

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT
[Otay Water Treatment Plant]

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and OTAY WATER DISTRICT, a California municipal water district ("PERMITTEE"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of certain real property located at 1500 Wueste Road, Chula Vista, California 91910, commonly known as the Otay Water Treatment Plant (APN 644-080-03 and 644-080-13, the "Permit Area," as more particularly described in **Exhibit A: Permit Area**, attached hereto).
- B. CITY and PERMITTEE are parties to that certain AGREEMENT FOR THE PURCHASE OF TREATED WATER FROM THE OTAY WATER TREATMENT PLANT (the "Treated Water Agreement"), attached hereto as **Exhibit B: Treated Water Agreement**. The term of this Permit coincides with the term of the Treated Water Agreement.
- C. PERMITTEE intends to build the Lower Otay Pump Station ("LOPS") on its property (APN 644-080-12, "PERMITTEE'S Property") adjacent to the Permit Area, and has requested the non-exclusive use of the Permit Area for access to PERMITTEE'S Property and: (1) to pave the unimproved portions of the existing road on the Permit Area that PERMITTEE will use to access PERMITTEE'S Property; (2) to install, operate, repair, maintain, and remove a 30-inch temporary pipeline ("PERMITTEE'S Pipeline") over the top of CITY'S 54-inch Otay III Pipeline ("CITY'S Pipeline") as shown in **Exhibit C: Pipeline Plan**, attached hereto; (2) to restore the Permit Area when PERMITTEE'S Pipeline is removed.
- D. By a separate grant of easement, CITY will grant to PERMITTEE an easement for the installation of PERMITTEE'S Pipeline on and under the Permit Area.
- E. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area solely as provided herein.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Right to Enter**. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, contractors, and invitees to enter upon the Permit Area solely for the purposes of accessing PERMITTEE'S Property and: (a) paving the unimproved portions of the existing road on the Permit Area that PERMITTEE will use to access PERMITTEE'S Property; (b) installing, operating, repairing, maintaining, and

removing PERMITTEE'S Pipeline; and (c) restoring the Permit Area upon removal of PERMITTEE'S Pipeline (the "Permit Use"), all at PERMITTEE'S sole cost and expense, and for no other purpose whatsoever.

2. Use of Permit Area. PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.
 - 2.1 Security Guard. PERMITTEE shall provide a security guard at the East Gate of the Permit Area during all construction hours to monitor PERMITTEE'S construction traffic entering and exiting the Permit Area.
 - 2.2 Deliveries. PERMITTEE shall coordinate all construction deliveries with CITY'S Otay Water Treatment Plant Supervisor at least 24 hours in advance. Unless otherwise approved by CITY in writing, all deliveries shall be limited to normal work hours.
 - 2.3 Paving Improvements. Subject to CITY'S prior written approval of paving plans, PERMITTEE shall pave, at its sole cost and expense, the unimproved portions of the existing road on the Permit Area that PERMITTEE will use to access PERMITTEE'S Property, as shown on **Exhibit D: Road Improvement Plan**, attached hereto.
 - 2.4 Cal/OSHA. PERMITTEE and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements Title 8 of the California Code of Regulations, as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as "Cal/OSHA").
 - 2.5 Vehicles. All vehicles used in relation to the Permit Use shall remain on existing roadways or CITY-designated access routes at all times while conducting the Permit use.
3. Term. The term of this Permit ("Term") shall commence on the Effective Date and expire on **December 31, 2048**. This Permit may be terminated by either party for any reason upon thirty (30) days prior written notice.
4. Restoration. Upon the removal of PERMITTEE'S Pipeline, PERMITTEE shall promptly restore the Permit Area to its original condition, all at PERMITTEE'S sole cost and expense.
5. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the Permit Area, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
6. Permit Fee. PERMITTEE shall pay to CITY a permit fee in the amount of Six Hundred Dollars undred DollarsH(\$600), payable upon execution of this Permit.

7. Security Deposit. On or before the Effective Date, PERMITTEE shall deliver to CITY a security deposit in the amount of Three Thousand Dollars (\$3,000) as security for the performance of PERMITTEE'S obligations under this Permit. CITY shall not be liable to PERMITTEE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the security deposit, but shall be and remain the property of CITY. All or any portion of the security deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Permit by PERMITTEE, or for expenses incurred by CITY as a result of PERMITTEE'S breach or default of this Permit. PERMITTEE shall maintain the security deposit throughout the Term.
 - 7.1 Utilization. If CITY utilizes all or any portion of the security deposit, then upon ten (10) days prior written notice, PERMITTEE shall reimburse the security deposit to the full required amount.
 - 7.2 Return. Provided PERMITTEE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to PERMITTEE within sixty (60) days after the expiration or termination of this Permit.
8. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his/her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
9. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for PERMITTEE'S use of the Permit Area.
10. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights of way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
11. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous

substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease.

- 11.1 Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.
- 11.2 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 11.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on, under, or from the Permit Area, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area.
- 11.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area, CITY may cause an environmental assessment of the Permit Area and/or the Permit Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the

remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

12. Noninterference. PERMITTEE shall not interfere with CITY'S use, operations, and activities on the Permit Area, and PERMITTEE shall use such routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY and other users of the Permit Area.
13. Property Damage. PERMITTEE shall pay for all damage to the Permit Area and CITY'S personal property on the Permit Area, and the personal property of third parties on the Permit Area resulting from PERMITTEE'S exercise of the rights granted by this Permit. PERMITTEE shall promptly repair and restore to its original condition all such property.
14. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.
15. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition.
16. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
17. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, agents, contractor's, and invitees, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
 - 17.1 Waiver of Claims. PERMITTEE waives any and all claims, demands, causes of action, and rights it may assert against CITY on account of any loss, damage, or injury to PERMITTEE'S personal property on, under, or above the Permit Area as a result of any event or occurrence which is beyond CITY'S reasonable control.
 - 17.2 Limitation of CITY'S Liability. CITY shall be liable only for the cost of repair or replacement of PERMITTEE'S damaged personal property caused by the active

negligence or willful misconduct of CITY, its employees, agents, or contractors, and in no event shall CITY be liable for indirect or consequential damages. CITY'S total liability under this Permit shall be limited to the fair market value of PERMITTEE'S personal property in its condition at the time of damage.

18. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the Permit Area as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
19. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
20. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
21. Insurance. Upon execution and delivery of this Permit, PERMITTEE shall deliver to CITY a current certificate of insurance for:
 - a) **Commercial General Liability Insurance**, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000); and
 - b) **Automobile Liability Insurance**, providing coverage for all bodily injury and property damage, with a limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles). Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
 - c) **Workers' Compensation Insurance**, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with limits of at least One Million Dollars (\$1,000,000).
- 21.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- 21.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.
- 21.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 21.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 21.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 21.6 Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to PERMITTEE'S use of the Permit Area.
- 21.7 Accident Reports. PERMITTEE shall report to CITY any accident causing property damage or injury to persons on the Permit Area and related to PERMITTEE'S use of the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 21.8 Failure to Comply. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach.
- 21.9 All-Risk Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Permit Area in an amount

to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.

22. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight courier service with receipt signature required, or delivery by United States mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

With a copy by First Class mail to:

SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

PERMITTEE: OTAY WATER DISTRICT
Attention: Mark Watton, General Manager
Engineering Design Manager
2554 Sweetwater Springs Boulevard
Spring Valley, CA 91978-2096

23. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
24. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
25. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

26. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
27. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
28. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

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29. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 4.9.2009 OTAY WATER DISTRICT, a California municipal water district
BY: [Signature]
Name & Title: MARK WATTON - GENERAL MANAGER

Date: 4/20/09 THE CITY OF SAN DIEGO, a California municipal corporation
BY: [Signature]
Name & Title: _____

ENVIRONMENTAL CLEARANCE:

This action is exempt from the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, Section 15262. This determination is based on Section 15004 of the Guidelines which provides direction to lead agencies on the appropriate timing for environmental review. The project will require further review under the provisions of CEQA.

CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT, ENVIRONMENTAL ANALYSIS SECTION

BY: [Signature]
Name & Title: NICOLE A. MCGOWAN, SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Date: 4-2-09 OTAY WATER DISTRICT GENERAL COUNSEL
BY: [Signature]
Name & Title: Aembel Bravelos, Assistant General Counsel

Date: 4/24/09 JAN GOLDSMITH, City Attorney
BY: [Signature]
Name & Title: BROCK LADIEWIG, DEPUTY CITY ATTORNEY

EXHIBIT "B"

November 19, 1998

**AGREEMENT FOR THE PURCHASE OF TREATED WATER FROM THE
OTAY WATER TREATMENT PLANT BETWEEN THE CITY OF SAN
DIEGO AND THE OTAY WATER DISTRICT**

This Agreement is made and entered into as of JAN 11 1999 by and between the Otay Water District ("OTAY"), a water district organized under the Municipal Water District Law of 1911, and the City of San Diego ("CITY"), a municipal corporation.

RECITALS

Whereas, the economy, employment and quality of life of the San Diego County region is dependent on a reliable and affordable water supply which requires cooperation of local water agencies both directly and through their joint imported water agency, the San Diego County Water Authority ("CWA"); and

Whereas treated water surplus to CITY needs (Surplus), hereby defined as treated water surplus over the Otay Water Treatment Plant's peak daily demand, is available to serve OTAY from the Otay Water Treatment Plant; and

Whereas, by making Surplus treated water available to OTAY, the CITY and the region will benefit by increased use of existing resources and potential savings in future regional facilities; and

Whereas, by entering into an agreement to provide Surplus treated water to OTAY, the CITY will improve the efficiency of its treatment plant operations and generate additional income; and

Whereas, the CWA will benefit by being able to defer deliveries of approximately ten MGD of treated water to OTAY; and

Whereas, the CWA recommends that each of its member agencies provide sufficient water reserves to withstand up to ten days of cutoff from imported treated water supplies; and

DOCUMENT NO. RR-291138

JAN 11 1999

FILED

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Whereas, OTAY relies exclusively on imported treated water and on imported raw water treated by others, for supplying its service area with water; and

Whereas, OTAY has determined that the most viable approach to establishing adequate reserves is to build a maximum of five days covered treated water storage and to secure treated water supply commitments from other agencies for the remainder; and

Whereas, the CITY is willing to sell Surplus treated water to OTAY from the CITY's Otay Water Treatment Plant and additional treated water in the future; and

Whereas, OTAY's future needs (OTAY's Needs) are for 10 to 20 million gallons per day (MGD) of treated water; and

Whereas, the CITY is willing to expand its Otay Water Treatment Plant to meet future OTAY and CITY needs.

NOW THEREFORE, in consideration of the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and OTAY agree as follows:

ARTICLE I TERM

1.1 The term of this Agreement shall be for a period of fifty years commencing on January 1, 1999, and terminating on December 31, 2048.

ARTICLE II SALE OF TREATED WATER TO OTAY

2.1 The CITY agrees to sell OTAY Surplus treated water from the Otay Water Treatment Plant pursuant to the following terms.

