

OTAY WATER DISTRICT

BOARD OF DIRECTORS MEETING  
DISTRICT BOARDROOM

2554 SWEETWATER SPRINGS BOULEVARD  
SPRING VALLEY, CALIFORNIA

**WEDNESDAY**  
**October 7, 2009**  
**3:30 P.M.**

**AGENDA**

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF AGENDA
4. ASSOCIATION OF CALIFORNIA WATER AGENCIES PRESENTATION  
(TIMOTHY QUINN, EXECUTIVE DIRECTOR)
5. APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF JULY 1, 2009
6. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO  
SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S  
JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

**CONSENT CALENDAR**

7. ITEMS TO BE ACTED UPON WITHOUT DISCUSSION, UNLESS A REQUEST IS  
MADE BY A MEMBER OF THE BOARD OR THE PUBLIC TO DISCUSS A PAR-  
TICULAR ITEM:
  - a) ADOPT RESOLUTION NO. 4149 REVISING BOARD OF DIRECTORS  
POLICIES 14, USE OF DISTRICT VEHICLES AND CAR ALLOWANCE;  
AND 19, TOBACCO FREE CAMPUS
  - b) APPROVE REPLACING THE CURRENT PPO (SILVER PLAN) WITH A  
NEW HMO THROUGH THE DISTRICT'S HEALTH BENEFITS INSURER,  
SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY; AND AUTHORIZE  
THE GENERAL MANAGER TO EXECUTE AN AMENDMENT TO THE EX-  
ISTING SERVICE AGREEMENT WITH DELTA HEALTH SYSTEMS COR-  
PORATION, THE DISTRICT'S TPA, TO EXTEND THE TERM OF THE  
AGREEMENT AND REPLACE THE DENTAL NETWORK

- c) APPROVE THE TRANSITION IN GOVERNANCE OF THE WATER CONSERVATION GARDEN FROM THE JOINT POWER AUTHORITY TO A NON-PROFIT ORGANIZATION
- d) APPROVE THE PURCHASE OF 17,414 ¾" THROUGH 2" (SMALL) RADIO READ (AMR) METERS FROM MASTER METER, INC. TO COMPLETE THE DISTRICT'S AMR RETROFIT PROGRAM AND AUTHORIZE THE PURCHASE OF SMALL AMR METERS ON AN AS-NEEDED BASIS THAT ARE REQUIRED FOR NEW INSTALLS AND CHANGE-OUTS
- e) APPROVE THE PURCHASE OF 3" AND LARGER (LARGE) RADIO READ (AMR) MASTER METERS AS-NEEDED TO COMPLETE THE RETROFIT OF EXISTING MANUAL READ METERS TO AMR METERS WITHIN THE DISTRICT'S EXISTING AMR ROUTES AND AUTHORIZE THE PURCHASE OF ADDITIONAL LARGE AMR MASTER METERS ON AN AS-NEEDED BASIS AS REQUIRED TO MEET THE DISTRICT'S LARGE METER NEEDS
- f) APPROVE A NON-COMPETITIVE PROFESSIONAL SERVICES AGREEMENT WITH MWH AMERICAS, INC. FOR THE PREPARATION OF A NORTH DISTRICT-SOUTH DISTRICT SERVICE AREA INTERTIE STUDY FOR AN AMOUNT NOT-TO-EXCEED \$119,505
- g) APPROVE A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH MWH AMERICA, INC. FOR THE RALPH W. CHAPMAN WATER RECLAMATION FACILITY UPGRADE PROJECT IN AN AMOUNT NOT-TO-EXCEED \$460,000
- h) APPROVE AN AGREEMENT FOR PROFESSIONAL SERVICES FOR AS-NEEDED ELECTRICAL DESIGN SERVICES WITH ENGINEERING PARTNER, INC. IN AN AMOUNT NOT-TO-EXCEED \$100,000 DURING FISCAL YEARS 2010 AND 2011 (ENDING JUNE 30, 2011)
- i) APPROVE AN AGREEMENT FOR PROFESSIONAL SERVICES FOR AS-NEEDED GEOTECHNICAL SERVICES WITH SOUTHERN CALIFORNIA SOIL AND TESTING, INC. FOR AN AMOUNT NOT-TO-EXCEED \$175,000 DURING FISCAL YEARS 2010 AND 2011 (ENDING JUNE 30, 2011)
- j) APPROVE AN AGREEMENT FOR PROFESSIONAL SERVICES FOR AS-NEEDED ENGINEERING DESIGN SERVICES WITH LEE & RO, INC. IN AN AMOUNT NOT-TO-EXCEED \$199,000 DURING FISCAL YEARS 2010 AND 2011 (ENDING JUNE 30, 2011)
- k) APPROVE DRAFT SETTLEMENT AGREEMENT IN THE STATE OF CALIFORNIA EX REL. NORA ARMENTA v. JAMES JONES COMPANY, ET AL. MATTER

ACTION ITEMS

8. FINANCE AND ADMINISTRATION

- a) ADOPT RESOLUTION NO. 4147 AND NO. 4148 AUTHORIZING THE SALE AND ISSUANCE NOT TO EXCEED \$9,000,000 OF OTAY WATER DISTRICT IMPROVEMENT DISTRICT NO. 27, 2009 GENERAL OBLIGATION REFUNDING BONDS; AND AUTHORIZING THE GENERAL MANAGER AND THE CHIEF FINANCIAL OFFICER TO EXECUTE AND DELIVER RELATED DOCUMENTS AND TAKE OTHER RELATED ACTIONS (BEACHEM)

9. BOARD

- a) DISCUSSION OF 2009 BOARD MEETING CALENDAR

INFORMATIONAL ITEMS

10. THESE ITEMS ARE PROVIDED TO THE BOARD FOR INFORMATIONAL PURPOSES ONLY. NO ACTION IS REQUIRED ON THE FOLLOWING AGENDA ITEMS.

- a) 2009 FISCAL YEAR-END CAPITAL IMPROVEMENT PROGRAM STATUS REPORT (RIPPERGER)
- b) UPDATE ON LARRY C. LARSON SAFETY AWARD FOR 2009 (CUDAL)

REPORTS

11. GENERAL MANAGER'S REPORT

- a) SAN DIEGO COUNTY WATER AUTHORITY UPDATE

12. DIRECTORS' REPORTS/REQUESTS

13. PRESIDENT'S REPORT

14. ADJOURNMENT

All items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

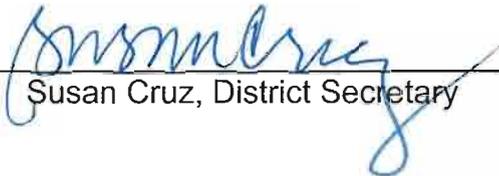
The Agenda, and any attachments containing written information, are available at the District's website at [www.otaywater.gov](http://www.otaywater.gov). Written changes to any items to be considered at the open meeting, or to any attachments, will be posted on the District's website. Copies of the Agenda and all attachments are also available through the District Secretary by contacting her at (619) 670-2280.

If you have any disability which would require accommodation in order to enable you to participate in this meeting, please call the District Secretary at (619) 670-2280 at least 24 hours prior to the meeting.

#### Certification of Posting

I certify that on October 2, 2009, I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of Otay Water District, said time being at least 72 hours in advance of the regular meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on October 2, 2009.

  
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Susan Cruz, District Secretary

**AGENDA ITEM 5**

**MINUTES OF THE  
BOARD OF DIRECTORS MEETING OF THE  
OTAY WATER DISTRICT  
July 1, 2009**

1. The meeting was called to order by President Croucher at 3:30 p.m.

2. ROLL CALL

Directors Present: Bonilla, Breitfelder, Croucher, Lopez and Robak

Staff Present: General Manager Mark Watton, Asst. GM Administration and Finance German Alvarez, Asst. GM Engineering and Water Operations Manny Magana, General Counsel Yuri Calderon, Chief of Information Technology Geoff Stevens, Chief Financial Officer Joe Beachem, Chief of Engineering Rod Posada, Chief of Operations Pedro Porras, Chief of Administration Rom Sarno, District Secretary Susan Cruz and others per attached list.

3. APPROVAL OF AGENDA

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak  
Noes: None  
Abstain: None  
Absent: None

to approve the agenda.

4. APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF MARCH 4, 2009

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak  
Noes: None  
Abstain: None  
Absent: None

to approve the minutes of the regular board meeting of March 4, 2009.

5. ACKNOWLEDGEMENT OF OTAY WATER DISTRICT STAFF FOR THEIR VOLUNTEER WORK

Assistant General Manager Manny Magana indicated that the District wished to recognize the eleven (11) district volunteers who worked as monitors throughout

the AWWA National Conference. He stated that they did a great job. He also indicated that the District sponsored a golf charity tournament for *Beads of Courage*. *Beads of Courage* is a unique program that provides assistance to children with cancer. He stated the tournament raised over \$18,000 and the funds will be utilized to open a new program in an Orange County Hospital. He recognized and thanked the District's eight staff members who attended the event early to set-up and stayed late to breakdown. He stated that they were true ambassadors for the Otay Water District (see attached presentation for photo of District volunteers for both events). President Croucher thanked and acknowledged Assistant General Manager Magana for his work in supporting the community.

6. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

Mr. Thomas Gaipa of El Cajon indicated that he only lives on social security which will end in 2016. He stated that his family saves as much water as they can and has been utilizing grey water to irrigate his plants. He stated that our region must find a way to supplement the water supply and suggested that desalination plants be built. He indicated that increasing water rates is not the answer. He asked that the board take into consideration ratepayers such as him when raising rates and asked that the board consider building in an exception into the water rates for those on fixed incomes.

CONSENT CALENDAR

7. ITEMS TO BE ACTED UPON WITHOUT DISCUSSION, UNLESS A REQUEST IS MADE BY A MEMBER OF THE BOARD OR THE PUBLIC TO DISCUSS A PARTICULAR ITEM:

Director Robak requested that agenda item 7c, APPROVE THE FINAL SEWER SYSTEM MANGEMENT PLAN (SSMP) TO MEET THE REQUIREMENTS OF THE STATE WATER RESOURCES CONTROL BOARD ORDER NO. 2006-0003, be pulled from the consent calendar for discussion.

President Croucher recused himself from voting on item 7f. He stated that he had discussed this item with counsel and was advised that he could vote on the item, however, he decided for the comfort of the San Miguel Consolidate Fire District, to recuse himself from voting on the item.

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve the following consent calendar items:

- a) APPROVE THE PURCHASE OF A 400 KILOWATT GENERATOR FROM SLOAN ELECTRIC TO PROVIDE FULL EMERGENCY BACK-UP POWER TO THE DISTRICT HEADQUARTERS BUILDING FOR AN AMOUNT NOT-TO-EXCEED \$65,941
- b) ADOPT RESOLUTION NO. 4139, IDENTIFYING THE GENERAL MANAGER AS THE OFFICIAL AUTHORIZED TO COMMIT THE DISTRICT TO FINANCIAL AND LEGAL OBLIGATIONS ASSOCIATED WITH THE POTENTIAL RECEIPT OF FINANCIAL ASSISTANCE GRANT FUNDING FROM THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION, FOR THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 WATER MARKETING AND EFFICIENCY GRANTS PROGRAM (CHALLENGE GRANT PROGRAM)
- d) APPROVE AN AGREEMENT FOR JANITORIAL SERVICES FOR THE DISTRICT'S ADMINISTRATIVE AND OPERATIONS FACILITIES WITH PROFESSIONAL MAINTENANCE SYSTEMS FOR AN AMOUNT NOT-TO-EXCEED \$32,100.84; AND, WITH AN OPTION FOR FOUR ANNUAL RENEWALS TO BE APPROVED AT THE GENERAL MANAGER'S DISCRETION
- e) REAFFIRM THAT THE PROPERTY, LISTED AS PARCEL NO. 7 ON THE STAFF REPORT PRESENTED TO THE BOARD ON JULY 2, 2003 AND DECLARED SURPLUS, INCLUDES BOTH APN 640-070-34 AND APN 640-142-08 AND IS SURPLUS TO THE DISTRICT'S NEEDS
- g) ADOPT RESOLUTION NO. 4138 TO ESTABLISH THE TAX RATE FOR IMPROVEMENT DISTRICT NO. 27 AT \$0.005 FOR FISCAL YEAR 2009-2010
- h) ADOPT RESOLUTION NO. 4142 TO CONTINUE WATER AND SEWER AVAILABILITY CHARGES TO BE COLLECTED THROUGH CUSTOMER PROPERTY TAXES FOR FISCAL YEAR 2009-2010
- i) ADOPT RESOLUTION NO. 4137 ALLOWING FOR THE REIMBURSEMENT OF CERTAIN EXPENDITURES FROM THE PROCEEDS OF THE DISTRICT'S DEBT OBLIGATIONS WHICH IS ANTICIPATED TO BE ISSUED DURING 2010
- j) AUTHORIZE THE GENERAL MANAGER TO NEGOTIATE A CONTRACT NOT-TO-EXCEED \$81,000 WITH HARRELL & COMPANY ADVISORS, LLC TO SERVE AS THE FINANCIAL ADVISOR FOR A DEBT ISSUANCE OF APPROXIMATELY \$41 MILLION IN CERTIFICATES OF PARTICIPATION (COPS), AND THE POTENTIAL REFINANCING OF THE ID 27 GENERAL OBLIGATION BONDS OF APPROXIMATELY \$9 MILLION

k) REJECT JOEL O. ANINIPOK CLAIM

President Croucher presented item 7c and 7f for discussion:

c) APPROVE THE FINAL SEWER SYSTEM MANGEMENT PLAN (SSMP)  
TO MEET THE REQUIREMENTS OF THE STATE WATER  
RESOURCES CONTROL BOARD ORDER NO. 2006-0003

Associate Civil Engineer Bob Kennedy indicated that in 2006 the State Water Resources Control Board issued Order No. 3, the Statewide General Waste Discharge Requirements (WDRs) for sanitary sewer systems. In 2007 the San Diego Regional Water Quality Control Board for the San Diego Region issued another order titled, Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region. He indicated that both orders require that the District prepare and implement a Sewer System Management Plan (SSMP) in accordance with State and Regional requirements. He stated a copy of the SSMP must be available at the District's office or online and must be approved by its Board of Directors at a public hearing.

He indicated to initiate the SSMP process, staff had presented to the Board on November 7, 2007 the list of the required eleven sections that comprise the SSMP and a schedule to complete them. The approved the sections and schedule at the board meeting and staff certified them the following day. He indicated that the waste discharge requirements are the regulatory mechanisms that apply to all agencies that own or operate a sanitary sewer collections systems greater than one mile in length that collect and convey untreated or partially treated wastewater to a publicly owned treatment facility. He stated that the ultimate goal of this waste discharge requirement is to reduce the frequency and volume of sanitary sewer overflows by requiring that districts, sewer agencies, cities and other entities to properly oerate, maintain , and manage their wastewater systems.

Associate Civil Engineer Kennedy indicated that the Engineering and Operations Departments worked closely on the preparation of this SSMP. The SSMP is basically a comprehensive plan that documents how all components regarding operation and maintenance are to be accomplished on a regular basis. This includes design and construction criteria for sewer facilities and response plans for emergency situations and a variety of critical functions that evaluate, monitor and audit the sewer system. He noted that there is no fiscal impact by the action to approve the SSMP.

It was indicated that this item was reviewed by the Engineering, Operations and Water Resources Committee. Director Breitfelder indicated that this is largely what District staff has been doing for many years now and it is being formally documented to meet the new regulatory requirements. He stated that the law is probably very beneficial for those districts that have not yet developed such plans. President Croucher indicated that the law provided the District an opportunity to clean up its paperwork and consolidate its documentation which will assist the District in becoming more efficient.

