newport Center Drive, Suite 1220
Newport Beach, CA 92660

RECORDING REQUESTED BY
TITLE INSURANCE & TRUST CO
RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

-4 25 PM MAY 3 1978

LEE A. BRANCH County Recorder

JOINT EXERCISE OF POWERS AGREEMENT
CREATING ALISO WATER MANAGEMENT AGENCY

Orange County, California
(AWMA)

JOINT EXERCISE OF POWERS AGREEMENT
CREATING ALISO WATER MANAGEMENT AGENCY
Orange County, California
(AWMA)

TABLE OF CONTENTS

	<u>Page</u>
I. RECITALS	1
II. COVENANTS	3
III. PURPOSE AND POWERS	3
1. Agency Created	3
2. Purpose of Agreement; Common Power to be Exercised	4
3. Powers	4
4. Definitions	6
IV. ORGANIZATION	7
5. Membership	7
6. Names	7
7. Designation of Directors	7
8. Principal Office	8
9. Meetings	8
10. Quorum	9
11. Powers and Limitations Thereon	9
12. Minutes	10
13. Rules	10
14. Vote or Assent of Members	10
15. Officers	10
V. PLANNING	12
16. Planning Policy	12
VI. BUDGETS AND PAYMENTS	12
17. General Budget	12
18. Project Budgets	13
19. Maintenance and Operation Budgets	14
20. Effective Failure of Approval of Budget	15
21. Expenditures for the Approved Budget	16
22. Payment of Amounts Due	16
23. Reimbursement of Funds	17
VII. BOND FINANCING	17
24. Revenue Bonds	17
VIII. PROJECT CONSTRUCTION	17
25. Acquisition and Construction of Projects	17
26. Project Members	18
IX. MAINTENANCE AND OPERATION OF FACILITIES	18
27. Maintenance and Operation of Facilities	18

X.	ACCOUNTING AND AUDITS	19
	28. Accounting Procedures	19
	29. Audit	19
XI.	PROPERTY RIGHTS	19
	30. Project Facilities	19
	31. Distribution of Assets and Termination of Agency	20
	32. Liabilities	20
XII.	FORMATION, TERM, TERMINATION, WITHDRAWAL	31
	33. Term	21
	34. Rescission	21
	35. Withdrawal	21
	36. Admission of New Members	22
	37. Amendments	22
	38. Notice	22
	39. Date of Formation	22
	40. Arbitration	22
	41. Severance	25
	42. Clarification of Powers of South Laguna Sanitary District	26

JOINT EXERCISE OF POWERS AGREEMENT
CREATING ALISO WATER MANAGEMENT AGENCY
Orange County, California
(AWMA)

THIS AGREEMENT is made and entered into as of the 1st
day of March, 1972, by and between the MOULTON-NIGUEL
WATER DISTRICT, and one or more of the following entities:

- (a) Irvine Ranch Water District;
- (b) City of Laguna Beach;
- (c) South Laguna Sanitary District;
- (d) El Toro Water District; and
- (e) Los Alisos Water District.

I.

R E C I T A L S :

A. The hereinabove named parties include within their existing boundaries territory within or related to the Aliso Valley Watershed Basin, which areas and the total area within the Aliso Valley Watershed Basin and areas logically related thereto for the hereinafter stated purposes are estimated to be as follows:

<u>ENTITY</u>	<u>ACREAGE</u>
Moulton-Niguel Water District	21,345
Irvine Ranch Water District	8,560
City of Laguna Beach	4,980
South Laguna Sanitary District	2,700
El Toro Water District	4,750
Los Alisos Water District	5,380
Other	<u>1,040</u>
T O T A L	<u>48,755</u>

B. Moulton-Niguel Water District is undertaking the formulation of regional plans for facilities for the collection, treatment, disposal and reclamation of waste water from within the Aliso Valley Watershed Basin, as well as areas related to the Aliso Valley Watershed Basin, inclusive of the formulation of a plan for a total water management program for the Aliso Valley Watershed Basin which it has been determined might best be undertaken in the manner provided for in this Agreement.

C. The parties to this Agreement hereto have and possess one or more of the following powers:

(1) The power and authorization to acquire and construct facilities for the collection, transmission, treatment and disposal of sewage and other waste products, including the reclamation of waste water for the benefit of the lands and inhabitants within their respective boundaries;

(2) The power and authorization to acquire and construct facilities to supply the inhabitants and lands within their respective boundaries with water for irrigation, domestic and municipal purposes, inclusive of providing for the development and conservation of water supplies.

D. Each of the parties hereto has territory within or related to the Aliso Valley Watershed Basin as set forth and depicted on Exhibit "A" hereto, which document is by this reference made a part hereof, including the designation thereon of the existing boundaries of the parties to this Agreement.

E. There is a need for coordinated regional planning of waste disposal, reclamation, and total water management within the Aliso Valley Watershed Basin and areas logically related thereto.

F. A regional waste water disposal and reclamation program, as well as total water management within the area designated on Exhibit "A" to this Agreement can best be achieved with the cooperative action of the parties to this Agreement, operating through a Joint Exercise of Powers Agency.

G. Each of the parties is authorized to contract with each other for the joint exercise of any common power under Article I, Chapter 5, Division 7, Title 1 of the Government Code.

II.
COVENANTS

In consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

III.
PURPOSE AND POWERS

1. Agency Created. There is hereby created a public entity to be known as the "ALISO WATER MANAGEMENT AGENCY". The Agency is formed by this Agreement pursuant to the provisions of Article I, Chapter 5, Division 7, Title 1 of the Government Code of the State of California. The Agency shall be a public entity separate from the parties hereto.

2. Purpose of the Agreement; Common Powers to be Exercised.

Each member has the common power to plan for, acquire, construct, maintain, repair, manage, operate and control facilities for one or more of the following purposes:

(a) The collection, transmission, treatment and disposal of waste water, as well as the reclamation of waste water and the use of reclaimed waste water for any beneficial purposes.

(b) The power to plan for, acquire, construct, maintain, repair, manage and operate and control facilities to supply the inhabitants and lands within their respective boundaries with water for irrigation, domestic and municipal purposes, and in carrying out such purposes to provide for the development and conservation of water supplies.

The purpose of this Agreement is to jointly exercise the foregoing common powers in the manner hereinafter set forth, inclusive of establishing a total water management program for the Aliso Valley Watershed Basin and any related areas.

3. Powers. The Agency shall have the power in its own name to do any of the following:

(a) To exercise jointly the common powers of its members in studying and planning ways and means to provide

a reasonable program for waste water disposal and reclamation, as well as a water management program for the Aliso Valley Watershed Basin;

(b) To make and enter into contracts;

(c) To contract for the services of engineers, attorneys, planners, financial consultants, and separate and apart therefrom to employ such other persons, as it deems necessary;

(d) To acquire, construct, manage, maintain and operate any buildings, works, or improvements;

(e) To acquire, hold and dispose of property;

(f) To incur debts, liabilities or obligations subject to limitations herein set forth;

(g) To sue and be sued in its own name;

(h) To apply for an appropriate grant or grants under any federal, state or local programs for assistance in developing any of its programs;

(i) To the extent not herein specifically provided for, to exercise any powers in the manner and according to the methods provided under the laws applicable to a California water district;

(j) Subject to enactment of appropriate enabling legislation, provided, such subsequent powers properly constitute the joint exercise of a common power as required by law, the authority to exercise any powers provided for in Chapter 3, Division 9; Chapter 35 (Appendix), Division 20, Parts 1 - 12;

Chapter 36, (Appendix); Chapter 40, (Appendix); Division 12, Parts 1 - 10; and Division 13, Chapters 1 - 9, all of the Water Code of the State of California, as well as Division 6, Part 1, Chapters 1 - 3, and Chapter 3, Division 5 of the Health and Safety Code of the State of California.

4. Definitions. For the purpose of this Agreement, the following words shall have the following meanings:

- (a) "Agreement" means this joint exercise powers agreement.
- (b) "Agency" means the Aliso Water Management Agency formed pursuant to this agreement.
- (c) "Board" or "Board of Directors" means the governing body of the Agency.
- (d) "Member" or "Party" means each of the parties which become a signatory to this agreement, accepting the rights and obligations of the Agency hereunder, including any public entity executing an addendum of the original agreement as hereinafter provided.
- (e) "Participating Member" means a member that has or will acquire rights and assume obligations in connection with a particular project.

- (f) "Participating Director" means the director representing a participating member.
- (g) "Fiscal Year" means July 1st to and including the following June 30th.
- (h) "Facility" or "Facilities" means any building, works, or improvement acquired or constructed by Agency.
- (i) "Project" means the facilities constructed by Agency pursuant to the project budget procedure.
- (j) "General Budget" means the approved budget applicable to the expenses of administration of the Agency.

IV.

ORGANIZATION

5. Membership. The members of the Agency shall be each public entity which has executed or hereafter executes this agreement, or any addenda, amendment or supplement thereto, and which has not, pursuant to the provisions hereof, withdrawn therefrom.

6. Names. The names, particular capacities, and addresses of the members at any time shall be shown on Exhibit "B", attached hereto, as amended or supplemented from time to time.

7. Designation of Directors. Within thirty (30) days after the execution of this agreement, each member shall designate and appoint, by resolution of its governing

body, one person to act as its director on the Board. Each member shall also appoint one alternate director whose name shall be on file with the Board and who may assume all rights and duties of the absent director representing the appointing member. Each director and alternate shall hold office from the first meeting of the Board after his appointment by the governing body which he represents until his successor is selected. Directors and alternates shall serve at the pleasure of the governing board of the appointing member and may be removed at any time, with or without cause, in the sole discretion of said member's governing board. A director or alternate may be a member of the governing board of the appointing members. A director may receive such compensation from the Agency for his services as may from time to time be established by the board. A director may be reimbursed for expenses incurred by such director in the conduct of the business of the Agency.

8. Principal Office. The principal office of the Agency shall be established by the board. The board is hereby granted full power and authority to change said principal office from one location to another in the County of Orange. Any change shall be noted by the secretary under this section but shall not be considered an amendment to this agreement.

9. Meetings. The board shall meet at the principal office of the Agency or at such other place as may be designated by the

board. The time and place of regular meetings of the board shall be determined by resolution adopted by the board, a copy of such resolution shall be furnished to each party hereto. Any meeting of a project committee shall be deemed to be a meeting of the Agency and all such meetings of the Agency shall be open to all directors. Regular, adjourned and special meetings shall be called and held in the manner as provided in Chapter 9, Division 2, Title 5 of the Government Code of the State of California (commencing at Section 54950).

10. Quorum. Three quarters of the directors shall constitute a quorum for the purposes of the transaction of business relating to the Agency. A majority of the participating directors, but not less than two (2), shall constitute a quorum for the purposes of the transaction of business of the Agency on matters relating to each project in which not all of the parties are participating.

11. Powers and Limitations Thereon. All of the powers and authority of the Agency shall be exercised by the board, subject, however, to the reserve right of the members as herein set forth. Unless otherwise provided herein, each director or participating director shall be entitled to one vote, and a vote of the majority of those present and qualified to vote may adopt any motion, resolution, or order and take any other action they deem appropriate to carry forward the objectives of the Agency or of a project committee.

12. Minutes. The secretary of the Agency shall cause to be kept minutes of regular, adjourned regular and special meetings of the board, and shall cause a copy of the minutes to be forwarded to each director and to each of the members hereto.

13. Rules. The board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

14. Vote or Assent of Members. The vote, assent, or approval of members in any matter requiring such vote, assent, or approval hereunder shall be evidenced by a certified copy of the resolution of the governing board of such member filed with the Agency.

15. Officers. There shall be selected from the membership of the board, a chairman and a vice chairman. The board shall appoint a secretary who may be a director. The treasurer of the County of Orange shall be the treasurer of the Agency, to be the depository and have custody of all money of the Agency from whatever source. The auditor of the County of Orange shall be the auditor of the Agency and shall draw all warrants and pay demands against the Agency approved by the board. In addition, the board shall have the power to appoint such additional officers

as it deems necessary. The treasurer and auditor hereby designated may be changed by the consent of all directors. The chairman, vice chairman, and secretary shall hold office for a period of one year commencing July 1st of each and every fiscal year; provided, however, the first chairman, vice chairman and secretary appointed shall hold office from the date of appointment to June 30th of the ensuing fiscal year. Any officer, employee or agent of the board may also be an officer, employee or agent of any of the members. The appointment by the board of such a person shall be evidence that the two positions are compatible. The public officer or officers or persons who have charge of, handle, or have any access to any property of the Agency shall be bonded and the amount of their bond shall be designated in the applicable budget and thus fixed.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents, or employees of any of the members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the board shall be deemed, by reason of their employment by the board, to be employed by any of the members or, by reason of their employment by the board, to be subject to any of the requirements of such members.

V.

PLANNING

16. Planning Policy. In keeping with the purpose of this agreement, the members hereby authorize and direct the board to undertake such studies and planning relative to the Aliso and Laguna Watershed Basin, as may be necessary, to provide for the collection, treatment, reclamation and total disposal of sewage of each of the members as well as for an integrated water management plan for the area within such watershed basin areas. The specific objectives of the study shall be to obtain a regional solution to waste water disposal and reclamation problems. To achieve this objective, the study may include proposals for the construction of trunk and intercepting sewers, treatment plants, and outfalls, as well as facilities for reclamation and water management within the Aliso and Laguna Watershed Basin Areas. Any such studies shall consider also, all phases of the maintenance and operation of regional facilities and the allocation to the benefited members of any maintenance and operating costs, including possible acquisition of any facilities presently owned by any member or members.

VI.

BUDGETS AND PAYMENTS

17. General Budget. Within sixty (60) days after the first meeting of the board, a general budget shall be adopted for the balance of the fiscal year and the ensuing fiscal year. The initial budget and each succeeding budget shall include the following: (a) the general administrative expenses of the Agency to be incurred during the period covered by the budget; and

(b) the allocation among the members of the amounts necessary to cover the general budget expenditures. The expenditures required in the initial budget (from formation to June 30, 1973) shall be shared equally. If after the initial budget, the board provides an allocation to the members on some basis other than equal amounts, the general budget must be approved by the unanimous consent of all of the directors. After the first full fiscal year, at or prior to each June meeting of the board, a general budget shall be adopted for the ensuing fiscal year.

18. Project Budgets. In addition to the general budget, the board may budget at any time for the study, implementation or construction of any specific project proposed to be constructed by the Agency. Each project budget shall include the following:

- (a) the administrative expenses allocated to the project during planning and construction;
- (b) the cost of studies and planning for the project;
- (c) the cost of the engineering and construction of the project;
- (d) the allocation among the participating members, the total project costs;
- (e) an estimate of annual maintenance and operating expenses; and
- (f) a formula for allocating annual maintenance and operating expenses.

After the board approves a project budget, it shall be submitted to each member who has expressed a desire to participate and is to be obligated for the payment of any amount thereunder and the Agency shall not incur any expense for the project until the project budget has been approved by the governing body of each of the proposed participating members. In the event a project budget is not approved, the cost of preparing the budget shall be divided among the proposed participating members in accordance with the proposed allocation of the total project costs.

19. Maintenance and Operation Budgets. For each project maintained and operated by the Agency, a maintenance and operation budget shall be prepared and approved at or prior to each June meeting of the board for the ensuing fiscal year. Said budget shall include the following:

- (a) the expenses of maintaining the project;
- (b) the expenses of operating the project;
- (c) an estimate of income from operations, if any;
- (d) the allocation of maintenance and operation expenses among the participating members in accordance with the formula set forth in the approved project budget.

A maintenance and operating budget must be approved by two-thirds (2/3) of the directors or by two-thirds (2/3) of the participating directors if the budget affects less than the entire membership. Copies of each operating budget shall be mailed to each participating member within thirty (30) days of its adoption.

In regard to payment of expenses of the Agency, it is agreed as follows: (a) all operational costs and maintenance costs directly related to use of the facilities, including necessary improvements, repairs, adjustments, replacements and incidental accounting and administrative costs in connection therewith shall be paid by each member using the facilities in proportion to their use; and (b) the maintenance costs not directly related to use of the facilities, including necessary improvements, repairs, adjustments, replacements and extraordinary or standby maintenance, and incidental accounting and administrative costs in connection therewith, shall be paid by the participating members in proportion to their respective percentage share of the costs of said facilities as herein provided. Any change of the foregoing may be made by the unanimous consent of all of the participating members.

20. Effect of Failure of Approval of Budget. If, after one hundred twenty (120) days from the first submission of a general budget, the budget fails to attain the required vote,

the consenting directors of members, in the case of the general budget, or the consenting members, in the case of a project budget, may treat the refusal of the representative director or member to approve the budget as a request for a withdrawal from the Agency, in the case of failure to approve a general budget, or from the project, but not from the Agency, in the case of failure to approve a project budget, by such member and the remaining members may thereafter, upon giving the non-consenting member thirty (30) days prior written notice, proceed with the adoption of a revised budget and the non-consenting member shall not be obligated for future debts of the Agency or of the project, as the case may be, nor shall it receive any benefits therefrom. The foregoing is subject to the provisions of Section 35 hereof.

21. Expenditures for the Approved Budget. All expenditures within the designations and limitations of approved general, project or maintenance and operation budgets, shall be made on the authorization of a majority of the directors for general budget expenditures or of a majority of the directors of the participating members for other expenditures. No expenditures in excess of those budgeted shall be made without the unanimous consent and approval of all of the directors representing the member affected by the budget under consideration.

22. Payment of Amounts Due. Amounts required to be paid by any member shall be due and payable forty-five (45) days

after receipt of billing therefor from the board.

23. Reimbursement of Funds. Grant funds received by the Agency from any federal, state or local agency to pay for budgeted expenditures for which the Agency has received all or a portion of said funds from its members shall be proportionally paid to said members to reimburse the members for the funds advanced to the Agency for the construction of the facilities for which grant money has been received.

VII.

BOND FINANCING

24. Revenue Bonds. The board shall have the power and authority to issue revenue bonds for the purposes now or hereinafter provided for in this agreement as set forth in subparagraph 3(j) hereof; provided, such subsequent powers properly constitute the joint exercise of a common power as required by law. Any such revenue bonds shall be issued in accordance with the procedure and requirements set forth in Article 2, Title 1, Division 7 of the Government Code of the State of California (commencing at Section 6540) and to the extent applicable, the Revenue Bond Law of 1941. Any election or referendum provided for in Section 54307.1 of the Government Code shall be held separately within each entity which is participating in the project to be constructed with the proceeds of the revenue bonds proposed to be issued.

VIII.

PROJECT CONSTRUCTION

25. Acquisition and Construction of Projects. No project shall be acquired or constructed by the board without the unanimous consent of every member, or if it is a project of less than all of

the members, the unanimous consent of all of the participating members. Approval of a project budget by all of the participating members shall constitute consent for the acquisition and construction of the project.

26. Project Members. If it is determined that a proposed project of less than all of the members, the participating directors for each project shall constitute a subcommittee of the board referred to as the " _____ Project Committee". All actions by a project committee shall be deemed actions of the Agency and shall be taken in the name of the Agency, however, only the participating members of a project shall have rights and obligations in said project as herein provided.

IX.

MAINTENANCE AND OPERATION OF FACILITIES

27. Maintenance and Operation of Facilities. The board, or the project committee, as the case may be, shall determine prior to the acquisition or construction of any project, whether or not the Agency shall maintain and/or operate such facilities. If the Agency is to maintain and/or operate such facilities, it shall do so in an efficient and economical manner, and in a manner not detrimental to the other members. It is the intent of the parties that any project may be maintained and operated in the name of the Agency although, as herein provided, a majority of the participating directors shall make all determinations of the Agency in connection therewith. If it is determined that one or more of the members shall maintain and/or operate said facilities, said members shall by written agreement consent thereto prior to the acquisition or construction thereof.

X.
ACCOUNTING AND AUDITS

28. Accounting Procedures. Full books and accounts shall be maintained for the Agency in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Agency's controller and treasurer shall comply strictly with requirements of the statute governing joint powers agencies, Chapter 5, Division 7, Title 1 of the Government Code commencing at Section 6500.

29. Audit. The records and accounts of the Agency shall be audited annually by an independent certified public accountant and copies of such other reports shall be filed with the County Auditor, the State Controller and each participating member within six (6) months of the end of the fiscal year under examination.

XI.
PROPERTY RIGHTS

30. Project Facilities. All facilities constructed or acquired by the Agency shall be held in the name of the Agency for the benefit of the membership of the Agency in accordance with the terms of this Agreement. Capacity rights in respect to project facilities shall be held for the benefit of the participating members in proportion to each member's agreed percentage of capacity rights in such project facility unless otherwise agreed to in writing by said participating members. It is the intent

of the foregoing provision that the Agency shall not acquire any unallocated capacity rights in any facility for disposal or use, except for the benefit of the participating members in proportion to their original percentage of capacity rights in said facility. Capacity rights may not be reallocated, sold, leased or assigned without the written consent of all participating members in a project.

31. Distribution of Assets and Termination of Agency.

To the extent that any funds (or property in lieu of funds) received from any member are used for the acquisition or construction of facilities, the same shall be allocated annually on the books of the Agency to the credit of said contributing member. Upon termination or dissolution of the Agency herein created, the facilities, and any funds, in possession of the Agency at such time shall be distributed in kind or sold, and the proceeds thereof distributed to the members at the time of termination as their interests appear on the books of the Agency.

32. Liabilities. Any liability incurred by the Agency during the course of its existence shall be discharged from payments hereby agreed to be made to the Agency by each of the parties hereto in proportion to their contribution or approved participation in facilities of the Agency for which the liability is attributable. Except as hereinabove provided, the debts, liabilities,

and obligations of the Agency shall be the debts, liabilities or obligations of the Agency alone and not of the parties to this Agreement.

XII.
FORMATION, TERM, TERMINATION, WITHDRAWAL

33. Term. The Agency shall continue until this Agreement is rescinded or terminated as herein provided.

34. Rescission or Termination. This Agreement may be rescinded and the Agency terminated by written consent of all members.

35. Withdrawal. Any member may withdraw from the Agency at any time upon giving each of the members one hundred and twenty (120) days written notice prior to the end of a fiscal year; provided, however, in the event the withdrawing member has any rights in any facility or obligations to the Agency, said member cannot sell, lease or transfer said rights or be relieved of its obligations, except its obligation to pay its share of operation and maintenance costs directly related to the use of the facilities, without the execution of a written agreement executed by it and all members affected by such withdrawal. The Agency may not sell, lease, transfer, or use any rights of a member who has withdrawn without first obtaining the written consent of the withdrawn member. Upon termination, a withdrawn member will be treated like all other members in regard to the provisions of Section 31 hereof.

36. Admission of New Members. It is recognized that public entities, other than the original members, may wish to participate in the Agency. Additional public entities may become members of the Agency upon such terms and conditions as provided by the board and the unanimous consent of each existing member of the Agency, evidenced by the execution of a written addendum to this agreement, signed by all of the members including the additional member.

37. Amendments. This Agreement may be amended only by the unanimous vote of all members.

38. Notice. Any notice or instrument required to be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to the addresses of the members as shown on Exhibit "B", shall be deemed to have been received by the party to whom the same is addressed at the expiration of seventy-two (72) hours after deposit of the same in the United States Post Office for transmission by registered or certified mail as aforesaid.