2.1.1 The CITY and OTAY agree that until such time as OTAY pays the CITY a sum of money equivalent to the then current cost to expand the Otay Water Treatment Plant to meet OTAY's Needs, CITY's obligation to supply treated water under this Agreement is contingent upon there being available 10 MGD of Surplus treated water in the Otay Water Treatment Plant for the term of this Agreement, as determined by the CITY in its sole discretion.

2.1.2 In the event said Surplus is projected by the CITY, in its sole discretion, to be less than 10 MGD due to increased demand on the part of the CITY's water customers, CITY shall so notify OTAY and CITY and OTAY shall confer to see if OTAY's Needs may continue to be met by the CITY, provided however, the decision to expand the CITY's Otay Water Treatment Plant be at the CITY's sole discretion. The CITY shall not unreasonably refuse to expand to meet OTAY's Needs.

2.1.3 OTAY agrees to pay the CITY, as a contribution in aid of construction, a payment equal to the then current costs and expenses of said expansion including any financing or any debt service costs, multiplied by the percentage which OTAY's Needs represents with respect to the total additional treatment capacity contemplated by said expansion. Such costs and expenses include, but are not limited to, planning, surveying, design, construction, easement acquisition, environmental studies and/or environmental impact reports, processing required permits through agencies, implementation of environmental mitigation measures, field inspection, project administration to complete such expansion project, debt service and other financing costs, and any other reasonable costs and expenses incurred by the CITY ("Expansion Costs").

2.1.4 Should the CITY and OTAY agree on an expansion of the facility, the CITY and OTAY shall enter into a separate agreement specifying obligations pertaining to the sharing of costs and expenses for the expansion and construction of the Otay Water Treatment Plant, including but not limited to financing, expansion and construction costs, as well as the duration of OTAY's right to service from said plant in consideration of said sharing of costs and expenses. Such separate agreement must be approved prior to any expenditures for the expansion by the City.

2.1.5 The CITY shall retain ownership of the Otay Water Treatment Plant and any expanded portions thereof, notwithstanding anything contained herein.

2.2 Notwithstanding the forgoing, nothing in this Section 2 or in this Agreement shall obligate the CITY to make any payment for the acquisition, construction, maintenance, or operation of the CITY's water treatment facilities from moneys derived from taxes or from any income and revenue of the CITY other than moneys in or water revenues which go into the Water Utility Fund for the CITY's water system and from construction funds derived from the sale of water revenue bonds or other securities for the CITY's water system as are duly authorized.

2.2.1 Nothing in this Agreement shall be construed to obligate the CITY to pay from its annual income and revenues any sum which would create an indebtedness, obligation or liability within the meaning of the provisions of article XVI, section 18, of the California State Constitution.

2.2.2 Nothing in this Section 2 or in this Agreement, however, shall prevent the CITY, in its discretion, from using tax revenues or any other available revenues or funds of the CITY for any purpose for which the CITY is empowered to expend moneys under this Agreement.

2.2.3 Nothing in this section shall relieve the CITY or OTAY from their

obligations under this Agreement.

2.2.4 Nothing in this Section 2 or in this Agreement shall obligate OTAY to make any payment which would create an indebtedness, obligation, or liability within the meaning of article XVI, section 18 of the California State constitution, or which is not authorized by law.

ARTICLE III OTAY's OBLIGATIONS

3.1 The cost of water to be purchased by OTAY in the next succeeding fiscal year from the CITY shall be calculated by the CITY by determining in June of the preceding fiscal year, the projected cost and expenses of all operations, maintenance and overhead, and capital improvements, repairs and replacements under \$100,000 to be incurred at the CITY's Otay Water Treatment Plant. This calculation shall be divided by the total number of acre feet (AF) of water treated at the Otay Water Treatment Plant in the preceding fiscal year. This cost per AF shall be added to the raw water rate, as defined in section 3.1.2, to determine the projected actual cost to OTAY for the next succeeding fiscal year.

3.1.1 Notwithstanding the forgoing, if the projected cost of the treated water to be supplied by the CITY exceeds the CWA treated water rates, OTAY shall have the option of purchasing treated water from the City or from CWA.

3.1.2 Raw water costs billed to OTAY by the CITY shall not exceed the prevailing CWA raw water rate that was last paid by the CITY. All imported raw water used to provide OTAY with treated water shall be from OTAY's imported water allocation from CWA.

3.1.3 OTAY shall annually notify the CITY in writing before June 30th, its projected daily average demand to be received from the CITY for the next fiscal year.

3.2 OTAY shall pay the following costs and expenses within forty-five (45) calendar days of receipt of a bill from the CITY: monthly operating costs and expenses shall be as determined in section 3.1 above, multiplied by the number of acre feet of treated water delivered to OTAY during the previous calendar month.

3.2.1 In the event OTAY fails to make its payment(s) to the CITY by the date specified in section 3.2 above, OTAY shall be charged interest on the amount outstanding at a rate of interest then equal to the CITY's pooled investment return.

3.2.2 OTAY shall pay for operations, maintenance, and overhead costs and expenses ("O&M Costs") of the Otay Water Treatment Plant, including the expansion, up to the full amount of water delivered to OTAY from that facility, as

determined in section 3.2 above.

3.3 OTAY shall order treated water from CITY facilities twice a day at 8:00 AM and 2:00 PM.

3.4 OTAY shall be responsible for all costs and expenses associated with constructing facilities to receive treated water from the CITY's Otay Water Treatment Plant, including any CITY approved metering facilities. Once constructed and approved by the CITY, OTAY shall transfer ownership of the metering facilities to the CITY. The CITY shall maintain, repair and replace as necessary the metering facilities and read the meter.