Director Robak inquired if the District has a previous SSMP that staff was just updating. General Manager Watton indicated that staff had projected that it would, at some point, be required and the District did have a plan entitled CMOM before the SSMP became a requirement. He stated that the District did have processes and procedures in place because sewer overflows are very expensive. The SSMP formalizes the documentation of these procedures which the District pretty much had in place.

Director Robak inquired what the next steps were. Associate Civil Engineer Kennedy indicated that the next step is the certification with the State Water Resources Control Board on August 2, 2009. It was indicated that the SSMP was developed internally by staff and included the CCTV element of sewer maintenance which is a continuing CIP project that must be done every year.

A motion was made by Director Robak, seconded by Director Breitfelder and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve staffs' recommendation.

- f) **ADOPT RESOLUTION NO. 4140 APPROVING THE SAN MIGUEL CONSOLIDATED FIRE PROTECTION DISTRICT'S PROPOSED FIRE PROTECTION AND EMERGENCY RESPONSE SERVICES ASSESSMENT AND AUTHORIZING THE GENERAL MANAGER TO VOTE "YES" AND SIGN THE OFFICIAL ASSESSMENT BALLOTS (FOUR BALLOTS) ON BEHALF OF THE DISTRICT**

A motion was made by Director Bonilla, seconded by Director Breitfelder and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Lopez and Robak
Noes:	None
Abstain:	Director Croucher
Absent:	None

to approve staffs' recommendation.

## ACTION ITEMS

### 8. BOARD

- a) **DISCUSSION OF 2009 BOARD MEETING CALENDAR**

There were no changes to the board calendar.

- b) ADOPT RESOLUTION NO. 4143 TO AMEND POLICY NO. 8, DIRECTORS COMPENSATION, REIMBURSEMENT OF EXPENSES AND GROUP INSURANCE BENEFITS, AND POLICY NO. 34, STAFF TRAVEL AND BUSINESS RELATED EXPENSES POLICY

General Counsel Yuri Calderon indicated that this item is presented at the direction of by the board to review Policy 8 and provide an opinion. He indicated that a minor modification to the policy is proposed with regard to District sponsorships of community events for the purpose of outreach, providing community contact, and where there is an opportunity for both staff and the board to be present, that reimbursement would not be sought for spouse/guest seats when a table is sponsored. The process for reimbursement is complicated, cumbersome, and in the opinion of counsel, not necessary. Many such events are held in the evening and it is appropriate to have a spouse present. Director Bonilla indicated that he felt that it was important for the District to support community events and have representatives at such events. He stated that he felt that staff and directors were deterred from attending these events as it becomes a financial burden. He indicated that he felt it was beneficial to both the community and the District to participate in such events and is the reason he supports this minor change. Director Lopez indicated that he concurred. President Croucher noted that if individual seats are purchased, that reimbursement will be sought. This change will only affect those sponsorships that include a table. He indicated that he too concurred.

A motion was made by Director Bonilla, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to adopt Resolution No. 4143 approving the amendment to Board of Directors Policy No. 8.

#### INFORMATIONAL ITEMS

- 9. THESE ITEMS ARE PROVIDED TO THE BOARD FOR INFORMATIONAL PURPOSES ONLY. NO ACTION IS REQUIRED ON THE FOLLOWING AGENDA ITEMS.

- a) CAPITAL IMPROVEMENT PROGRAM UPDATE REPORT FOR THE THIRD QUARTER OF FISCAL YEAR 2009 (RIPPERGER)

Engineering Manager Ron Ripperger presented the Fiscal Year 2009 Third Quarter CIP update in which he highlights the status of CIP expenditures, significant issues and progress milestones on major projects.

He noted that the Fiscal Year 2009 CIP consists of 66 projects totaling \$31.9 million. He indicated that the District's CIP is broken down into four categories:

• Capital Facility Projects	\$23,100,000
• Replacement/Renewal	\$ 6,000,000
• Capital Purchases	\$ 2,200,000
• Developer Reimbursements	<u>\$ 600,000</u>
TOTAL:	\$31,900,000

He stated that overall expenditures through the third quarter of Fiscal Year 2009 totaled approximately \$12.3 million, which is approximately 39% of the District's target expenditure for the full fiscal year. He stated that the current forecast for expenditures through June 30, 2009 is \$22.2 million which is 70% of the approved budget. He indicated that the decrease in the projected expenditures is due primarily to the delay of the District's 36-inch pipeline project which is underway at the moment. He noted that construction change orders are at a -.54%.

He presented a slide depicting a map showing the District's major CIP projects, their status and their location within the District's service area. He stated, of the nineteen projects in FY09, one is in the planning stage, three are in design, seven are in construction and eight have been completed and in use. He reviewed the status of the District's flagship projects which included the 850-4 Reservoir, 36-inch Pipeline from FCF No. 14, 1485-1 Pump Station Replacement, Material Storage Bins and Cover, and 450-1 Reservoir Disinfection Facility.

Engineering Manager Ripperger presented slides which provide the status of the various consultant contracts for planning, design, public services, construction/inspection and environmental. He also presented slides providing a listing of all CIP projects planned for Fiscal Year 2009 and the status of each.

Director Robak indicated with regard to the landscaping component for the 850-4 Reservoir, that it was discussed that staff was working with Conservation Manager William Granger to develop the landscaping for the site. He inquired if the plan had been finalized. Engineering Manager Ripperger indicated that staff did work with Conservation Manager Granger and came up with good ideas and changes to the plan which includes replacing the eucalyptus trees because of fire concerns. Staff is also utilizing the same ideas at the 1296-3 Reservoir project.

b) OVERVIEW OF THE SAN DIEGO COUNTY WATER AUTHORITY  
WATER SMART TARGET PROGRAM (GRANGER)

Conservation Manager Granger indicated that the Water Smart Target Program was implemented in early 2007. He indicated that CWA looked at what the City of San Diego had developed and felt that the program could be taken county-wide. He stated that the program essentially takes aerial and remote sense

imagery and the imagery shows various colors that indicate what areas of the property is hard scape, turf grass and shrubbery. From the image, one can determine a water smart target/water budget. These images can be utilized to notify customers and make them aware of programs to assist them in tracking their water use. He stated that ultimately, the images would be available for mixed use accounts. At the moment, however, the District is focusing on large irrigation/landscape accounts.

He indicated that some of the benefits to the District is it is a great customer service tool. The District can look at customers' water use and compare it to a theoretical water budget and share some of the District's programs with customers to help them reduce their landscape water use. The program could also help the District comply with the BMP's if it chose to move forward with the program.

He presented a slide showing the information that would be available in the Water Smart Target Program system (see attached copy of presentation). He indicated that the water smart target varies based on your climatic zone. There are four to five different climatic zones within San Diego County. This District overlaps zones 3 and 4. Because of the zones, a property with the same sized landscape in Jamul may have a different Water Smart Target than a property in Chula Vista.

The images within the Water Smart Target program will be updated every two years, however, it should be updated periodically so current images are available. He stated that ultimately the images in the program would be accessible to property managers, landscape contractors, and other agencies by permission of the property owner.

Conservation Manager Granger indicated that along with this program, the District was provided two interns at no cost from CWA who have been working on Water Smart Target evaluations. He indicated that they are approximately a quarter of the way through the evaluations and the goal is to complete the assessment of all of the District's 1800 irrigation accounts by the end of 2009.

Director Robak inquired which customers the District has been working with on the Water Smart Target evaluations. Conservation Manager Granger indicated that the District has started with potable only and commercial customers (within the customer groups public and commercial). Eventually, the District will develop water targets for mixed used accounts, such as Cuyamaca and Southwestern Colleges.

Director Breitfelder inquired if this was a permanent program. Conservation Manager Granger indicated that the program is funded for one year by CWA. The oversight of the project has been contracted out to CRG whose contract has been extended another year or two. He stated that he believed that eventually CWA will take it over and maintain the program. However, at this time, there are still a lot of enhancements that need to be done.

Director Robak indicated that he felt the logo developed for the program was very good and would be excellent to use to showcase low water use landscapes and in advertising.

## REPORTS

### 10. GENERAL MANAGER'S REPORT

#### GENERAL MANAGER'S REPORT:

General Manager Watton indicated that staff has had its first meeting with the contractor and project manager for the 36-inch Pipeline Project. Staff also met with the El Cajon Sheriff's Office to assure coordination of information to minimize disruption in the community.

He indicated that he attended the Water Conservation Summit and good information was shared and the summit was very worthwhile.

He noted that the District has been holding conservation classes at the Garden and they have been well attended though attendees must pay a fee for the classes. He stated that this is a good indicator of interest in landscape conservation when attendees are willing to pay to attend such classes.

He stated that the District again received awards for its FY 2008-2009 Operating and Capital Budget and Capital Comprehensive Annual Financial Report (CAFR) from the Government Finance Officers Association and the California Society of Municipal Finance Officers.

General Manager Watton indicated that the board was provided in their packet a copy of an article from the *Treasury and Risk Magazine* wherein the District and Union Bank were featured for the operation of the District's lock box and how quickly customer remittances are being deposited.

He noted that the Proposition 218 notices have all been mailed (approximately 63,000 notices). At this time, the District has received three responses to the notices. Staff will forward copies of the responses periodically as they are received.

He shared with regard to recycled water for the Otay Landfill, that it involved the District's recycled water pipeline project (from the City's South Bay Water Reclamation Plant) and the pump station and reservoir site located adjacent to the Landfill. A component of the project was to acquire easements from the Landfill and an agreement to allow the District to place spoil/exported dirt from the adjacent pump station and reservoir site to the Landfill. The District saved approximately \$600,000 on the project by not having to haul the dirt offsite to another location. This is a substantial savings and is a result of the good relationship between the District has with the Otay Landfill. He indicated as part of the agreement, the District will provide a recycled meter and recycled backflow system to the Landfill at not cost (approximate cost of \$88,000). Once the meter

has been installed, the Landfill will start utilizing recycled water for dust control, compaction, etc.

He noted that staff attended the renaming reception for the Los Olivos Wastewater Treatment Plant to *Arturo Herrera Solis Treatment Plant* which was hosted by CESPT. Mr. Herrera, CILA Director, died in a plane crash a few months ago. Mr. Herrera was well respected by the water industry in Tijuana and they wished to recognize him by renaming the plant in his honor.

He stated that the graph on page 8 of his report will be provided each month. The graph shows the District's water purchases, budget and allocation from CWA. The allocations will go into effect on July 1. He stated that the District is still below its allocation and it is expected that we will continue to see the same trend line. We are ahead of the allocation at this time and District customers are still conserving.

#### SAN DIEGO COUNTY WATER AUTHORITY UPDATE:

President Croucher indicated that CWA's board has reviewed its General Manager and General Counsel and they received favorable reviews. Their contracts have been extended though there will not be a pay increase this year.

He stated the groundbreaking ceremony for the San Vicente Reservoir is scheduled on July 9, 2009. He noted that CWA was also continuing to pursue the Bay Delta issues and would continue to travel to Sacramento to keep the issue active and obtain funding. CWA is also continuing to discuss desalination possibilities, not only at Carlsbad, but Camp Pendleton and Mexico. He indicated that both he and General Manager Watton have advised the CWA General Manager, Maureen Stapleton, that Otay is continuing to work on the its desalination project and that it was going well.

CWA is also still focused on water conservation and they are asking each agency to provide a presentation to CWA's board on what they are doing to promote conservation.

He noted that Lake Hodges continues to be an issue between CWA, Olivenhain MWD, the City of San Diego and Santa Fe ID with regard to water quality and maintenance of the lake. The District is following the issue closely to assure that the District, as a member of CWA, does not take on any undue financial burdens from the issue that it should not have to.

#### 11. DIRECTORS' REPORTS/REQUESTS

Director Breitfelder stated that he spoke with Mayor Cox, City of Chula Vista, and indicated to her that the District and the City had many areas of common interest and the District wished to work well with them at all levels. Mayor Cox was very appreciative and asked that the District continue to keep the water flowing.

Director Bonilla indicated that he and General Manager Watton met with Hernando Duran, CESPT, to explore acquiring water rights from Mexico. He stated the desalination project is moving quickly and is looking very positive. He asked that the board direct counsel to review the code to see if anything can be done with regard to rates for customers on fixed incomes. President Croucher indicated that the District has discussed the issue in the past and that there were legal issues associated with doing so. He indicated, however, that Padre Dam MWD had provided a presentation to CWA regarding their rates and had mentioned a lifeline rate. He indicated that the District might explore what their lifeline rate referenced. General Counsel Calderon indicated that he would review and see if there are any legal issues in providing a lifeline rate.

Director Lopez indicated that he attended the AWWA conference in San Diego and had an opportunity to meet a few of the contractors that work with the District. He also attended some of the workshops during the conference. He stated because he works at the convention center, his attendance was free. He also indicated that he has been very involved with the Water Conservation Garden. He attended a full day workshop last Monday to discuss the future and vision of the Garden and to develop a Strategic Plan. General Manager Watton indicated that the Strategic Plan should be completed in mid-August and will address the future funding requirements of the Garden and where the funding will come from.

Director Robak indicated that it was good to hear that there has been good discussion regarding the Garden. He stated that the Garden's mission has become more important due to the water issues. He also shared that he attended the AWWA conference as well. He commended staff for their presentation on the District's GIS System at the conference. He stated that he liked that AWWA was international in scope and that it was very interesting to get different perspectives on water issues. He indicated that the quality of their seminars was very good and he came away with a lot of information.

Director Bonilla indicated that he would like to see the District highlight events at the Garden by posting some of the Garden events in the lobby.

## 12. PRESIDENT'S REPORT

President Croucher presented General Manager Watton his Service Award for five years of service to the District and thanked him for his service.

## RECESS TO CLOSED SESSION

### e) CLOSED SESSION

General Counsel Calderon indicated that the board will be recessing to closed session at 4:41 p.m. to discuss the following matter:

- a) CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION  
[GOVERNMENT CODE §54956.9(a)]

- (I) MULTIPLE CASES RELATED TO THE FENTON BUSINESS CENTER AND FILED WITH THE SUPERIOR COURT OF THE COUNTY OF SAN DIEGO CONSOLIDATED UNDER CASE NO. 37-2007-00077024-CU-BC-SC
- (II) CITY OF BANNING v. JAMES JONES CO., COUNTY OF LOS ANGELES, SUPERIOR COURT, CASE NO. BC 321513

RETURN TO OPEN SESSION

- f) REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION. THE BOARD MAY ALSO TAKE ACTION ON ANY ITEMS POSTED IN CLOSED SESSION

General Counsel Calderon stated that the board reconvened from closed session at 5:12 p.m. and that the board took no reportable actions in closed session.

13. ADJOURNMENT

With no further business to come before the Board, President Croucher adjourned the meeting at 5:12 p.m.

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
District Secretary



# AGENDA ITEM 7a

## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Kelli Williamson, <i>KW</i> Human Resources Manager	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)	Rom Sarno, Chief, Administrative Services <i>[Signature]</i>		
APPROVED BY: (Asst. GM):	German Alvarez, Assistant General Manager, Finance and Administration <i>Ga</i>		
SUBJECT:	Adopt Resolution #4149 to Revise the Use of District Vehicles and Car Allowance Board Policy #14 and the Tobacco Free Campus Board Policy #19 (Smoking Policy)		

### GENERAL MANAGER'S RECOMMENDATION:

That the Board adopt Resolution #4149 to Revise the Use of District Vehicles and Car Allowance Board Policy #14 and the Tobacco Free Campus Board Policy #19 (Smoking Policy).

### COMMITTEE ACTION: \_\_\_\_\_

See Attachment "A".

### PURPOSE:

To request the Board approve revisions to Board Policies.