39. Date of Formation. The Agency shall exist at such time as this Agreement has been executed by the Moulton-Niguel Water District and any one or more of the entities enumerated herein.

40. Arbitration. Any controversy or claim between any two or more parties to this Agreement, or between any such party

or parties and the Agency, in respect to the Agency's operations, or to any claims, disputes, demands, differences, controversies, or misunderstandings arising under, out of, or in relation to this contract, or any breach thereof, shall be submitted to and determined by arbitration. To the extent not inconsistent herewith, the rules of the American Arbitration Association shall apply. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to every other party to this Agreement and the Agency. Such notice shall designate as "respondents" such other parties as the initiating party intends to have bound by any award made therein. Any party not so designated but which desires to join in the arbitration may, within ten days of service upon it of such notice, file a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within twenty (20) days of the service of the initial demand for arbitration, the American Arbitration Association, hereinafter referred to as "AAA" shall submit simultaneously to the initiating party and to all parties named as respondents or filing a response therein, an identical list of names of persons chosen from the AAA National Panel of Arbitrators which persons shall be, to the extent possible, men first in the field of waste water disposal and reclamation as well as public law. Each party to the dispute shall have seven days from the mailing date in which to cross

off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree upon one of the persons named, or if an acceptable arbitrator is unable to act, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment of the arbitrator from other members of the panel without the submission of any additional list.

The arbitrator shall determine the rights of the parties in accordance with the law, and the award shall be subject to review as to the arbitrator's application of the law by any court having jurisdiction thereof, whether or not any mistake of law shall appear upon the face of the award. As to all questions of facts, however, the determination of the arbitrator shall be binding upon all parties and shall be final. Any party shall be entitled to written findings of fact and conclusions of law as to all issues determined by the award. Subject to the above limitations, the award shall be binding upon all parties

to the arbitration and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

The arbitrator may, in his discretion, as part of the arbitration award impose upon any one party or allocate among two or more of the parties, the liability for the arbitration fees and expenses. Such allocable fees may include the initial administration fees, fees for second and subsequent hearings, postponement fees, fees for second and subsequent hearings, postponement fees, and overtime fees. Allocable expenses may include the expenses of producing witnesses, the cost of stenographic records, the cost of any transcripts, travel expenses of the arbitrator and Tribunal Administrator, the expenses of any witnesses, the costs of any proofs produced at the direct request of the arbitrator, and any other expenses relating directly to the arbitration. In the event of the failure of the arbitrator to provide for the allocation of such fees and expenses, the arbitration fees shall be divided equally between the parties and the expenses shall be borne by the party incurring them.

41. Severance. If any section, subsection, sentence, clause or phrase of this agreement, or the application thereof, to any of the members for any other person or circumstances is for any reason held invalid, the validity of the remainder of the

agreement, or the application of such provision to the other members, or to any other persons or circumstances, shall not be affected thereby. Each of the members hereby declares that it would have entered into this agreement, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, or the application thereof, to any member or any other person or circumstance be held invalid.

42. Clarification of Powers of South Laguna Sanitary District.

In order to clarify that the purposes herein provided for are within the statutory powers of the South Laguna Sanitary District, execution hereof by that entity is subject to the enactment of legislation clarifying that the powers and purposes herein provided for are within the powers set forth in Section 6512 of the Health and Safety Code or any other applicable statutory provisions. Until such occurrence, the powers to be exercised by the Agency shall be only those also specified or incidental to those specified in Section 6512 of the Health and Safety Code.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their respective officers thereunto duly authorized the day and year first hereinabove written.

MOULTON-NIGUEL WATER DISTRICT

By *James O. Hanson*

By *Charles E. ...*

(signatures continued on
page 27)

IRVINE RANCH WATER DISTRICT

By J. E. [Signature]

By [Signature]

CITY OF LAGUNA BEACH

By Richard Goldberg
MAYOR

By [Signature]
City Clerk

SOUTH LAGUNA SANITARY DISTRICT

By [Signature]

By [Signature]

EL TORO WATER DISTRICT

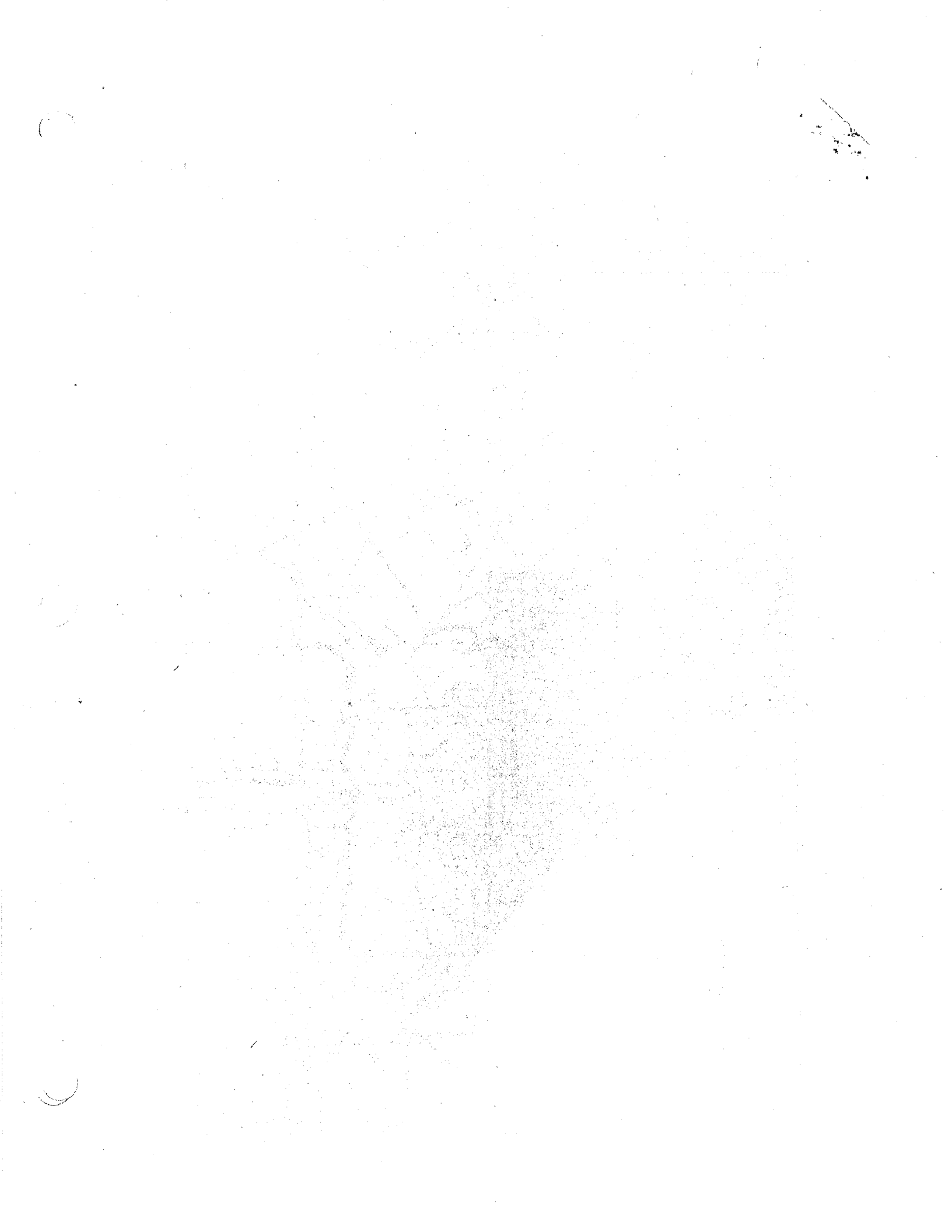
By Hugh T. Walker

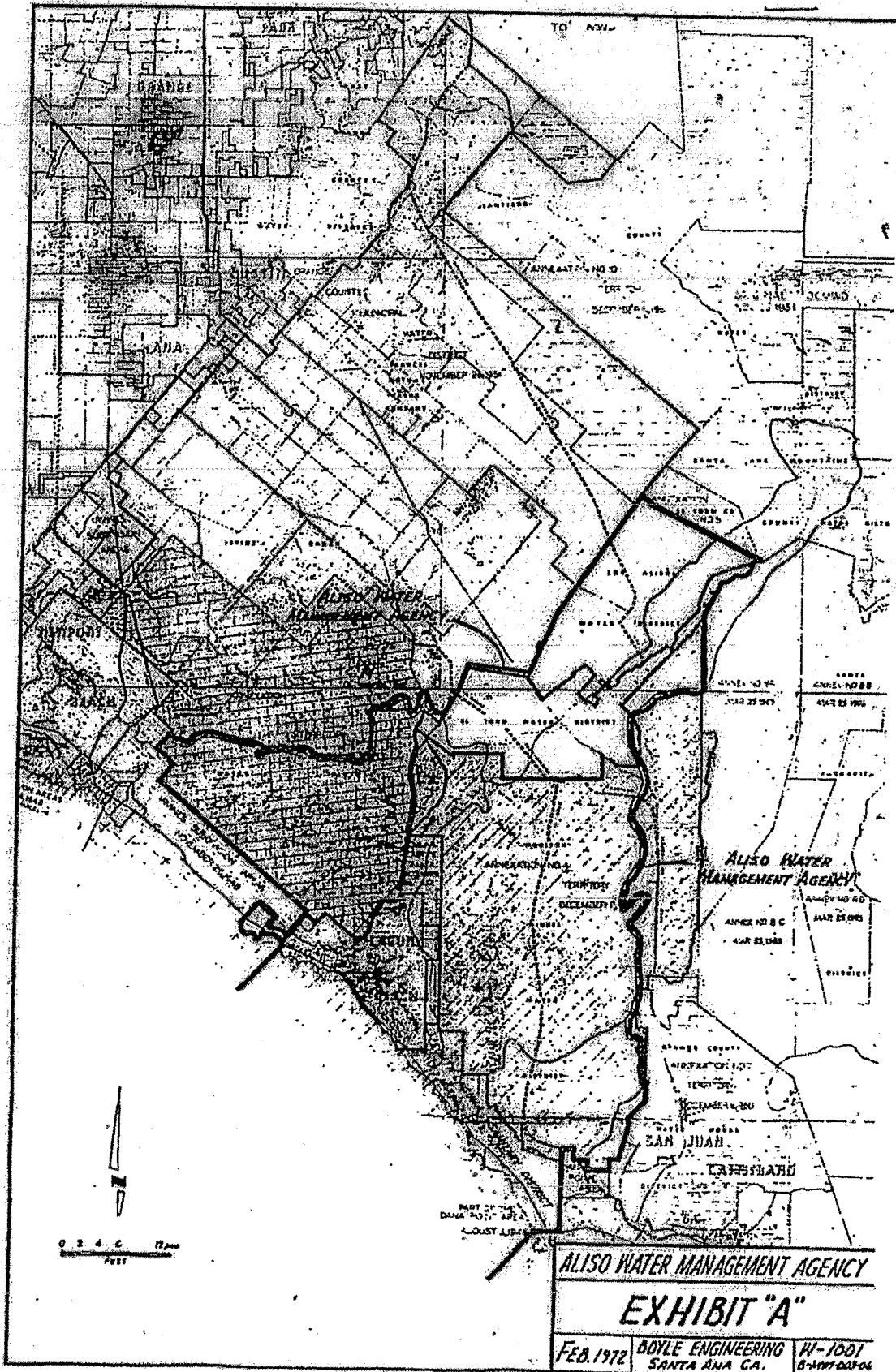
By [Signature]

LOS ALISOS WATER DISTRICT

By [Signature]

By [Signature]
Secretary





ALSO WHEN RECORDED RETURN

TO:
ALEXANDER BOWIE, A Law Corporation
610 Newport Center Drive, Suite 1220
Newport Beach, CA 92660

5573
EXEMPT
C2

TITLE INSURANCE & TRUST CO.
RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA
-4 25 PM MAY 3 1978

LEE A. RYAN County Recorder

ADDENDUM NO. ONE
TO
JOINT EXERCISE OF POWERS AGREEMENT
CREATING
ALISO WATER MANAGEMENT AGENCY

Orange County, California
(AWMA)

THIS ADDENDUM is made and entered into this 10th day
of August, 1972, by and between the following parties:

- (a) CITY OF LAGUNA BEACH;
- (b) EL TORO WATER DISTRICT;
- (c) IRVINE RANCH WATER DISTRICT;
- (d) LOS ALISOS WATER DISTRICT;
- (e) MOULTON-NIGUEL WATER DISTRICT;
- (f) SOUTH LAGUNA SANITARY DISTRICT;
- (g) EMERALD BAY SERVICE DISTRICT; and
- (h) SANTA ANA MOUNTAINS COUNTY WATER DISTRICT.

W I T N E S S E T H:

WHEREAS, the City of Laguna Beach, El Toro Water Dis-
trict, Irvine Ranch Water District, Los Alisos Water District,
Moulton-Niguel Water District, and South Laguna Sanitary District
are the original parties to that certain Joint Powers Agreement
entitled "JOINT EXERCISE OF POWERS AGREEMENT CREATING ALISO WATER
MANAGEMENT AGENCY - Orange County, California (AWMA), dated
March 1, 1972,

WHEREAS, said Joint Powers Agreement provides under ARTICLE XII, Section 36 for "Admission of New Members", and

WHEREAS, the EMERALD BAY SERVICE DISTRICT and the SANTA ANA MOUNTAINS COUNTY WATER DISTRICT have applied for membership in the ALISO WATER MANAGEMENT AGENCY, and

WHEREAS, the original Member Agencies of the ALISO WATER MANAGEMENT AGENCY, to wit, City of Laguna Beach, El Toro Water District, Irvine Ranch Water District, Los Alisos Water District, Moulton-Niguel Water District, and South Laguna Sanitary District did approve and accept into membership the EMERALD BAY SERVICE DISTRICT, on July 6, 1972, and did approve and accept into membership the SANTA ANA MOUNTAINS COUNTY WATER DISTRICT, on August 10, 1972, both without terms and conditions being imposed thereon;

NOW, THEREFORE, the parties hereto agree as follows:

1. That the EMERALD BAY SERVICE DISTRICT is hereby acknowledged to be a Member of the ALISO WATER MANAGEMENT AGENCY, without any terms and conditions being imposed thereon, and may participate and join in those Project Committees in which the Emerald Bay Service District determines to be in the best interests of the Emerald Bay Service District.

2. That the SANTA ANA MOUNTAINS COUNTY WATER DISTRICT is hereby acknowledged to be a Member in the ALISO WATER MANAGEMENT AGENCY, without terms and conditions being imposed thereon, and may participate and join in those Project Committees in which the Santa Ana Mountains County Water District determines to be in the best interests of the Santa Ana Mountains County Water District.

IN WITNESS WHEREOF the parties hereto have caused this Addendum No. One to be executed as of the date and year first hereinabove written.

CITY OF LAGUNA BEACH

By Sherron Boyd
Mayor

By Lawrence P. Rose
City Clerk

EL TORO WATER DISTRICT

By Hugh J. Walker
President

By Fritz Thodling
Secretary

IRVINE RANCH WATER DISTRICT

By J. E. Elabing
President

By Arthur C. Spore
Secretary

LOS ALISOS WATER DISTRICT

By [Signature]
President

By [Signature]
Secretary

MOULTON-NIGUEL WATER DISTRICT

By [Signature]
President

By [Signature]
Secretary

SOUTH LAGUNA SANITARY DISTRICT

By [Signature]
President

By [Signature]
Secretary

EMERALD BAY SERVICE DISTRICT

By [Signature]
President

By [Signature]
Secretary

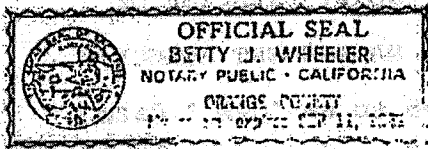
SANTA ANA MOUNTAINS COUNTY WATER DISTRICT

By [Signature]
President

By [Signature]
Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On April 10, 1978, before me, the undersigned, a Notary Public of the State of California, personally appeared LANSING E. EBERLING and ARTHUR C. KORN, known to me to be the persons whose names are subscribed to the within instrument as parties, and acknowledged to me that they are the persons described in it and that they executed said instrument, respectively, as the President and Secretary of the Irvine Ranch Water District.



Subscribed and sworn to before me this 10th day of April, 1978.

Betty J. Wheeler
Notary Public of the State of California

(SEAL)

AMENDMENT NO. 2 TO
JOINT EXERCISE OF POWERS AGREEMENT
CREATING ALISO WATER MANAGEMENT AGENCY
(AWMA)

THIS AMENDMENT is entered into this 15th day of
August, 1977, by and between the following parties:

- (a) City of Laguna Beach;
- (b) El Toro Water District;
- (c) Irvine Ranch Water District;
- (d) Los Alisos Water District;
- (e) Moulton-Niguel Water District;
- (f) South Coast County Water District; and
- (g) Emerald Bay Service District.

R E C I T A L S:

WHEREAS, the Aliso Water Management Agency (AWMA) was created by an agreement entitled "JOINT EXERCISE OF POWERS AGREEMENT CREATING ALISO WATER MANAGEMENT AGENCY," hereinafter in some instances referred to as "JPA," dated March 1, 1972; and

WHEREAS, the present Member Agencies of AWMA are set forth above; and

WHEREAS, the parties desire to amend Section 24 of the JPA to conform to a subsequent change in law relative to the sale of revenue bonds;

NOW, THEREFORE, the parties hereto agree as follows:

CHP:wm
7/12/77

Paragraph VII(24) of the "JOINT EXERCISE OF POWERS AGREEMENT CREATING ALISO WATER MANAGEMENT AGENCY (AWMA)," dated March 1, 1972, is amended to read in its entirety as follows:

"24. Revenue Bonds. The board shall have the power and authority to issue revenue bonds for the purposes now or hereinafter provided for in this agreement as set forth in subparagraph 3(j) hereof; provided, such subsequent powers properly constitute the joint exercise of a common power as required by law. Any such revenue bonds shall be issued in accordance with the procedure and requirements set forth in Article 2, Title 1, Division 7 of the Government Code of the State of California (commencing at Section 6540) and to the extent applicable, the Revenue Bond Law of 1941."

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their respective officers thereunto authorized on the 15th day of August, 1977.

CITY OF LAGUNA BEACH

By 

By _____

EL TORO WATER DISTRICT

By 

By 

CHP:wm
7/12/77

IRVINE RANCH WATER DISTRICT

By [Signature]

LOS ALISOS WATER DISTRICT

By [Signature]

By [Signature]

APPROVED AS TO FORM
HARWOOD & ADKINSON
Legal Counsel -
L.A.W.D.

AUG 15 1977

By E. T. McSadden

By [Signature]
Don R. Adkinson

MOULTON-NIGUEL WATER DISTRICT

By [Signature]

By _____

SOUTH COAST COUNTY WATER DISTRICT

By [Signature]

By [Signature]

EMERALD BAY SERVICE DISTRICT

By [Signature]

By [Signature]

AMENDMENT NO. 3
TO
JOINT EXERCISE OF POWERS AGREEMENT
CREATING ALISO WATER MANAGEMENT AGENCY
(AWMA)

THIS AMENDMENT NO. 3 is entered into and effective as of this 30th day of June, 1996, by and among the following parties, all members agencies of Aliso Water Management Agency (AWMA):

- (a) City of Laguna Beach;
- (b) El Toro Water District;
- (c) Irvine Ranch Water District;
- (d) Los Alisos Water District;
- (e) Moulton Niguel Water District;
- (f) South Coast Water District; and
- (g) Emerald Bay Service District.

RECITALS:

WHEREAS, AWMA was created by an agreement entitled "JOINT EXERCISE OF POWERS AGREEMENT CREATING ALISO WATER MANAGEMENT AGENCY," (the "Joint Powers Agreement") dated March 1, 1972, as amended; and

WHEREAS, Irvine Ranch Water District ("IRWD") has agreed to the sale of all of its capacity rights in the AWMA Ocean Outfall (AWMA Project Committee 24). Without outfall capacity, IRWD's capacities in other AWMA facilities are not useable by IRWD, and, additionally, present land use plans applicable to the portion of IRWD tributary to AWMA show that such area will generate no sewage flows to the facilities of AWMA; and

WHEREAS, IRWD has notified the members of AWMA of its election to withdraw from AWMA, and the members desire to amend the JPA to provide for such withdrawal.

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT

1. IRWD's withdrawal from AWMA pursuant to Section 35 of the Joint Powers Agreement is hereby acknowledged. From and after the effective date hereof, IRWD shall be relieved of all of its obligations under the Joint Powers Agreement. This Amendment No. 3 shall constitute the written agreement required by Section 35 of the Joint Powers Agreement for a withdrawing member agency's relief from obligations.

2. Notice of withdrawal as specified by Section 35 of the Joint Powers Agreement is hereby waived.

3. IRWD is concurrently entering into the below-listed amendments to the project agreements of those project committees of which it is a member, effectuating its withdrawal from the committees. Except as specifically provided in this Amendment No. 3 and the Project Amendments (defined below), the withdrawal of IRWD shall be governed by Section 35 of the Joint Powers Agreement.

4. IRWD's capacity rights in any AWMA facilities, except for those capacities being transferred through Amendment No. 5 to the PC 11-A Agreement, shall be held in the name of AWMA and shall not be used, reallocated, sold, leased or assigned without IRWD's written agreement accepting the consideration to be received therefor, if any, and any other terms thereof. In the event of any future dispute, controversy or claim among the parties to this Amendment No. 3 as to the terms and conditions of any future use, reallocation, sale, lease or assignment of capacity rights, the arbitration procedure set forth in the Joint Powers Agreement shall apply.

5. The effectiveness of this Amendment No. 3 is subject to the concurrent execution and delivery of the following agreements (the "Project Amendments") of even date herewith:

- (i) Amendment No. 5 to Agreement for Acquisition of Capacity, Construction, Use, Operation and Maintenance of Outfall Facilities for Aliso Water Management Agency and for Such Agency on Behalf of Project Committee No. 11-A (the "PC 24 Amendment");
- (ii) Amendment No. 2 to Agreement for Design, Construction, Use, Operation, Maintenance, Repair, and Replacement of Phase 1 North Coastal Interceptor Sewer Pipeline and Pumping Stations for Aliso Water Management Agency and for And on Behalf of Project Committee No. 7-A;
- (iii) Amendment No. 6 to Agreement for Design, Construction, Use, Operation, Maintenance, Repair, and Replacement of Coastal Treatment Plant for And on Behalf of Project Committee No. 15, Aliso Water Management Agency;
- (iv) Amendment No. 7 to the Agreement for Construction, Use, Operation, Maintenance, Repair, and Replacement of Joint Regional Wastewater Reclamation and Sludge Solids Handling Facility on Behalf of Project Committee No. 17, Aliso Water Management Agency; and
- (v) Amendment No.2 to the Agreement for Preliminary Planning, Design, Construction, Use, Operation, Maintenance, Repair and Replacement of Additional Liquids and Solids Handling Facilities on Behalf of Project Committee No. 18 of Aliso Water Management Agency.