ARTICLE IV CITY's OBLIGATIONS

4.1 In the event the rated capacity of the CITY's Otay Water Treatment Plant is diminished for any reason, including, but not limited to, equipment failure, source water quality changes, regulatory requirements or natural disaster, and OTAY is receiving Surplus treated water pursuant to Article II above, then OTAY shall be entitled to purchase such treated water that is then surplus to the CITY's needs. If OTAY has contributed to the expansion of the Otay Water Treatment Plant pursuant to section 2.1 above, then OTAY shall be entitled to receive an amount of available treated water produced by the Otay Water Treatment Plant which shall be determined by dividing the amount of capacity funded by OTAY by the design capacity of the plant, and then multiplying by the reduced capacity thereof.

4.2 During a declared drought, the amount of treated water that may be purchased by OTAY, whether Surplus or pursuant to a contribution to expansion, shall be reduced by the same percentage as the rationing that is imposed on all CITY customers.

4.3 The CITY shall bill OTAY directly for O&M Costs of water treated and delivered to OTAY. The O&M Costs are subject to adjustment as follows:

4.3.1 After the first fiscal year (beginning July 1 and ending June 30) and thereafter, the CITY shall determine before January 10th, its total O&M Costs, defined as year end O&M Costs, at the Otay Water Treatment Plant for the preceding fiscal year. The CITY shall make available to OTAY its books and records relevant to such determination and review the same with the General Manager of OTAY.

4.3.2 The total O&M Costs for the preceding fiscal year shall be divided by the total number of acre feet of water treated at the CITY's Otay Water Treatment Plant to determine the unit cost of the O&M Costs for said period. Such unit cost shall be multiplied by the water delivered to OTAY during such period.

4.3.3 An adjustment shall be made by January 10 of each year in the projected O&M Costs calculated per section 3.1 to reflect the total O&M Costs of producing and delivering the treated water to OTAY for the preceding fiscal year. The CITY shall bill or credit OTAY for such O&M Costs. Upon receipt of audited financial statements received after January 10 of each year, adjustments shall be made by the CITY in the succeeding monthly billings consistent with the costs and expenses actually incurred by the CITY.

4.4 After the Agreement commencement date and OTAY'S receipt of treated water from the CITY, the CITY shall bill OTAY monthly on or before the 15th of each month for the amounts due for the previous month's costs hereunder.

ARTICLE V MAJOR REPAIR, REPLACEMENT OR RECONSTRUCTION COSTS AND EXPENSES

5.1 A project is considered a major repair, replacement, or reconstruction if its total projected cost exceeds \$100,000.

5.2 In the event major repair, replacement, or reconstruction becomes necessary at the CITY's Otay Water Treatment Plant in order to supply OTAY with treated water pursuant to this agreement, the total cost shall be divided by the number of years of expected useful life of such improvement. Such number shall then be divided by the number of acre-feet treated at the CITY's Otay Water Treatment Plant in the past fiscal year to arrive at a cost per acre-foot. This cost per acre foot shall then be added to the cost of each acre foot of treated water delivered to OTAY and billed thereafter for the number of years of expected useful life of the improvement, as agreed to between the CITY and OTAY. This cost shall be adjusted annually based upon the actual water treated at the CITY's Otay Water Treatment Plant each fiscal year. For example, a major repair costs \$200,000 and is expected to have a useful life of 20 years; a total of 30,000 acre feet was treated at the Otay Water Treatment Plant during the past fiscal year; and OTAY pays the CITY \$500 per acre foot for treated water delivered. The following calculation would apply: \$200,000 divided by 20 years equals \$10,000 per year, \$10,000 per year divided by 30,000 acre feet per year equals \$0.33 per acre foot, \$500 plus \$0.33 equals the new rate of \$500.33 per acre foot of treated water that the CITY charges OTAY. If in the following fiscal year 32,000 acre feet are treated, then the adjustment would be \$10,000 divided by 32,000 acre feet which equals \$0.31 per acre foot. The \$0.31 would then be added to the updated cost OTAY pays the CITY per acre foot.

5.3 Major repair, replacement, or reconstruction project costs and expenses shall include, but not be limited to, the following: planning, surveying, design, construction, easement acquisition, environmental studies and/or environmental impact reports, processing required permits through agencies, implementation of

environmental mitigation measures, field inspection, project administration to complete such replacement project, debt service and other financing costs where applicable, and any other reasonable costs and expenses incurred by the CITY ("Replacement Costs").

5.4 The CITY shall maintain the Otay Water Treatment Plant and Lower Otay Reservoir outlet works in good repair and good working order in accordance with sound engineering practices by the CITY. It shall be the duty of the CITY to make any repair, replacement, or reconstruction necessary to keep such facilities in good operating condition.

5.5 Prior to the CITY undertaking any major repair, replacement, or reconstruction of the Otay Water Treatment Plant or the Lower Otay Reservoir outlet works, it shall review with OTAY the costs thereof. The CITY retains the right to proceed in any event.

5.6 In the event of an emergency, any necessary repairs, replacements, or reconstruction shall be implemented as expeditiously as possible, with notification as soon as reasonably possible to OTAY of the emergency and required repairs, replacements, and reconstruction.