### ANALYSIS:

Use of District Vehicle Board Policy #14 (Attachment B)

Updates to this policy include clarification that employees should not engage in activities that would distract them while driving to ensure a safer driving experience (ie: eating, use of cell phones), updates to the section regarding employees not smoking in vehicles, and other minor updates. In addition, the updates include removing the section regarding Board of Directors checking out a District vehicle to drive to and from meetings since Board members are provided mileage reimbursement and have not used this section of the policy.

Tobacco Free Campus Board Policy #19 (Attachment C)

The use of tobacco products at work can cause a health risk to the public and to employees; for both the user and non-user. In addition, smokeless tobacco product use have hygiene specific issues, besides the obvious adverse health affects for the user. In order to promote the health, safety and wellness of all employees, the "Tobacco Free Campus" policy will enhance the District's Safety and Wellness Programs. The policy specifically bans the use of tobacco products while on District property and field locations.

Through the District's Wellness Program, employees who currently use tobacco products may choose to access the Smoking Cessation Program which will generally cover the cost of cessation programs and provide the employee a \$200 incentive for staying tobacco-free for six months.

These policy updates have been provided to the Employee Association for review. The Association provided no comments or input.

Resolution #4149 (Attachment D)

It is requested that the Board of Directors adopt Resolution #4148 in support of the proposed revisions to the above-referenced Policies.

**FISCAL IMPACT:**



None.

**STRATEGIC GOAL:**

Optimize the District's Operating Efficiency.

**LEGAL IMPACT:**

\_\_\_\_\_

None.



**General Manager**

- Attachment A - Committee Action
- Attachment B - Use of District Vehicle Board Policy #14
- Attachment C - Tobacco Free Campus Board Policy #19
- Attachment D - Resolution #4149



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Adopt Resolution #4149 to Revise the Use of District Vehicles and Car Allowance Board Policy #14 and the Tobacco Free Campus Board Policy #19 (Smoking Policy)
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### COMMITTEE ACTION:

The Finance, Administration and Communications Committee reviewed this item at a meeting held on September 14, 2009 and the following comments were made:

- Staff is proposing revisions to Board Policies No. 14, Use of District Vehicles, and No. 19, Tobacco Free Campus (formerly known as Smoking Policy).
- The policy revisions were reviewed with the Safety Committee, Employee Association and management. No comments were received from the Employee Association.
- The changes to Board Policy No. 14, Use of District Vehicle include:
  - Prohibits eating, cell phone use, texting, etc. while driving.
  - Updates the section regarding smoking in District vehicles, prohibiting smoking in all District vehicles.
  - Deletes language regarding Directors use of pool vehicles as board members are provided mileage reimbursements and have not been using this section of the policy.

Changes to Board Policy No. 19, Tobacco Free Campus (formerly known as Smoking Policy) include:

- Prohibiting the use of tobacco products on all District property to maintain a safe and productive working environment for employees and eliminate threats to employee health (it was noted that the District has a smoking cessation program available to employees).

The committee supported staffs' recommendation and presentation to the full board on the consent calendar.

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
USE OF DISTRICT VEHICLES AND CAR ALLOWANCE	14	7/1/85	10/7/09

PURPOSE

To prescribe rules and regulations for the use of District vehicles by Directors and employees of the District and car allowance.

BACKGROUND

Certain District vehicles are made available for the use by designated employees and Directors during business hours and in some instances during off-duty hours.

POLICY

The following rules shall apply to the use of District vehicles:

## 1. Executive Management

Certain District vehicles are assigned to specific executive management employees on a 24-hour basis, including personal use. These vehicles are pursuant to employment agreements authorized by the Board of Directors or General Manager. A list of District vehicles assigned to District employees is maintained by Human Resources.

## 2. Automobile Allowance

Executive staff consisting of Department Chiefs and Assistant General Managers may be provided a vehicle allowance, in lieu of a vehicle, as determined by the General Manager. These employees shall be required to maintain automobile insurance at least at the minimum levels required by state law. These employees shall use their personal vehicles to conduct District business within San Diego County and may only use District vehicles for business trips out of San Diego County, or in unusual circumstances (i.e., 4-wheel drive necessary).

When using their personal vehicles, all operating expenses are to be borne by these employees except employees may receive reimbursement for mileage at established rates for portions of any trips that are taken on District business outside San Diego County.

3. Certain District service vehicles are assigned to specific management, supervisory, and crew leader positions on a 24-hour per day basis for emergency purposes. A list of District vehicles assigned to District employees is maintained by Human Resources. Such personnel are authorized to use the vehicles

OTAY WATER DISTRICT  
**BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
USE OF DISTRICT VEHICLES AND CAR ALLOWANCE	14	7/1/85	10/7/09

assigned to them day or night to respond to District business requirements.

Each person is also authorized to use the vehicle for transportation to and from his residence and to store the vehicle at his residence when the vehicle is not being used for District business. The above personnel may also use the vehicle for educational activities, personal errands during lunch breaks and on their way to and from work, and for medical appointments occurring during work hours. Other use of such vehicles is not authorized. Transportation of non-district personnel for non-district business requires the approval of the General Manager or designee. Employees must comply with all District policies, procedures and must remain sensitive to the public's perception of them while using District vehicles. The transportation of firearms, alcoholic beverages or illegal drugs is prohibited.

Each employee assigned a District vehicle is responsible for Social Security and income taxes relating to the commuting value and will comply with Internal Revenue Service regulations relating to de minimis use.

4. Use of other District vehicles (i.e., pool vehicle) outside of normal business hours may be made only upon prior approval of the General Manager or designee.

5. Use of any District vehicle outside of San Diego County may be made only with the prior approval of the General Manager or designee.

6. District employees may use District pool vehicles only for transportation required to perform their official District duties. Authorization must be obtained from General Manager or designee to transport non-District personnel in pool vehicle while on District Business.

7. Only when a District pool vehicle is not available, may District employees, other than those mentioned in paragraph "1" above, use their own private vehicles for transportation required to perform their official District duties and only if the employee maintains automobile insurance in at least the minimum amounts required by state law. In such instances, the employee shall receive reimbursement for mileage at established rates. Authorization must be obtained from General Manager or designee to transport non-District personnel in own private vehicle while on District Business.

8. The use of tobacco products, as defined in Board Policy 19, is prohibited in all District vehicles, including those assigned

OTAY WATER DISTRICT  
**BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
USE OF DISTRICT VEHICLES AND CAR ALLOWANCE	14	7/1/85	10/7/09

to an employee and all vehicles available to employees for general District business such as pool vehicles, utility trucks, Vector trucks, heavy equipment, etc.

9. While driving, all activities that would distract an employee from driving a District vehicle safely are prohibited (i.e., eating, and drinking). The use of cell phone, while driving, must comply with state law. Message texting is prohibited in a moving vehicle. Passengers are also discouraged from the above activities when they are needed to assist a driver to safely maneuver a vehicle. Occasional snacks are acceptable as long as it does not distract the driver or passenger from the primary task of driving or assisting the driver.

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
USE OF DISTRICT VEHICLES AND CAR ALLOWANCE	14	7/1/85	<del>4/13/04</del> 0/7/09

PURPOSE

To prescribe rules and regulations for the use of District vehicles by Directors and employees of the District and car allowance.

BACKGROUND

Certain District vehicles are made available for the use by designated employees and Directors during business hours and in some instances during off-duty hours.

POLICY

The following rules shall apply to the use of District vehicles:

~~1. Board of Directors~~

~~Board Directors may check out a District vehicle to drive to and from approved meetings by reserving dates with the District Secretary.~~

2.1. Executive Management

Certain District vehicles are ~~leased for or~~ assigned to specific executive management employees on a 24-hour basis, including personal use. These vehicles are pursuant to employment agreements authorized by the Board of Directors or General Manager. A list of District vehicles assigned to District employees is maintained by Human Resources.

3.2. Automobile Allowance

Executive staff consisting of Department Chiefs and Assistant General Managers may be provided a vehicle allowance, in lieu of a vehicle, as determined by the General Manager. These employees shall be required to maintain automobile insurance at least at the minimum levels required by state law. These employees shall use their personal vehicles to conduct District business within San Diego County and may only use District vehicles for business trips out of San Diego County, or in unusual circumstances (i.e., 4-wheel drive necessary).

When using their personal vehicles, all operating expenses are to be borne by these employees except employees may receive reimbursement for mileage at established rates for portions of any trips that are taken on District business outside San Diego County.

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
USE OF DISTRICT VEHICLES AND CAR ALLOWANCE	14	7/1/85	<del>4/13/04</del> 0/7/09

4.3. Certain District service vehicles are assigned to specific management, supervisory, and crew leader positions on a 24-hour per day basis for emergency purposes. A list of District vehicles assigned to District employees is maintained by Human Resources. Such personnel are authorized to use the vehicles assigned to them day or night to respond to District business requirements.

Each person is also authorized to use the vehicle for transportation to and from his residence and to store the vehicle at his residence when the vehicle is not being used for District business. The above personnel may also use the vehicle for educational activities, personal errands during lunch breaks and on their way to and from work, and for medical appointments occurring during work hours. Other use of such vehicles is not authorized. Transportation of non-district personnel for non-district business requires the approval of the General Manager or designee. Employees must comply with all District policies, procedures and must remain sensitive to the public's perception of them while using District vehicles. The transportation of firearms, alcoholic beverages or illegal drugs is prohibited.

Each employee assigned a District vehicle is responsible for Social Security and income taxes relating to the commuting value and will comply with Internal Revenue Service regulations relating to de minimis use.

5.4. Use of other District vehicles (i.e., pool vehicle) ~~during~~ ~~or~~ outside of normal business hours may be made only upon prior approval of the General Manager or designee.

6.5. Use of any District vehicle outside of San Diego County may be made only with the prior approval of the General Manager or designee.

7.6. District employees may use District pool vehicles only for transportation required to perform their official District duties. Authorization must be obtained from General Manager or designee to transport non-District personnel in pool vehicle while on District Business.

8.7. Only when a District pool vehicle is not available, may District employees, other than those mentioned in paragraph "1" above, use their own private vehicles for transportation required to perform their official District duties and only if the employee maintains automobile insurance in at least the minimum amounts required by state law. In such instances, the employee shall receive reimbursement for mileage at established rates.

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
USE OF DISTRICT VEHICLES AND CAR ALLOWANCE	14	7/1/85	<del>4/13/04</del> 0/7/09

Authorization must be obtained from General Manager or designee to transport non-District personnel in own private vehicle while on District Business.

8. ~~9. — In accordance with~~ The use of tobacco products, as defined in Board Policy 19, ~~smoking~~ is prohibited in all District vehicles, including those assigned to an employee and all vehicles available to employees for general District business such as pool vehicles, utility trucks, Vector trucks, heavy equipment, etc.

9. While driving, all activities that would distract an employee from driving a District vehicle safely are prohibited (i.e., eating, and drinking). The use of cell phone, while driving, must comply with state law. Message texting is prohibited in a moving vehicle. Passengers are also discouraged from the above activities when they are needed to assist a driver to safely maneuver a vehicle. Occasional snacks are acceptable as long as it does not distract the driver or passenger from the primary task of driving or assisting the driver.

# ATTACHMENT C

## OTAY WATER DISTRICT BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
TOBACCO FREE CAMPUS	19	3/6/89	10/07/09

### PURPOSE

To establish the policy regarding the use of tobacco products on District property. This policy applies to all employees, consultants, volunteers and visitors while on District property and areas designated as District field work sites.

### POLICY

1. Otay Water District is dedicated to maintaining a safe and productive working environment for its employees and is committed to taking appropriate action to eliminate threats to employees' health and safety posed by the use of tobacco products. "Use" means a method of consuming tobacco products, including but not limited to smoking, inhaling and chewing. "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis or any other preparation of tobacco.
2. This policy prohibits the use of tobacco products within District controlled properties where employees and other persons will be exposed to secondhand smoke and smokeless tobacco residue. Hence, the use of tobacco products is prohibited on all District-owned property and on District designated field work sites.
3. No ashtrays or other ash receptacles will be placed in areas where the use of tobacco products is prohibited. The only exceptions will be outside the public entrances to District facilities, in order to assist visitors in discarding of their tobacco product.

### RESPONSIBILITY

Managers and supervisors are responsible for enforcing this policy in areas under their control.

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
<del>SMOKING POLICY</del> <u>TOBACCO FREE CAMPUS</u>	19	3/6/89	<del>4/13/04</del> <u>0/7/09</u>

PURPOSE

To establish the policy regarding ~~smoking~~ the use of tobacco products ~~in on~~ District facilities property. located within the County of San Diego. This policy applies to all employees, consultants, volunteers and visitors while on District property and areas designated as District field work sites ~~of these facilities.~~

REFERENCE

~~County of San Diego Smoking Ordinance #7519.~~

POLICY

1. Otay Water District is dedicated to maintaining a safe and productive working environment for its employees and is committed to taking appropriate action to eliminate threats to employees' health and safety posed by the use of smoking tobacco products. "Use" means a method of consuming tobacco products, including but not limited to smoking, inhaling and chewing. "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis or any other preparation of tobacco. ~~The provisions of this policy are consistent with the San Diego County Ordinance which prohibits smoking in public places and in places of employment, except in areas specifically designated for smoking.~~
2. This policy prohibits the use of tobacco products within District controlled properties where employees and other persons will be exposed to secondhand smoke and smokeless tobacco residue. Hence, the use of tobacco products is prohibited on all District-owned property and on District designated field work sites. ~~In the event a question arises concerning the application or interpretation of policy, preferential consideration will be given to the non-smoker.~~
3. No ashtrays or other ash receptacles will be placed in areas where ~~smoking~~ the use of tobacco products is prohibited. The only exceptions will be outside the public entrances to District facilities, in order to assist visitors in discarding of their tobacco product.
4. ~~Smoking is prohibited in:~~
  - ~~1. All Administrative and Operations work areas.~~
  - ~~2. All rest rooms.~~

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
<del>SMOKING POLICY</del> <u>TOBACCO FREE CAMPUS</u>	19	3/6/89	<del>4/13/04</del> <u>10/7/09</u>

- ~~3. All conference rooms and meeting rooms.~~
- ~~4. All hallways.~~
- ~~5. All lobbies.~~
- ~~6. All storage areas.~~
- ~~7. All District vehicles, including those assigned to an employee as stated in Policy 14 of this Code of Ordinance and all vehicles available to employees for general District business such as pool vehicles, utility trucks, Vector truck, heavy equipment, etc.~~

~~5. Smoking is permitted only in open air outdoor areas not covered in Section 4 above.~~

~~NOTE: Smoking areas may not be designated in areas where employees must walk through to get to no smoking areas, and within 20 feet of a main exit, entrance, or operable window of a public building.~~

RESPONSIBILITY

~~Department and Division Managers~~Managers and supervisors are responsible for enforcing this policy in areas under their control.

RESOLUTION NO. 4149

RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
OTAY WATER DISTRICT  
TO REVISE POLICY 14 CONCERNING USE OF  
DISTRICT VEHICLES AND CAR ALLOWANCE AND  
POLICY 19 CONCERNING TOBACCO FREE CAMPUS

WHEREAS, the Board of Directors of Otay Water District wishes to clearly communicate the District's position of maintaining a safe work environment for employees and the public by creating a tobacco free campus and clearly expressing the rules and regulations for the use of District vehicles; and

WHEREAS, it is the policy of the District to provide a clear policy regarding the rules and regulations for employees use of District vehicles; and

WHEREAS, the use of tobacco products at work can cause a health risk to the public and employees; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Otay Water District revise Policy 14, "Use of District Vehicles and Car Allowance" and Policy 19, "Tobacco Free Campus"; and

BEING FURTHER RESOLVED that the Board directs the staff of the District to comply with the provisions of revised Policy 14, "Use of District Vehicles and Car Allowance" and revised Policy 19, "Tobacco Free Campus".

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Otay Water District at a regular meeting held this 7th of October, 2009.