Section 5.1 IRWD's withdrawal from AWMA is contingent upon the accomplishment of the "1996 Capacity Transfer" (as defined in the PC 24 Amendment referred to above in 4(i)). In the event the 1996 Capacity Transfer fails to occur, IRWD's withdrawal from AWMA will be deemed ineffective.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 3 on the dates set forth opposite their respective signatures below.

CITY OF LAGUNA BEACH

By Kenneth Paul
Mayor City Manager

Dated: July 11, 1996

By Terma R. Rastinger
City Clerk

EL TORO WATER DISTRICT

By William M. Temple
President/Vice President

Dated: July 3, 1996

By Tommy Kennedy
Secretary/ Assistant Secretary

IRVINE RANCH WATER DISTRICT

By Osama
President/Vice President

AUG 7 1996
Dated: _____, 1996

By Leslie
Secretary/ Assistant Secretary

LOS ALISOS WATER DISTRICT

By *Victor P. Kaulops*
President/Vice President

By *Don Ode*
Secretary/ Assistant Secretary

Dated: 7/24, 1996

MOULTON NIGUEL WATER DISTRICT

By *James R. Ryzto*
President/Vice President

By *Jamie C. Gray-Perry*
Secretary/ Assistant Secretary

Dated: _____, 1996

SOUTH COAST WATER DISTRICT

By *Susan D. Hinman*
President/Vice President

By *Michael P. Aurbaw*
Secretary/ Assistant Secretary

Dated: July 23, 1996

EMERALD BAY SERVICE DISTRICT

By *W. J. Chisler*
President/Vice President

By *[Signature]*
Secretary/ Assistant Secretary

Dated: July 16, 1996

ALISO WATER MANAGEMENT AGENCY

By *James R. Ryzto*, Chairman

By *[Signature]*, Secretary

Dated: _____, 1996

WHEN RECORDED RETURN TO:

ALEXANDER BOWLE, A Law Corp
616 Newport Center Dr.
Suite 1220
Newport Beach, CA 92660

AMENDMENT NO. 1 TO
JOINT EXERCISE OF POWERS AGREEMENT
CREATING ALISO WATER MANAGEMENT AGENCY
(AWMA)

RECORDING REQUESTED BY
TITLE INSURANCE & TRUST CO.

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

I.

4 33 PM MAY 3 1978

R E C I T A L S:

LEE A. HITCHCOCK County Recorder

The Aliso Water Management Agency (AWMA) was created by an agreement entitled "JOINT EXERCISE OF POWERS AGREEMENT CREATING ALISO WATER MANAGEMENT AGENCY" hereinafter and in some instances referred to as "JPA," dated March 1, 1972, and approved by and entered into between Irvine Ranch Water District, City of Laguna Beach, South Laguna Sanitary District, El Toro Water District, and Los Alisos Water District.

An addendum to the above referenced JPA, entitled "ADDENDUM NO. ONE TO JOINT EXERCISE OF POWERS AGREEMENT CREATING ALISO WATER MANAGEMENT AGENCY," dated August 10, 1972, was subsequently approved, which amended the JPA to include the following parties as Member Entities:

- (a) Irvine Ranch Water District;
- (b) City of Laguna Beach;
- (c) South Laguna Sanitary District;
- (d) El Toro Water District;
- (e) Los Alisos Water District;
- (f) Moulton-Niguel Water District;
- (g) Emerald Bay Service District; and
- (h) Santa Ana Mountains County Water District.

Santa Ana Mountains County Water District formally withdrew from AWMA by action by its Board of Directors on July 9, 1975,

Subsequently, the South Laguna Sanitary District was dissolved, and the South Coast County Water District became the successor to the South Laguna Sanitary District.

II.

The parties hereto desire to amend this Agreement as follows:

Paragraph IV(7) of the "JOINT EXERCISE OF POWERS AGREEMENT CREATING ALISO WATER MANAGEMENT AGENCY (AWMA)", dated March 1, 1972, is amended to read in its entirety as follows:

"7. Designation of Directors

Within thirty (30) days after the execution of this Agreement, each member shall designate and appoint by resolution of its governing body, one person to act as its director on the Board. Each member shall also appoint one alternate director and may appoint a second alternate director, whose name(s) shall be on file with the Board and who may assume all rights and duties of the absent director representing the appointing member. Each director, alternate director, and second alternate director shall hold office from the first meeting of the Board after his appointment by the governing body which he represents until his successor is selected. Directors, alternate directors, and second alternate directors shall serve at the pleasure of the governing board of the appointing member and may be removed at any time, with or without cause, in the sole discretion of said member's governing board.

A director, alternate director, or second alternate director may be a member of the governing board of the appointing members. A director may receive such compensation from the Agency for his services as may from time to time be established by the board. A director may be reimbursed for expenses incurred by such director in the conduct of the business of the Agency."

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their respective officers thereunto authorized on the 10th day of NOVEMBER, 1976.

CITY OF LAGUNA BEACH

By Phyllis J. Sweetney

By Teresa D. Keeling 11-10-76

EL TORO WATER DISTRICT

By Harold T. Walker

By John A. [Signature]

IRVINE RANCH WATER DISTRICT

By L. E. Whaling

By Arthur L. Jones 11-17-76

LOS ALISOS WATER DISTRICT

By A. J. West

By Frank A. Riddle
Secretary

MOULTON-NIGUEL WATER DISTRICT

By Francis J. Gatti

By Robert L. Brown

SOUTH COAST COUNTY WATER DISTRICT

By Walter A. Brooks

By Raymond C. [unclear]
11-22-1976

EMERALD BAY SERVICE DISTRICT

By J. Thomas Swanson

By Charles J. White
11/18/76

EXHIBIT "B"

11-10-76

AGREEMENT FOR DESIGN, CONSTRUCTION,
USE, OPERATION, MAINTENANCE,
REPAIR, AND REPLACEMENT OF COASTAL
TREATMENT PLANT FOR AND ON BEHALF
OF PROJECT COMMITTEE NO. 15,
ALISO WATER MANAGEMENT AGENCY

THIS AGREEMENT, made and entered into this 9th
day of November, 1976, by and between ALISO WATER MANAGE-
MENT AGENCY, an entity created by the joint powers agreement
entitled "Joint Exercise of Powers Agreement Creating Aliso
Water Management Agency, Orange County, California (AWMA),"
dated March 1, 1972, hereinafter referred to as "Agency,"
and the following parties:

- (a) Moulton-Niguel Water District, hereinafter referred to as "MNWD";
- (b) South Coast County Water District, hereinafter referred to as "SCCWD";
- (c) City of Laguna Beach, hereinafter referred to as "CLB";
- (d) Emerald Bay Service District, hereinafter referred to as "EBSD"; and
- (e) Irvine Ranch Water District, hereinafter referred to as "IRWD."

The foregoing parties to this Agreement are the participating members of the Agency for Project Committee No. 15, hereinafter in some instances referred to as the "Participating Member Agencies."

W I T N E S S E T H:

WHEREAS, Agency desires to pursue in the most beneficial, economical, and environmentally compatible manner, a regional program for wastewater collection, treatment,

11-10-76

reclamation, reuse, disposal and management, including, but not limited to, the coastal treatment plant, which proposed facility is depicted on Exhibit "A" hereto, which document by this reference is incorporated in this Agreement, hereinafter in some instances referred to collectively as "Coastal Treatment Plant"; and

WHEREAS, a project committee, as provided for in the Joint Powers Agreement hereinabove referred to, has been created and designated "Project Committee No. 15," which Project Committee was created for the purpose of preparing an engineering report, construction plans and specifications, environmental impact report, grant application, and acquisition of permits and rights-of-way relative to the Coastal Treatment Plant, the approximate location and capacity thereof being as set forth and described on Exhibit "A" hereto, all of which may be modified during the preparation of the engineering report, construction plans and specifications, environmental impact report, and acquisition of permits and rights-of-way; and

WHEREAS, the scope and purpose of Project Committee No. 15 may be modified subsequently to include the construction, operation, maintenance, repair, and replacement of the Coastal Treatment Plant;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. General. Agency agrees, subject to the receipt of the funds herein required to be deposited by each Participating Member Agency, to cause the preparation

11-10-76

of an engineering report, construction plans and specifications, environmental impact report, grant application, and acquisition of permits and rights-of-way relative to the Coastal Treatment Plant. Each Participating Member Agency, on the terms hereinafter set forth, agrees to pay to Agency the amounts hereinafter set forth, and to perform each and all of the obligations set forth in this Agreement.

Agency's obligation shall include any necessary permits, approvals, and acquisition of land for the construction, and ultimately operation and maintenance, of the Coastal Treatment Plant. Additionally, Agency shall diligently pursue obtaining grant funds from the State of California and the Environmental Protection Agency relative to the Coastal Treatment Plant. Hereinafter, in some instances, such grant funds are referred to as "the Grant."

It is agreed by the parties to this Agreement that if, subsequent to the execution of this Agreement by all parties thereto, but prior to the award of a contract for the construction of the Coastal Treatment Plant, any permit to construct, operate, maintain, repair, or replace the Coastal Treatment Plant is revoked or denied, without which the Coastal Treatment Plant cannot be constructed, operated, or maintained, all further obligations of all parties hereto shall cease as of the date of such denial or revocation, except obligations for expenses already incurred. The Coastal Treatment Plant shall be constructed and thereafter owned, operated, and maintained by Agency, through, on behalf of, and for the use and benefit of CLB, EBSD,

and IRWD, and also on behalf of and for the use and benefit of MNWD and SCCWD for related sludge handling facilities and possible joint operation.

2. Application for Grant Funds. As hereinabove provided, Agency shall file, at the earliest possible date, and thereafter diligently pursue, the Grant as herein defined.

3. Previous Facilities Planning. The parties to this Agreement recognize that Project Committees No. 3 and 12 of the Aliso Water Management Agency previously expended funds for various wastewater treatment facilities planning. The parties to this Agreement agree that under Project Committee No. 15, there will be a request for grant funds under a Step II grant for the purpose of reimbursement for expenditures under Project Committees No. 3 and 12. In the event that there is such a reimbursement, the reimbursement shall be given to the Member Agencies of Agency who previously advanced said funds. However, there shall be no liability incurred by any parties to this Agreement by reason of the application for such grant funds.

4. Engineering Report. It is agreed that upon Agency's receipt of funds as set forth on Exhibit "B" hereto, which document by this reference is incorporated in this Agreement, Agency shall contract with an engineering firm satisfactory to at least four of the Participating Member Agencies, whereby said engineering firm shall cause to be prepared an engineering report and construction plans and specifications relative to the nature and extent

and location of the Treatment Plant to treat sewage of CLB, EBSD, and IRWD in the vicinity of the existing treatment plant facilities of SCCWD and MNWD. The engineering report shall further make recommendations with regard to the existing sludge handling facilities for SCCWD and MNWD, as well as CLB, EBSD, and IRWD. The engineering report shall include recommendations as to placing of sludge handling facilities from that area upstream of the existing treatment plant and the estimated cost of the Treatment Plant sludge handling facilities. The engineering report shall further investigate and report upon the proposed method and operation, whether integrated or not, of the existing treatment plant facilities of SCCWD and MNWD, and the Coastal Treatment Plant facilities for CLB, EBSD, and IRWD.

5. Site for Sludge Handling Facilities. MNWD

agrees that it will make a site available for sludge handling facilities at the existing MNWD 1-A Treatment Plant site.

6. Acquisition of Coastal Treatment Plant Site.

MNWD does agree that it will, at the request of CLB, EBSD, and IRWD, make available to the Agency for the benefit of CLB, EBSD, and IRWD, a Treatment Plant site on land presently owned by MNWD for the construction of the Coastal Treatment Plant, at a price equivalent to the cost of the property involved to MNWD plus interest charges from the date of the acquisition by MNWD at a rate equivalent to the cost of the money used by MNWD for such acquisition, or at the then appraised fair market value of the property, whichever

method indicates a fair market value of the property. In the event that the engineering report indicates that the Coastal Treatment Plant should be located on land which is presently leased by MNWD, MNWD agrees that it will, at no cost, except for past lease payments, assign said lease to Agency. In the event that the engineering report indicates that the Coastal Treatment Plant should be located on land which is not presently the property of MNWD, either by lease or by ownership, Agency, MNWD, and SCCWD agree to take all steps necessary and appropriate to assist Agency to acquire such property, provided the proposed location will not prevent or impede the operation of the existing treatment plant facilities. The location of the land referred to in this section is set forth in Exhibit "A."

7. Assistance by Participating Member Agencies.

Each Participating Member Agency agrees that it will assist Agency and each other Participating Member Agency in this project, and recognizes that CLB, EBSD, and IRWD shall be entitled to have constructed by Agency on their behalf on fair and equitable terms and conditions, a Treatment Plant to be served by the construction of the North Coast Interceptor Sewer.

8. Access to Coastal Treatment Plant. MNWD and SCCWD hereby agree that they will grant to Agency, at no cost, on behalf of all Member Agencies of Agency, use of all rights they currently have for access, including pipeline easements to the site of the existing treatment plant and the site of the proposed Coastal Treatment Plant,

11-10-76

whether lying downstream or upstream of said site. The parties to this Agreement, including Agency, shall pursue the acquisition of the necessary easements and other access rights to insure unimpeded access to the facilities proposed to be constructed, which access shall be made available to all Member Agencies of Agency.

9. Approval of State Treasurer. This Agreement shall be subject to the approval of the Treasurer of the State of California. MNWD and IRWD, concurrently with the execution of this Agreement, shall request approval of this Agreement by the Treasurer of the State of California.

10. Miscellaneous.

(1) Notice. Any notice of instrument required to be given or delivered may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

ALISO WATER MANAGEMENT AGENCY
27500 La Paz Road
Laguna Niguel, CA 92677

CITY OF LAGUNA BEACH
505 Forest Avenue
Laguna Beach, CA 92651

MOULTON-NIGUEL WATER DISTRICT
27500 La Paz Road
Laguna Niguel, CA 92677

EMERALD BAY SERVICE DISTRICT
600 Emerald Bay
Laguna Beach, CA 92651

IRVINE RANCH WATER DISTRICT
P. O. Box D-1
Irvine, CA 92664

SOUTH COAST COUNTY WATER DISTRICT
31652 Second Avenue
South Laguna, CA 92677

and shall be effective upon receipt thereof.

11-10-76

(2) Attorneys's Fees. In the event an action is commenced by any party to this Agreement to enforce or construe its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the Court, shall be entitled to recover all statutory costs plus a reasonable amount for attorney's fees.

(3) Arbitration. Any controversy or claim between the parties to this Agreement, including but not by way of limitation, any claims, disputes, demands, differences, controversies, or misunderstandings arising under, out of, or in relation to this contract, or any alleged breach thereof, shall be submitted to and determined by arbitration. To the extent not inconsistent herewith, the rules of the American Arbitration Association shall apply. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to the other party to this Agreement. Such notice shall designate such other parties, if any, as the initiating party intends to have bound by any award made therein. Within twenty (20) days of the service of the initial demand for arbitration, the American Arbitration Association, hereinafter referred to as "AAA," shall submit simultaneously to the initiating party and to all parties, if any, named as respondents or filing a response therein, an identical list of names of persons chosen from the AAA National Panel of Arbitrators, which persons shall be, to the extent possible, persons first in the field of wastewater disposal and reclamation or in the alternative, public law. Each party to the dispute shall have seven (7)

11-10-76

consecutive calendar days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitration panel consisting of three persons from those designated, or if for any reason an acceptable panel of three arbitrators is unable to act, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment of the panel of three arbitrators from other members of the list originally submitted, without the submission of any additional list.

The panel of arbitrators shall determine the rights of the parties in accordance with the law, and the award shall be subject to review as to the panel's application of the law by any court having jurisdiction thereof, whether or not any mistake of the law shall appear upon the face of the award. As to all questions of fact, however, the determination of the arbitrators shall be binding upon all parties and shall be final. Any party shall be entitled to written findings of fact and conclusions of law as to all issues determined by the award. Subject to the above limitations, the award shall be binding upon all parties to the arbitration and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction

The arbitrators may, in their discretion, as part of the arbitration award, impose upon any one party or allocate among two or more of the parties, the liability for the arbitration fees and expenses. Such allocable fees may include the initial administration fees, fees for second and subsequent hearings, postponement fees, and overtime fees. Allocable expenses may include the expenses of producing witnesses, the cost of stenographic records, the cost of any transcripts, travel expenses of the arbitrators and Tribunal Administrator, the expenses of any witnesses, the cost of any proofs produced at the direct request of the arbitrators, and any other expenses relating directly to the arbitration. In the event of the failure of the arbitrators to provide for the allocation of such fees and expenses, the arbitration fees shall be divided equally between the parties and the expenses shall be borne by the party incurring them.

11. Agreement Binding Upon Successors and Assigns.

This Agreement shall be binding upon the successors and assigns of each party to this Agreement, and upon any such succession or assignment, the successor or assignee shall accept and assume in writing each and every obligation applicable under this Agreement.

12. Effective Date. This Agreement shall not be effective until the following have occurred:

- (1) An agreement has been executed by Agency, CLB, EBSD, and IRWD for the construction of the North Coastal Interceptor Sewer on behalf of Project Committee No. 7-A.

11-10-76

(2) The existing agreement dated September 24, 1976, on behalf of Project Committee No. 11-A, to construct the Ocean Outfall, has been executed by Agency and six Member Agencies of the Aliso Water Management Agency.

(3) Amendments No. 1, 2, and 3 to the agreement dated September 24, 1976, have been executed by Agency and six Member Agencies of Agency.

ALISO WATER MANAGEMENT AGENCY

By *C. J. Lyman*
Chairman

Dated: 11 Nov 76

By *W. F. Wray*
Secretary

MOULTON-NIGUEL WATER DISTRICT

By *William E. Smith*
President

Dated: 18 Nov 76

By *Robert A. ...*
Assistant Secretary

SOUTH COAST COUNTY WATER DISTRICT

By *Walter H. ...*
President

Dated: 11/22/1976

By *...*
Secretary

CITY OF LAGUNA BEACH

By *Phyllis J. Sweeney*
Mayor

Dated: 11-10-76

By *Terna L. ...*
City Clerk

11-10-76

EMERALD BAY SERVICE DISTRICT

By *J. Thomas Swanson*
President

Dated: *Nov. 18, 1976* By *Charles E. Ugel*
Secretary

IRVINE RANCH WATER DISTRICT

By *P. E. Chalngi*
President

Dated: *Nov. 17, 1976* By *Arthur C. Gome*
Secretary

ALISO WATER MANAGEMENT AGENCY
 COASTAL TREATMENT PLANT
 PROJECT COMMITTEE 15
 PROPOSED BUDGET

November 9, 1976
 Page 1 of 2

<u>Task Order</u>		<u>Consultant</u>	<u>General Purposes</u>	<u>Plants Specific</u>	<u>Total</u>
1	Engineering Design Study - (Dependent on scope desired)		\$ 10,000	\$ 40,000	\$ 50,000
2	E.I.R.		10,000	20,000	30,000
3	Agreement, Budgets & Contracts	Staff	2,000	4,000	6,000
4	Agreements	Legal	1,500	2,000	3,500
5	Archaeological Survey	Westec	1,700	-0-	1,700
6	Archaeological Survey - Contingency		2,000	-0-	2,000
7	Conditional Use Permit	Staff	2,000	4,000	6,000
8	Conditional Use Permit	Legal	1,000	2,000	3,000
9	Coastal Commission Permit	Staff	2,000	2,000	4,000
10	Coastal Commission Permit	Legal	1,000	1,000	2,000
11	Accounting and Costs Reporting	Smith	1,500	3,500	5,000
12	Contingency		<u>5,000</u>	<u>10,000</u>	<u>15,000</u>
	<u>Sub-Total "Coastal Treatment Plant"</u>		<u>\$ 39,700</u>	<u>\$ 88,500</u>	<u>\$128,200</u>
15	Professional Services paid by Agencies on Regional Treatment Plant - 1972 through May 6, 1975:				
	Engineering		\$ 506,358		
	Legal		23,074		
	Fiscal and miscellaneous		<u>10,132</u>		
					<u>539,564</u>
	<u>TOTAL</u>				<u>\$667,764</u>

ALISO WATER MANAGEMENT AGENCY
 COASTAL TREATMENT PLANT
 PROJECT COMMITTEE 15
 PROPOSED BUDGET

November 9, 1976
 Page 2 of 2

	General Purposes			Plants Specific			Total		
	*MGD	Percent	Amount	*MGD	Percent	Amount	Costs	Less: Amount Paid on 6/9/76 Budget	Net Amount Due
Moulton-Niguel Water District	1.60	17.68	\$ 7,019			\$ -0-	\$ 7,019	\$ 6,461	\$ 558
Juth Coast County Water District	1.60	17.68	7,019			-0-	7,019	1,593	5,426
City of Laguna Beach	4.40	48.62	19,302	4.40	75.21	66,561	85,863	4,374	81,489
Emerald Bay Service District	.20	2.21	877	.20	3.42	3,027	3,904	198	3,706
Irvine Ranch Water District	1.25	13.81	5,483	1.25	21.37	18,912	24,395	1,242	23,153
	<u>9.05</u>	<u>100.00</u>	<u>\$ 39,700</u>	<u>5.85</u>	<u>100.00</u>	<u>\$ 88,500</u>	<u>\$ 128,200</u>	<u>\$ 13,868</u>	<u>\$ 114,332</u>

* Allocation based on capacity for each agency.

EXHIBIT "C"

**AGREEMENT FOR ASSIGNMENT OF SEWAGE TREATMENT
CAPACITY IN THE AWMA COASTAL TREATMENT PLANT
BETWEEN MOULTON NIGUEL WATER DISTRICT
AND THE CITY OF LAGUNA BEACH**

This ASSIGNMENT AGREEMENT ("Agreement") is made and entered into as of the 16th day of September, 1999, by and between the CITY OF LAGUNA BEACH, a general law city organized under Title 4 (commencing with Section 34000) of the Government Code of the State of California (the "CITY") and the MOULTON NIGUEL WATER DISTRICT, a California water district, organized under Division 12 (commencing with Section 34000) of the California Water Code ("MNWD"). The CITY and MNWD are sometimes individually referred to in this Agreement as "party" and jointly as "parties".

RECITALS

- A. The CITY and MNWD are members of Aliso Water Management Agency ("AWMA"), a joint powers authority, organized under Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California, and created by the "Joint Exercise of Powers Agreement Creating Aliso Water Management Agency - Orange County, California (AWMA)", dated March 1, 1972 ("Joint Powers Agreement").
- B. The CITY participates in AWMA Project Committee No. 15 for the purpose of acquiring, operating and maintaining the wastewater treatment facility known as the AWMA Coastal Treatment Plant ("Coastal Treatment Plant"), as more particularly described in the "Agreement for Design, Construction, Use, Operation, Maintenance, Repair, and Replacement of Coastal Treatment Plant for and on Behalf of Project Committee No. 15, Aliso Water Management Agency", inclusive of Amendment Nos. 1 through 6 to said agreement (collectively, the "PC 15 Agreement"). The CITY is a signatory to the PC 15 Agreement.
- C. The PC 15 Agreement establishes the CITY's right to discharge certain quantities of wastewater to the Coastal Treatment Plant for handling, treatment and disposal ("Capacity

Rights"). Pursuant to the PC 15 Agreement, the CITY currently possesses the following Capacity Rights: Four Million gallons per day (4.0 mgd) of treatment capacity and corresponding solids transportation capacity.