5.7 Notwithstanding the provisions of Section 5.2 above, if as a result of natural disaster, operation of federal or state law or other causes beyond the control of the parties hereto, it becomes necessary for the CITY to undertake major repairs, replacements, or reconstruction of the Otay Water Treatment Plant, and OTAY has contributed to the expansion of the plant pursuant to section 2.1.3 of this Agreement, OTAY shall reimburse the CITY for its proportionate share of the cost of such repairs, replacements, or reconstruction not covered by grants, insurance, FEMA, etc. For example, if the Otay Water Treatment Plant can treat a maximum of 60 MGD and OTAY has contributed to the construction of 10 MGD pursuant to terms of this Agreement, then OTAY's share would be one-sixth (16.67 percent).

ARTICLE VI SUCCESSORS IN INTEREST

6.1 In the event that, at the sole discretion of the CITY, the CITY chooses to lease, privatize or sell the Otay Water Treatment Plant to any third party, the CITY agrees that it will require, as a condition of said lease, privatization or sale, a commitment on the part of said third party to honor the terms and conditions of this Agreement.

6.2 Nothing contained herein shall prevent the CITY from entering into a financing agreement which may impose limits on the CITY's power to sell the Otay Water Treatment Plant or any appurtenant facilities, if the CITY believes that such financing is in the CITY's best interests. Neither the entry into such a financing

agreement by the CITY nor its performance thereunder by the CITY shall constitute a breach or default by the CITY hereunder.

ARTICLE VII INDEMNIFICATION

The CITY and OTAY agree to defend, indemnify, protect and hold each other harmless from all claims, demands, losses and liability to the extent that the same are the result of error, omission or negligent act of its officers or employees, or any other persons acting pursuant to its control and performing under this agreement. However, the CITY and OTAY'S duty to indemnify and hold the other party harmless shall not include any claims or liability arising from the sole negligence or willful misconduct of the other party, its agents, officers, or employees.

ARTICLE VIII AMENDMENTS

This Agreement may be modified or amended by the parties hereto at any time. Provided, however, that any modification or amendment must be mutually agreed upon and executed in writing. Verbal modifications or amendments shall be of no effect.

ARTICLE IX WATER TREATMENT STANDARDS

The CITY shall treat all water to be sold to OTAY in accordance with all requirements of federal and state authorities, laws, rules, regulations, and standards. The treated water shall be of a quality substantially the same as delivered by the CITY to its customers.

ARTICLE X ASSIGNMENT

10.1 Neither OTAY nor the CITY shall assign this Agreement nor any interest herein, or permit the transfer thereof by operation of law or otherwise, without first obtaining the consent of the other expressed in writing and signed by the City Manager or OTAY General Manager.

10.2 Such consent shall not be unreasonably withheld by either party.

10.3 Any attempted transfer or assignment shall not create any right whatsoever in the transferee or assignee.

ARTICLE XI TERMINATION

11.1 In the event OTAY shall be adjudicated as bankrupt or become insolvent or subject to a receivership, the CITY may, at its discretion, terminate this Agreement without further notice.

11.2 In the event OTAY shall fail or refuse to perform any term, covenant, or condition of this Agreement and shall fail to cure such default within ninety days after written notice from the CITY, then the CITY may terminate this Agreement by giving OTAY written notice of its election to terminate this Agreement.

ARTICLE XII FORCE MAJEURE

In the event the rights and obligations of the parties to this Agreement shall be subject to unanticipated delays or cancellations caused by strikes, fire, accident, acts of God, orders of any military, civil, or governmental authority, litigation, or other cause beyond the control of the parties, the rights or obligations of the parties affected thereby shall be continued for a period equal to the period resulting from such delay.

ARTICLE XIII CONSTRUCTION OF THIS AGREEMENT

13.1 Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party as follows:

To CITY: c/o City Manager
City Administration Building
202 C Street MS 9A
San Diego, CA 92101

To OTAY: c/o General Manager
Otay Water District
2554 Sweetwater Springs Blvd.
Spring Valley, CA 91978-2096

or such other address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the fourth business day following the day of mailing only if mailed with the United States Postal Service, by certified mail, return receipt requested.

13.2 Time is of the essence for each provision of this Agreement.

13.3 Nothing contained in this Agreement shall be construed as a limitation upon the powers of CITY as a chartered city of the State of California or OTAY.

13.4 All provisions hereof, expressed as either covenants or conditions on the part of CITY or OTAY to be performed or observed shall be deemed to be both covenants and conditions.

13.5 This Agreement shall be construed and interpreted in accordance with the laws of the State of California. OTAY covenants and agrees to submit to the personal jurisdiction of any state court located in San Diego County for any dispute, claim, or matter arising out of or related hereto. Either party may refer any dispute to non-binding mediation for resolution based on mutual consent.

13.6 This Agreement, including Attachments and/or Exhibits, contains all of the agreements of the parties and all prior negotiations and agreements are merged herein.

13.7 The Section headings and any captions are inserted herein only as a matter of convenience and for reference and shall have no effect on the interpretation of this Agreement.

13.8 When required by the context of this Agreement, the singular shall include the plural.

13.9 The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal, provided that the purpose and intent of the Agreement can be reasonably carried out without the unenforceable or invalid provision.

13.10 If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to request the court for an award of reasonable attorneys' fees and costs of suit from the losing party.

13.11 The failure of CITY to enforce a particular term, condition, or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

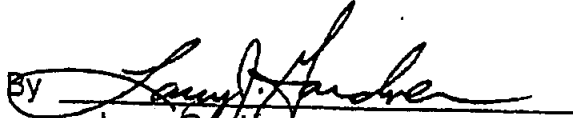
13.12 All payments to the CITY under the terms of this Agreement shall be made payable to the City Treasurer, and submitted to the CITY Water Department.