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President

ATTEST:

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Secretary



# AGENDA ITEM 7b

## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Kelli Williamson, <i>KW</i> Human Resources Manager	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)	Rom Sarno, Chief of Administrative Services, <i>RS</i>		
APPROVED BY: (Asst. GM):	German Alvarez, Assistant General Manager, Finance and Administration, <i>GA</i>		
SUBJECT:	Approve replacing a current Preferred Provider Organization Plan (PPO) with a new Health Maintenance Organization Plan (HMO) through SDRMA and obtain Board approval for certain required changes to Agreement with the dental network Third Party Administrator (TPA)		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Board:

- 1) Approve replacing a current PPO (Silver Plan) with a new HMO through the Special District Risk Management Authority (SDRMA); and
- 2) Authorize the General Manager to execute an Amendment to the existing Service Agreement with Delta Health Systems Corporation (Delta), the District's TPA, to replace the dental network and to extend the term of the agreement.

**COMMITTEE ACTION:** \_\_\_\_\_

See Attachment A.

**PURPOSE:**

To present information to the Board concerning new developments affecting the District's Health and Dental Benefits and to obtain Board approval for certain actions to be taken by the District.

## **ANALYSIS:**

### ***Health Benefits***

In January 2008, the District made available three new medical health plans through its health benefits insurer, SDRMA. The three plans are Gold PPO, Silver PPO and an EPO plan. Prior to signing up with SDRMA, the District was self-insured for both health and dental benefits. Two of the reasons the District decided to sign-up with SDRMA plans in 2008 were to save money, and to give Staff a choice between a PPO plan and an HMO plan. At that time, SDRMA did not offer a true HMO plan but offered the EPO which is similar to an HMO in that it has a lower out of pocket cost to the employee. Recently, the District was made aware that SDRMA now offers two new HMO plans (An Access+ HMO 15 and an Access+ HMO 20).

Due to inherent selection risk involved, SDRMA will not allow any of its members to offer more than three health plan options to its employees. Since the District already offers three options, it may not "add" a new plan to the current coverage options. However, SDRMA will allow the District to replace one of the existing plans with the new HMO plan. Staff is recommending replacing the Silver PPO Plan with the Access+ HMO 15 Plan.

Staff recommends replacing the Silver PPO Plan as this is the least utilized plan. In fact, currently there are no participants in this plan. The Staff also believes that the Silver PPO Plan is the least beneficial plan currently available to the employees (e.g. high deductibles and higher out of pocket expenses than the new Access+ HMO 15 Plan). Although the Access+ HMO 15 Plan and Access+ HMO 20 Plan are exactly the same with respect to the yearly deductibles and maximum co-insurance amounts, the Access+ HMO 15 Plan offers lower co-pays and lower out of pocket expenses.

### ***Dental Benefits***

Although the District joined SDRMA's for health benefits, it remained self-insured for dental benefits. The District entered into a Services Agreement, dated January 1, 2008 (the "Dental TPA Agreement") with a Third Party Administrator (TPA), Delta. (Attachment B). The current Agreement is set to expire on December 31, 2009 and by the end of the agreement the District will have paid approximately \$34,000 in fees to the TPA.

At a recent Strategic Planning Review meeting with the District's Benefits Broker, Willis, the Staff was informed that the dental network selected under the Dental TPA agreement, Community Dental Network (CDN), will dissolve by the end of the year. A new dental network, First Dental Health Network (First Dental), will replace CDN. According to our broker, First Dental will offer a wider pool of in-network dentists and will also offer greater discounts to employee claims as well as to the District. Dental premiums for our 2010 open enrollment will remain the same.

In addition, the District will be adding an EPO dental option plan which will further save the employees and the District by receiving greater claims discounts.

To accomplish the replacement of CDN with First Dental, the District will need to amend one of the Exhibits to the Dental TPA Agreement. In addition, the Staff recommends that the Dental TPA Agreement be extended for an additional two years. This request is being presented to the Board because it is anticipated that the aggregate fees paid to the TPA will exceed the General Manager's authority during the proposed extension period.

**FISCAL IMPACT:**



The Silver PPO Plan is the least expensive plan due to its high-deductibles and higher out of pocket expenses. As such, it is the least desirable plan for participants. This is confirmed by the fact that no one is currently on the plan and last year there were only two participants who chose the Silver PPO Plan.

By replacing the Silver PPO Plan with the Access+ HMO 15 Plan, the District estimates that the change will be close to being cost-neutral. Since the Tier III retiree health benefits are tied to the lowest-cost health plan, and the lowest-cost health plan will change to the Gold PPO Plan, there will be an increase of approximately \$20,000 per year to fund the retiree health benefits. However, if approximately 30% (estimated) of the employees who have the EPO plan change to the Access+ HMO 15 Plan, there would be an anticipated cost-savings of approximately \$16,000 per year; with a net cost to the District of approximately \$4,000 per year. The District is uncertain how cost-neutral this option will be and we will not know for certain until after open enrollment when employees have made

their final selections. At the most, this change will be an increase of approximately \$20,000 per year.

In addition, the addition of the EPO dental option will save the District approximately \$8,500 per year based on recent past claims experience.

**STRATEGIC GOAL:**

District's FY 09-11 Strategic Plan related to "Retaining a dedicated workforce."

**LEGAL IMPACT:** \_\_\_\_\_

None.



\_\_\_\_\_  
**General Manager**

Attachment A - Committee Action

Attachment B - Dental TPA Agreement with Delta Health Systems  
effective January 1, 2008



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Approve replacing a current Preferred Provider Organization Plan (PPO) with a new Health Maintenance Organization Plan (HMO) through SDRMA and obtain Board approval for certain required changes to Agreement with the dental network Third Party Administrator (TPA)
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### COMMITTEE ACTION:

The Finance, Administration and Communications Committee reviewed this item at a meeting held on September 14, 2009 and the following comments were made:

- Staff is prepping for the upcoming open enrollment period for Health Benefits.
- When the District initially switched to SDRMA as its health benefits insurer in January 2008, staff had wanted to add a HMO plan as an option. SDRMA, at the time, did not have a HMO plan. The District has been informed that SDRMA will begin providing two HMO plan options (Access+HMO 15 and Access+HMO 20) in January 2010.
- The District currently provides an EPO, Gold PPO and Silver PPO as options. SDRMA allows its members to provide only three health plan options. Staff is proposing that the District replace the Silver PPO with the Access+HMO 15 option. There are no employees on the Silver PPO plan at this time so there will be no impact to employees by replacing the plan.
- Because the Gold PPO plan will become the least expensive plan, there will be a cost associated with adding the HMO as an option. However, if 30% of employees move from the EPO to the HMO option, the cost will be approximately the same as the District's current plan.
- It was noted that the change will not cost the employees more, it will just add another medical plan option for employees to choose from. Employees out-of-pocket cost will be based on the plan they select.

- It was discussed that the proposed change was presented to the Employee Association and they were supportive of the change.
- Staff is also proposing the District replace its dental network (currently CDN) with First Dental Health Network as CDN will be dissolving by the end of the year. First Dental Health Network has a larger pool of in-network dentists and will also offer greater discounts to employee claims and to the District. The District will also be adding an EPO dental option plan. If employees choose the EPO plan it will provide further claims discounts to employees and the District.

The committee supported staffs' recommendation and presentation to the full board on the consent calendar.



## ADMINISTRATIVE AGREEMENT

**This Agreement**, dated as of *January 1, 2008* shall be between *Otay Water District* having its principal office at *2554 Sweetwater Springs Blvd Spring Valley, CA 91978* and *Delta Health Systems Administrative Corporation* ("Delta"), a California corporation having its principal office at *1234 West Oak Street, Stockton, CA 95203*.

When the Client is acting as the Plan Sponsor (as defined in ERISA) under this Agreement, it will be referred to as the "Plan Sponsor," and when it is acting as the Plan Administrator (again, as defined in ERISA) under this Agreement, it will be referred to as the "Plan Administrator." As Plan Sponsor, the Client is acting in its capacity as the settler of the Plan; and, as the Plan Administrator, it is acting in its fiduciary capacity.

### WITNESSETH:

**Whereas**, the Client, as the Plan Sponsor, has established an employee welfare benefit plan (as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) for the purpose of providing certain benefits to eligible participants; and

**Whereas**, it is the Plan Sponsor's desire that Delta provide certain administrative services with respect to the Plan, and Delta is willing to provide such services, subject to the terms and conditions hereof.

**Now, therefore**, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

#### 1. Responsibilities.

- a. **Responsibilities of Delta.** Delta shall assume responsibility for the specific administrative duties set forth on Attachment "A," which is attached to, and made a part of, this Agreement. Delta shall accept no responsibility for the work performed by any prior third party administrator, nor does Delta agree to reevaluate, reprocess or readjust claims or work previously done by a prior administrator unless otherwise agreed upon. Delta will perform additional administrative duties resulting from changes in benefit plans or procedures as the Plan Administrator may legally, properly and reasonably assign for a fee agreed upon in advance in writing.
- b. **Responsibilities of the Plan Sponsor and the Plan Administrator.** The Plan Sponsor and the Plan Administrator shall assume responsibility for the specific duties set forth on Attachments "B" and "C," respectively, which are attached to, and made a part of, this Agreement.

2. **Compensation.** In consideration of services to be provided under this Agreement, the Plan Sponsor agrees to pay Delta the fees and reimbursements set forth on Attachment "D," which is attached to, and made a part of, this Agreement. Services not specifically set forth on Attachment "A" may be subject to an additional fee. Delta agrees to provide the Plan Sponsor with sixty (60) days' prior written notice in the event of Delta's adjustment of its fees.

Delta reserves the right to adjust administrative fees stated in this agreement when a division, a subsidiary or an affiliated Client is added or deleted from this agreement or if the number of participants decreases by 15% from the average of the last three months average enrollment.

3. **Ownership of Books and Records; Access by Plan Administrator.** Delta acknowledges that all records and files maintained by it with regard to the Plan are the property of the Plan Administrator. Delta will not be held liable for errors in keeping any records required under this Agreement, except if such errors are the result of its gross negligence or willful or reckless misconduct. In the event the Plan Administrator or its employees accesses the Plan's records or files, whether to update eligibility information, process claims or perform some other function, the Plan Administrator acknowledges and agrees that Delta shall have no responsibility or liability in connection with any actions taken by the Plan Administrator or its employees.
4. **Delta Insurance.** For the protection of the Plan and its participants, Delta shall maintain, at its own expense, errors and omissions coverage, which shall meet the requirements of ERISA and any applicable state laws and regulations.
5. **Plan Documentation.** Delta agrees to prepare, as outlined in Attachment "D", an initial Plan Document and Summary Plan Description (collectively, the "Plan Documents") for approval by the Plan Sponsor. Delta further agrees to prepare, at the request of the Plan Sponsor, Plan amendments to modify a provision of coverage and will assist the Plan Administrator in the preparation of notices to Plan participants. In the event the Plan Sponsor elects to prepare, or have a third party prepare, its Plan Document, Summary Plan Description or amendments, the Plan Sponsor acknowledges and agrees that Delta shall have no responsibility or liability in connection with such Plan Document, Summary Plan Description or amendments, and that Delta shall be indemnified and held harmless against all claims, damages, liabilities, reasonable attorneys' fees and expenses in connection with any claim, action, suit, proceeding, settlement or compromise thereof, relating to such documents.
6. **Confidential and Proprietary Information.** Delta shall at all times maintain and protect the confidentiality of Plan information and records, but shall provide with the Client's consent, to the extent permitted by applicable law, cooperation, information and service to other providers of services to the Plan. The Client acknowledges that Delta's proprietary computer software, records, reports, forms, documents and business methods remain the sole property of Delta and may not be duplicated or disclosed in any manner.

7. **Acknowledgment of Certain Responsibilities.** The Client acknowledges that it is the Plan Administrator and the Plan Sponsor of the Plan. This provision may be disclosed by Delta in any communication, whether oral or written, including, without limitation, periodic statements to the Plan Sponsor, the Plan Administrator or the Plan participants. The parties explicitly agree and affirm that the Plan Administrator is the fiduciary of the Plan and, to the extent permitted by law; Delta is not a fiduciary and has no fiduciary responsibility with respect to the Plan. The Plan Sponsor acknowledges that it has exclusive responsibility for the design and funding of the Plan, but acknowledges that it may not be amended during the term hereof except by statute or with prior notice to Delta (although Delta's consent to any amendment is not required).

It is agreed that Delta does not have discretionary authority or discretionary control respecting management of the funds, payment or non-payment of claims or any other determination with respect to the Plan and the participants' rights in the Plan. To the extent discretion must be used in making any decision regarding a claim or an appeal of a denial, Delta shall refer the claim, together with its recommendation and any medical information needed to make a determination with respect to the claim, to the Plan Administrator, who shall have the sole authority to make discretionary decisions with respect to the Plan.

8. **Prescription Drug Cards.** In the event the Plan includes prescription drug benefits and participants in the Plan are issued cards in connection with those benefits, the Plan Administrator acknowledges and agrees that it is responsible for collecting such cards when a participant's coverage under the Plan terminates, that it is liable for any misuse of such cards following a participant's termination and that Delta has no liability in connection therewith.
9. **Additional Payments to Claimants.** The Plan Administrator may, by written notice to Delta signed by an executive officer of the Plan Administrator, instruct Delta to pay claims, which are not payable under the Plan based upon the Plan Documents, upon the condition that such instruction expressly releases Delta from any liability in connection therewith. The Plan Administrator hereby acknowledges that such payments will not qualify for credit toward excess or stop loss insurance coverage, if any, and, as such, are considered "outside" the Plan. The Plan Administrator assumes all legal requirements for such payments.
10. **Self Funded Benefits; Insurance.** The Plan is funded exclusively by Plan Sponsor and, if the Plan Sponsor so elects, participant contributions. Delta shall have no responsibility or liability for the adequacy or sufficiency of funds in the Plan. Benefits under the Plan are payable only if and to the extent any such funds are sufficient to pay related expenses and/or insurance premiums required to maintain stop loss, excess or other related insurance in force. Upon payment of the premiums in connection therewith, there will be in effect stop loss or excess loss insurance. The parties acknowledge that it is the responsibility of the Plan Sponsor to determine if such insurance coverage is needed, to obtain such insurance coverage, to determine the terms and conditions of such coverage and to provide the funds needed to pay the premiums thereon.

Delta agrees that it shall, as soon as practicable, inform the Plan Sponsor of the cancellation of, or reduction in the amount of, such insurance if Delta is notified; but, the Plan Sponsor shall, at all times, remain responsible for providing funds sufficient to pay such insurance premiums as well as Plan benefits. The Plan Sponsor acknowledges that Delta may notify Plan participants of the Plan Sponsor's inability to fund premiums due if not paid within thirty (30) days of their due date.

11. **Broker Services.** In the event the Plan Sponsor elects to utilize the services of a broker (the "Broker"), the Plan Sponsor agrees to defend, indemnify and hold Delta harmless against all claims, damages, liabilities, reasonable attorneys' fees and expenses resulting from actions of, or services provided by, the Broker. The Plan Sponsor further agrees that, in the event stop loss, excess loss or similar insurance is obtained through the Broker, Delta shall be indemnified and held harmless against all claims, damages, liabilities, reasonable attorneys' fees and expenses in connection with any claim, action, suit, proceeding, settlement or compromise thereof, relating to such insurance. The Plan Sponsor acknowledges that Delta has no ownership or affiliation with the Broker.
  
12. **Indemnification.**
  - a. **By Delta.** Delta agrees to defend, indemnify, and hold the Client harmless against all claims, damages, liabilities, reasonable attorneys' fees and expenses reasonably incurred or imposed on it in connection with any claim, action, suit, proceeding, settlement or compromise thereof related to any breach of this Agreement by Delta or any negligent or other tortious or criminal conduct of Delta, its agents or employees. The right to be defended, indemnified and held harmless hereunder shall extend to the employees of the Client, their heirs, personal representatives and assigns. Delta shall immediately notify the Client of any lawsuits or actions, or any threat thereof that may become known to Delta that might adversely affect any interest of the Client.
  