D. MNWD desires to acquire certain Capacity Rights in the Coastal Treatment Plant, and the CITY desires to assign a certain portion of its Capacity Rights to MNWD. The parties intend this Agreement to supersede and render null and void any prior oral or written understanding between the parties as to the use of Capacity Rights by MNWD as of the "Effective Date" (which term is defined in Section 3 of this Agreement).

E. AWMA's National Pollution Discharge Elimination System (NPDES) Permit, San Diego Regional Water Quality Control Board Order No. 95-107 (the "NPDES Permit") recognizes that CITY annually diverts nuisance water to the Coastal Treatment Plant from Memorial Day through the end of September in accordance with the terms of the NPDES Permit. The transfer of Capacity Rights to MNWD will provide for the CITY's use of a portion of the Capacity Rights assigned to MNWD during certain annual periods for disposal of nuisance water.

F. In order to publicly finance the CITY's proportionate share of the construction costs for the CITY's Capacity Rights, and at the request of the CITY, AWMA issued the \$4,250,000 Coastal Treatment Plant Revenue Bonds on July 18, 1979 (the "Revenue Bonds"). In connection with the issuance of the Revenue Bonds, AWMA and the CITY entered into that certain Public Facilities Lease dated July 1, 1979 (the "Public Facilities Lease") to provide for AWMA's lease to the CITY of the Capacity Rights, as set forth in the PC 15 Agreement, upon completion of the plant. The CITY currently pays AWMA the 'Base Rental' and 'Additional Rental', as such terms are defined in and under the Public Facilities Lease, and until the Revenue Bonds are otherwise paid or redeemed, shall pay such rental until the final maturity of the Revenue Bonds on July 1, 2008. In connection with the issuance of the Revenue Bonds, the Board of Directors of AWMA adopted Resolution No. 79-42 on July 18, 1979, entitled "Resolution of the Aliso Water Management Agency Constituting its Indenture Providing the

Terms and Conditions for the Issuance of \$4,250,000 Coastal Treatment Plant Leasehold Revenue Bonds (the "Indenture"). In Section 6.02 of the Indenture, AWMA covenants that (i) it shall not encumber, sell, lease, pledge or dispose of all or substantially all of the Capacity Rights unless the terms of such sale, or other transfer, provide for the continued payments of revenues for principal and interest payments on the Revenue Bonds and (ii) it shall use any payment resulting from a sale of any substantial part of the Capacity Rights for the acquisition and/or construction of improvements or extensions of the Coastal Treatment Plant, or use such funds to pay or call and redeem the Revenue Bonds in accordance with the Indenture.

G. AWMA, at the request of and on behalf of the CITY, is undertaking a refinancing of the Revenue Bonds through the issuance of refunding lease revenue bonds (the "1999 Refunding Bonds"). In accordance with the refinancing plan, the transfer of capacity in the Coastal Treatment Plant contemplated to occur from the CITY to MNWD will occur subsequent to such refinancing. Under the terms of the refinancing, the Capacity Rights transferred to MNWD hereunder will no longer be considered part of the refinancing project, nor subject to the refinanced Public Facilities Lease, or any resolution, indenture, or other document setting forth the terms of the 1999 Refunding Bonds.

NOW, THEREFORE, the parties, in consideration of the mutual covenants herein, agree as follows:

I. ASSIGNMENT

1.1 Capacity Assignment. For the promises and covenants contained herein, and the valuable consideration set forth in Section 1.4, the CITY assigns, transfers and conveys to MNWD the following portion of the CITY's Capacity Rights ("Assigned Capacity"):

///
///
///
///

- A. One and a Quarter Million gallons per day (1.25 mgd), average dry weather flow, of treatment capacity and corresponding solids transportation capacity during all annual periods from July 1 through and including August 30.
- B. One and One-Half Million gallons per day (1.50 mgd), average dry weather flow, of treatment capacity and corresponding solids transportation during all annual periods from September 1 through and including June 30.

The transfers for the mgd amounts during the corresponding periods referenced in subparagraph A and B above yield a capacity transfer equal to an annual average of 1.46 mgd, dry weather flow.

Section 1.2 CITY Nuisance Water Diversion. In order to facilitate CITY's continued seasonal diversion of nuisance water to the Coastal Treatment Plant, as permitted by the NPDES Permit, during periods of high seasonal wastewater discharges, subsequent to the 1999 MNWD Capacity Transfers, MNWD and CITY agree CITY may use up to 0.45 mgd of CITY's Coastal Treatment Plant capacity transfer to MNWD set forth in Section 2.2 on any day (the "Diversion Capacity") during the period from April 15 through and including October 31 (the "Diversion Period"). CITY's use of the Diversion Capacity during the Diversion Period is subject to all the following conditions:

(i) CITY's use of the Diversion Capacity will not exceed 0.45 million gallons on any day during the Diversion Period.

(ii) CITY agrees to continue to pay all annual operation and maintenance expenses during any Diversion Period associated with the use of the Diversion Capacity in accordance with the Project Committee No. 15 approved budgetary and payment procedures. MNWD shall have no responsibility for the payment of such expenses. For purposes of

budgetary cost allocations under this subsection (ii), the Diversion Capacity is treated no differently from wastewater capacity.

(iii) Recognizing the priority use of Coastal Treatment Plant capacity to treat wastewater generated by the PC 15 Members, upon the occurrence of the following event, CITY's use of the Diversion Capacity during any Diversion Period will terminate, at no cost to MNWD: the NPDES Permit or any other regulatory or other legal requirement mandates termination of CITY's use of the Diversion Capacity.

1.3 Warranty of Assigned Capacity. The CITY represents and warrants that it possesses the rights and interests in the PC 15 Agreement set forth therein, that the CITY is in full compliance with all terms and conditions of such agreement, that such agreement is in full force and effect, and that there has been no breach by any of the parties to such agreement which would affect the validity or enforceability thereof. The CITY further warrants that it possesses the right, title, and interest in the Capacity Rights, that the CITY has the right to assign the 'Assigned Capacity' set forth in Section 1.1 of this Agreement, that the CITY has not assigned or encumbered all or any part of the Assigned Capacity to any other person or entity, and that the Assigned Capacity is not subject to any pledge, or any lease, indenture or any instrument relative to the Revenue Bonds, or the 1999 Refunding Bonds. In addition, other than as described below in Section 1.7, the CITY represents that it has no knowledge of any existing or threatened action, suit, or proceeding affecting or potentially affecting the Assigned Capacity or any portion thereof.

1.4 Acceptance: Consideration: Payment. MNWD accepts the assignment of the Assigned Capacity, and agrees to pay to the CITY the amount of Three Million Eight Hundred Fifty-Seven Thousand Three Hundred Twenty-Eight Dollars (\$3,857,380) ("Consideration") on the terms and conditions set forth in this Agreement, as detailed in attached Exhibit A. Payment of the Consideration from MNWD to the CITY shall be made and delivered to the CITY by cashier's check or money order within thirty (30) days after the conditions precedent set forth in Section 1.6 have been fully satisfied as evidenced in accordance with Section 1.6. CITY agrees

that a portion of the Consideration in the amount of Five Hundred Ninety-Eight Thousand Five Hundred Seventy Dollars (\$598,570) will be paid by and/or through AWMA's reimbursement of amounts on deposit for certain capital projects, as detailed in Exhibit A.

1.5 Assumption of Obligations. Except as set forth in Section 1.7 of this Agreement, and except with respect to the Diversion Capacity, MNWD assumes all obligations of the CITY related to, and in proportion to, the Assigned Capacity, as such obligations are established in the PC 15 Agreement, the Joint Powers Agreement, and any other documents setting forth terms and conditions with respect to the operations, repairs or maintenance of the Coastal Treatment Plant, inclusive of the export sludge pipeline and Coastal Treatment Plant access road. MNWD agrees to perform all such obligations after the Effective Date of this Agreement.

1.6 Consent to Assignment: Amendment No. 7 to PC 15 Agreement. Under Section 30 of the Joint Powers Agreement, the written consent of South Coast Water District and Emerald Bay Service District, members of AWMA's Project Committee No. 15, are required to effectuate an assignment of the Capacity Rights ("Consenting Parties"). The consent of the Consenting Parties to the assignment of rights and assumption of obligations in this Agreement is memorialized in Amendment No. 7 to the PC 15 Agreement, which is incorporated in this Agreement by this reference ("Amendment No. 7"). Amendment No. 7 sets forth certain conditions precedent to effective consent by the Consenting Parties, and all such conditions must be satisfied in accordance with the terms of Section III of this Agreement for this Agreement to be effective.

1.7 Pre-Existing Liabilities. Any and all liabilities, costs, judgments, attorneys fees and obligations that may occur as a result of or in connection with actions, events, occurrences, claims or causes of actions related to, arising out of, or in connection with, the Capacity Rights, including the Assigned Capacity, occurring prior to the Effective Date, whether known or unknown, including but not limited to those actions, events, occurrences, claims or causes of action which are asserted, or which may form the basis of assertion for future indemnity or contribution, in connection with Briggs Christian Morris-Smith vs. MNWD, SCWD, Central

District Court Case No. SACV 98-35 GLT (EEx), Briggs Christian Morris-Smith and Dennis Morin vs. MNWD SCWD, et al., Orange County Superior Court Case No. 79 04 88 (or any successor or related action, proceeding, claim or cause of action thereto), and that are the CITY's obligation under the Joint Powers Agreement, the PC 15 Agreement or otherwise, shall remain the responsibility of the CITY in accordance with the terms of the PC 15 Agreement, or as otherwise provided in relevant agreements, or by law. MNWD does not assume any costs, responsibilities, liabilities or attorneys' fees, nor does it waive any rights or claims it may have against the CITY, arising out of any such actions, events, occurrences, claims, or causes of action as a result of the capacity assignment provided herein.

1.8 Indemnification. In addition to the obligation set forth in Section 1.7 and elsewhere hereunder, the CITY shall defend, indemnify, and hold harmless MNWD, its elected officials, officers, employees, agents, and volunteers, from any and all claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency (collectively, "claims"), arising out of or incidental to the Capacity Rights or the PC 15 Agreement, to the extent relating to or caused by acts, events, omissions, or conditions occurring on or prior to the Effective Date of this Agreement; provided, CITY's indemnification obligation hereunder shall apply to claims arising out of or incidental to CLB's use of the Diversion Capacity occurring subsequent to the Effective Date. This indemnification includes, without limitation, the payment of all penalties, fines, judgements, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of MNWD, its elected officials, officers, employees, agents, and/or volunteers for all legal expenses and costs incurred by each of them. The CITY's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CITY, or by MNWD, or their respective elected officials, officers, employees, agents, or volunteers.

Except as set forth in Section 1.7, MNWD shall defend, indemnify, and hold harmless the CITY, its elected officials, officers, employees, agents, and volunteers, from any and all claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including

wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incidental to the Assigned Capacity, excluding the Diversion Capacity, to the extent relating to or caused by acts, events, omissions, or conditions arising after the Effective Date of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgements, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of the CITY, its elected officials, officers, employees, agents, and/or volunteers for all legal expenses and costs incurred by each of them. MNWD's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MNWD, or by the CITY, or their respective elected officials, officers, employees, agents, or volunteers.

II. GENERAL PROVISIONS

2.1 **Authority to Enter Agreement.** Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement and bind each respective party.

2.2 **Notices.** All notices, demands, payments and written communications shall be in writing and delivered to the following addresses or such other addresses as the parties may designate by written notice:

To CITY: City Manager
 City of Laguna Beach
 505 Forest Avenue
 Laguna Beach, CA 92651
 (949) 497-0704

To MNWD: General Manager
 Moulton Niguel Water District
 27500 La Paz Road
 Laguna Niguel, CA 92677
 (949) 643-2006

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

2.3 Cooperation: Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

2.4 Construction: References: Captions. It being agreed the parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to MNWD and the CITY include their respective elected officials, officers, employees, agents, and volunteers, except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

2.5 Recitals and Exhibits. The CITY and MNWD each represent and warrant that to the best of its knowledge, the Recitals set forth in this Agreement are a true and accurate representation of the facts and circumstances as they relate to the CITY's Capacity Rights, the PC 15 Agreement, and this Agreement. The Recitals and Exhibit A are incorporated as part of this Agreement by this reference.

2.6 Amendment: Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

2.7 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or

service voluntarily given or performed by a party shall give the other party any contractual right by custom, estoppel, or otherwise.

2.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the parties, and their successors, heirs, personal representatives, or assigns.

2.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the parties under this Agreement.

2.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

2.11 Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any lawsuit brought in connection with this Agreement shall be brought in the appropriate court in the County of Orange, California.

2.12 Attorneys' Fees and Costs. If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which the party is entitled.

2.13 Time is of the Essence. Time is of the essence in this Agreement, and the parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

2.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

2.15 Entire Agreement; Repeal of Prior Agreements. This Agreement contains the entire agreement between MNWD and the CITY related to the subject matter herein, and this Agreement supersedes any prior oral or written agreement between the parties related to the Capacity Rights and renders null and void any rights or obligations created pursuant to any such agreement.

III. EFFECTIVE DATE

3.1 This Agreement shall not be effective, and no term shall be enforceable, until the date on which all of the following have occurred ("Effective Date"):

- (i) The issuance, sale and delivery of the 1999 Refunding Bonds;
- (ii) Amendment No. 7 to the PC 15 Agreement is executed and made effective as to MNWD's membership in Project Committee No. 15 and the Assigned Capacity, and all conditions precedent to the effectiveness of Amendment No. 7 are satisfied in accordance with the terms thereof (the "Completion Date"); and
- (iii) MNWD pays the Consideration to the CITY within thirty (30) days of the Completion Date.

If any of the above contingencies fails to occur, for any reason whatsoever, this Agreement shall be null and void, and no party shall have any liability or obligation arising out of, or relating to, this Agreement.

THIS AGREEMENT is entered into by the parties as of the date first referred to above.

CITY OF LAGUNA BEACH

By _____
City Manager

2.15 ~~Entire Agreement; Repeal of Prior Agreements.~~ This Agreement contains the entire agreement between MNWD and the CITY related to the subject matter herein, and this Agreement supersedes any prior oral or written agreement between the parties related to the Capacity Rights and renders null and void any rights or obligations created pursuant to any such agreement.

III. EFFECTIVE DATE

3.1 This Agreement shall not be effective, and no term shall be enforceable, until the date on which all of the following have occurred ("Effective Date"):

- (i) The issuance, sale and delivery of the 1999 Refunding Bonds;
- (ii) Amendment No. 7 to the PC 15 Agreement is executed and made effective as to MNWD's membership in Project Committee No. 15 and the Assigned Capacity, and all conditions precedent to the effectiveness of Amendment No. 7 are satisfied in accordance with the terms thereof (the "Completion Date"); and
- (iii) MNWD pays the Consideration to the CITY within thirty (30) days of the Completion Date.

If any of the above contingencies fails to occur, for any reason whatsoever, this Agreement shall be null and void, and no party shall have any liability or obligation arising out of, or relating to, this Agreement.

THIS AGREEMENT is entered into by the parties as of the date first referred to above.

CITY OF LAGUNA BEACH

By Kenneth Ford
City Manager

Dated: April 15, 1999

By: Thomas R. Pullen
City Clerk

APPROVED AS TO FORM:
City Attorney, City of Laguna Beach
Rutan & Tucker, LLP

By: Phillip L. Kohn
Phillip L. Kohn

MOULTON NIGUEL WATER DISTRICT

By: _____
President/Vice-President

Dated: _____, 1999

By: _____
Secretary/Assistant Secretary

APPROVED AS TO FORM:
General Counsel, MNWD
Bowie, Arneson, Wiles & Giannone

By: _____
Patricia B. Giannone

Dated: _____, 1999

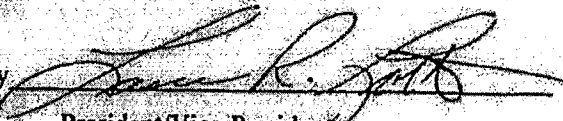
By _____

City Clerk

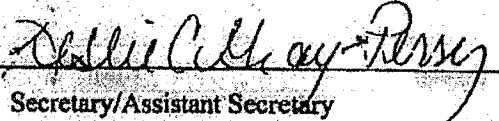
APPROVED AS TO FORM:
City Attorney, City of Laguna Beach
Rutan & Tucker, LLP

By: _____
Phillip D. Kohn

MOULTON NIGUEL WATER DISTRICT

By 
President/Vice-President

Dated: 9-16-99, 1999

By 
Secretary/Assistant Secretary

APPROVED AS TO FORM:
General Counsel, MNWD
Bowie, Arneson, Wiles & Giannone

By: _____
Patricia B. Giannone

EXHIBIT "A"

MOULTON NIGUEL WATER DISTRICT &
CITY OF LAGUNA BEACH
ASSIGNMENT OF SEWAGE TREATMENT CAPACITY
COASTAL TREATMENT PLANT

PC 15 - CTP FACILITIES

● CTP Treatment Capacity 1.46 mgd Dry Weather Flow (Plant & Access Road)	\$2,972,761
● Sludge Force Main	<u>45,858</u>
<u>Total</u>	<u>\$3,018,619</u>

PRIOR CAPITAL PROJECTS

● Reconstruct Access Bridge (1991/92)	\$78,011
● Retrofit Secondary Clarifier (1993)	<u>161,253</u>
<u>Total</u>	<u>\$ 239,264</u>

CURRENT CAPITAL PROJECTS

● New Sludge Force Main	\$457,803
● Foul Air System at CTP	<u>141,642</u>
<u>Total</u>	<u>\$ 599,445</u>

TOTAL PURCHASE PRICE **\$3,857,328**

* The sum of \$3,018,619 + \$239,264 (\$3,257,883) will be sent to CLB.

**\$599,445 will be sent to AWMA for reimbursement to CLB for MNWD's participation in the indicated capital projects.

Basis of Costs for Exhibit A
"1999 MNWD Capacity Transfer"
CLB/MNWD

The consideration which the MNWD will pay to the CLB for the "1999 MNWD Capacity Transfer" has been determined as described below. All abbreviations and terms used in this Exhibit are defined throughout the Agreement itself. For convenience of determination, the derivation of the cost of the CLB/MNWD transfer is divided into two separate areas. They are:

- Wastewater Treatment and Related Facilities Associated with the CTP; PC 15 – CTP Facilities
- Portions of Recently Constructed, and to be Constructed, Capital Improvements to the Above Facilities.

The cost by area is:

1. PC 15 – CTP Facilities

The value of the PC 15 CTP treatment capacity that MNWD is purchasing can be determined by aggregating the present day value of two different project components:

- AWMA PC 15 Facilities (Plant and Access Road)
- AWMA PC 2 Facilities (Sludge Force Main)

Since MNWD is purchasing 1.46 mgd of capacity, the equivalent of each of these project components must be determined, as outlined in the following sections.

1.1 CTP Treatment Capacity

AWMA PC 15 Facilities (Plant and Access Road)

When the AWMA Regional Facilities were constructed, the original 2.5 mgd plant that was owned by MNWD and South Coast County Water District was expanded to 6.7 mgd and was named the AWMA Coastal Treatment Plant. The 4.2 mgd expansion was owned by the City of Laguna Beach (4.0 mgd) and by the Emerald Bay Service District. To determine the cost of these improvements that was allocated to the CLB, the final audited costs for the AWMA Project Committees that constructed the treatment plant improvements and the Access Road were used. As shown in Table A-1, the original local share investment (defined as the total cost minus Construction Grant Funds from the EPA and the State of California) was \$5,280,848. Therefore the value of CLB'S capacity can be determined as follows:

$$\$5,280,848 \times (1.46 \text{ mgd} / 4.0 \text{ mgd}) = \$1,927,509$$

Updating the construction costs can be done using the Engineering News Record Construction Cost Index for Los Angeles. This index, commonly referred to as the ENR CCI, tracks the cost of construction labor, structural steel, 2x4 lumber and Portland cement. The four components are weighted 76% to labor, 12% to steel, 11% to lumber and 1% to cement. As the cost of these components change with time, the CCI is adjusted accordingly, either upward or downward. Construction costs can then be updated using the following formula:

$$\text{Updated Cost} = \text{Original Cost} \times (\text{Updated CCI} / \text{CCI at the time of the Original Cost})$$

This cost can then be updated from the mid-point of construction, which was September 1981 (ENR CCI Los Angeles = 4,423) for the treatment plant (PC 15-D Con, Construction and Retrofit) to September 1999 (ENR CCI Los Angeles = 6,821.51) as follows.

$$\$1,927,509 \times (6,821.51 / 4,423) = \$2,972,761$$

This same approach is used throughout the remainder of this Appendix A.

1.3 Sludge Force Main AWMA PC 2 Facilities

The sludge force main between the CTP and the RTP was constructed as a portion of AWMA PC 2. PC 2 also constructed all Reaches of the Effluent Transmission Main, and two wastewater pumping stations. The costs allocated to CLB for its portion of the sludge force main are shown in Table A-1. As shown, the local share cost was \$73,415. Since the solids equivalent of the 1.46 mgd of the liquid treatment capacity is what is being transferred to MNWD, the original local share of the force main capacity to be transferred can be determined as follows:

$$\$73,415 \times (1.46 \text{ mgd} / 4.0 \text{ mgd}) = \$26,796$$

This cost can be updated from the mid-point of construction, which was September 1980 (ENR CCI Los Angeles = 3,986) to April 1998 (ENR CCI Los Angeles = 6,821.51) as follows:

$$\$26,796 \times (6,821.51 / 3,986) = \$45,858$$

1.3 Summary of Costs for Facilities

The sum of the updated costs for these two components is as follows:

AWMA PC 15 Facilities \$2,972,761

AWMA PC 2 Facilities \$ 45,858

Total Cost - PC 2 and PC 15 = \$3,018,619

2. Capital Improvement Projects

2.1 Prior Capital Projects

MNWD and SCWD have mutually agreed that a portion of the cost of two previously completed capital projects at the Coastal Treatment Plant should be included in the capacity transfer. These two projects are the reconstruction of the plant access bridge (FY 1991/1992) and retrofit of the secondary clarifiers from a traveling bridge sludge collection system to a conventional chain and flight mechanism (FY 1993/1994). It was also mutually agreed not to update these costs, but only to allocate a pro-rata portion to MNWD.

2.1.1 Reconstruct Access Bridge

Reconstruction of the plant access bridge was necessitated when the original wooden bridge washed out in the winter of 1991/92. The cost of the replacement bridge was \$541,000, but the Federal Emergency Management Agency (FEMA) reimbursed \$183,000 of this, leaving a net cost of \$358,000. The portion applicable to the 1.46 mgd being purchased by MNWD is:

$$\$358,000 \times (1.46 \text{ mgd} / 6.7 \text{ mgd}) = \$78,011$$

where 1.46 mgd is the capacity being purchased from SCWD and 6.7 mgd is the capacity of the CTP.