13.13 All payments required under this Agreement shall be deemed sufficiently paid if made by check collected on first presentation.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its City Manager, pursuant to ~~Ordinance No. O- R- 291138~~ authorizing such execution, and by OTAY. RESOLUTION NO.

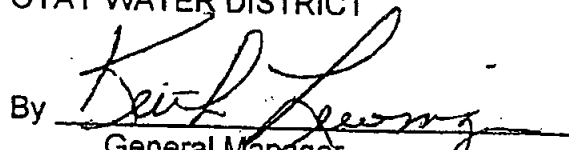
Dated this _____ day JAN 11 1999 1998.

THE CITY OF SAN DIEGO

By 
Larry Gardner
Water Department Director

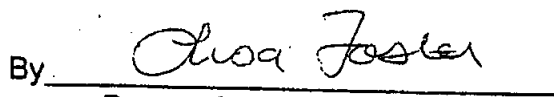
Dated this 19th day of November, 1998.

OTAY WATER DISTRICT

By 
General Manager

Approved as to form and legality on this day 15 of JANUARY, ¹⁹⁹⁹~~1998~~.

CASEY GWINN
City Attorney

By 
Deputy City Attorney

H:\WPDOCS\OWD9I.DOC.JM

Passed and adopted by the Council of San Diego on

by the following vote: JAN 11 1999

YEAS: Mathis, Wear, Kehoe, Stevens, Warden, Stallings, McCarty,
Vargas, Mayor Golding.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: MARY A. CEPEDA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 291138, passed and adopted by the Council of The City of San Diego, California on JAN 11 1999.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Mary A. Cepeda, Deputy

RESOLUTION NUMBER R- 291138

ADOPTED ON JAN 11 1999

WHEREAS, the economy and employment and quality of life of the San Diego County region is dependent on a reliable and affordable water supply which requires cooperation of local water agencies both directly and through their joint imported water agency, the San Diego County Water Authority ("CWA"); and

WHEREAS, treated water surplus to CITY needs (Surplus), hereby defined as treated water surplus over the Otay Water Treatment Plant's peak daily demand, is available to serve OTAY from the Otay Water Treatment Plant; and

WHEREAS, by making Surplus treated water available to OTAY, the CITY and the region will benefit by increased use of existing resources and potential savings in future regional facilities; and

WHEREAS, by entering into an agreement to provide Surplus treated water to OTAY, the CITY will improve the efficiency of its treatment plant operations and generate additional income; and

WHEREAS, the CWA will benefit by being able to defer deliveries of approximately ten MGD of treated water to OTAY; and

WHEREAS, the CWA recommends that each of its member agencies provide sufficient water reserves to withstand up to ten days of cutoff from imported treated water supplies; and

WHEREAS, OTAY relies exclusively on imported treated water and on imported raw water treated by others, for supplying its service area with water; and

WHEREAS, OTAY has determined that the most viable approach to establishing adequate reserves is to build a maximum of five days covered treated water storage and to secure treated water supply commitments from other agencies for the remainder; and

WHEREAS, the City is willing to sell Surplus treated water to OTAY from the CITY's Otay Water Treatment Plant and additional treated water in the future; and

WHEREAS, OTAY's future needs (OTAY's Needs) are for 10 to 20 million gallons per day (MGD) of treated water; and

WHEREAS, the CITY is willing to expand its Otay Water Treatment Plant to meet future OTAY and CITY needs; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and is hereby authorized and empowered to enter into an Agreement, a copy of which is on file in the Office of the City Clerk as Document No. CC-291138, with the Otay Water District regarding the purchase of surplus treated water from the City of San Diego.

BE IT FURTHER RESOLVED, that the City is authorized to sell OTAY treated water, surplus to the City's needs, from the CITY's Otay Water Treatment Plant upon execution of the agreement;

BE IT FURTHER RESOLVED, that the City is authorized to sell OTAY additional treated water;

BE IT FURTHER RESOLVED, that OTAY will pay the City's actual operating costs for treatment, which includes operation, maintenance, and overhead expenses, plus the prevailing CWA raw water rate regardless of whether local or imported raw water is treated;