  - b. **By the Client.** The Client agrees to defend, indemnify, and hold Delta harmless against all claims, damages, liabilities, reasonable attorneys' fees and expenses reasonably incurred or imposed on it in connection with any claim, action, suit, proceeding, settlement or compromise thereof related to (a) any breach of this Agreement by the Client; (b) any negligent or other tortious or criminal conduct of the Client, its agents or employees; (c) any claim for benefits under the Plan. The right to be defended, indemnified and held harmless hereunder shall extend to the employees of Delta, their heirs, personal representatives and assigns. The Client shall immediately notify Delta of any lawsuits or actions, or any threat thereof that may become known to the Client that might adversely affect any interest of Delta.
  
13. **Dispute Resolution.** Any dispute, which may arise between the parties as to the proper interpretation or application of this Agreement, shall be governed by the laws of the State of California. In the event any legal action or other proceeding shall be instituted with respect to a breach of any of the provisions of this Agreement and such a breach shall be held to have occurred, then the prevailing party shall be entitled to recover all expenses incurred in connection with such action or proceeding, including reasonable attorneys' fees, through any appeal.
  
14. **Term and Termination.** The initial term of this Agreement shall be for two year(s), beginning on *January 1, 2008*. This Agreement shall automatically renew for successive one-year terms unless otherwise terminated in accordance with this Agreement. Either party to this Agreement may terminate it by giving written notice thereof to the other at least sixty (60) days prior to the end of the first year or any successive year of the Agreement. Such termination shall be effective on the last day of the initial term or any successive term. The provisions of Section 12 shall

survive the termination of this Agreement. Delta may resign without prior notice at any time, if the Plan Sponsor does not supply sufficient funds to pay approved claims, premiums or any fees within thirty (30) days of notice by Delta of the amount due.

As of the date of its termination of this Agreement or of its resignation, as aforesaid, to administer the Plan, Delta will provide the Plan Administrator, or such agent designated in writing by the Plan Administrator, standard claims history information of not more than two years in the form of a computer printout or electronic media. Delta shall not destroy or otherwise dispose of any Plan records in its possession or custody after the termination of this Agreement unless possession or custody is first offered to the Plan Administrator in writing.

15. **Assignment.** Neither party may assign its rights or obligations hereunder, except as specifically provided herein, without the prior written consent of the other. This Agreement shall not be construed as granting any rights in favor of any persons other than the parties and their successors and permitted assigns.

16. **Notices.** All notices hereunder shall be in writing and delivered by hand, by U.S. first-class mail or by overnight delivery. Notices to Delta shall be directed to it as follows:

Leslie Hirschfield, VP, Consumer & Corporate Services  
Delta Health Systems Administrative Corporation  
1234 West Oak Street  
P.O. Box 1147  
Stockton, CA 95201

Notices to the Client shall be directed to it as follows:

Otay Water District  
2554 Sweetwater Springs Blvd  
Spring Valley, CA 91978

Either party may designate another address at any time by appropriate written notice to the other.

17. **Entire Agreement; Modification.** This Agreement represents the entire agreement between the parties relating to the subject matter hereof. No provision of this Agreement may be modified, except in writing, signed by the parties.

18. **Controlling Law.** This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws provisions.

19. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their successors and permitted assigns.

In Witness Whereof, the parties have caused this Agreement to be executed as of the date first above written.

DATE:

12.4.07

THE CLIENT

By: Keel M. Ullrich

Its Duly Authorized Human Resources Manager

Tax ID Number: 95-2049267

DATE:

12/11/07

DELTA HEALTH SYSTEMS  
ADMINISTRATIVE CORPORATION

By: David Hirschfeld

It's Duly Authorized  
VP, Consumer and Corporate Services

**ATTACHMENT "A"  
TO  
ADMINISTRATIVE AGREEMENT**

**Duties and Responsibilities of Delta Health Systems**

During the term of the Agreement, Delta agrees to perform the following services:

- 1. Supplies.** Provide all standard supplies necessary with respect to the Plan, including enrollment materials, claim forms and other related documents.
- 2. Plan Documents.** Provide benefit booklets and standard documents to communicate the benefits available to participants in the Plan and to consult with them when necessary regarding the proper methods of submitting claims for benefits. Charges for such booklets, documents and consultation are set forth in Attachment "D."
- 3. Communications Regarding Claims.** Communicate in appropriate instances with physicians, hospitals and other persons or institutions supplying medical or other services, in order to clarify or verify claims.
- 4. Claims Processing.** Review, process and adjust claims, in accordance with the Plan Documents, which are incurred on or after the Effective Date of this Agreement and are received by Delta prior to the termination of this Agreement. This includes verifying eligibility; checking for pre-existing conditions; coordinating benefits with other group plans, auto insurance coverage, workers' compensation and any other applicable benefit plans; applying contractual and reasonable and customary allowances to billed charges; applying deductibles and coinsurance; and, upon receipt of funds from the Plan Sponsor, sending explanations of benefits and non-assigned claim drafts (if any) to the employee and assigned claim drafts to the service providers. This may also involve review by physician and dental consultants and consulting attorneys. It is specifically agreed that Delta will not have the authority to make a determination with respect to claims decisions requiring the use of discretion, which are addressed in Section 7 of the Agreement.

In the event the Plan Administrator does not elect to enter into a run-out agreement with Delta with respect to claims received after the termination of this Agreement ("Run-Out Claims"), Delta shall have no responsibility with respect to Run-Out Claims. In such event, Delta shall either return any Run-Out Claims received to the providers or to the Plan Administrator, as shall be directed by the Plan Administrator in writing. In the event the Plan Administrator does not direct Delta as to return of the Run-Out Claims, Delta shall return them to the providers.

- 5. Claims Processing – Run-in Claims.** *(Initial here YRW if this service is desired.)* Review, evaluate and process claims, in accordance with the Plan Documents, which were incurred prior to the Effective Date of this Agreement and are received by Delta prior to the date set forth in Paragraph 4 above, except for decisions requiring the use of discretion, which are addressed in Section 7 of the Agreement.

6. **Denials and Appeals.** As required by the Plan Documents and applicable law, notify participants in the Plan or their assignees of (i) any denial of their claim and the right to appeal the denial and (ii) the decision on appeal. Delta shall review and provide recommendations on any appeals of denied claims, except for decisions requiring the use of discretion, which are addressed in Section 7 of the Agreement.
7. **Excess Loss Claims.** File requests for reimbursement for claims exceeding the stop loss or excess loss insurance attachment point to the insurance carrier and review such reimbursement. Provide such other notices regarding claims as may be required by the carrier.
8. **Monthly Reporting.** Provide the Plan Sponsor and the Plan Administrator with a monthly check register and a monthly accounting of the self-funded claims activity, including the fund beginning balance, paid claims, deposits made and ending fund balance.
9. **Premiums and Fees.** Provide a monthly invoice to the Plan Sponsor for stop loss, excess loss or similar insurance premiums, administrative fees and any other agreed-upon premiums or fees. Remit applicable premiums and fees monthly to insurance carriers and other service providers.
10. **Cost Containment.** Coordinate cost containment features to be included in the Plan. Fees for cost containment services for which the Plan Administrator contracts with independent parties are in addition to the administrative fees set forth on Attachment "D".
11. **COBRA Notices and Fees.** *(Initial here  if this service is desired.)* Notify participants of their rights under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") upon notification of a qualifying event by the Plan Administrator or a participant; and collect and disburse premiums for COBRA participants.
12. **HIPAA Administration.** *(Initial here  if this service is desired.)* Assist the Plan Administrator with its HIPAA administration, including (i) preparing certificates of creditable coverage; (ii) sending such certificates to individuals when they cease to be covered under the Plan, become covered under COBRA, cease COBRA coverage or request certificates within 24 months of termination of coverage; and (iii) providing information on categories of benefits upon request and upon payment of the costs of such disclosure by the party requesting the information.
13. **Delta Network Advantage.** *(Initial here  if this service is desired.)* Assist the Plan Administrator in negotiating facility charges for claims falling outside the primary PPO Network. Delta Health Systems will attempt to negotiate payment terms for all non-network facility claims, both in-patient and out patient services. All negotiations will be conducted via signed and dated contracts between providers and Delta Health Systems. Fees for this service will be based on a percentage of savings and outlined in Attachment D. This service is elective and if no election occurs, non-network facility claims will be paid in accordance with Plan Administrator's benefit structure.

14. **Forms 1099.** Issue Forms 1099 for providers of services, as required.
15. **ERISA Required Filings.** Provide data to the Plan Sponsor and the Plan Administrator for filing documents with governmental agencies as required under ERISA.
16. **State Surcharge Filings.** File reports with the State of New York HCRA and State of Massachusetts.
17. **Other Services.** Perform such additional ministerial services with respect to the administration of the Plan as may be agreed to by the parties from time to time during the term of this Agreement.

**ATTACHMENT "B"  
TO  
ADMINISTRATIVE AGREEMENT**

**Duties and Responsibilities of the Plan Sponsor**

During the term of this Agreement, the Plan Sponsor shall:

- 1. Establishment and Amendment of the Plan.** Have exclusive authority to establish, amend and terminate the Plan, including the determination of benefits offered under, and eligibility to participate in, the Plan.
- 2. Documentation.** Have final authority and responsibility with respect to all Plan Documents, including the initial documentation and any amendments thereof, and provide Delta with executed copies thereof.
- 3. Funding.** Have the responsibility to provide funds for payment of benefit claims under the Plan. It is expressly acknowledged that Delta has no responsibility or liability for the adequacy of funds in the Plan and that claims will be paid by Delta only to the extent of funds made available to it by the Plan Sponsor.

The Plan Sponsor will provide funds to cover its responsibilities under this Agreement through wire transfer or such other method of funding as the Plan Sponsor, in its sole discretion, may from time to time select, including, but not limited to, the maintenance of a zero balance bank account. Any funds provided by the Plan Sponsor shall, to the fullest extent permitted by law, remain the exclusive property of the Plan Sponsor, and the Plan shall have no interest, beneficial or otherwise, in those funds.

**In the event the Plan Sponsor fails to provide funds for payment of claims within thirty (30) days of receipt of notice of liability from Delta. Delta will notify Plan participants of the Plan Sponsor's inability to fund processed claims.**

In the event that a delay in funding by the Plan Sponsor causes any discounts to be no longer available, the Plan Sponsor agrees that Delta shall have no liability with respect thereto and that Delta shall be indemnified and held harmless against all claims, damages, liabilities, reasonable attorneys' fees and expenses in connection with any claim, action, suit, proceeding, settlement or compromise thereof, relating to such lost or rescinded discounts.

- 4. Excess Loss Insurance.** Determine if excess loss insurance coverage is needed, obtain such insurance coverage, determine the terms and conditions of such coverage and provide the funds needed to pay the premiums thereon; and advise Delta promptly upon acquisition of any new or different insurance contract or adjustment in the premium rate or other changes in the Client's organization which might affect the status of the Plan.

**5. Notice of Changes and Amendments.** Provide Delta with prior notice regarding any changes in its procedures or amendments to the Plan Documents in order to allow Delta sufficient time to implement such changes or amendments.

**6. Payment of Fees, Printing Costs and Plan Expenses.** Pay to Delta the administrative fees set forth on Attachment "D," when due. Except as otherwise provided in this Agreement, the Plan Sponsor shall be solely responsible for all costs and expenses incurred in providing benefits under the Plan, including, but not limited to, all costs for professional services contracted for in connection with the administration of the Plan.

ATTACHMENT "C"  
TO  
ADMINISTRATIVE AGREEMENT

**Duties and Responsibilities of the Plan Administrator**

During the term of this Agreement, the Plan Administrator shall:

1. **Eligibility and Enrollment.** No later than the 5<sup>th</sup> of each month, supply Delta with all information required with respect to employees and dependents eligible to participate in the Plan and who are enrolled in the Plan. Provide Delta weekly notification changes occurring thereafter with respect to the eligibility status of all Plan participants. Funding for such eligibility premiums will be provided no later than the 15<sup>th</sup> of each month or a 1.5% late fee will apply towards the Delta Health Systems administrative fee.
2. **COBRA Qualifying Events.** Advise Delta promptly of a COBRA qualifying event.
3. **COBRA Initial Notices.** Provide all initial notices required by COBRA.
4. **Additional Information.** Provide Delta with such additional information with respect to matters incidental to the Plan as may be requested by Delta.
5. **Final Authority.** Have final authority with respect to all claims determinations and operations of the Plan.
6. **Compliance with Laws.** Be responsible for compliance with applicable state and federal laws.



**ATTACHMENT "D"  
TO  
ADMINISTRATIVE AGREEMENT**

**Fees**

*January 1, 2008*

During the term of this Agreement, the Plan Sponsor (Otay Water District) agrees to pay monthly fees in accordance with the following schedule:

**Dental Claims Administration:**

**Per Employee Per Month**

**\$3.75**

This rate *includes* the following services from Delta: Web-site access to Claims, Eligibility and Benefits; On-line monthly reports and ad hoc reporting; My ePhit for employee only; Eligibility and premium collection and reporting for Dental and all lines of coverage.

Note: Separate administrative fees may be implemented based on future discussion of plan coverage options that do not include dental coverage. Fees for stand alone coverage options such as medical only, dental/vision, dental and vision only or fully insured may be imposed.

**COBRA/HIPAA Administration:**

**Per Employee Per Month**

**\$1.00**

This rate *includes* the following services from Delta: COBRA administration and HIPAA certificates for Dental, Medical and FSA.

**One Time Set Up Fee**

**\$3,500.00**

This rate *includes* the following services from Delta: Includes initial ID cards.

**Community Dental Network (First Health)**

**\$1.61**

This rate includes access to the Community Dental Network of providers.

The administrative fees shall be payable by the first of each month and are guaranteed by the Delta Health Systems until December 31, 2008. The administrative services provided by Delta are set forth on Attachment "A." Delta agrees to provide the Plan Sponsor with sixty (60) days' prior written notice in the event of Delta's adjustment of its fees.

Interest earned, if any, on funds deposited in Delta's trust account shall accrue to Delta to help to offset banking fees. The parties acknowledge that Delta must disclose to the Plan Sponsor and obtain specific approval of these and any other fees derived by Delta that may receive administrative fees from various vendors who supply services to the Plan to cover Delta's administrative expenses in facilitating the vendors' services.

In addition to Delta's monthly administrative fee, the following service fees may be included:

**Plan Documents:** Preparation of plan documents and amendment drafting is \$95 per hour. If DHS is asked to have the documents printed for distribution, all printing charges will be passed on to the Plan.

**ID Cards:** Black and white plastic ID cards will be provided at \$1.50 per card and a \$1.75 per color card. There will be an additional fee of \$500 for any modifications made to the original plastic ID card by request of the client. Charges may vary upon each request and will be provided to you for approval prior to printing.

**Data Mart Reporting Services:** Standard On-line reports are available at no extra charge.

**Customized Data Analysis (including specialized reports):** 5 hours per calendar quarter at no charge. Additional hours will be charged based upon staff level required to complete the task.

**5500s:** Form 5500 preparation will be provided upon request at \$350 per document.

**Notice of change in rates:** Delta will provide Employer sixty (60) days advance notice of any Delta fee increases beyond the initial term of the agreement.

**Employee Benefit Fairs and/or Customer Service Site Visits:** A Delta representative will be available for a maximum of 16 hours per year at no charge. Additional hours will be charged at \$75 per hour. Travel expenses will be the responsibility of Delta Health Systems.

**Customized Mailings:** Printing and mailing costs will be passed on to the Plan. Labor necessary to complete the task will be charged at \$50 per hour.