2.1.2 Retrofit Secondary Clarifier

This project replaced the original sludge removal mechanism with a conventional chain and flight mechanism. The construction cost was \$740,000, making the portion attributable to the 1.46 mgd being purchased by MNWD as follows:

$$\$740,000 \times (1.46 \text{ mgd} / 6.7 \text{ mgd}) = \$161,253$$

2.2 Current Capital Projects

There are three on-going capital projects associated with either the RTP solids handling or the CTP. These projects have been fully funded by the current PC 15 Member Agencies, and it is therefore necessary that MNWD reimburse CLB for a pro-rata share of the amount funded by CLB. The current capital projects and the amounts to be refunded to CLB are:

2.2.1 New Sludge Force Main

PC 15 has decided that the existing sludge force main (used to transport raw sludge solids from the CTP to the RTP for processing) needs to be replaced. PC 15 has collected the funds from the PC 15 Members that are estimated to be required to design and construct the new force main. MNWD will reimburse CLB through AWMA for its proportionate share, determined as follows:

$$\$2,100,880 \times (1.46 \text{ mgd} / 6.7 \text{ mgd}) = \$457,803$$

2.2.2 Foul Air System at the CTP

PC 15 is also undertaking the construction of a foul air scrubber project for the headworks screening building. Necessary funds for the design and construction have been collected from the PC 15 Members. Similar to the new sludge force main, MNWD will reimburse SCWD through AWMA for its proportionate share, determined as follows:

$$\$650,000 \times (1.46 \text{ mgd} / 6.7 \text{ mgd}) = \$141,642$$

The total of these current capital projects is \$599,445. This amount will be sent to AWMA, which in turn will reimburse CLB for MNWD's participation in these projects.

3. Total Purchase Price

The total purchase price for 1.46 mgd of capacity will be \$2,363,732, developed as follows:

PC 15, CTP Facilities	\$3,018,619
Prior Capital Projects	239,264
Current Capital Projects	<u>599,445*</u>
Total Purchase Price	\$3,857,328

*This amount for the "Current Capital Projects" will be sent to AWMA, which in turn will reimburse SCWD for MNWD's participation in these projects.

TABLE A-1

CITY OF LAGUNA BEACH
 OWNERSHIP IN THE COASTAL TREATMENT PLANT
 AND RELATED FACILITIES

Project Committee	Capital Cost	Grant Funds	Local Share
COASTAL TREATMENT PLANT			
15-A (Planning, Design, CM)	\$838,375	\$646,578	\$191,797
15-C Con. (Construct. Access Rd)	\$397,187	\$308,570	\$88,617
15-C Con II (Storm Damage Access Rd)	\$217,313	\$98,610	\$118,703
15-D Con (Construction & Retrofit)	\$12,845,977	\$7,878,149	\$4,867,828
15-D Con (Litigation)	\$13,803	—	\$13,803
Total Investment	\$14,312,755	\$9,031,907	\$5,280,848
SLUDGE FORCE MAIN			
PC 2 Con. Rch E (15A)	\$158,236	\$131,368	\$26,868
PC 2 Con. (15E)	\$164,417	\$125,365	\$39,052
PC 2B Con. Rch E III	\$11,439	\$3,944	\$7,495
Total Investment	\$334,092	\$260,677	\$73,415

EXHIBIT "D"

**AGREEMENT FOR ASSIGNMENT OF SEWAGE TREATMENT
CAPACITY IN THE AWMA COASTAL TREATMENT PLANT
BETWEEN MOULTON NIGUEL WATER DISTRICT
AND SOUTH COAST WATER DISTRICT**

This ASSIGNMENT AGREEMENT ("Agreement") is made and entered into as of the 7th day of October, 1999, by and between SOUTH COAST WATER DISTRICT, a County water district, organized under Division 11 (commencing with Section 30000) of the California Water Code of ("SCWD") and the MOULTON NIGUEL WATER DISTRICT, a California water district, organized under Division 12 (commencing with Section 34000) of the California Water Code ("MNWD"). MNWD and SCWD are sometimes individually referred to in this Agreement as "party" and jointly as "parties".

RECITALS

A. SCWD and MNWD are members of Aliso Water Management Agency ("AWMA"), a joint powers authority, organized under Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California, and created by the "Joint Exercise of Powers Agreement Creating Aliso Water Management Agency - Orange County, California (AWMA)", dated March 1, 1972 ("Joint Powers Agreement").

B. SCWD participates in AWMA Project Committee No. 15 for the purpose of acquiring, operating and maintaining the wastewater treatment facility known as the AWMA Coastal Treatment Plant ("Coastal Treatment Plant"), as more particularly described in the "Agreement for Design, Construction, Use, Operation, Maintenance, Repair, and Replacement of Coastal Treatment Plant for and on Behalf of Project Committee No. 15, Aliso Water Management Agency", inclusive of Amendment Nos. 1 through 6 to said agreement (collectively, the "PC 15 Agreement"). SCWD is a signatory to the PC 15 Agreement.

C. SCWD and MNWD participate in AWMA Project Committee No. 17 for the purpose of acquiring, operating and maintaining the wastewater treatment facility known as the

AWMA Joint Regional Treatment Plant ("Joint Regional Plant"), as more particularly described in the "Agreement for Design, Construction, Use, Operation, Maintenance, Repair, and Replacement of Joint Regional Treatment Plant and Sludge Solids Handling Facility for and on Behalf of Project Committee No. 17, Aliso Water Management Agency", inclusive of Amendment Nos. 1 through 7 to said agreement (collectively, the "PC 17 Agreement"). SCWD and MNWD are signatories to the PC 17 Agreement.

D. The PC 15 Agreement establishes SCWD's right to discharge certain quantities of wastewater to the Coastal Treatment Plant for handling, treatment and disposal, inclusive of rights to export solids/sludge through the export sludge line ("PC 15 Capacity Rights"). The PC 17 Agreement establishes SCWD's right to discharge certain quantities of raw sludge solids to the Joint Regional Plant solids handling facilities for handling, treatment and disposal ("PC 17 Capacity Rights").

E. Pursuant to the PC 15 Agreement, SCWD currently possesses the following PC 15 Capacity Rights: Two Million Five Hundred Thousand gallons per day (2.5 mgd) of treatment capacity. Pursuant to the PC 17 Agreement, SCWD currently possesses the following PC 17 Capacity Rights: Fifty Six Hundred pounds per day (5,600 lbs/day) of raw solids, which is equivalent to 0.019 million gallons per day (mgd) raw sludge flow.

F. MNWD desires to acquire certain PC 15 Capacity Rights in the Coastal Treatment Plant, and certain PC 17 Capacity Rights in the Joint Regional Plant solids handling facilities, and SCWD desires to assign a certain portion of its PC 15 Capacity Rights and PC 17 Capacity Rights to MNWD. The parties intend this Agreement to supersede and render null and void any prior oral or written understanding between the parties as to the use of PC 15 Capacity Rights and/or PC 17 Capacity Rights by MNWD as of the 'Effective Date' (which term is defined in Section 3 of this Agreement).

NOW, THEREFORE, the parties, in consideration of the mutual covenants herein, agree as follows:

I. CAPACITY ASSIGNMENTS

1.1 PC 15 Capacity Assignment. For the promises and covenants contained herein, and the valuable consideration set forth in Section 1.4, SCWD, assigns, transfers and conveys to MNWD the following portion of SCWD's PC 15 Capacity Rights ("PC 15 Assigned Capacity"):

Five Hundred Thousand gallons per day (0.5 mgd), average dry weather flow, of treatment capacity and corresponding solids transportation capacity.

1.2 PC 17 Capacity Assignment. For the promises and covenants contained herein, and the valuable consideration set forth in Section 1.4, SCWD, assigns, transfers and conveys to MNWD the following portion of SCWD's PC 17 Capacity Rights ("PC 17 Assigned Capacity"):

One Thousand One Hundred Twenty pounds raw solids per day (1,120 lbs/day), which is equivalent to 0.0038 mgd of raw sludge flow in the Joint Regional Plant solids handling facilities.

1.3 Warranty of Assigned Capacity. SCWD represents and warrants that it possesses the rights and interests in the PC 15 Agreement and PC 17 Agreement set forth therein, that SCWD is in full compliance with all terms and conditions of such agreements, that such agreements are in full force and effect, and that there has been no breach by any of the parties to such agreements which would affect the validity or enforceability thereof. SCWD further warrants that it possesses the right, title, and interest in the PC 15 Capacity Rights and PC 17 Capacity Rights, that SCWD has the right to assign the "PC 15 Assigned Capacity" and the "PC 17 Assigned Capacity" set forth, respectively, in Sections 1.1 and 1.2 of this Agreement, and that SCWD has not assigned or encumbered all or any part of the PC 15 Assigned Capacity or PC 17

Assigned Capacity to any other person or entity. In addition, other than as described below in Section 1.6, SCWD represents that it has no knowledge of any existing or threatened action, suit, or proceedings affecting or potentially affecting the PC 15 Assigned Capacity or PC 17 Assigned Capacity, or any portion of either thereof.

1.4 Acceptance; Consideration; Payment. MNWD accepts the assignment of the PC 15 Assigned Capacity and the PC 17 Assigned Capacity and agrees to pay SCWD the total amount of Two Million Four Hundred Seventeen Thousand Eight Hundred Twenty Dollars (\$2,417,820) ("Consideration") on the terms and conditions set forth in this Agreement, as detailed in attached Exhibit A. Payment of the Consideration from MNWD to SCWD shall be made and delivered to SCWD by cashier's check or money order within thirty (30) days after the conditions precedent set forth in Section 1.5 have been fully satisfied as evidenced in accordance with Section 1.6. SCWD agrees that a portion of the Consideration in the amount of Three Hundred Sixty-One Thousand Five Hundred Thirty Dollars (\$361,530) will be paid by and/or through AWMA's reimbursement of funds on deposit for certain capital projects detailed in Exhibit A.

1.5 Assumption of Obligations. Except as set forth in Section 1.7 of this Agreement, MNWD assumes all obligations of SCWD related to, and in proportion to, the PC 15 Assigned Capacity, and the PC 17 Assigned Capacity, as such obligations are established, respectively, in the PC 15 Agreement, the PC 17 Agreement, the Joint Powers Agreement, and any other documents setting forth terms and conditions with respect to the operations, repairs or maintenance of the Coastal Treatment Plant including the export sludge pipeline and Coastal Treatment Plant access road, or the Joint Regional Plant. MNWD agrees to perform all such obligations after the Effective Date of this Agreement.

1.6 Consent to Assignment-Other AWMA Project Members. Under Section 30 of the Joint Powers Agreement, the written consent of the City of Laguna Beach (City) and Emerald Bay Service District (EBSD), members of Project Committee No. 15, are required to effectuate an assignment of the PC 15 Capacity Rights, and the written consent of the City, EBSD and El

Toro Water District members of Project Committee No. 17, are required to effectuate an assignment of the PC 17 Capacity Rights (collectively, "Consenting Parties"). The consent of the Consenting Parties to the assignment of rights and assumption of obligations in this Agreement is memorialized in Amendment No. 7 to the PC 15 Agreement, and Amendment No. 8 to the PC 17 Agreement, which are incorporated in this Agreement by this reference ("Amendment No. 7"; "Amendment No. 8"). Amendment No. 7 and Amendment No. 8 each sets forth certain conditions precedent to effective consent by the Consenting Parties, and all such conditions must be satisfied in accordance with the terms of Section 3 of this Agreement.

1.7 Pre-Existing Liabilities. Any and all liabilities, costs, judgments, attorneys fees and obligations that may occur as a result of or in connection with actions, events, occurrences, claims or causes of actions related to, arising out of, or in connection with, the PC 15 Capacity Rights, including the PC 15 Assigned Capacity, and the PC 17 Capacity Rights, including the PC 17 Assigned Capacity, occurring prior to the Effective Date, whether known or unknown, including but not limited to those actions, events, occurrences, claims or causes of action which are asserted, or which may form the basis of assertion for future indemnity or contribution, in connection with Briggs Christian Morris-Smith vs. MNWD, SCWD, Central District Court Case No. SACV 98-35 GLT (EEx), Briggs Christian Morris-Smith and Dennis Morin vs. MNWD SCWD, et al., Orange County Superior Court Case No. 79 04 88 (or any successor or related action, proceeding, claim or cause of action thereto), and that are SCWD's obligation under the above referenced litigation, the PC 15 Agreement, the PC 17 Agreement, or otherwise, shall remain the responsibility of SCWD in accordance with the terms of the PC 15 Agreement, the PC 17 Agreement, or as otherwise provided in relevant agreements, or by law. Except as may be otherwise provided in that certain "Collective Defense Agreement" by and between MNWD and SCWD dated June 15, 1998, related to the Morris-Smith litigation referenced above, MNWD does not assume any costs, responsibilities, liabilities or attorneys' fees, nor does it waive any rights or claims it may have against SCWD, arising out of any such actions, events, occurrences, claims, or causes of action as a result of the capacity assignments provided herein.

1.8 Indemnification. In addition to the obligation set forth in Section 1.7 and elsewhere hereunder, SCWD shall defend, indemnify, and hold harmless MNWD, its elected officials, officers, employees, agents, and volunteers, from any and all claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to the PC 15 Capacity Rights, PC 17 Capacity Rights, the PC 15 Agreement or the PC 17 Agreement, to the extent relating to or caused by acts, events, omissions, or conditions occurring on or prior to the Effective Date of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgements, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of MNWD, its elected officials, officers, employees, agents, and/or volunteers for all legal expenses and costs incurred by each of them. SCWD's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by SCWD or by MNWD, or their respective elected officials, officers, employees, agents, or volunteers.

Except as otherwise provided in Section 1.7, MNWD shall defend, indemnify, and hold harmless SCWD, its elected officials, officers, employees, agents, and volunteers, from any and all claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to the PC 15 Assigned Capacity and the PC 17 Assigned Capacity to the extent relating to or caused by acts, events, omissions, or conditions arising after the Effective Date of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgements, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of MNWD, its elected officials, officers, employees, agents, and/or volunteers for all legal expenses and costs incurred by each of them. MNWD's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MNWD, SCWD, or their respective elected officials, officers, employees, agents, or volunteers.

II. GENERAL PROVISIONS

2.1 Authority to Enter Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement and bind each respective party.

2.2 Notices. All notices, demands, payments and written communications shall be in writing and delivered to the following addresses or such other addresses as the parties may designate by written notice:

To SCWD: General Manager
South Coast Water District
31592 West Street
Laguna Beach, CA 92651
(949) 499-4555

To MNWD: General Manager
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677
(949) 643-2006

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

2.3 Cooperation: Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

2.4 Construction: References: Captions. It being agreed the parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be

construed simply, according to its fair meaning, and not strictly for or against either party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to MNWD and SCWD include their respective elected officials, officers, employees, agents, and volunteers, except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

2.5 Recitals/Exhibits. SCWD and MNWD each represent and warrant that to the best of its knowledge, the Recitals in this Agreement are a true and accurate representation of the facts and circumstances as they relate to SCWD's PC 15 Capacity Rights, the PC 15 Agreement, the PC 17 Solids Capacity Rights, the PC 17 Agreement, and this Agreement. The Recitals and Exhibit A are incorporated as part of this Agreement by this reference.

2.6 Amendment/Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

2.7 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual right by custom, estoppel, or otherwise.

2.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the parties, and their successors, heirs, personal representatives, or assigns.

2.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the parties under this Agreement.

2.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

2.11 Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any lawsuit brought in connection with this Agreement shall be brought in the appropriate court in the County of Orange, California.

2.12 Attorneys' Fees and Costs. If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which the party is entitled.

2.13 Time is of the Essence. Time is of the essence in this Agreement, and the parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

2.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

2.15 Entire Agreement; Repeal of Prior Agreements. This Agreement contains the entire agreement between MNWD and SCWD related to the subject matter herein, and this Agreement supersedes any prior oral or written agreements between the parties related to the PC 15 Capacity Rights and/or the PC 17 Capacity Rights and renders null and void any rights or obligations created pursuant to any such agreements.

///

///

///

///

III. EFFECTIVE DATE

3.1 This Agreement shall not be effective, and no term shall be enforceable, until the date on which both of the following have occurred ("Effective Date"):

- (i) Amendment No. 7 to the PC 15 Agreement is executed and made effective as to MNWD's membership in Project Committee No. 15 and the PC 15 Assigned Capacity, and all conditions precedent to the effectiveness of Amendment No. 7 are satisfied in accordance with the terms thereof, and Amendment No. 8 to the PC 17 Agreement is executed and made effective as to the PC 17 Assigned Capacity, and all conditions precedent to the effectiveness of Amendment No. 8 are satisfied in accordance with the terms thereof (the "Completion Date"); and
- (ii) MNWD pays the Consideration to SCWD within thirty (30) days of the Completion Date.

If any of the above contingencies fails to occur, for any reason whatsoever, this Agreement shall be null and void, and no party shall have any liability or obligation arising out of, or relating to, this Agreement.

///

///

///

///

///

///

///

///

///

///

///

THIS AGREEMENT is entered into by the parties as of the date first referred to above.

SOUTH COAST WATER DISTRICT

By Richard J. Ringer
President/Vice-President

Dated: October 7, 1999

By Michael P. Aunter
Secretary/Assistant Secretary

APPROVED AS TO FORM:
General Counsel, SCWD

By: _____
Thomas L. Woodruff

MOULTON NIGUEL WATER DISTRICT

By _____
President/Vice-President

Dated: _____, 1999

By _____
Secretary/Assistant Secretary

APPROVED AS TO FORM:
General Counsel, MNWD
Bowie, Arneson, Wiles & Giannone

By: _____
Patricia B. Giannone

THIS AGREEMENT is entered into by the parties as of the date first referred to above.

SOUTH COAST WATER DISTRICT

By _____
President/Vice-President

By _____
Secretary/Assistant Secretary

Dated: _____, 1999

APPROVED AS TO FORM:
General Counsel, SCWD

By: _____
Thomas L. Woodruff

MOULTON NIGUEL WATER DISTRICT

By _____
President/Vice-President

By _____
Secretary/Assistant Secretary

Dated: 9-16-99, 1999

APPROVED AS TO FORM:
General Counsel, MNWD
Bowie, Arneson, Wiles & Giannone

By: _____
Patricia E. Giannone

EXHIBIT "A"

MOULTON NIGUEL WATER DISTRICT &
SOUTH COAST WATER DISTRICT
ASSIGNMENT OF SEWAGE TREATMENT CAPACITY
COASTAL TREATMENT PLANT

PC 15 - CTP FACILITIES

• CTP Treatment Capacity 0.5 mgd Dry Weather Flow Original SLSD/MNWD Plant	\$914,414
• CTP Treatment Capacity 0.5 mgd Dry Weather Flow (Plant and Access Road)	770,866
• Sludge Force Main	<u>11,957</u>
<u>Total</u>	<u>\$ 1,697,237</u>

PC 17 SOLIDS HANDLING FACILITIES

• 1,120 lbs/day Solids Handling Capacity	\$277,082
<u>Total</u>	<u>\$ 277,082</u>

PRIOR CAPITAL PROJECTS

• Reconstruct Access Bridge (1991/92)	\$26,716
• Retrofit Secondary Clarifier (1993)	<u>55,255</u>
<u>Total</u>	<u>\$ 81,971</u>

CURRENT CAPITAL PROJECTS

• New Sludge Force Main	\$156,782
• Foul Air System at CTP	48,507
• Reconstruct Solids Handling Systems at RTP(PC 17)	<u>156,241</u>
<u>Total</u>	<u>\$ 361,530</u>

TOTAL PURCHASE PRICE \$2,417,820

* The sum of \$1,697,237 + \$277,082 + \$81,971 (\$2,056,290) will be sent to SCWD.

**\$361,530 will be sent to AWMA for reimbursement to SCWD for MNWD's participation in the indicated capital projects.

Basis of Costs for Exhibit A "1999 MNWD Capacity Transfer" SCWD/MNWD

The consideration which the MNWD will pay to the SCWD for the "1999 MNWD Capacity Transfer" has been determined as described below. All abbreviations and terms used in this Exhibit are defined throughout the Agreement itself. For convenience of determination, the derivation of the cost of the SCWD/MNWD transfer is divided into three separate areas. They are:

- Wastewater Treatment and Related Facilities Associated with the CTP; PC 15 – CTP Facilities
- Solids Treatment and Handling Facilities at the RTP; PC 17 – RTPSHF
- Portions of Recently Constructed, and to be Constructed, Capital Improvements to the Above Facilities.

The cost by area is:

1. PC 15 – CTP Facilities

The value of the PC 15 CTP treatment capacity that MNWD is purchasing can be determined by aggregating the present day value of three different project components:

- Original SLSD/MNWD Treatment Plant
- AWMA PC 15 Facilities (Plant and Access Road)
- AWMA PC 2 Facilities (Sludge Force Main)

Since MNWD is purchasing 0.5 mgd of capacity, the 0.5 mgd equivalent of each of these project components must be determined, as outlined in the following sections

1.1 CTP Treatment Capacity

Original SLSD / MNWD Treatment Plant

Prior to construction of the AWMA Regional Facilities, a 2.5 mgd treatment plant was located at the current site of the AWMA Coastal Treatment Plant (CTP). This plant was jointly owned by MNWD and the South Laguna Sanitary District (predecessor agency of the South Coast County Water District). With the construction of the AWMA Regional Treatment Plant (RTP), MNWD no longer needed this capacity, and it was sold to the SCCWD. The basis for the sale was an agreement called "Agreement between South Coast County Water District as Successor to the South Laguna Sanitary District and the

Moulton Niguel Water District Relative to Acquisition and Use of Wastewater Treatment Facilities", dated January 31, 1980. In this Agreement, the value of the 1.25 mgd that MNWD was selling to SCWD was determined to be \$1,296,922.00 as of June 30, 1979.

Therefore the value of 0.5 mgd at that time would have been:

$$\$1,296,922.00 \times (0.5 \text{ mgd} / 1.25 \text{ mgd}) = \$518,768$$

This cost can be updated from June 1979 using the Engineering News Record Construction Cost Index for Los Angeles. This index, commonly referred to as the ENR CCI, tracks the cost of construction labor, structural steel, 2x4 lumber and Portland cement. The four components are weighted 76% to labor, 12% to steel, 11% to lumber and 1% to cement. As the cost of these components change with time, the CCI is adjusted accordingly, either upward or downward. Construction costs can then be updated using the following formula:

Updated Cost = Original Cost X (Updated CCI / CCI at the time of the Original Cost)

To update the cost of the treatment capacity from June of 1979, (ENR CCI for Los Angeles = 3,870) to September 1999 (ENR CCI for Los Angeles = 6,821.51) the formula is as follows:

$$\$518,768 \times (6,821.51 / 3,870) = \$914,414$$

This same approach is used throughout the remainder of this Appendix A.