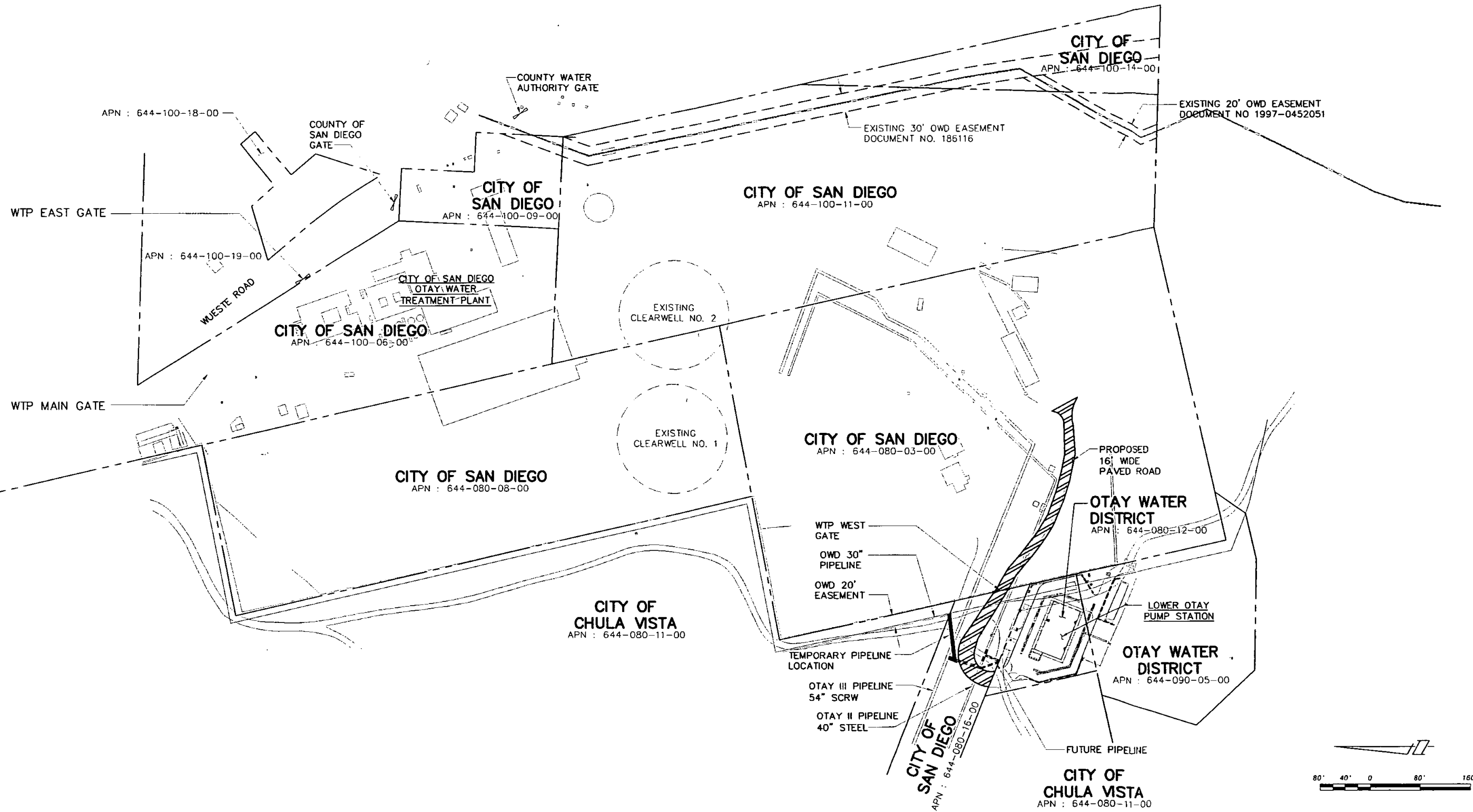
BE IT FURTHER RESOLVED, that the agreement term is for fifty years.

APPROVED: CASEY GWINN, City Attorney

By Lisa Foster
Lisa Foster
Deputy City Attorney

LAF:jp
11/20/98
Or.Dept:Water
Aud.Cert:
R-99-620

P:\WORK\ING\QIP\255\WO-2626\Graphics\Drawings\Exhibit D.dwg 1/30/2003 10:34:35 AM PST



LEGEND

-  PROPOSED ACCESS ROUTE
-  ROAD IMPROVEMENT FOR ACCESS ROUTE
(16' WIDE PROPOSED PAVED ROAD)

-  EXISTING EASEMENT LINE
-  30-INCH TEMPORARY PIPELINE
-  FUTURE PIPELINE



OTAY WATER DISTRICT
2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CA 91978-2096
619-670-2222

**LOWER OTAY PUMP STATION
ROAD IMPROVEMENT
PLAN
EXHIBIT D**

104



David
Y.

SIA

RESOLUTION NUMBER R- 303950

DATE OF FINAL PASSAGE JUL 29 2008

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A RIGHT-OF-ENTRY PERMIT AUTHORIZING ACCESS TO CITY PROPERTY FOR PURPOSES OF CONSTRUCTION AND MAINTENANCE OF A PUMP STATION AND AN EASEMENT DEED IN FAVOR OF THE OTAY WATER DISTRICT FOR UNDERGROUND PIPELINE FACILITIES AND APPURTENANCES FOR THE TRANSMISSION AND DISTRIBUTION OF WATER PURCHASED FROM THE CITY, PER RESOLUTION NO. RR-291138 DATED JANUARY 11, 1999 (ATTACHED).

WHEREAS, on January 11, 1999, the City entered into an agreement with the Otay Water District to provide surplus treated water (see attached Resolution No. RR-291138) with a termination date of December 31, 2048; and

WHEREAS, the Lower Otay Pump Station (LOPS) will deliver increased capacity from the City of San Diego Otay Water Treatment Plant and will contribute toward meeting the future water demand for the Otay Water District's Central Area and Otay Mesa Systems; and

WHEREAS, the Right-of-Entry Permit will allow access to the Lower Otay Pump Station across City property for the purposes of construction, expansion and maintenance of LOPS ; and

WHEREAS, the easement granted to Otay Water District will allow the installation and maintenance of the pipeline and connections to the City's Otay III Pipeline for the transfer of water purchased from the City; NOW, THEREFORE,

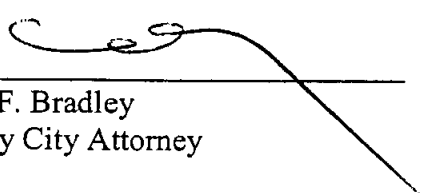
BE IT RESOLVED, by the Council of San Diego, that the Mayor, or his designee, is authorized to execute a Right-of-Entry Permit, form of which is attached, authorizing access to City property for purposes of construction and maintenance of a pump station required for the

delivery of treated water purchased from the City per Resolution No. RR-291138 dated January 11, 1999.