**Vendor Fees:** Vendor pass-through fees are subject to annual adjustment.

**Banking Fees:** Client shall be responsible for all banking fees.

**Run-in Fees:** Run in claims incurred prior to January 1, 2008 will be processed for a fee of \$10.00 per claim.

**Consultants' Fees:** Fees of medical and dental consultants and any consulting attorneys will be passed on to the Plan, at Delta's cost.

**Auditors:** 5 hours for responding to internal auditors' requests are included at no charge and then \$75 per hour thereafter. Delta will not charge the Plan Sponsor to assist with outside Auditors requests.

**Setup Fee.** For initial Plan start-up, the Plan Sponsor shall pay a non-refundable fee of \$15,000.00 for expenses incurred by Delta.

**Reprocessing Fee.** In the event a retroactive amendment results in the need to reprocess claims, the Plan Sponsor agrees to pay Delta's expenses in performing that service.

**Other Expenses.** For any other expenses incurred by Delta in connection with administration of the Plan, Delta agrees to bill such expenses, limited to the actual amount of cost to Delta, and agrees to allow the Plan Sponsor access to records of said costs and provided that such expenses are approved by the Plan Sponsor in advance.

**Subrogation.** For expenses incurred by Delta in connection with recovery of Plan assets through a Plan subrogation provision, Delta shall be compensated at the rate of 20% of the amount recovered. If the Plan Sponsor chooses to utilize the services of an outside subrogation vendor, the Plan Sponsor agrees to pay Delta a fee of \$45 per hour of labor necessary to retrieve documentation requested by the vendor.

**Out of Network Repricing Services.** Plan Sponsor agrees to reimburse Delta or Delta's selected third party vendor (s) for negotiating discounts off billed charges from out of network providers, equal to 25% of savings.

Claims that fall outside of both layers of PPO networks will be considered for Delta Network Advantage fee negotiations. Delta Network Advantage will attempt to negotiate terms for all non-network (inpatient or outpatient) facility claims. All negotiations will be conducted via signed and dated contracts. The Delta fee for these services is 20% of the savings.

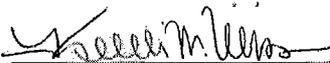
**Late Fee.** There will be a 1.5% late fee imposed on any invoice and/or billing statement if payment is not received within 15-days from the date of the invoice and/or billing statement.

**Translation:** Translation services needed for claims processing will be billed at cost.

DATE:

12.4.07

THE CLIENT

By: 

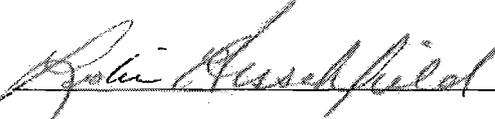
Its Duly Authorized Human Resources Manager

Tax ID Number: 95-2049267

DATE:

12/12/07

DELTA HEALTH SYSTEMS  
ADMINISTRATIVE CORPORATION

By: 

It's Duly Authorized  
VP, Consumer and Corporate Services



## AGENDA ITEM 7c

### STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Mark Watton, General Manager	W.O./G.F. NO:	DIV. NO. All
APPROVED BY:			
SUBJECT:	Change of Governance for the Water Conservation Garden		

#### **GENERAL MANAGER'S RECOMMENDATION:**

That the Board of Directors approve the transition of the governance of the Water Conservation Garden (Garden) as outlined below.

#### **PURPOSE:**

The purpose of the proposed change in governance of the Water Conservation Garden is to bring about a new model of governance that combines the benefits of financial stability and support from its member agencies, while allowing the Garden to operate more autonomously under the Friends of the Water Conservation Garden (FOWCG), a more traditional nonprofit organization.

The Garden will remain as a nonprofit organization and will continue to provide valuable water conservation training, education, and physical demonstration needed by the water agencies throughout the region while being allowed to operate under the direction of a board of directors with the sole purpose of advancing water conservation.

Members of the Conservation Garden Authority (JPA) funded the construction of the Garden and continue to fund a majority of its operational costs. Future long-term financial support of the Garden by members of the JPA under this new model provides valuable water conservation programs and will continue to utilize the facilities constructed at the Garden as intended by its founders.

#### **COMMITTEE ACTION:**

See Attachment A

#### **BACKGROUND**

Currently, the operation of the Garden is managed within a Joint Powers Authority (JPA) consisting of the Otay Water District, Helix Water District, San Diego County Water Authority, City of San Diego,

Sweetwater Authority (Water Agencies) and Cuyamaca College. Otay Water District and Helix Water District provided approximately \$2 million each to construct the Garden on land donated by Cuyamaca College. To fund the annual operation of the Garden, the Water Agencies provide various levels of financial support. Financial support for the Garden is also obtained by the "Garden Partners" program, grants, gifts, memberships, sponsorships, and donations.

The JPA Board of Directors (Board) is completing a strategic plan that has focused on the governance of the Garden and is exploring alternatives to the current JPA model. The proposed model would transition the governance and operation of the Garden to the FOWCG, a separate nonprofit entity. Long-term funding for the Garden is expected to continue in part from the Water Agencies in the JPA, but the day-to-day operation of the Garden would be the responsibility of the FOWCG, beginning January 1, 2011.

The JPA and the Nonprofit would enter into a facilities use agreement to define roles and responsibilities with specific performance standards detailed. The ownership of the Garden remains with the JPA, and the Garden will be operated by the Nonprofit FOWCG. Financial support and transition details will be identified in the facilities use agreement. The belief is that the Nonprofit will be better able to raise additional funds for the operation and capital needs beyond reliance on its JPA members.

To better understand the components of the transition plan, the following framework elements are proposed.

### **Calendar**

The following draft calendar would outline the major milestones and events in the framework plan:

- |                  |  |
|------------------|--|
| 10/2009          | Completion and approval of the Garden's Strategic Plan.  |
| 10/2009 -12/2010 | Facilities use agreement between the JPA and the FOWCG is prepared and approved. The FOWCG will recruit for additional board members and hire a development director exclusively for fundraising. The JPA continues to operate the Garden  |
| 1/2011           | The FOWCG assumes all management responsibilities of the Garden including maintenance, education, outreach, and development. The JPA reduces the number of positions on the Board. The Nonprofit controls the majority of new Board's positions. Funding is defined in the facilities use agreement. The FOWCG and the JPA determine the appropriate |

level of long-term financial support by JPA members and amends the facilities use agreement as necessary.

### **Governance Transition**

10/2009-12/2010 The JPA finalizes and executes the facilities use agreement with the FOWCG.

1/2011- FOWCG begins operating the Garden. The FOWCG Board of Directors includes up to fifteen members consisting of the following:

- Three members of JPA.
- Up to twelve board members from the FOWCG, with at least a total of four FOWCG members to function.
- *For the first year, the officers on the Nonprofit Board will be comprised of a JPA member as president, a JPA member treasurer, a Nonprofit board member as vice president, and a Nonprofit board member as secretary.*

### **Staffing Transition**

- The current positions remain funded at existing levels.
- The Development Director position will be a contract employee.
- The San Diego County Water Authority would provide funds for a contract Development Director during the transition period. This person would report to the Garden's Executive Director. An Oversight Committee composed of the General Manager of the Helix Water District, the Otay Water District, and the Sweetwater Authority, as well as the Conservation Executive of the County Water Authority, would work with the Executive Director to monitor the Development Director's progress towards specific funding goals.
- In addition, any contract clerical support will be funded within the line item for the development director.
- On January 1, 2011, the FOWCG will officially assume responsibilities and expenses associated with the CWA lead agency role for the Garden employees.

### **JPA Funding Plan during the Transition Period (Budget Elements for Revenue Contributions 1/10-6/11)**

- Basic Operational Funding - JPA members will provide basic funding for the second half of FY 2009-2010 at current budget levels. Otay's share in FY 2009-2010 is \$78,750, plus \$7,750 in supplemental funding it agreed to provide to the Garden as

"bridge funding", approved at the 9/2/2009 Otay Board of Directors meeting.

- JPA members commit to funding for FY 2010-2011 at 5% over FY 2009-2010.
- Supplemental Funding (additional funding over the basic operational funding)
  - San Diego County Water Authority (CWA)- \$93,000 over eighteen months (A total of \$246,000 including the development director.)
  - Non CWA JPA members - \$93,000 over eighteen months (Otay's share will be \$7,750 for FY 2010 and \$7,750 for FY 2011.)
- Development Director - Funded by CWA at \$153,000 over eighteen months as a contract employee including clerical support. Office space will be provided at the Helix Water District for eighteen months.
- Formation Costs - Funded by JPA Reserves.
- JPA Reserves - Remain with and under the control of the JPA until 7/1/2011.
- Long-term funding by the JPA for the Garden after 7/1/2011 will be determined during the transition period and incorporated in the facilities use agreement.

**FISCAL IMPACT:** \_\_\_\_\_

Funding for \$7,750 this fiscal year to help provide "bridge" funding during the transition period was approved at the Board of Directors meeting on September 2, 2009.

**LEGAL IMPACT:** \_\_\_\_\_

None.

  
\_\_\_\_\_  
**General Manager**

**Attachments**

Attachment A - *Committee Action Report*



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Change of Governance for the Water Conservation Garden
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### COMMITTEE ACTION:

The Finance, Administration and Communications Committee reviewed this item at its meeting held on September 14, 2009 and the following comments were made:

- Staff had presented at last months committee meeting a request to provide the Water Conservation Garden (Garden) an additional \$7,500 in funding for this fiscal year. The committee supported providing the additional funding and the District's Board of Directors formally approved the funding at their September 2 board meeting.
- Staff also shared last month that the Garden was exploring a new form of governance and would be proposing that governance of the Garden be transitioned to the non-profit 501(c)3 organization (Friends of the Water Conservation Garden [FOWCG]). The Garden approved this new form of governance at their last board meeting. It was noted that CWA, at this time, still needs to approve the governance change.
- Last month a longer transition of the management of the Garden was discussed. At that time, it was proposed that the non-profit would assume all management responsibilities of the Garden by June 2011. The transition date proposed today is January 2011. However, the FOWCG Board will have an extra year to add members.
- The transition to a non-profit organization would allow the Garden to operate more as a traditional non-profit organization, allowing them to focus more on fundraising.
- CWA has designated funding for a Development Director who will focus on fundraising for the Garden.

- There was discussion for staff to encourage contractors doing business with the District to support and promote visitation to the Garden.
- Staff indicated that the intent of this action would be to approve transitioning the Garden to a non-profit 501(c)3 organization and the hiring of a Development Director.

The committee supported staffs' recommendation and presentation to the full board on the consent calendar.

# Governance Restructuring Plan

For the

Water Conservation Garden

9-14-09

## **Purpose**

The purpose of the for the Governance Restructuring Plan for the Water Conservation Garden is to detail a new model of governance for the Garden which combines the benefits of financial stability and support from the current Joint Powers Authority water agencies while providing for the flexibility, continuity, and fundraising potential of a traditional nonprofit board. The Garden will continue to provide the valuable water conservation training, education, and physical demonstration needed by water agencies throughout the region. In return, it is expected that strong working partnerships and financial relationships between the Garden and water agencies will continue indefinitely into the future.

## **Background:**

Currently the operation of the Garden is managed by a Joint Powers Authority consisting of Otay Water District, Helix Water District, San Diego County Water Authority, City of San Diego, Sweetwater Authority and Cuyamaca College. Otay Water District and Helix Water District provided approximately \$2 million each to construct the Garden on land donated by Cuyamaca College. To fund the annual operation of the Garden the Water Agencies provide various levels of financial support. Financial support for the Garden is also obtained through individual, agency, and corporate memberships, sponsorships, donations, grants, class fees, event income, facility rental, and gift shop income.

At the September 9, 2009 Water Conservation Garden Authority Board meeting, the Board approved the concept of a new form of governance, to go into effect in January, 2011.

## **Overview:**

- The Joint Powers Authority (JPA) would continue to exist.
- The JPA's lease with the Grossmont-Cuyamaca Community College District for the Garden's land would continue to be in effect.

- The JPA would contract with Friends of the Water Conservation Garden (FOWCG), an existing tax-exempt charitable organization, to operate the Garden. The Friends would be tasked with providing water conservation demonstration and education activities.
- JPA agencies would provide supplemental funding for the transition period, through June 30, 2011. The retail agencies would contribute a total of \$30,000 in addition to current funding in FY 2009-2010, and the Water Authority would contribute an additional \$30,000 in operating funds.
- In FY 2010-2011, the retail agencies would contribute \$63,000 in additional operating funds, and the Water Authority would contribute \$63,000 in additional operating funds. There would also be a 5% cost of living increase in each agency's regular annual contribution.
- It is anticipated that JPA agencies would continue to fund the Garden after this period, as long as FOWCG provides water conservation demonstration and education programs that meet the agencies' needs.
- The San Diego County Water Authority would provide funds for a contract Development Director during the transition period. This person would report to the Executive Director. An Oversight Committee composed of the General Manager of the Helix Water District, the Otay Water District, and the Sweetwater Authority, as well as the Conservation Executive of the County Water Authority, would work with the Executive Director to monitor the Development Director's progress towards specific funding goals.
- Formation costs of the new entity will be funded by JPA reserves.
- An agreement will be made between the JPA and FOWCG to begin operating the Garden in January 2011.
- The current JPA will continue to operate the Garden throughout calendar year 2010.
- By calendar year 2011, the JPA will be represented by three members on the FOWCG Board, chosen by the JPA representatives. There will be at least four and no more than 12 other board members.
- Garden staff will become employees of FOWCG by 1/11.
- FOWCG will assume the responsibilities and expenses associated with the CWA lead agency role by 1/11, including insurance, human resources, and payroll responsibilities.

**Conclusion:**

The Water Conservation Garden Authority believes that the above elements of governance restructuring will strengthen the Garden's ability to perform its mission, "promoting water conservation in the southern California landscape through excellent programs and exhibits that educate and inform the public" well into the next decades.

**AGENDA ITEM 7d**



**STAFF REPORT**

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Frank Anderson, Utility Services Manager <i>FA.</i>	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)	Pedro Porrás, Chief, Water Operations <i>[Signature]</i>		
APPROVED BY: (Asst. GM):	Manny Magaña, <i>[Signature]</i> Assistant General Manager, Engineering & Operations		
SUBJECT:	Approval to Purchase Additional ¾" - 2" AMR Meters through Master Meter, Inc.		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Board authorize the General Manager to:

1. Purchase an additional 17,414 ¾" through 2" (small) radio-read (AMR) meters, needed to complete the District's AMR meter retrofit program, from Master Meter, Inc. through the Master Meter, Inc. Agreement approved by the Board on December 7, 2005, and
2. Purchase small AMR meters required for new installs and change-outs on an as-needed basis through the Master Meter, Inc. Agreement approved by the Board on December 7, 2005.

**COMMITTEE ACTION:** \_\_\_\_\_

See Attachment "A"

**PURPOSE:**

To obtain Board authorization to purchase from master Meter, Inc. the remaining AMR meters needed to complete the District's retrofitting program, scheduled for completion through FY 2014 and purchase additional Master Meter, Inc. on an as-needed basis

to meet District's additional small meter needs through FY 2014 utilizing the Master Meter Agreement authorized by the Board on December 7, 2005.

If approved, purchase of AMR meters will be on an annual as-needed basis dependent upon AMR retrofit progress and the routes' needs. Additional meters required for new installation and change-outs will also be purchased on an annual basis.

Retrofit AMR meter purchases will be funded from CIP 2458 and funding and new meter purchase funds will be customer generated and charged to the Meter Maintenance Annual Operating Budget.

**ANALYSIS:**

On December 7, 2005 the Board authorized the General Manager to enter into a ten-year agreement for the purchase of 11,500 AMRs. The agreement set the terms and conditions for purchasing AMRs from Master Meter, Inc. and authorized the purchase of 11,500 meters during the first three years of the agreement for initial scheduled AMR meter retrofits.