1.2 CTP Treatment Capacity

AWMA PC 15 Facilities (Plant and Access Road)

When the AWMA Regional Facilities were constructed, the original 2.5 mgd plant was expanded to 6.7 mgd and was named the AWMA Coastal Treatment Plant. During this expansion, improvements were made that benefited the original 2.5 mgd treatment plant, and the cost of these improvements was allocated to the South Coast Water District. This improved treatment capacity represents SCWD's ownership in the AWMA CTP at the time of the 1999 Capacity Transfer. To determine the cost of these improvements, the final audited costs for the AWMA Project Committees that constructed the treatment plant improvements and the Access Road were used. As shown in Table A-1, the original local share investment (defined as the total cost minus Construction Grant Funds from the EPA and the State of California) was \$2,499,108. Therefore the value of SCWD's capacity can be determined as follows:

$$\$2,499,108 \times (0.5 \text{ mgd} / 2.5 \text{ mgd}) = \$499,822$$

This cost can then be updated from the mid-point of construction, which was September 1981 (ENR CCI Los Angeles = 4,423) for the treatment plant (PC 15-D Con, Construction and Retrofit) to September 1999 (ENR CCI Los Angeles = 6,821.51) as follows.

$$\$499,822 \times (6,821.51 / 4,423) = \$770,866$$

1.3 Sludge Force Main AWMA PC 2 Facilities

The sludge force main between the CTP and the RTP was constructed as a portion of AWMA PC 2. PC 2 also constructed all Reaches of the Effluent Transmission Main, and two wastewater pumping stations. The costs allocated to SCWD for its portion of the sludge force main are shown in Table A-1. As shown, the local share cost was \$34,933. Since SCWD owns 5,600 lbs./day of capacity in the sludge force main and is transferring 1,120 lbs./day to MNWD, the original local share of the capacity to be transferred can be determined as follows:

$$\$34,933 \times (1,120 \text{ lbs./day} / 5,600 \text{ lbs./day}) = \$6,987$$

This cost can be updated from the mid-point of construction, which was September 1980 (ENR CCI Los Angeles = 3,986) to September 1999 (ENR CCI Los Angeles = 6,821.51) as follows:

$$\$7,140 \times (6,821.51 / 3,986) = \$11,957$$

1.4 Summary of Costs for Facilities

The sum of the updated costs for these three components is as follows:

Original SLSD/MNWD Treatment Plant	\$914,414
AWMA PC 15 Facilities	\$770,866
AWMA PC 2 Facilities	\$ 11,957

Total Cost – PC 2 and PC 15 = \$1,697,237

2. PC 17 - Regional Treatment Plant Solids Handling Facilities

AWMA PC 17 constructed the liquid and solids handling facilities at the RTP. The local share of the costs allocated to the SCWD for its portion of these facilities was \$920,222, as

shown in Table A-1. Since SCWD owns 5,600 lbs./day of capacity in RTP solids handling facilities transferring 1,120 lbs./day to MNWD, the value of the capacity to be transferred can be determined as follows:

$$\$920,222 \times (1,120 \text{ lbs./day} / 5,600 \text{ lbs./day}) = \$184,044$$

This cost can be updated from the mid-point of construction, which was December 1981 (ENR CCI Los Angeles = 4,531) to September 1999 (ENR CCI Los Angeles = 6,821.51) as follows:

$$\$184,044 \times (6,821.51 / 4,531) = \$277,082$$

3. Capital Improvement Projects

3.1 Prior Capital Projects

MNWD and SCWD have mutually agreed that a portion of the cost of two previously completed capital projects at the Coastal Treatment Plant should be included in the capacity transfer. These two projects are the reconstruction of the plant access bridge (FY 1991/1992) and retrofit of the secondary clarifiers from a traveling bridge sludge collection system to a conventional chain and flight mechanism (FY 1993/1994). It was also mutually agreed not to update these costs, but only to allocate a pro-rata portion to MNWD.

3.1.1 Reconstruct Access Bridge

Reconstruction of the plant access bridge was necessitated when the original wooden bridge washed out in the winter of 1991/92. The cost of the replacement bridge was \$541,000, but the Federal Emergency Management Agency (FEMA) reimbursed \$183,000 of this, leaving a net cost of \$358,000. The portion applicable to the 0.5 mgd being purchased by MNWD is:

$$\$358,000 \times (0.5 \text{ mgd} / 6.7 \text{ mgd}) = \$26,716$$

where 0.5 mgd is the capacity being purchased from SCWD and 6.7 mgd is the capacity of the CTP.

3.1.2 Retrofit Secondary Clarifier

This project replaced the original sludge removal mechanism with a conventional chain and flight mechanism. The construction cost was \$740,000, making the portion attributable to the 0.5 mgd being purchased by MNWD as follows:

$$\$740,000 \times (0.5 \text{ mgd} / 6.7 \text{ mgd}) = \$55,255$$

3.2 Current Capital Projects

There are three on-going capital projects associated with either the RTP solids handling or the CTP. These projects have been fully funded by the current PC 15 Member Agencies, and it is therefore necessary that MNWD reimburse SCWD for a pro-rata share of the amount funded by SCWD. The current capital projects and the amounts to be refunded to SCWD are:

3.2.1 New Sludge Force Main

PC 15 has decided that the existing sludge force main (used to transport raw sludge solids from the CTP to the RTP for processing) needs to be replaced. PC 15 has collected the funds from the PC 15 Members that are estimated to be required to design and construct the new force main. MNWD will reimburse SCWD through AWMA for its proportionate share, determined as follows:

$$\$2,100,880 \times (0.5 \text{ mgd} / 6.7 \text{ mgd}) = \$156,782$$

3.2.2 Foul Air System at the CTP

PC 15 is also undertaking the construction of a foul air scrubber project for the headworks screening building. Necessary funds for the design and construction have been collected from the PC 15 Members. Similar to the new sludge force main, MNWD will reimburse SCWD through AWMA for its proportionate share, determined as follows:

$$\$650,000 \times (0.5 \text{ mgd} / 6.7 \text{ mgd}) = \$48,507$$

3.2.3 Reconstruct Solids Handling System at the RTP (PC 17)

PC 17 is in the final stages of completing the installation of four centrifuges for dewatering solids, and a dewatered solids loading system. The total capacity of this project is 49,975 lbs./day, and MNWD is purchasing 1,120 lbs./day from SCWD as part of the capacity transfer.

$$\$6,971,600 \times (1,120 \text{ lbs./day} / 49,975 \text{ lbs./day}) = \$156,241$$

The total of these three current capital projects is **\$361,530**. This amount will be sent to AWMA, which in turn will reimburse SCWD for MNWD's participation in these projects.

4. Total Purchase Price

The total purchase price for 0.5 mgd of capacity will be \$2,417,820, developed as follows:

PC 15, CTP Facilities	\$1,697,237
PC 17, Regional Treatment Plant Solids Handling Facilities	277,082
Prior Capital Projects	81,971
Current Capital Projects	<u>361,530 *</u>
Total Purchase Price	\$2,417,820

*This amount for the "Current Capital Projects" will be sent to AWMA, which in turn will reimburse SCWD for MNWD's participation in these projects.

TABLE A-1

**SOUTH COAST WATER DISTRICT
OWNERSHIP IN THE COASTAL TREATMENT PLANT
AND RELATED FACILITIES**

Project Committee	Capital Cost	Grant Funds	Local Share
COASTAL TREATMENT PLANT			
15-A (Planning, Design, CM)	\$256,348	\$187,937	\$68,411
15-C Con. (Construct. Access Rd)	\$127,752	\$97,274	\$30,478
15-C Con II (Storm Damage Access Rd)	\$135,782	\$61,614	\$74,169
15-D Con (Construction & Retrofit)	\$4,534,340	\$2,212,639	\$2,321,701
15-D Con (Litigation)	\$4,349	—	\$4,349
Total Investment	\$5,058,571	\$2,559,464	\$2,499,108
SLUDGE FORCE MAIN			
PC 2 Con. Rch E (15A)	\$51,809	\$45,724	\$5,885
PC 2 Con. (15E)	\$102,731	\$78,331	\$24,400
PC 2B Con. Rch E III	\$7,108	\$2,460	\$4,648
Total Investment	\$161,448	\$126,515	\$34,933
REGIONAL TREATMENT PLANT			
PC 17 Engineering	\$147,880	\$64,710	\$83,170
PC 17A/B Con. (Construction)	\$209,392	\$153,841	\$55,551
PC 17A/B Lit (Litigation)	\$5,661	—	\$5,661
PC 17D Con. (Construction)	\$2,146,271	\$1,370,431	\$775,840
Total Investment	\$2,509,204	\$1,588,982	\$920,222

EXHIBIT "E"

**JOINT EXERCISE OF POWERS AGREEMENT
CREATING SOUTH ORANGE COUNTY
WASTEWATER AUTHORITY
Orange County, California
(SOCWA)**

**AND TERMINATING ALISO WATER MANAGEMENT AGENCY,
SOUTH EAST REGIONAL RECLAMATION AUTHORITY,
SOUTH ORANGE COUNTY RECLAMATION AUTHORITY**

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	2
AGREEMENT	7
I. DEFINITIONS	7
1.1 Definitions	7
II. TERMINATION OF THE JPAs	10
2.1 Rescission	10
III. PURPOSE AND POWERS OF CONSOLIDATED JPA	11
3.1 Agency Created	11
3.2 Purpose of the Agreement; Common Powers to be Exercised	11
3.3 Specific Powers	12
3.4 Restrictions on Exercise of Powers	14
3.5 Authority as Successor to JPAs	14
3.6 Adoption of Rules, Regulations, Policies	15
3.7 Personnel	15
3.8 Project Committees; Agreements	16
IV. ORGANIZATION	16
4.1 Membership	16
4.2 Names	17
4.3 Designation of Directors	17
4.4 Principal Office	17
4.5 Meetings	17
4.6 Quorum	18
4.7 Voting Powers and Limitations Thereon	18
4.8 Minutes	18
4.9 Rules	18
4.10 Vote or Assent of Members	18
4.11 Officers	19
V. PLANNING	20
5.1 Planning Policy	20

VI.	BUDGETS AND PAYMENTS	21
6.1	General Budget	21
6.2	Project Budgets	21
6.3	Operation and Maintenance Budgets	22
6.3.1	O & M Costs/Capital Components	23
6.4	Effect of Failure of Approval of Budget	23
6.5	Expenditures Under Approved Budgets	24
6.6	Payment of Amounts Due	24
6.7	Reimbursement of Funds	24
VII.	BOND FINANCING	25
7.1	Financing Method	25
VIII.	PROJECT CONSTRUCTION	25
8.1	Project Members	25
8.1.1	Project Committee of One Member	25
8.2	Acquisition and Construction of Projects	26
IX.	MAINTENANCE AND OPERATION OF FACILITIES	26
9.1	Maintenance and Operation of Facilities	26
X.	ACCOUNTING AND AUDITS	27
10.1	Accounting Procedures	27
10.2	Audit	27
XI.	PROPERTY RIGHTS	27
11.1	Project Facilities	27
11.2	Distribution of Assets and Termination of Authority	28
11.3	Liabilities	29
XII.	FORMATION, TERM, TERMINATION, WITHDRAWAL	29
12.1	Term	29
12.2	Rescission or Termination	29
12.3	Withdrawal	29
XIII.	GENERAL	30
13.1	Admission of New Member Agencies	30
13.2	Insurance	30

13.3	Amendments	31
13.4	Notice	31
13.5	Arbitration	31
13.6	Severance	33
13.7	Counterparts	33
	Exhibit A Map of SOCWA Jurisdiction	
	Exhibit B List of Member Agencies	

**JOINT EXERCISE OF POWERS AGREEMENT
CREATING SOUTH ORANGE COUNTY
WASTEWATER AUTHORITY
Orange County, California
(SOCWA)**

**AND TERMINATING ALISO WATER MANAGEMENT AGENCY,
SOUTH EAST REGIONAL RECLAMATION AUTHORITY,
SOUTH ORANGE COUNTY RECLAMATION AUTHORITY**

THIS AGREEMENT is made and entered into as of the 1st day of July, 2001, to be effective on the Effective Date (as hereinafter defined) by and between CITY OF LAGUNA BEACH (CLB), CITY OF SAN CLEMENTE (CSC), CITY OF SAN JUAN CAPISTRANO / CAPISTRANO VALLEY WATER DISTRICT (SJC/CVWD), EL TORO WATER DISTRICT (ETWD), EMERALD BAY SERVICES DISTRICT (EBS), IRVINE RANCH WATER DISTRICT (IRWD), MOULTON NIGUEL WATER DISTRICT (MNWD), SANTA MARGARITA WATER DISTRICT (SMWD), SOUTH COAST WATER DISTRICT (SCWD), and TRABUCO CANYON WATER DISTRICT (TCWD), which are water purveyors and/or wastewater service providers within the San Juan Creek and/or Aliso Creek watersheds and other watershed areas within the jurisdiction of the California Regional Water Quality Control Board, San Diego Region ("Region 9") and (in some cases) Santa Ana Region ("Region 8"). The public entities listed above may be referred to in this Agreement collectively or in combination(s) as "parties" or "Members Agencies" or individually as "party" or a "Member Agency". Capitalized terms not otherwise defined shall have the definitions set forth in Section I.

RECITALS

- A. CSC, MNWD, SCWD, SJC/CVWD and SMWD are Member Agencies of South East Regional Reclamation Authority (SERRA) formed under and pursuant to Government Code Section 6500 *et seq.* and that certain joint powers agreement dated March 9, 1970, entitled "Joint Exercise of Powers Agreement Creating South East Regional Reclamation Authority, Orange County, California (SERRA)" as thereafter amended from time-to-time ("SERRA Joint Powers Agreement").
- B. CLB, EBSD, ETWD, IRWD (as the consolidated successor to Los Alisos Water District), MNWD and SCWD are members of Aliso Water Management Agency (AWMA) formed under and pursuant to Government Code Section 6500 *et seq.* and that certain joint powers agreement dated March 1, 1972, entitled "Joint Exercise of Powers Agreement Creating Aliso Water Management Agency, Orange County, California (AWMA)," as thereafter amended from time-to-time ("AWMA Joint Powers Agreement").
- C. ETWD, IRWD (as the consolidated successor to IRWD and Los Alisos Water District), MNWD, SJC/CVWD, SCWD, SMWD and TCWD are members of South Orange County Reclamation Authority (SOCRA) formed under and pursuant to Government Code Section 6500 *et seq.* and that certain joint powers agreement dated November 29, 1994, entitled "Amended and Restated Joint Exercise of Powers Agreement Creating South Orange County Reclamation Authority," as thereafter amended from time-to-time ("SOCRA Joint Powers Agreement").
- D. CVWD is currently a subsidiary district of SJC, with the SJC City Council as its legislative body. Pursuant to Orange County Local Agency Formation Commission (LAFCO)

Reorganization R096-15, SJC will formally merge with CVWD upon the completion of certain terms and conditions under LAFCO Resolution No. R096-15. This Agreement provides for the membership of SJC/CVWD in Authority as a single Member Agency and recognizes SJC as the successor SOCRA member to CVWD and to all of CVWD's rights, obligations, agreements, liabilities, and all other duties previously held by CVWD in its capacity as a member of SOCRA. SJC hereby assumes all of CVWD's rights, obligations, agreements, liabilities and all other duties previously held by CVWD in its capacity as a member of SOCRA.

E. Effective December 31, 2000, IRWD is the successor-in-interest to Los Alisos Water District (LAWD), a former member of AWMA, and to IRWD and LAWD, former members of SOCRA, pursuant to both Orange County Local Agency Formation Commission Resolution DC 00-05 adopted on September 13, 2000, which approved the consolidation of LAWD and IRWD, and Orange County Board of Supervisors Resolution 00-399 adopted on October 24, 2000, which ordered the consolidation of LAWD with IRWD, leaving IRWD as the consolidated successor district. The boards of directors of AWMA and SOCRA have adopted, respectively, AWMA Resolution No. 2001- 01 and SOCRA Resolution No. 2001-01 formally recognizing IRWD as the successor AWMA member to LAWD and as the successor SOCRA member to LAWD and IRWD, and to all of the rights, obligations, agreements, liabilities and all other duties previously held by LAWD in its capacity as a member of AWMA and by LAWD and IRWD in their capacities as members of SOCRA.

F. AWMA, SERRA and SOCRA (collectively the "JPAs") currently share in the administrative support costs necessary to administer the JPAs, including the services of the General Manager of the JPAs and the administrative support staff, as well as the joint use of administrative building facilities for the operation of the JPAs, pursuant to that certain agreement

entitled "Agreement Among the South East Regional Reclamation Authority, Aliso Water Management Agency and South Orange County Reclamation Authority Establishing Procedures for Shared Staff Resources", recently amended on November 2, 2000, to provide for the consolidation of administrative facilities operations at the SERRA treatment plant in the near future.

G. In accordance with extensive reviews and reports initiated by the JPAs over the past five years, including a 1996 administrative and management review study by Griffith & Associates, and the 1999 report entitled "Evaluation of the Future Policy Direction for the AWMA/SERRA Organization" prepared by the JPAs' General Manager in accordance with board direction, the boards of directors of the JPAs desire at this time to formally consolidate the JPAs into one joint powers authority in the interests of furthering a regional approach to wastewater treatment and reclamation, and additional operational and administrative efficiencies, subject to the unanimous approval by the respective Member Agencies of the termination of AWMA, SERRA and SOCRA concurrently with the formation of a consolidated joint powers agency by execution of this Agreement.

H. Each of the parties hereto has territory within or related to the San Juan Creek and/or Aliso Creek watershed areas or other watershed areas within the Orange County portion of Region 9 and/or Region 8 as set forth and depicted on Exhibit A to this Agreement including the designation thereon of the existing boundaries of the parties. There is a continued need for efficiencies in the coordinated regional planning of wastewater disposal, reclamation and total water management, as well as of production, transmission, storage and distribution of Nondomestic Water and a coordinated effort to facilitate and expedite new and increased use of Nondomestic Water, within the area set forth in Exhibit A. Additionally, the continued

implementation of a primary user permit for use of Recycled Water and to process associated modifications to water quality objectives and beneficial use designations for groundwaters and surface waters, as necessary, for implementation of reclamation plans within certain of the area designated in Exhibit A and also within Region 9 can most efficiently be achieved through the continued cooperative action of the parties operating through a consolidated joint exercise of powers agency in lieu of all three JPAs.

I. The parties have and possess one or more of the following powers:

(1) the power and authorization to acquire and construct facilities for the collection, transmission, treatment and disposal of sewage and other waste products, including the reclamation of wastewater for the benefit of the lands and inhabitants within their respective boundaries;

(2) the power and authorization to acquire and construct facilities for the production, treatment, transmission, storage and distribution of Nondomestic Water for the benefit of the lands and inhabitants within their respective boundaries; and

(3) the power and authorization to acquire and construct facilities to supply the inhabitants and lands within their respective boundaries with potable and recycled water for irrigation, domestic and municipal purposes, inclusive of providing for the development and conservation of water supplies.

J. The parties own and operate or have capacity rights in wastewater treatment and/or reclamation plants under the jurisdiction of Region 9, and/or utilize groundwaters or surface waters in accordance with basin plans approved by Region 9. Additionally, ETWD and IRWD each include within their respective boundaries watershed areas within the jurisdiction of Region 8. The parties previously undertook regional wastewater disposal and reclamation

programs, as well as total water management plans within the areas designated in Exhibit A through cooperative action by operating through the JPAs. The groundwaters and surface waters are used in accordance with certain water quality objectives and beneficial use designations set forth in basin plans approved by Region 9 or Region 8.

K. The parties previously constructed, with the assistance of federal and State Clean Water Act grant funding, and now operate and maintain certain wastewater treatment and reclamation plants through the AWMA/SERRA organization. In addition to ongoing capital improvements for such plants and other AWMA/SERRA facilities, the parties are undertaking the planning and construction of facilities for the production and utilization of Nondomestic Water from the wastewater treatment and reclamation plants and/or through other means with available groundwaters and/or surface waters, which include additional treatment, production, transmission, storage, pumping and distribution facilities. The governing body of Region 9 previously supported and encouraged the establishment of SOCRA for the purposes of holding a single primary producer/user permit for the San Juan Creek and Aliso Creek watersheds, and other watershed areas within the Orange County portion of Region 9, amending the associated basin plans in conjunction with implementation of recycled water plans for those areas and coordinating and regulating the use of Nondomestic Water within such areas. SOCRA administered compliance with all regulations, orders and permits issued from time to time relative to Recycled Water previously performed by Region 9, and implemented amendments to basin plans under the jurisdiction of Region 9 in order to provide for uniform water quality objectives and Nondomestic Water use requirements.

L. Each of the parties is authorized to contract with each other for the joint exercise of any common power under the Act. The parties desire to form a single joint powers authority

as a successor-in-interest to AWMA, SERRA and SOCRA for all purposes by execution of this Agreement, subject to the terms and conditions set forth in this Agreement. Generally, the terms and conditions include the continuation of all existing AWMA, SERRA and SOCRA project committees, and corresponding project agreements, including but not limited to the rights, duties and liabilities of the respective Member Agencies under all such project committees and agreements. Additionally, plans, benefits, permits, contracts, policies and all other rights and legal obligations of the JPAs will be assumed by the successor joint powers authority in the manner provided in this Agreement as a means to effecting the consolidation without adverse impacts to the continuous facilities operations of the JPAs.

In consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

AGREEMENT

I. DEFINITIONS

1.1 Definitions. For the purpose of this Agreement, the following words shall have the following meanings:

- (a) "Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as now or hereinafter amended.
- (b) "Agreement" means this joint exercise of powers agreement.
- (c) "Authority" means the SOUTH ORANGE COUNTY WASTEWATER AUTHORITY formed pursuant to this Agreement.

- (d) "Board" or "Board of Directors" means the governing body of the Authority.
- (e) "Bond Law" means Article 2 of the Act (commencing with Section 6540 of the California Government Code), the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 of the Act (commencing with Section 6584 of the California Government Code), the Mello-Roos Community Facilities Act of 1982 (commencing with Section 53311 of the California Government Code), as any of the aforementioned statutes are now or hereafter amended, or any other law presently or hereafter legally available for use by the Authority in the authorization and issuance of Bonds to finance or refinance the acquisition, construction, renovation, leasing, subleasing, maintenance or operation of Projects authorized hereunder.
- (f) "Bonds" means bonds, notes or other obligations of the Authority issued pursuant to the Bond Law or pursuant to any other provision of law which may be used by the Authority for the authorization and issuance of bonds, notes or other obligations.
- (g) "Effective Date" means July 1, 2001; provided, the Effective Date with respect to the termination of AWMA, SERRA and SOCRA as provided for in Section II may be a later date for certain limited purposes as may be required.
- (h) "Fiscal Year" means July 1st to and including the following June 30th.

- (i) "General Budget" means the approved budget applicable to the expenses of administration of the Authority.
- (j) "Member Agency" or "Member" means each of the parties which become a signatory to this Agreement, accepting the rights and obligations of the Authority hereunder, including any public entity executing an addendum to this Agreement as a Member Agency as hereinafter provided.
- (k) "Nondomestic Water" means Recycled Water (as defined below), groundwater, surface water and any other nonpotable water produced and or utilized by the parties.
- (l) "Participating Director" means the director representing a Participating Member Agency.
- (m) "Participating Member Agency or Agencies" means a Member Agency(ies) that has or will acquire rights and assume obligations in connection with a particular Project.
- (n) "Project" means the facilities owned, constructed or operated and maintained by the Authority pursuant to the project budget procedure.
- (o) "Recycled Water" means secondary or higher treated effluent reclaimed under and pursuant to Title 22 requirements of the California Code of Regulations (or successor provisions) and used for irrigation and other purposes in the Aliso Creek, San Juan Creek watersheds or other watershed areas.