BE IT FURTHER RESOLVED, by the Council of San Diego, that the Mayor, or his designee, is authorized to execute an Easement Deed in favor of the Otay Water District for underground pipeline facilities and appurtenances for the transmission and distribution of water purchased from the City.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Todd F. Bradley
Deputy City Attorney

TFB:bas
07/01/08
Or.Dept: READ
R-2009-8
MMS #6385

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 22 2008.

ELIZABETH S. MALAND
City Clerk

By 

Deputy City Clerk

Approved:

7-29-08
(date)



JERRY SANDERS, Mayor

Vetoed:

(date)

JERRY SANDERS, Mayor

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

N/A
(FOR AUDITOR'S USE ONLY)

TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets Department	DATE: April 7, 2008
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4. SUBJECT:

Right-of-Entry Permit and Pipeline Easement Deed to Otay Water District

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.):

BLM LANE MACKENZIE, (619) 236-6050, 51a

6. SECONDARY CONTACT

DAVID YEARGAIN, (619) 236-6721

7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION HAS BEEN COMPLETED ON PAGE 2: ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					Cost: None
ORGANIZATION					Job: 923544
OBJECT ACCOUNT					Thomas Guide Page: 1311-A7
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>J.F. [Signature]</i>	4/9/08	8	DEPUTY CHIEF	<i>[Signature]</i>	4-18-08
2	EAS.	<i>[Signature]</i>	5/05/08	9	CITY ATTORNEY	<i>[Signature]</i>	4-11-08
3	WATER DEPT.	<i>[Signature]</i>	5-22-08	10	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7/2/08
4	CFO/FM	<i>[Signature]</i>	5/13/08	11			
5	EOCP/MEMO 5-3-95				MGR. DOCKET COORD:		COUNCIL REP.
6	CFO/AUDITORS	<i>[Signature]</i>	05/15/08		RULES COMMITTEE	☐ CONSENT	☐ ADOPTION
7						☐ REFER TO:	DATE:

11. PREPARATION OF:

☒ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing the Mayor to execute a Right-of-Entry Permit, form of which is attached, authorizing access to City property for purposes of construction and maintenance of a pump station required for the delivery of treated water purchased from the City per resolution No. R-291138 dated January 11, 1999 (attached).

2. Authorizing the Mayor to execute an Easement Deed in favor of the Otay Water District (form of which is attached) for underground pipeline facilities and appurtenances for the transmission and distribution water purchased from the City, per resolution No. R-291138 dated January 11, 1999 (attached), affecting a portion of Quarter Section 4 of Map 862, Otay Ranch owned by the City of San Diego as shown on Record of Survey Map No. 8989 recorded in the Office of the County Recorder April 15, 1982 in the County of San Diego.

3. See Reverse.

11A. MANAGER'S RECOMMENDATIONS: ADOPT THE RESOLUTION

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 8

COMMUNITY AREA(S): OTAY MESA

ENVIRONMENTAL IMPACT: See below.

ACTION REQUESTED BY: Real Estate Assets Department

DESCRIPTIVE LOCATION: Adjacent to the City's Lower Otay Treatment Plant in the City of Chula Vista near the Lower Otay Reservoir.

HANDLING: DO NOT RECORD: Return documents to Real Estate Assets Department, Attention: David Yeargain, M.S. 51A for further handling.

Environmental:

The Right of Entry (ROE) is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15304(e). The purpose for which this ROE, which allows across City property for the purpose of construction, expansion and maintenance of the LOP and granting an Easement Deed for activities associated with the underground pipeline facilities and appurtenances are covered under an MND prepared and adopted by the Otay Water District in December 2004.

EXECUTIVE SUMMARY SHEET 1

DATE REPORT ISSUED:

REPORT NO.

ATTENTION:

Council President and City Council

ORIGINATING DEPT:

Real Estate Assets

SUBJECT:

Right-of-Entry Permit Otay Water District

COUNCIL DISTRICT:

8

STAFF CONTACT:

Lane MacKenzie (619-236-6050)

REQUESTED ACTION: Adopt a Resolution (1) authorizing the execution of Right-of-Entry Permit form which is attached, for access across City property to the Lower Otay Pump Station, and (2) granting a Water Pipeline Easement, form of which is attached, for water pipeline to transfer water purchased from the City. (3) see previous page

STAFF RECOMMENDATION: Staff recommends adopting the Resolutions.

EXECUTIVE SUMMARY: On January 11, 1999, the City entered into an agreement with the Otay Water District to provide surplus treated water to Otay Water District, RR-2991138, attached. The term of this agreement is to December 31, 2048. Pursuant to this agreement, the Lower Otay Pump Station (LOPS) will deliver increased capacity from the City of San Diego Otay Water Treatment Plant. This increased water capacity will contribute toward meeting the future water demand for the Otay Water District's Central Area and Otay Mesa Systems. The Right-of-Entry Permit will allow access to the Lower Otay Pump Station across City property for the purpose of construction, expansion and maintenance of LOPS, the temporary engine/pump system and pipeline connections to the City's Otay III Pipeline for the duration of the Agreement to purchase treated water per Resolution No. RR-291138. The Easement granted to Otay Water district will allow the installation and maintenance of the pipeline and connections to the City's Otay III Pipeline for the transfer of water purchased from the City.

FISCAL CONSIDERATIONS: None

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Execution of Agreement for the Purchase of Treated Water from the Otay Water Treatment Plant Between the City of San Diego and the Otay Water District RR-291138.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None



James F. Barwick, CCIM
Real Estate Assets Director



Approved: William Anderson, FAICP
Deputy Chief Operating Officer: Executive Director
City Planning and Development

- Attachments:
1. Right-of-Entry Permit
 2. Permit Area Drawing
 3. Resolution R-291138
 4. Agreement