On December 6, 2006 the Board authorized the purchase of an additional 17,000 meters for the change-out of the failing RAMAR units.

Consequently, the total number of ¾" through 2" meters authorized for purchase using the Master Meter, Inc. Agreement is 28,500. As of this date, the District has purchased 23,685 AMRs with the remaining 4,815 already committed to be purchased. Currently we are on schedule with the number of change outs.

It is expected that during the next five years the District will require an additional 17,414 small meters to complete the AMR meter retrofit program.

The purchasing of meters for new installations will be performed separately, on an annual as-needed basis, determined from yearly estimated expected growth and meter sales projections.

To date, Master Meter, Inc. AMR meters continue to be a reliable and sustainable product and are meeting the District's needs.

**FISCAL IMPACT:**

A handwritten signature in blue ink, appearing to be 'J.A.', is written over a horizontal line.

The purchase of the meters for new meter installations will be charged against the Meter Maintenance Annual Operating Budget,

which will be off-set by the meter fees paid by new customers. The purchase of new meters will take place only on an as-needed basis to meet customer demand.

It is estimated that the cost to purchase the proposed 17,414 AMR retrofit program meters will be \$2,991,208.40 to be charged against the AMR/Manual Meter Replacement CIP 2458. The annual purchase of these meters is dependant upon the schedule of replacements projected from FY 2010 to FY 2014. As a condition of the Master Meter, Inc. agreement, the per-meter cost is based on a defined discount of Master Meter, Inc's published standard price schedule. To date, Master Meter, Inc. has not made any adjustments to this schedule.

The total budget for the AMR/Manual Meter Replacement CIP 2458 is \$10,477,000. Current expenditures and encumbrances for the CIP, including the meters purchased under this request if approved, are \$6,324,786.

Costs include contract retrofit for three-quarter-inch and one-inch meters, angle meter stops, ball valves and meter boxes, and in-house labor for retrofit of meters larger than one-inch.

Expenditure Summary:

AMR/Meter Replacement CIP 2458 Budget:		\$ 10,447,000
Expenditures and Encumbrances to Date:	\$3,333,578	
Proposed Meter Purchases:	\$2,991,208	
Total Expenditures and Encumbrances:		\$6,324,786
Projected Balance of AMR/Meter Replacement CIP 2458 Budget:		\$ 4,122,214

**STRATEGIC GOAL:**

Implementation of the AMR program per schedule.

**LEGAL IMPACT:** \_\_\_\_\_

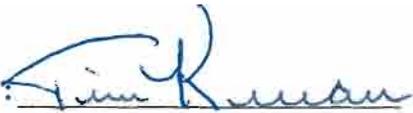
None



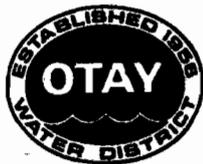
**General Manager**

Attachment "A" Committee Action

QA/QC approval:

Name: 

Date: 9-17-2009



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Approval to Purchase Additional Master Meters through Master Meter, Inc.
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on September 28, 2009 and the following comments were made:

- Staff indicated that on December 7, 2005, the Board approved the Master Meter, Inc. Agreement for the District's AMR meter retrofit program. To complete the final stage of the program by FY 2014, staff recommends that the Board authorize the General Manager to purchase the remaining 17,414 ¾" - 2" (small) radio-read AMR meters through Master Meter, Inc. In addition, staff is requesting authorization to purchase small AMR meters on an as-needed basis for new installs and change-outs through the Master Meter, Inc. agreement.
- The Committee inquired about staff's satisfaction with the AMR meters provided by Master Meter, Inc. Staff indicated that the AMR meters continue to be a reliable and sustainable product and are meeting the District's needs.
- The Committee inquired if District staff plans to re-evaluate the program and consider other alternatives. Staff is currently evaluating alternative technology, which may include other fixed based meter reading technology, that may prove to be more cost effective. Staff plans to pilot test any new technology before implementation. Staff also noted that Padre Dam Municipal Water District is currently pilot testing the "Datamatic Fixed Base Unit" and plans to follow their progress.
- The Committee requested that District staff provide the Board with an update when staff is moving to the new technology and updates on Padre Dam MWD's program.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full board on the consent calendar.

# ATTACHMENT B

*Execution/Board Version*

## AGREEMENT BETWEEN THE OTAY WATER DISTRICT AND MASTER METER, INC. TO PROVIDE FOR THE PURCHASE, SALE AND WARRANTY OF CERTAIN WATER METERS

This Agreement (the "Agreement") is made and entered into by and between the Otay Water District ("District"), a municipal water district, formed and existing pursuant to the provisions of the Municipal Water District Law of 1911, commencing with Section 71000 of the Water Code of the State of California, as amended, and Master Meter, Inc., a corporation organized, existing and in good standing under the laws of the State of Texas ("Seller" and together with District, the "Parties"), to provide terms and conditions pursuant to which District agrees to purchase, install and operate and Seller agrees to sell, repair, replace and warrant certain radio transmitter read water meters, all as provided herein. This Agreement shall be dated and effective as of the date it is approved by the Board of Directors of District, as indicated on the signature page hereof and on District records (the "Effective Date").

### WITNESSETH

WHEREAS, District desires to establish a working automated meter reader program and has been searching for a company that produces reliable radio transmitter read water meters to automate as many of its meter reading routes as deemed advisable by District; and

WHEREAS, Seller is in the business of manufacturing, or causing to be manufactured, to its own standard and specifications radio transmitter read water meters capable of transmitting data to a receiver connected to either a laptop computer or handheld devices; and

WHEREAS, Seller represents that it causes its meters to be manufactured to all applicable AWWA and California Proposition 65 standards; and

WHEREAS, Seller has agreed to sell and deliver to District 6,500 Dialog 3G-DS radio transmitter read water meters, as set forth in Exhibit A attached hereto (the "Scheduled AMR Water Meters"), under the terms and conditions set forth in this Agreement; and

WHEREAS, if the Scheduled AMR Water Meters prove as accurate as anticipated by District and if other conditions set forth herein are met, District will also purchase from Seller additional radio transmitter read water meters of similar design, specification and function to the Scheduled AMR Water Meters, as set forth in Exhibit B attached hereto (the "Additional AMR Water Meters" and together with the Scheduled AMR Water Meters, the "AMR Meters"); and

WHEREAS, if the Scheduled AMR Water Meters prove satisfactory to District, District will order at least 5,000 Additional AMR Water Meters pursuant to one or more purchase orders to be delivered over a period of not less than twenty-four (24) months in accordance with a schedule to be agreed upon by the Parties; and

WHEREAS, Seller has represented to District that it has the right, title and interest in and to the AMR Meters and all related software and equipment, including the transmitter component of the Prior Meters (as defined below) and the AMR Meters (collectively, the "Transmitters") that transmit the data in the manner required to automate the reading of the water meters, and including the authority to sell, warrant, repair, replace or otherwise provide the same to District; and

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WHEREAS, in connection with the purchase of AMR Meters by District, Seller will provide a twenty (20) year warranty to District to cover each and every Transmitter purchased by District from Seller and will also provide its standard warranty to cover all other parts of the AMR Meters purchased by District from Seller; and

WHEREAS, prior to the execution of this Agreement, District has purchased approximately 3,600 narrow band automated meter reader water meters from Seller (the "Prior Meters"), most of which have been installed and all of which are intended by the Parties to be covered under similar terms as the AMR Meters and Transmitters; and

WHEREAS, Seller's warranty will cover the cost of repair or replacement of the Transmitters, the AMR Meters and the Prior Meters, including the cost of manufacturing or acquiring any parts needed to repair or replace said Transmitters and meters, to the extent further described in the warranties attached hereto as Exhibit D, each as hereafter extended or increased by Seller (collectively, the "Warranty"); and

WHEREAS, the warranty period for the AMR Meters and the Transmitters will commence from the date that is sixty (60) calendar days from the date each AMR Meter and/or Transmitter, as applicable, is shipped to District and, with respect to any AMR Meters that arrive in damaged condition, District will cooperate with Seller in the filing of any required damaged claims; and

WHEREAS, Seller has provided District a warranty letter extending the coverage described in the Warranty to the Prior Meters and Seller and District agree that, with respect to each of the Prior Meters the warranty coverage will be retroactive, commencing on the date each Prior Meter was shipped by Seller to District; and

WHEREAS, Seller and District agree that District shall be responsible for the initial installation of all meters purchased from Seller; and

WHEREAS, Seller has provided initial training to designated District staff and will provide any additional training in the proper use, configuration, handling and/or installation of its AMR Meters, as from time to time required by District and agreed to by the Parties at a rate of \$850.00 per day, inclusive of transportation and other administrative costs incurred by Seller; and

WHEREAS, Seller and District have agreed that Seller shall provide technical support to District on an ongoing basis and that during regular business hours Seller will respond to inquiries from District within a period of time not to exceed four (4) hours from the time a question concerning the performance of any AMR Meters, Prior Meters, Transmitters or any related parts of said meters supplied by Seller is tendered to the Seller, provided that District shall have performed troubleshooting procedures as set forth in the troubleshooting guide provided by Seller and attached hereto as Exhibit E; and

WHEREAS, in connection with all software Seller recommends that District acquire from Seller's subsidiary, GreenTree, to be used in connection with the AMR Meters and/or Transmitters, Seller has informed District that software support is available for one year from date of purchase as part of the purchase, and, after the one year, under a support contract if one is executed; and

WHEREAS, Seller and District believe that it is in their respective best interest to enter into this Agreement for the purposes specified herein.

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, District and Seller agree as follows:

**I. Incorporation of Recitals**

The recitals above are accurate and true to the best of the understanding of the Parties and are incorporated herein by reference as if fully set forth herein.

**II. Scope of Use – Right to Protocols**

Upon receipt or replacement of any AMR Meters and any related hardware provided by Seller during the term of this Agreement, District is hereby authorized to use all the aforementioned for all legal purposes of District. Seller grants to District all right, title and interest necessary for District to use the AMR Meters and/or cause the transmitter component of the AMR Meters to be constructed and installed in the meters.

A. Technology Escrow. On or prior to ninety (90) calendar days of the execution of this Agreement by District, Seller shall place the protocols (including all technology, technical information, and intellectual property that is necessary and vital) for the manufacturing of the AMR Meters into a technology escrow, in form and substance acceptable to District. The technology escrow may, at District's request, be opened with District's general counsel office or with District provided that the reassurances as to the storage, handling and confidentiality of the information so escrowed shall be acceptable to Seller.

B. Survival. The rights granted hereunder and under the escrow described above shall survive the termination or expiration of this Agreement as well as any event of bankruptcy, reorganization or transfer of assets of Seller or other similar events and shall remain in effect for as long as District owns and operates any AMR Meters purchased hereunder.

C. Integration. Proper protocols or codes and other relevant information shall be made available by Seller as needed to support any integration with another meter or hardware manufacturer. Seller will be compensated at its normal travel and/or programming charges, as appropriate, to support integration; provided that any software data for a new billing system provider will be supplied at no cost, except any bridge programming which shall be compensated at the normal programming rate.

**III. Term**

This Agreement shall be for the term of ten (10) years from the Effective Date (the "Initial Term"), unless extended by the Parties or unless earlier terminated as set forth herein; provided that any warranty, license, indemnity or insurance given by Seller hereunder shall continue in effect during the term specified in connection therewith, or as required in connection with District's ownership and operation of the AMR Meters or the Prior Meters, as applicable.

A. Extension Terms. This Agreement may be extended for three additional two-year terms, or one additional six year term (each an "Extension Term"), upon request of the District and agreement by Seller. On a date that is at least sixty (60) calendar days prior to the expiration of the Initial Term, District will give notice to Seller of its intent to extend this Agreement either for one two-year term or for one six year term. If District opts to extend for only two years, then, prior to the expiration of the first two-year term or second two year term, as applicable, District will give notice to Seller if it desires to extend for an additional two year term.

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- B. Term. As used herein, the defined term "Term" refers to the period of time during which this Agreement is in effect, including the Initial Term and any Extension Terms.

#### IV. Purchase; Price and Payment

A. Orders. The Scheduled AMR Water Meters will be delivered by Seller as set forth on Exhibit A. In connection with the purchase of any Additional AMR Water Meters, District will contact Seller via facsimile, electronic communication or as otherwise requested by Seller to specify the quantity of Additional AMR Water Meters being purchased and to agree on the delivery schedule on a per order basis.

1. Special Order. On a date that is within twelve (12) calendar months of the Effective Date, if the Scheduled AMR Water Meters have proved satisfactory, District agrees to place an order for not less than 5,000 Additional AMR Water Meters (the "Special Order") to be delivered to District based on an agreed-upon schedule not to exceed twenty-four (24) calendar months from the date this Special Order is placed. The price per meter shall be calculated pursuant to the price schedule in effect at the time of each shipment made by Seller pursuant to this Special Order.

2. Obligation to Buy. The obligation of District to purchase the Scheduled AMR Meters, Special Order meters or any other meters or parts shall be void and non-enforceable, and this Agreement may be terminated by District effective immediately, if it becomes unlawful for District to order, purchase, use or install any such meters or parts thereof.

B. Price. For the purchase of the Scheduled AMR Water Meters the District will pay the price per meter specified in Exhibit A. For the purchase of any Additional AMR Water Meters described in Exhibit B, or subsequent or improved series or versions of 3G-DS meters or other similar or improved technology meters purchased by District hereunder, the Parties agree that the price per meter shall be calculated as set forth in Exhibit C attached hereto, as from time to time amended or revised in the manner provided below.

1. The price schedule set forth in Exhibit C is subject to change no more than twice annually. Any adjustment made shall be made only as necessary to bring the price schedule into compliance with Seller's published market rate schedule. However, any price adjustment shall not cause the price multipliers set forth in Exhibit C, nor any price multiplier applicable to District at the time of the adjustment, to be increased. The price multiplier shall be applicable to any other meters of any kind or series purchased by District from Seller.
2. Each such adjustment shall become effective on the thirtieth (30<sup>th</sup>) calendar day following delivery of notice together with a copy of the proposed price schedule to District. If Seller fails to give District at least thirty (30) calendar days notice, Seller may request a waiver and the written consent of District for an adjustment to become effective at an earlier day, but District shall be under no obligation to grant such waiver or consent, and the revised price schedule shall become

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effective on the earlier of, the agreed upon date or thirty (30) calendar days from the date of actual notice.

3. On the date a revised price schedule becomes effective, it shall replace or become part of Exhibit C, as applicable, and shall be in effect for any purchases made by District from the date it is effective to the date one (1) business day prior to the day the next revised price schedule becomes effective.
4. The term "business day" for the purpose of this Section and this Agreement shall mean all regular working days in the United States of America, composed of the traditional five (5) calendar day work-week and excepting traditional holidays. "Day" shall mean a traditional calendar day if not preceded by the word "business." If a date specified as the last day for the taking of any action hereunder falls on a Saturday or Sunday, the deadline for such action shall be the first business day following such date.