As used in this Agreement, words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise

indicates, words importing the singular shall include the plural and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

II TERMINATION OF THE JPAs

2.1 Recission. Except as may be necessary to wind up the affairs of AWMA, SERRA and SOCRA in order to arrange for the orderly transition to the Authority of the JPAs' rights, duties and liabilities as more specifically detailed in this Agreement, or to otherwise accomplish the implementation of current employee plans or benefits, or other programs,

(a) pursuant to Sections 33 and 34 of the AWMA Joint Powers Agreement, CLB, ETWD, EBSD, IRWD, MNWD and SCWD individually and collectively rescind the AWMA Joint Powers Agreement and thereby terminate AWMA, such recission and termination to be effective on the Effective Date, subject to the above-referenced proviso as to winding up AWMA affairs and subject to all other terms and conditions set forth in this Agreement and provided further, that the project committee agreements of AWMA shall not be terminated and shall be transferred automatically to the Authority on the Effective Date;

(b) pursuant to Sections 33 and 34 of the SERRA Joint Powers Agreement, CSC, SJC/CVWD, MNWD, SMWD and SCWD individually and collectively rescind the SERRA Joint Powers Agreement and thereby terminate SERRA, such recission and termination to be effective on the Effective Date, subject to the above-referenced proviso as to winding up SERRA affairs and subject to all other terms and conditions set forth in this Agreement and provided further, that the project committee agreements of SERRA shall not be terminated and shall be transferred automatically to the Authority on the Effective Date; and

(c) pursuant to Sections 33 and 34 of the SOCRA Joint Powers Agreement, CVWD/SJC, ETWD, IRWD, MNWD, SMWD, SCWD and TCWD individually and collectively rescind the SOCRA Joint Powers Agreement and thereby terminate SOCRA, such rescission and termination to be effective on the Effective Date, subject to the above-referenced proviso as to winding up SOCRA affairs and subject to all other terms and conditions set forth in this Agreement and provided further, that the project committee agreements of SOCRA shall not be terminated and shall be transferred automatically to the Authority on the Effective Date.

III. PURPOSE AND POWERS OF CONSOLIDATED JPA

3.1 Agency Created. A public entity to be known as the "SOUTH ORANGE COUNTY WASTEWATER AUTHORITY" (the "Authority") is hereby formed by the parties, such formation to be effective the Effective Date, and deemed to occur simultaneously with the termination of AWMA, SERRA and SOCRA. The Authority is formed by this Agreement pursuant to the provisions of the Act and the Bond Law. The Authority shall be a public entity separate from the parties.

3.2 Purpose of the Agreement: Common Powers to be Exercised. Each party to the Agreement has the common power to do the following:

- (a) Plan for, acquire, construct, maintain, repair, manage, operate and control facilities for the collection, transmission, treatment and disposal of wastewater, the reclamation and use of wastewater for any beneficial purposes, and the production, transmission, storage and distribution of Nondomestic Water.
- (b) Plan for, acquire, construct, maintain, repair, manage and operate and control facilities to supply the inhabitants and lands within their respective

boundaries with water for irrigation, domestic and municipal purposes, and in carrying out such purposes to provide for the development and conservation of water supplies.

- (c) Develop planning objectives and facilities as necessary to recharge groundwaters and utilize live-stream discharge opportunities.
- (d) Implement waste discharge requirements and basin plan amendments, acquire National Pollutant Discharge Elimination System ("NPDES") permits and primary producer/user permits for Recycled Water and provide for the development and conservation of potable water relating thereto.
- (e) Establish a Nondomestic Water management program for the area within Authority and a mechanism to interface with Region 9 and Region 8.

The purpose of this Agreement is to jointly exercise the foregoing common powers in the manner set forth in this Agreement.

3.3 Specific Powers. The Authority shall have the power in its own name to do any of the following, subject to the limitations otherwise herein set forth:

- (a) To exercise jointly the common powers of the Members Agencies in studying and planning ways and means to provide a reasonable program for wastewater disposal and reclamation, as well as a water management program for the Aliso Creek and San Juan Creek watersheds and related areas;

- (b) To exercise jointly the common powers of the Member Agencies in planning and implementing a reasonable program for management and use of Nondomestic Water, as practicable;
- (c) To make and enter into contracts, including contracts for the construction of public works, in the same manner as a California water district, Section 34000 *et seq.* of the California Water Code;
- (d) To contract for the services of engineers, attorneys, planners, financial consultants, and separate and apart therefrom to employ such other persons, as it deems necessary;
- (e) To acquire, construct, manage, maintain and operate any buildings, facilities, works, or improvements;
- (f) To acquire, hold and dispose of real and other property;
- (g) To issue Bonds and otherwise to incur debts, liabilities or obligations, subject to applicable limitations;
- (h) To sue and be sued in its own name;
- (i) To apply for and hold permits, including NPDES permits and primary producer and/or user permit or other similar permit for production or use of Recycled Water and to provide for the implementation and enforcement of permit conditions;
- (j) To facilitate or undertake work designed to result in basin plan amendments in conjunction with formulating a regional reclamation plan and the use of Nondomestic Water;

- (k) To apply for appropriate grants or loans or other available financing programs under any federal, state or local programs for assistance in developing or accomplishing any of the programs or purposes specified in this Agreement; and
- (l) To exercise any and all other powers as may be provided in the Act or in the Bond Law.

3.4 Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Act and in the Bond Law, and, except for those powers set forth in the Bond Law, shall be subject (in accordance with Section 6509 of the Act) to the restrictions upon the manner of exercising such powers that are imposed upon a California water district (see, Section 34000 *et seq.* of the California Water Code) in the exercise of similar powers and to any restrictions set forth elsewhere in this Agreement.

3.5 Authority as Successor to JPAs. Except as more specifically set forth herein as to certain rights and obligations, as of the Effective Date Authority shall be deemed the successor-in-interest to AWMA, SERRA and SOGRA for all purposes, and shall assume all assets, obligations, agreements and liabilities of the JPAs, including but not limited to:

- (a) project committees and project committee agreements; contracts; NPDES permits and Recycled Water primary user permits; interagency agreements with the Member Agencies as well as other public entities; operating and encroachment permits; licenses and leases; federal and/or state grant contracts or loans; policies, resolutions, rules and regulations, ordinances; and joint powers memberships/joint powers agreements, except for the joint powers agreements expressly terminated in Section II hereof;

- (b) the 1978 and 1979 AWMA Lease Revenue Bonds, and the 1998 AWMA Refunding Lease Revenue Bonds;
- (c) the AWMA and SERRA administrative, wastewater treatment and disposal, potable water, Recycled Water, Nondomestic Water and sewer facilities and capacities (as applicable) and associated lands and rights-of-way;
- (d) personal property, including vehicles, office furniture equipment and documents; and
- (e) capital, operating, reserve, investment, and all other funds and cash balances.

3.6 Adoption of Rules, Regulations, Policies. Except as otherwise specified in this Agreement, all the AWMA, SERRA and SOCRA resolutions, policies, ordinances and rules and regulations shall be deemed adopted by Authority and the Board of Directors as of the Effective Date; provided, where there is conflict or inconsistency between such documents necessitating a resolution between inconsistent or conflicting terms, the parties shall take appropriate action so as to retain as nearly as practicable the substance of the policies, rules, etc., effecting each JPA prior to the Effective Date, unless otherwise agreed by the parties.

3.7 Personnel. All employees of AWMA and SERRA shall become employees of Authority as of the Effective Date. The AWMA/SERRA/SOCRA General Manager shall be the General Manager of Authority upon the Effective Date.

The current Memorandum of Understanding effective through June 30, 2001, by and between AWMA/SERRA and the AWMA/SERRA Employees Association, as well as the

AWMA/SERRA Personnel Policy, shall each be deemed assumed and adopted, respectively, by Authority as of the Effective Date.

The foregoing terms are set forth to effectuate the orderly succession of Authority to the JPAs and are not for the benefit of, nor shall such terms be enforceable by, any third party not a party to this Agreement.

3.8 Project Committees; Agreements. Notwithstanding the foregoing succession-in-interest by Authority to the JPAs, and except as may be agreed upon by the parties after the Effective Date, the rights, duties, obligations and liabilities of the parties (including any acknowledged successors to such parties) under and pursuant to the JPAs' project committees and project agreements, and any other agreements and budgetary procedures arising out of or in connection with the project committee structure or the JPAs generally (except the joint powers agreements terminated under Section II hereof), including but not limited to capacity rights and liabilities, shall remain intact and unchanged by the consolidation of the JPAs, the formation of Authority and its' assumption of the aforesaid obligations, agreements, liabilities and assets, or the execution of this Agreement.

IV. ORGANIZATION

4.1 Membership. The Members of the Authority shall be each public entity which has executed or hereafter executes this Agreement, or any addendum, amendment or supplement thereto, and which has not, pursuant to the provisions hereof, withdrawn therefrom.

4.2 Names. The names and addresses of the Member Agencies at any time shall be shown on Exhibit B, attached hereto, as amended or supplemented from time to time.

4.3 Designation of Directors. Within thirty (30) days after the execution of this Agreement, each Member Agency shall designate and appoint, by resolution of its governing

body, one person to act as its director on the Board. Each Member Agency shall also appoint one alternate director and may appoint a second alternate director, whose name(s) shall be on file with the Authority and who may assume all rights and duties of the absent director representing the appointing Member Agency. Each director and alternate(s) shall hold office from the first meeting of the Board after his appointment by the governing body which he represents until his successor is selected. Directors and alternates shall serve at the pleasure of the governing board of the appointing Member Agency and may be removed at any time, with or without cause, in the sole discretion of said Member Agency's governing board. A director or alternate may be (but is not required to be) a member of the governing board of the appointing Members. A director may receive such compensation from the Authority for his services as may from time to time be established by the Board, or, in the alternative at the election of any individual Member Agency, a director may be compensated directly by such Member Agency. A director may be reimbursed by the Authority for expenses incurred by such director in the conduct of the business of the Authority.

4.4 Principal Office. The principal office of the Authority shall be established by the Board. The Board is hereby granted full power and authority to change said principal office from one location to another in the County of Orange. Any change shall be noted by the Secretary of the Authority in appropriate documents of the Authority but shall not be considered an amendment to this Agreement.

4.5 Meetings. The Board shall meet at the principal office of the Authority or at such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board, and a copy of such resolution shall be furnished to each party hereto. Any meeting of a project committee shall be deemed to

be a meeting of the Authority and all such meetings of the Authority shall be open to all directors. Regular, adjourned and special meetings of the Authority, including project committee meetings, shall be called and held in the manner as provided in Chapter 9, Division 2, Title 5 of the Government Code of the State of California (commencing at Section 54950).

4.6 Quorum. Two-thirds (2/3) of the Board of Directors shall constitute a quorum for the purposes of the transaction of business relating to the Authority. A majority of the Participating Directors acting on behalf of a project committee, but not less than two (2) (subject to Section 8.1.1 hereof), shall constitute a quorum for the purposes of the transaction of business of the Authority on matters relating to each Project in which not all of the Member Agencies are participating.

4.7 Voting Powers and Limitations Thereon. All of the powers and authority of the Authority shall be exercised by the Board, subject, however, to the reserved right of the Member Agencies as herein set forth. Unless otherwise provided herein, each director or Participating Director shall be entitled to one vote, and a vote of the majority of the Board qualified to vote may adopt any motion, resolution, or order and take any other action which they deem appropriate to carry forward the objectives of the Authority or of a project committee.

4.8 Minutes. The Secretary of the Authority shall cause to be kept minutes of regular, adjourned regular and special meetings of the Board and project committees, and shall cause a copy of the minutes to be forwarded to each director and to each of the Member Agencies.

4.9 Rules. The Board may adopt, from time to time, such rules and regulations for the conduct of its affairs as may be required.

4.10 Vote or Assent of Members. The vote, assent, or approval of Member Agencies in any matter requiring such vote, assent, or approval hereunder shall be evidenced by a certified

copy of the resolution of the governing board of such Member filed with the Authority, or a certified copy of minutes evidencing such vote, assent or approval.

4.11 Officers. There shall be selected from the membership of the Board a Chairman and a Vice-Chairman. The Board shall appoint a Secretary, who may be a Director. The Chairman, Vice-Chairman and Secretary shall hold office for a period of one year commencing July 1st of each Fiscal Year or until their respective successors are duly qualified; provided, however, the first Chairman, Vice-Chairman and Secretary appointed shall hold office from the date of appointment to June 30th of the ensuing Fiscal Year.

The General Manager of the Authority shall serve as the Treasurer of the Authority, and shall direct the deposit and custody of all money of the Authority from whatever source in accordance with applicable policies approved by the Board. The General Manager of the Authority shall also be the Auditor of the Authority and shall draw all warrants and pay demands against the Authority approved by the Board. The Treasurer/Auditor hereby designated may be changed by the consent of a majority of the directors. As provided in Section 6505.6 of the Act, the Treasurer/ Auditor shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

The Board shall have the power to appoint such additional officers as it deems necessary. Any officer, employee or agent of the Board may also be an officer, employee or agent of any of the Member Agencies. The appointment by the Board of such a person shall be evidence that the two positions are compatible. The public officer or officers or persons who have charge of, handle, or have any access to any property of the Authority shall be bonded and the amount of their bond shall be designated and fixed in the applicable budget.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activity of officers, agents, or employees of any of the Member Agencies when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed, by reason of their employment by the Board, to be employed by any of the Member Agencies or, by reason of their employment by the Board, to be subject to any of the requirements of such Member Agencies.

V. PLANNING

5.1 Planning Policy. In keeping with the purpose of this Agreement, the Member Agencies hereby authorize and direct the Board and Authority to undertake, from time-to-time, studies and planning relative to the Aliso Creek and San Juan Creek watersheds and related areas as may be necessary to provide for the collection, treatment, reclamation and total disposal of sewage of each of the Member Agencies, as well as for integrated water management plans for the areas within such watersheds and related areas. The specific objectives of the studies shall be to obtain and implement regional solutions to wastewater disposal and reclamation problems. To achieve this objective, the studies may include proposals for the construction of trunk and interceptor sewers, treatment plants, and outfalls for final disposal, as well as facilities for reclamation and water management within the watershed areas. Any such studies shall consider all phases of the maintenance and operation of regional facilities and the allocation to the benefitted Member Agencies of any maintenance and operating costs. In addition, the study may include the reclamation of sewage for any and all uses including, but not limited to, water for domestic, agricultural and recreational uses. The study or studies shall also concentrate on the

methods of financing any construction proposed and the allocation of construction costs among the benefitted members.

The Member Agencies hereby authorize and direct the Board and the Authority to undertake, from time-to-time, studies and planning relative to the watersheds and related areas, as may be necessary, to provide for the production, transmission, storage and distribution of Nondomestic Water by Authority as well as an integrated plan for use of Nondomestic Water by Authority, including any necessary amendments to basin plans of Region 9 and Region 8.

VI. BUDGETS AND PAYMENTS

6.1 General Budget. Within sixty (60) days after the first meeting of the Board, a "General Budget" shall be adopted for the balance of the Fiscal Year and the ensuing Fiscal Year. The initial General Budget and each succeeding General Budget shall include the following: (a) the general administrative expenses of the Agency to be incurred during the period covered by the General Budget; and (b) the allocation among the Member Agencies of the amounts necessary to cover the General Budget expenditures. If the General Budget provides an allocation to the Member Agencies on some basis other than equal amounts, the General Budget must be approved by the unanimous consent of all of the Member Agencies. After the first full Fiscal Year, at or prior to each June meeting of the Board, a General Budget shall be adopted for the ensuing Fiscal Year.

6.2 Project Budgets. In addition to the General Budget, the Board may budget at any time for the study, implementation or construction of any specific Project proposed to be constructed by the Authority ("Project Budget"). Each Project Budget shall include at a minimum the following:

- (a) the administrative expenses allocated to the project during planning and construction;
- (b) the cost of studies and planning for the Project;
- (c) the cost of the engineering and construction of the Project;
- (d) the allocation among the Participating Member Agencies of the total Project costs;
- (e) an estimate of annual maintenance and operating expenses; and
- (f) a formula for allocating annual maintenance and operating expenses.

After the Board approves a Project Budget, it shall be submitted to each Member Agency which has expressed a desire to participate and is to be obligated for the payment of any amount thereunder. The Authority shall not incur any expense for the Project until the Project Budget has been approved by the governing body of each of the proposed Participating Member Agencies. In the event a Project Budget is not approved, the cost of preparing the budget shall be divided among the proposed Participating Member Agencies in accordance with the proposed allocation of the total Project costs.

6.3 Operation and Maintenance Budgets. For each Project operated and maintained by the Authority, a operations and maintenance budget ("O & M Budget") shall be prepared and approved at or prior to each June meeting of the Board for the ensuing Fiscal Year. Said budget shall include the following:

- (a) the estimated expenses of operating the Project;
- (b) the estimated expenses of maintaining the Project;
- (c) an estimate of income from operations, if any; and

- (d) the allocation of operation and maintenance expenses among the Participating Member Agencies in accordance with the formula set forth in the approved Project Budget.

An O & M Budget must be approved by two-thirds (2/3) of the directors or by two-thirds (2/3) of the Participating Directors if the budget affects less than the entire membership. Copies of each O & M Budget shall be mailed to each Participating Member Agency within thirty (30) days of its adoption.

6.3.1 O & M Costs/Capital Components. It is agreed as follows: (a) all operations and maintenance costs directly related to the use of the Project facilities, including necessary improvements, repairs, adjustments, replacements and incidental accounting and administrative costs in connection therewith, shall be paid by each Member Agency using the Project facilities in proportion to its use; and (b) the maintenance costs not directly related to use of the Project facilities, including necessary capital improvements, repairs, adjustments, replacements and extraordinary or standby maintenance, and incidental accounting and administrative costs in connection therewith, shall be paid by the Participating Member Agencies in proportion to their respective percentage share of the ownership of capacity in said Project facilities. Any change of the foregoing may be made by the unanimous consent of all of the Participating Member Agencies.

6.4 Effect of Failure of Approval of Budget. If, after one hundred twenty (120) days from the first submission of a General Budget or Project Budget, the budget fails to attain the required vote, the consenting Directors, in the case of the General Budget, or the Participating Directors, in the case of a Project Budget, may treat the refusal of the representative director to approve the respective budget as a request for a withdrawal from the Authority, in the case of

failure to approve a General Budget; or as a request from withdrawal from the Project, but not from the Authority, in the case of failure to approve a Project Budget, by such Participating Director; the remaining Member Agencies may thereafter, upon giving the non-consenting Member Agency thirty (30) days prior written notice, proceed with the adoption of a revised General or Project Budget, and the non-consenting member shall not be obligated for future debts of the Authority or of the Project, as the case may be, nor shall it receive any benefits therefrom. The foregoing is subject to the provisions of Section 12.3 of this Agreement.

6.5 Expenditures Under Approved Budgets. All expenditures within the designations and limitations of an approved General, Project or O & M Budget shall be made on the authorization of a majority of the directors for General Budget expenditures, or of a majority of the directors of the Participating Member Agencies for Project Budget or O & M Budget expenditures. No expenditures in excess of those budgeted in the General Budget or in a Project Budget shall be made without the unanimous consent and approval of the directors representing the Member Agencies affected by the budget under consideration. No expenditures in excess of those budgeted in an O & M Budget shall be made without the consent and approval of two-thirds (2/3) of the directors representing the Member Agencies affected by the O & M Budget under consideration.

6.6 Payment of Amounts Due. Amounts required to be paid by any Member Agency or Participating Member Agency, shall be due and payable forty-five (45) days after receipt of billing therefor from the Authority.

6.7 Reimbursement of Funds. Grant funds or loan proceeds or other funding assistance received by the Authority from any federal, state, or local agency to pay for budgeted expenditures for which the Authority has received all or a portion of said funds from the Member

Agencies shall be proportionally paid to the respective Member Agencies to reimburse the members for the funds advanced to the Authority for the construction of the Project facilities for which such funding has been received.

VII. BOND FINANCING

7.1 Financing Method. The Board shall have the power and authority to issue Bonds on behalf of the Authority pursuant to the Act or the Bond Law, for the purposes now or hereinafter provided for in this Agreement and as specifically set forth in Section III. Any election or referendum provided for in the Act or Bond Law shall be held in the jurisdictional area(s) of the Member Agency(ies) on whose behalf a financing is undertaken by Authority, unless otherwise provided by the Act or Bond Law. The voters voting on the Bonds shall be the resident registered voters as defined by the California Elections Code, or as otherwise provided by the Act or Bond Law.

VIII. PROJECT CONSTRUCTION

8.1 Project Members. If it is determined that a proposed Project includes participation by less than all of the Member Agencies, the Participating Directors for each project shall constitute a subcommittee of the Board referred to as the "_____ Project Committee". All actions by a project committee shall be deemed actions of the Authority and shall be taken in the name of the Authority, provided, only the Participating Member Agencies shall have rights and obligations in said Project as herein provided. The project committees of AWMA, SERRA and SOCRA shall retain their existing designations, or may be re-numbered, but shall in any case be deemed to be the project committees of the Authority automatically upon the Effective Date.

8.1.1 Project Committee of One Member. In the event that only one Participating Member Agency desires to take action in the name of the Authority and fund and

operate a Project, a project committee may be formed consisting of only one Member Agency; provided, however, that all other Member Agencies shall have a right to participate in any project, and further provided that in the event a project committee is formed consisting of only one Member Agency, the Board of Directors may, by majority vote of the directors, impose conditions upon the manner of taking action of such a project committee.

8.2 Acquisition and Construction of Projects. No project shall be acquired or constructed by the Authority without the unanimous consent of every Member Agency or, if it is a project of less than all of the Member Agencies, unanimous consent of all of the Participating Member Agencies. Approval of a project budget by all of the Participating Member Agencies shall constitute consent for the acquisition and construction of the Project. In the event any individual Participating Member Agency or combination of such agencies desire to modify, rehabilitate or otherwise improve the Project, and those Participating Member Agencies agree to pay all costs associated with the modifications, rehabilitations or other improvements, including but not limited to the costs of all necessary permits and regulatory approvals, as well as engineering and construction costs, such agency or agencies may proceed with the modifications or other improvements upon approval of a simple majority vote of all Participating Member Agencies. No Participating Member Agency shall unreasonably withhold or condition its approval of a Project modification, rehabilitation or improvement which is proposed to be wholly funded by other Participating Member Agencies.

IX. MAINTENANCE AND OPERATION OF FACILITIES

9.1 Maintenance and Operation of Facilities. The Board, or the project committee, as the case may be, shall determine whether or not the Authority shall maintain and/or operate Project facilities. If the Authority is to maintain and/or operate Project facilities, it shall do so in

an efficient and economical manner, and in a manner not detrimental to the Participating Member Agencies. It is the intent of the parties that any Project may be maintained and operated in the name of the Authority although, as herein provided, a majority of the Participating Directors shall make all determinations of the Authority in connection therewith. If it is determined by the Participating Member Agencies that one or more of the Member Agencies shall maintain and/or operate Project facilities, the Participating Member Agencies shall, by written agreement, consent unanimously thereto.

X. ACCOUNTING AND AUDITS

10.1 Accounting Procedures. Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with those utilized by, the Controller of the State of California for special districts, or for other public entities as specified by the Act. The Authority's Auditor and Treasurer shall comply strictly with requirements of the Act governing joint powers agencies relative to such matters.

10.2 Audit. In accordance with Section 6505 of the Act, the records and accounts of the Authority shall be audited annually by an independent certified public accountant and copies of such other reports shall be filed with the State Controller, Orange County Auditor and each Member Agency within six (6) months of the end of the Fiscal Year under examination. Copies shall also be provided to persons or entities so requesting as required by the Act.

XI. PROPERTY RIGHTS

11.1 Project Facilities. All Project facilities constructed or acquired by the Authority shall be held in the name of the Authority for the benefit of the membership of the Authority in accordance with the terms of this Agreement. The cost and depreciation of all Project facilities so constructed or acquired shall be charged or accrue to the Participating Member Agencies in

proportion to each Member's agreed percentage of capacity rights in such Project facility and shall not be charged or accrue to the account of the Authority unless agreed to in writing by all Participating Member Agencies; provided, however, that depreciation of all facilities acquired or constructed pursuant to funds obtained through the State or federal government through the Clean Water Grant Program or through other State or federal financing programs shall be charged or accrued to the account of the Authority if required by such programs. Capacity rights in Project facilities shall be held for the benefit of the Participating Member Agencies in proportion to each such member's agreed percentage of capacity rights in such Project facility unless otherwise agreed to in writing by said Participating Member Agencies. It is the intent of the foregoing provision that the Authority shall not acquire any unallocated capacity rights in any Project facility for disposal or use, except for the benefit of the Participating Member Agencies in proportion to their original percentage of capacity rights in said facility. Capacity rights may not be sold, leased or assigned to parties or entities other than Member Agencies, or between and among Member Agencies without the written consent of all Participating Member Agencies in a Project.

11.2 Distribution of Assets and Termination of Authority. To the extent that any funds (or property in lieu of funds) received from any Participating Member Agency are used for the acquisition or construction of Project facilities, the same shall be allocated annually on the books of the Authority to the credit of said contributing member. Upon termination or dissolution of the Authority herein created, the Project facilities and any funds in possession of the Authority at such time shall be distributed in kind or sold, and the proceeds thereof distributed to the Participating Member Agencies at the time of termination as their interests appear on the books of the Authority.

11.3 Liabilities. The parties to this Agreement do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2, as amended or supplemented. The parties further agree as follows: (i) pursuant to California Government Code Section 895.4, in the event the parties, under applicable law, are held liable for the acts or omissions of the Authority caused by a negligent or wrongful act or omission occurring in the performance of this Agreement; or (ii) in the case of any other liability incurred by the Authority during the course of its existence; then, with respect to (i) and (ii) the parties shall discharge any such liability from payments to be made to the Authority by each of the parties in proportion to each parties' contribution or approved participation in Project facilities of the Authority to which the liability is attributable, unless otherwise agreed; provided, the foregoing contribution from the Member Agencies shall be required only to the extent the Authority does not have insurance coverage for such liability. Each Member Agency shall indemnify, defend and hold harmless the other Member Agencies from any such liability in excess of its proportionate share. Except as provided herein, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the Member Agencies.

XII. FORMATION, TERM, TERMINATION, WITHDRAWAL

12.1 Term. The Authority shall continue until this Agreement is rescinded or terminated as herein provided.

12.2 Rescission or Termination. This Agreement may be rescinded and the Authority terminated by written consent of all Member Agencies.

12.3 Withdrawal. Any Member Agency may withdraw from the Authority effective on the last day of a specified Fiscal Year by giving each of the Member Agencies written notice one

hundred and twenty (120) days prior to the end of a Fiscal Year which Fiscal Year shall be specified in said notice; provided, however, in the event the withdrawing Member Agency has any rights in any Project facility, or obligations to the Authority, said Member cannot sell, lease or transfer said rights or be relieved of its obligations, except its obligation to pay its share of operation and maintenance costs directly related to the use of the Project facilities, without the execution of a written agreement executed by it and all Member Agencies affected by such withdrawal. The Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawn Member. Upon termination, a withdrawn member will be treated like all other Members in regard to the provisions of Section 11.2 hereof.

XIII. GENERAL

13.1 Admission of New Member Agencies. It is recognized that public entities, other than the signatories to this Agreement, may wish to participate in the Authority. Additional public entities may become Member Agencies of the Authority upon such terms and conditions as provided by the Board and the unanimous consent of each existing Member Agency of the Authority, evidenced by the execution of a written addendum to this Agreement, signed by all of the Member Agencies, including the additional Member Agency.

13.2 Insurance. The Member Agencies agree that the Authority shall obtain policies of general liability, workers' compensation and property insurance (as applicable) which shall remain in effect at all times the Authority remains in existence or is otherwise winding up its affairs pursuant to any termination thereof. The Authority shall name each of the Member Agencies and their officers, directors, employees and consultants as additional insureds under all such policies, including all excess policies.

13.3 Amendments. This Agreement may be amended only by the unanimous vote of all Member Agencies.

13.4 Notice. Any notice or instrument required to be given or delivered shall be validly given and made by depositing the same in any United States Post office, first class postage prepaid, addressed to the addresses of the Member Agencies as shown on Exhibit B, and shall be deemed to have been received by the party to whom the same is addressed at the expiration of seventy-two (72) hours after deposit of the same in the United States Post Office for transmission.

13.5 Arbitration. Any controversy or claim between any two or more parties to this Agreement, or between any such party or parties and the Authority, in respect to the Authority operations, or to any claims, disputes, demands, differences, controversies, or misunderstandings arising under, out of, or in relation to or in connection with this Agreement, or any breach thereof, shall be submitted to and determined by arbitration. To the extent not inconsistent herewith, the rules of the American Arbitration Association shall apply. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to every other party to this Agreement and the Authority. Such notice shall designate as "respondents" such other parties as the initiating party intends to have bound by and any award made therein. Any party not so designated but which desires to join in the arbitration may, within fifteen (15) days of service upon it of such notice, file a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within twenty (20) days of the service of the initial demand for arbitration, the American Arbitration Association, hereinafter referred to as "AAA" shall submit simultaneously to the initiating party and to all parties named as respondents or filing a response therein, an

identical list of names of persons chosen from the AAA National Panel of Arbitrators which persons shall be, to the extent possible, persons first in the field of wastewater disposal and reclamation as well as public law. Each party to the dispute shall have fifteen (15) days from the mailing date in which to cross off any names to which it objects, number the remaining names indicating the order of its preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree upon one of the persons named, or if an acceptable arbitrator is unable to act, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment of the arbitrator from other members of the panel without the submission of any additional list.

The arbitrator shall determine the rights of the parties in accordance with the law, and the award shall be subject to review as to the arbitrator's application of the law by any court having jurisdiction thereof, whether or not any mistake of law shall appear upon the face of the award. As to all questions of facts, however, the determination of the arbitrator shall be binding upon all parties and shall be final. Any party shall be entitled to written findings of fact and conclusions of law as to all issues determined by the award. Subject to the above limitations, the award shall be binding upon all parties to the arbitration and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

The arbitrator may, in his discretion, as part of the arbitration award impose upon any one party or allocate among two or more of the parties, the liability for the arbitration fees and expenses. Such allocable fees may include the initial administration fees, fees for second and

subsequent hearings, postponement fees, and overtime fees. Allocable expenses may include the expenses of producing witnesses, the cost of stenographic records, the cost of any transcripts, travel expenses of the arbitrator and tribunal administrator, the expenses of any witnesses, the costs of any proofs produced at the direct request of the arbitrator, and any other expenses relating directly to the arbitration. In the event of the failure of the arbitrator to provide for the allocation of such fees and expense, the arbitration fees shall be divided equally between the parties and the expenses shall be borne by the party incurring them.

13.6 Severance. If any section, subsection, sentence, or clause or phrase of this Agreement, or the application thereof, to any of the Member Agencies or any other person or circumstances is for any reason held invalid, the validity of the remainder of the Agreement, or the application of such provision to the other Member Agencies, or to any other persons or circumstances, shall not be affected thereby. Each of the Member Agencies hereby declares that it would have entered into this Agreement, and each section, subsection, sentence, clause or phrase thereto, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, or the application thereof, to any Member Agency or any other person or circumstance be held invalid.

13.7 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

/

/

/

/

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their respective officers thereunto duly authorized the day and year first herein above written.

CITY OF LAGUNA BEACH

By: 
Mayor

By: 
City Clerk

[Additional Signatures Next Page]

CITY OF SAN CLEMENTE

By: Scott Quill
Mayor

By: Maryann E. Gray
City Clerk

CITY OF SAN JUAN CAPISTRANO/
CAPISTRANO VALLEY WATER DISTRICT

By: _____
Mayor

By: _____
City Clerk

EL TORO WATER DISTRICT

By: _____
President

By: _____
Secretary

EMERALD BAY SERVICES DISTRICT

By: _____
President

By: _____
Secretary

CITY OF SAN CLEMENTE

By: _____
Mayor

By: _____
City Clerk

CITY OF SAN JUAN CAPISTRANO/
CAPISTRANO VALLEY WATER DISTRICT

By: Wyatt Hart
Mayor

By: Dawn Schardere
City Clerk

EL TORO WATER DISTRICT

By: _____
President

By: _____
Secretary

EMERALD BAY SERVICES DISTRICT

By: _____
President

By: _____
Secretary

CITY OF SAN CLEMENTE

By: _____
Mayor

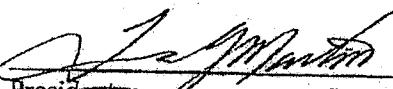
By: _____
City Clerk

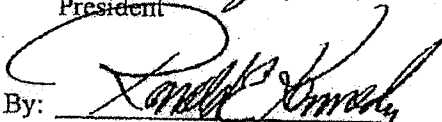
CITY OF SAN JUAN CAPISTRANO/
CAPISTRANO VALLEY WATER DISTRICT

By: _____
Mayor

By: _____
City Clerk

EL TORO WATER DISTRICT

By:  _____
President

By:  _____
Secretary

EMERALD BAY SERVICES DISTRICT

By: _____
President

By: _____
Secretary

CITY OF SAN CLEMENTE

By: _____
Mayor

By: _____
City Clerk

CITY OF SAN JUAN CAPISTRANO/
CAPISTRANO VALLEY WATER DISTRICT

By: _____
Mayor

By: _____
City Clerk

EL TORO WATER DISTRICT

By: _____
President

By: _____
Secretary

EMERALD BAY SERVICES DISTRICT

By: _____
Vice President

By: _____
Secretary

IRVINE RANCH WATER DISTRICT

ACH
10-25-01

By: Mary Ellen Mathen
President

By: Jeske Bonkowski
Secretary

MOULTON NIGUEL WATER DISTRICT

By: _____
President

By: _____
Secretary

SANTA MARGARITA WATER DISTRICT

By: _____
President

By: _____
Secretary

SOUTH COAST WATER DISTRICT

By: _____
President

By: _____
Secretary

IRVINE RANCH WATER DISTRICT

By: _____
President

By: _____
Secretary

MOULTON NIGUEL WATER DISTRICT

By: *[Signature]*
President

By: *[Signature]*
Secretary

SANTA MARGARITA WATER DISTRICT

By: _____
President

By: _____
Secretary

SOUTH COAST WATER DISTRICT

By: _____
President

By: _____
Secretary

IRVINE RANCH WATER DISTRICT

By: _____
President

By: _____
Secretary

MOULTON NIGUEL WATER DISTRICT

By: _____
President

By: _____
Secretary

SANTA MARGARITA WATER DISTRICT

By: Betty H. Olson
President

By: Judy H. Sakas
Secretary

SOUTH COAST WATER DISTRICT

By: _____
President

By: _____
Secretary

IRVINE RANCH WATER DISTRICT

By: _____
President

By: _____
Secretary

MOULTON NIGUEL WATER DISTRICT

By: _____
President

By: _____
Secretary

SANTA MARGARITA WATER DISTRICT

By: _____
President

By: _____
Secretary

SOUTH COAST WATER DISTRICT

By: Robertta Morris
President

By: Michael P. Dunbar
Secretary

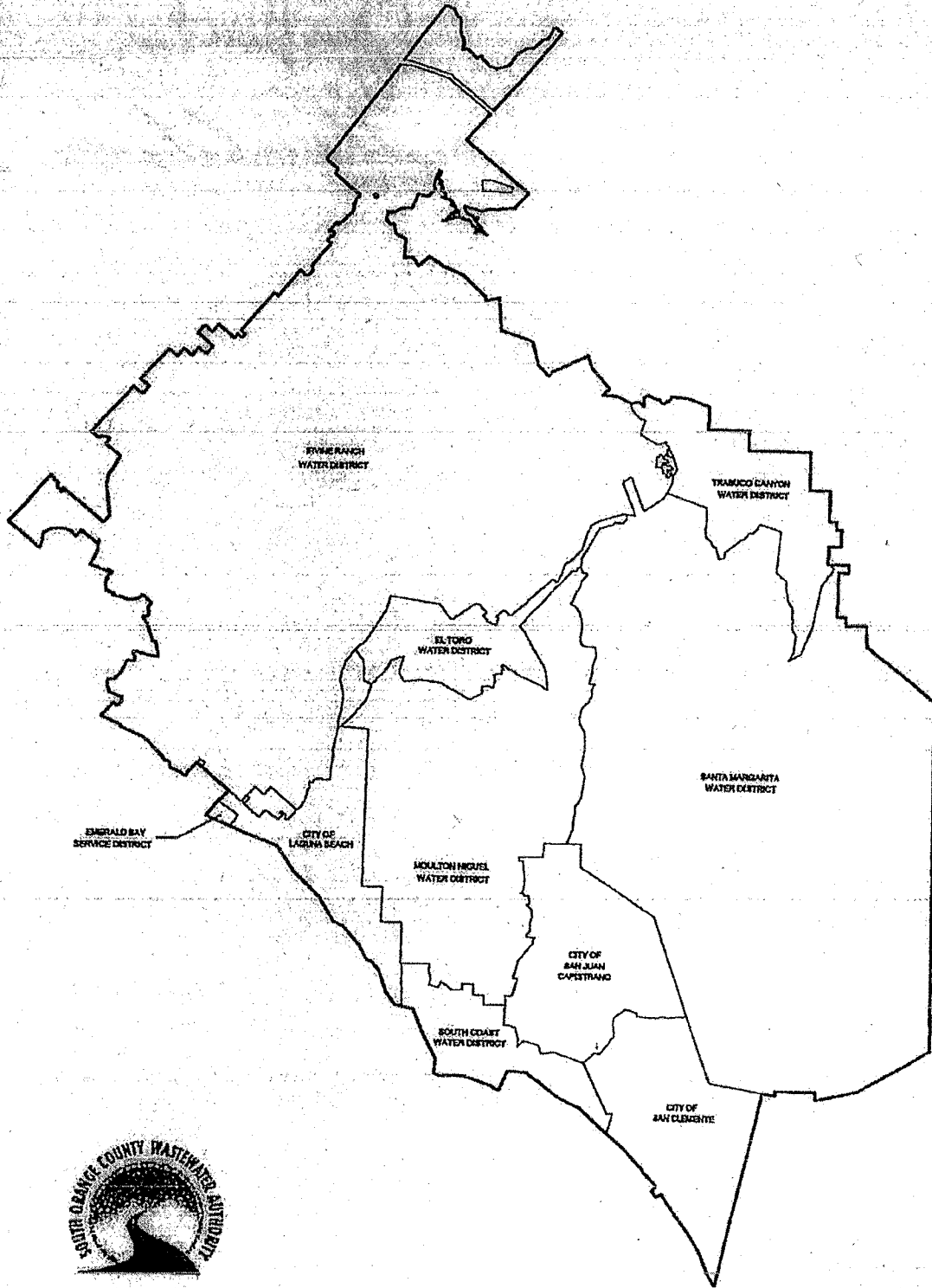
TRABUCO CANYON WATER DISTRICT

By: James Hasset
President

By: Sharon Smith
Secretary

South Orange County Wastewater Authority

Jurisdictional Boundary



**EXHIBIT B
MEMBER AGENCIES**

City of Laguna Beach	505 Forest Avenue Laguna Beach, CA 92651 Phone: 949-497-0704 Fax: 949-497-0791
City of San Clemente	910 Calle Negocio San Clemente, CA 92672 Phone: 949-498-2533 Ext. #120
City of San Juan Capistrano	32400 Paseo Adelanto San Juan Capistrano, CA 92675 Phone: 949-493-1171
El Toro Water District	P.O. Box 4000 Laguna Hills, CA 92653 Phone: 949-837-7050 Fax: 949-837-7092
Emerald Bay Service District	600 Emerald Bay Laguna Beach, CA 92651 Phone: 949-494-8571 Fax: 949-497-0982
Irvine Ranch Water District	P.O. Box 57000 Irvine, CA 92619-7000 Phone: 949-453-5300 Fax: 949-453-1228
Moulton Niguel Water District	27500 La Paz Road Laguna Niguel, CA 92656 Phone: 949-643-2006 Fax: 949-831-5651
Santa Margarita Water District	26111 Antonio Parkway Rancho Santa Margarita, CA 92688 Phone: 949-459-6400 Fax: 949-459-6463
South Coast Water District	P.O. Box 30205 Laguna Niguel, Ca 92607-0205 Phone: 949-499-4555 Fax: 949-499-4265
Trabuco Canyon Water District	32003 Dove Canyon Drive, 92679 P.O. Box 500 Trabuco Canyon, CA 92678

ALVARADO SMITH
A PROFESSIONAL CORPORATION
SANTA ANA

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

South Orange County Wastewater Authority, et al. v. Moulton Niguel Water District, et al.

RCSC Case No: RIC 172240

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is **AlvaradoSmith, 1 MacArthur Place, Santa Ana, CA 92707.**

On **June 26, 2018**, I served the foregoing document described as: **FIRST AMENDED CROSS-COMPLAINT OF DEFENDANT/CROSS-COMPLAINANT MOULTON NIGUEL WATER DISTRICT FOR: RESCISSION, BREACH OF CONTRACT AND DECLARATORY RELIEF** on the interested parties in this action.

by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

BY REGULAR MAIL: I deposited such envelope in the mail at 1 MacArthur Place, Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED.

BY ELECTRONIC SERVICE: I caused the documents to be sent to the persons at the electronic notification address listed in the Service List.

BY FACSIMILE MACHINE: I Tele-Faxed a copy of the original document to the above facsimile numbers.

BY OVERNIGHT MAIL: I deposited such documents at the GSO Overnight or Federal Express Drop Box located at 1 MacArthur Place, Santa Ana, California 92707. The envelope was deposited with delivery fees thereon fully prepaid.

BY PERSONAL SERVICE: I caused such envelope(s) to be delivered by hand to the above addressee(s).

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on **June 26, 2018**, at Santa Ana, California.


YVETTE CHONG

SERVICE LIST

***South Orange County Wastewater Authority, et al. v. Moulton Niguel Water District, et al.
RCSC Case No.. RIC 1721240***

Gregory D. Brown, Esq.
Brown & Charbonneau, LLP
420 Exchange, Suite 270
Irvine, CA 92602

T: (714) 505-3000
F: (714) 505-3070

octriallaw@gmail.com

*Attorneys for Plaintiffs South Orange County
Wastewater Authority, City of Laguna Beach, South
Coast Water District, and Emerald Bay Service
District*

VIA GSO OVERNIGHT

Jeremy N. Jungreis, Esq.
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626-1931

T: (714) 641-5100
F: (714) 546-9035

jjungreis@rutan.com

*Attorneys for Plaintiffs South Orange County
Wastewater Authority, City of Laguna Beach, South
Coast Water District, and Emerald Bay Service
District*

VIA GSO OVERNIGHT

Arthur G. Kidman, Esq.
Kidman Law LLP
2030 Main Street, Suite 1300
Irvine, CA 92614

T: (714) 755-3100
F: (714) 755-3110

akidman@kidmanlaw.com

Attorneys for South Coast Water District

VIA GSO OVERNIGHT

Allison E. Burns, Esq.
Stradling Yocca Carlson & Rauth, P.C.
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660

T: (949) 725-4187
F: (949) 823-5187

aburns@sycr.com

Attorneys for Emerald Bay Service District

VIA GSO OVERNIGHT

Jeffrey V. Dunn, Esq.
Anthony S. Chavez, Esq.
Daniel S. Shimell, Esq.
Best Best & Krieger, LLP
18101 Von Karman Avenue, Suite 1000
Irvine, CA 92612

T: (949) 263-2600
F: (949) 260-0972

jeffrey.dunn@bbklaw.com
anthony.chavez@bbklaw.com
daniel.shimell@bbklaw.com

VIA GSO OVERNIGHT



COURT • PROCESS • MESSENGER

www.nationwideasap.com

legal@nationwideasap.com

DATE 06/26/18

CONTROL # 2806683

Los Angeles	CA	(213) 249-9999	(213) 249-9990
Santa Ana	CA	(714) 558-2400	(714) 558-2401
San Francisco	CA	(415) 351-0400	(415) 351-0407
San Diego	CA	(619) 232-7500	(619) 232-7600
Riverside	CA	(951) 275-0071	(951) 275-0074
Sacramento	CA	(916) 443-4400	(916) 443-4401
Phoenix	AZ	(602) 256-9700	(602) 256-9720
Tucson	AZ	(520) 624-9700	(520) 624-9701
Las Vegas	NV	(702) 385-5444	(702) 385-1444

Firm: ALVARADO SMITH
Telephone: 949 955-6800 Acct. # 20700

Attorney: YVETTE CHONG
Secretary:
Email:
Ref./Billing #: N-1716-1

SERVICE TYPE: STND PDF FILING

MESSENGER SERVICES

From: ALVARADO SMITH
1 MACARTHUR PLACE
SUITE 200
SANTA ANA, CA 92707

To: RIVERSIDE/RIVERSIDE SUPERIOR COURT
4050 MAIN STREET
RIVERSIDE CA 92501

Sender:

Attention:

COURT SERVICES

Case Number: RIC1721240
Case Name: SOCWA V. MOULTON

- Court Filing
- Research/Copy
- Courtesy Copy
- Recording

ADVANCE
Fees Attached \$ _____
Advance Fees \$ _____
Check Number : _____

DRIVER NOTES

NOTES:

- Office Service
- Business
- Residence
- Substituted OK

ADVANCE
Fees Attached \$ _____
Advance Fees \$ _____
Check Number : _____

Service Deadline

DOCUMENTS / SPECIAL INSTRUCTIONS:

Do Not ADVANCE

1ST AMND XCOMPL.
ADV FEES

FILE/CONFORM/RETURN
FILE TODAY

Received By: S204

Date: 6/26/18 Time: 344