C. The Seller shall invoice District concurrently with the first scheduled delivery of the Scheduled AMR Water Meters for all such meters in accordance with the price set forth on Exhibit A, and upon delivery of any Additional AMR Water Meters for the meters so delivered in accordance with Exhibit C, or any revised price schedule in effect at the time of purchase, as provided above. In connection with each invoice the following shall be applicable:

1. Shipment. For any shipment of \$20,000 or more, Seller shall pay the freight and the meters and/or parts shall be shipped FOB Mansfield, Texas, freight allowed. For any shipment less than \$20,000, freight will be paid by District, all prices, handling and freight charges must be shown separately on the invoice and the shipment shall be FOB Mansfield, Texas. If Seller moves its plant closer to a different shipping location, the new location may become the new shipping point if agreed upon by the Parties, but it is the intent of the Parties that Seller will continue to be responsible for all shipping costs on shipments of \$20,000 or more.
2. Invoices. District shall have forty-five (45) calendar days from the date of receipt of an invoice to, without incurring interest and/or penalty charges, either (i) make payment, or (ii) provide written notice to Seller that District is contesting all or some of the invoiced amounts.
3. Contest of Invoiced Amounts. District may contest any amounts invoiced for damaged, defective, non conforming or non delivered items. If District contests an invoice, District will provide Seller with information and, if applicable, documentation supporting the contest. District may withhold payment of the entirety of the invoice if more than forty percent (40%) of the invoiced amounts are being contested. Otherwise, District shall remit payment for uncontested amounts concurrently with its written notice of contested amounts.
4. Seller Review of Contested Amounts; Resolution. After Seller has an opportunity to review District's notice of contested amounts, Seller shall contact District to discuss. If the Parties are able to reach an agreement on the amounts due, Seller will issue an invoice for the agreed-upon amounts which shall be paid by District within thirty (30) calendar days of receipt thereof. If the Parties are unable to

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reach an agreement concerning the amounts due within a reasonable time not less than sixty (60) calendar days from the date negotiations commence, after good faith efforts to settle the matter are made, Seller or District may pursue any remedy available to it hereunder or at law or equity.

**V. Termination**

- A. This Agreement may be terminated by District or Seller as follows:
1. Upon sixty (60) calendar days notice by District to Seller of District's election to terminate this Agreement for any reason, with or without cause, provided that District shall have fulfilled its obligation to purchase the Scheduled AMR Water Meters **and** the Special Order prior to any such termination;
  2. Upon thirty (30) calendar days notice by non-defaulting Party that this Agreement is being terminated due to the occurrence of an Event of Default by defaulting Party which has occurred and continued for thirty (30) calendar days, provided that defaulting Party may give non-defaulting Party written notice of its election to cure the Event of Default, specifying a reasonable cure period (not to exceed sixty (60) calendar days or other time period acceptable to non-defaulting Party) during which defaulting Party will cure and present evidence of cure satisfactory to non-defaulting Party. If such notice is given, and non-defaulting Party agrees to the cure period specified by defaulting Party, the notice of termination shall be deemed rescinded and this Agreement will continue in full force and effect as if the Event of Default had not occurred unless, after the expiration of the cure period, non-defaulting Party notifies defaulting Party that the cure is not satisfactory or has not been completed and the Agreement is terminated effective on a date specified in this failure to cure notice;
  3. Upon thirty (30) calendar days notice by Seller to District, if District fails to pay the Seller any amounts due by District hereunder, provided that any amounts contested in the manner provided above are considered amounts due and are not basis for termination until the Parties have reached an Agreement concerning said amounts or have declared themselves unable to reach an Agreement despite good faith efforts, and further provided that District shall have an opportunity to cure the default by paying to Seller prior to the expiration of said thirty (30) calendar day period all amounts then due, which payment shall rescind the notice of termination and this Agreement shall thereafter continue in full force and effect as if the Event of Default had not occurred; or
  4. Upon twenty (20) calendar days written notice by either Party to the other if a force majeure event continues for more than ninety (90) calendar days or if the other Party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors. A force majeure event shall mean, for purposes of this Agreement, damage caused by an act of God, war, terrorism or other casualty, which would prevent or make impractical compliance with the provisions hereof, or damage caused under circumstances where it would be impractical or impossible for either Party to notify the other of the necessity for temporary interference with compliance of any provision hereof.

B. Survival of Obligations. It is agreed and understood that Seller's obligations under the Warranty and under Section VII, sub-paragraphs entitled "Accuracy" and "Percent Failure" shall survive the termination of this Agreement and that Seller, or its successors or assigns, as applicable, shall be responsible for fulfilling said obligations during the longer of (i) the Term of this Agreement, or (ii) the term such obligation is applicable under the provisions thereof or the Warranty.

**VI. Events of Default & Remedies**

A. Seller Default. An "Event of Default" as to Seller under this Agreement shall include any of the following:

1. any breach of any provision or obligation of Seller hereunder, or misrepresentation by Seller or any person or entity other than Seller providing warranties or security under this Agreement, which continues uncorrected for fifteen (15) business days after notice of such breach or misrepresentation is given by District;
2. failure of more than three percent (3%) or a determination by Seller or District that there is a design or manufacturing problem with the Transmitters that renders the AMR Meters not usable or unreliable for the purpose for which they are intended, provided that Seller will have an opportunity to cure this default in the manner provided in Section VII, below;
3. the revocation of, attempt to revoke or terminate, or failure to honor, the Warranty, indemnity or Seller's obligation to investigate the reason for excessive failures and to provide labor for replacement, as applicable;
4. failure by Seller to honor an obligation to give District technical assistance with any problems related to the AMR Meters within the time periods specified herein;
5. the insolvency of Seller or its failure generally to pay its debts as such debts become due;
6. the commencement as to Seller of any voluntary or involuntary proceeding under any laws relating to bankruptcy, insolvency, reorganization, dissolution, liquidation, arrangement, debt adjustment or relief, including any assignment by Seller for the benefit of its creditors, the appointment, or commencement of any proceedings for the appointment, of a receiver, trustee, custodian or similar official for all or a substantial part of Seller's property;
7. the occurrence of an event that, in the reasonable opinion of District after investigation, threatens the corporate existence or financial soundness of Seller including the: (i) filing or recording against Seller, or the property of Seller, of any notice of levy, notice to withhold, or other legal process for taxes other than property taxes; (ii) default by Seller for amounts owed or on an obligation concerning the borrowing of money; or (iii) issuance against Seller, or the property of Seller, or, or failure of Seller to comply with, a writ of attachment, execution, or other order, judgment, injunction, decree or judicial lien.



B. District Default. An "Event of Default" as to District under this Agreement shall include any of the following:

1. any breach, or misrepresentation by District of any provision of this Agreement that continues uncorrected for fifteen (15) calendar days after notice of such breach or misrepresentation is given by Seller to District; or
2. the failure of District to pay any uncontested invoice, or any portion due, as provided in Paragraph IV, above.

C. Remedies on Default. Remedies of the Parties upon the occurrence of an Event of Default shall include any of the following:

1. Give written notice of the Event of Default to the defaulting Party; and
2. Give, pursue or request any remedy or cure provided under this Agreement, or agreed by the Parties, including request for specific performance; and/or
3. In connection with a default described in paragraph A.2, above, due to a failure of more than three (3%) of the Transmitters or a manufacturing problem, the cure described under Section VII, below; and/or
4. Following the termination of any applicable cure period, declaring this Agreement terminated and pursuing any remedy available at law or equity.

#### VII. *Covenants, warranties and representations of Seller*

In connection with the AMR Meters, the Transmitters, this Agreement, and, as applicable to the Prior Meters where indicated, the Seller represents, covenants, warrants and agrees as follows:

A. Time for Delivery. Seller shall deliver, or cause to be delivered, the Scheduled AMR Water Meters in accordance with the schedule of delivery set forth in Exhibit A, and shall deliver, or cause to be delivered, the Special Order pursuant to the delivery schedule agreed upon by the Parties in connection with the Special Order, and shall deliver, or cause to be delivered, any other Additional AMR Water Meters purchased by District within standard delivery times based on availability but, unless otherwise agreed to by District, no later than sixty (60) calendar days from the day an order is made. An order shall be considered "made" on the date a confirmation of receipt of an order is given by Seller to District following the placement of an order by the District. Each shipment of AMR Meters, or parts, as applicable, shall contain the following:

1. Meter Information. At the time of each delivery, and subsequent thereof as requested by District from time to time, Seller shall provide District with all data relevant to the meters included in each shipment or delivery, including the manufacturer name, the model number, and any serial numbers for each item included in said delivery. This information shall be in both written and electronic form;
2. Electronic form of Data. The data included with each shipment in electronic form shall be in Microsoft Excel format or other format agreed upon by the Parties. Each shipment shall include only one (1) clean, final, usable form of the electronic data in the agreed upon format. Seller and District agree that Seller's failure to deliver a clean, usable error free spreadsheet will result in delays in the

proper installation and incorporation of the affected meters into District's system. *If Seller sends an incomplete or otherwise non-complaint spreadsheet to District, District shall be entitled to reject any and all future shipments, including those for which advanced orders have been placed, if any, and shall not be obligated to pay for the shipment containing the non-compliant spreadsheet until an error free spreadsheet is provided and data is incorporated into District's meter reader system;*

3. *Software.* District intends to use Green Tree meter reading software, or other software as from time to time recommended by Seller, for all meters purchased under this Agreement. As long as District is using any software at any time recommended by Seller, Seller shall insure that its AMR Meters continue to properly function with that software and any modification or updates to said software;

B. Quality. Seller will exert its best efforts to deliver high quality AMR Meters in conformance with its published specifications;

C. Accuracy. Seller will exert its best efforts to ensure that at least ninety-eight percent (98%) of the meter readings resulting from transmissions from its Transmitters will be accurate, exclusive of errors due to installation or programming by District or other vendors. If inaccurate readings in excess of two percent (2.0%) are evident, in addition to all other remedies available to District hereunder or at law or equity, District may request Seller, and Seller agrees, to designate at least one full time person from its staff for as long as needed for such person or persons to inspect all meter readers and run all software or hardware tests required to determine why inaccurate readings are being provided and to correct the problem;

D. Percent Failure. Seller warrants, represents and will make best efforts to ensure that the percent failure on the aggregate of the Transmitters and parts provided to District by Seller does not exceed three percent (3.0%), provided that the following terms shall apply:

1. while the aggregate failure rate of AMR Meters, Transmitters and/or parts sold or provided by Seller to District is equal to or below two percent (2.0%), Seller will only be obligated to repair or replace, as applicable, in the manner provided under the Warranty, provided that a subsequent failure of a 3GDS Meter or part previously repaired or replaced shall also be counted towards the total percentage of failure;
2. if the aggregate failure rate of the Transmitters and/or parts sold or provided to District by Seller exceeds two percent (2.0%) but is less than three percent (3.0%), Seller shall repair or replace, as appropriate under the Warranty, all the Transmitters that are in disrepair at the time the aggregate failure exceeded two percent (2%). Seller shall be responsible for all costs related to and incurred in connection with the repair and/or replacement of all such Transmitters, as applicable, and shall, in addition do the following:
  - a. within fifteen (15) business days of the date District informs Seller, either in writing or via telephone or facsimile communication, that the failure rate has exceed two percent (2%), Seller shall either (i) notify District that Seller will, within a time frame not to exceed sixty (60) calendar days, or as otherwise

accepted by District in writing, provide or cause to be provided actual labor to accomplish the repair or replacement of all Transmitters in disrepair at the time the failure rate exceeded two percent (2%), or (ii) notify District that Seller will compensate District for the costs incurred by District to repair and/or replace, or cause to be repaired and/or replaced, all such Transmitters, including all administrative costs and all costs associated with shipping and handling of the Transmitters and, if applicable and necessary, the actual AMR Meters. If Seller fails to give this notice to District within said fifteen (15) business days, District may undertake to do all acts necessary to accomplish the repair and replacement and Seller shall be responsible for reimbursing all costs incurred by District in connection therewith upon the written request of District; AND

- b. designate and appoint, at its sole cost and expense, at least one full time person from its staff, or a contractor, in either case acceptable to District for as long as needed for such person or persons to (A) test and inspect all Transmitters, and run all software or hardware tests required to determine why the meters are failing, (B) prepare a report indicating the source of the problem and the recommended steps and/or procedures for fixing the problem and preventing same from occurring in the future; and (C) correct the problem. District agrees to cooperate with such person or persons by making the software and hardware, including lists of location as maintained by District, available to such person or persons. Seller shall be obligated to comply with this provision even if District has undertaken the responsibility to repair or replace the non-functioning meters in the manner provided in subparagraph (a) above;
3. if the aggregate failure rate of the AMR Meters and/or Transmitters purchased by or otherwise provided to District by Seller exceeds three percent (3%), Seller shall be in default hereunder (the "Failure Rate Default"). Seller will have sixty (60) calendar days, or if requested by Seller in writing, other longer period of time agreed to by District, from the date notice is given by District that the failure rate has exceeded three percent (3%) to cure such default. Cure shall include but not be limited to the following: (i) within ten (10) business days of the date of notice, provide or cause to be provided, actual labor to accomplish the repair or replacement of all the Transmitters in disrepair at the time the failure rate exceeded three percent (3%); (ii) promptly retain or designate professionals acceptable to District to investigate the reason for the repeated failures, to inspect and test all Transmitters provided by Seller to District and to provide or cause to be provided to District, no later than forty-five (45) calendar days from the date the professionals are agreed upon, a report making findings as to the cause for the excessive failure rate; and (iii) within a reasonable time agreed upon by Seller and District, Seller shall make or cause to be made, at its sole cost and expense, all other repairs, replacements or corrections recommended by the report, including any corrections, repair or replacement required to be made to non-failed meters to ensure the proper functioning of the AMR Meters in accordance with the goals of the District as set forth in this Agreement;

4. if Seller becomes aware that the failure rate of any series of AMR Meters or Transmitters sold to District and manufactured as a batch, or by the same subcontractor of Seller, exceeds ten percent (10%), Seller shall notify District of that fact and shall inform District of the actions Seller intends to take to correct the problem, which actions may include but not be limited to the replacement of all Transmitters manufactured in that batch at the sole cost and expense of Seller.

In computing the number of failures, Seller shall not be held responsible for any failures attributable to damage due to improper installation of any hardware delivered to District, and any such failure shall not be considered in the calculation of failure rate contemplated herein. It is also agreed that if a Transmitter fails due to an act of District or its agents or employees and is replaced by Seller within ninety (90) calendar days of initial installation by District, the failure will not be counted towards the failure rates identified above, provided that any failure due to a manufacturing defect, missing part or other similar cause will be counted against such failure rates;

E. Technical Support. Seller shall maintain offices or locations staffed by a sufficient trained and capable staff, adequate to provide District with assistance and instructions on setup, installation, and use of the Scheduled AMR Water Meters and Additional AMR Water Meters as needed. Said staff shall be available at the numbers specified herein or at such other numbers as from time to time provided by Seller to District;

1. During the term of this Agreement, Seller shall provide technical support to District within no more than four (4) hours from an initial request for assistance made during Seller's regular business hours (8:00 a.m. to 6:00 p.m.) CST Monday through Friday via telephone or facsimile to:

Master Meter Inc. – Service Center  
Phone: (800) 765-6518  
Fax: (817) 842-8100  
email: jpotter@mastermeter.com

2. District may obtain software support directly from Greentree during regular business hours (7:00 a.m. to 6:00 p.m. EST) or as agreed between District and Greentree in any software support contract effective from time to time;
3. Seller shall also provide on-site support at the request of District, provided that District shall first apply any troubleshooting procedures described in the guide provided by Seller, entitled 3G Troubleshooting Guide and attached hereto as Exhibit E; and
4. Seller shall provide free software updates for purchased software as such updates are available or necessary to correct any software problem and will provide upgrades to the software if so agreed by the Parties under a separate software contract;

F. Rights Covenant. Seller warrants and represents to District that it has the right, title and interest in and to the AMR Meters, and all related software and equipment, and the authority to sell or otherwise provide the same to District. Seller represents that the AMR Meters and all associated hardware and software contemplated hereunder are proprietary. If District determines or elects to purchase similar meters or meter reading products from another vendor, Seller agrees to

promptly provide all access information and protocols to the new vendor as needed to insure a seamless incorporation of the other vendor's meters or product;

G. Performance. Seller warrants that the Transmitters will, when properly installed, transmit reliable meter readings to a receive manufactured by Seller and connected to either a laptop or a handheld device;

H. Warranty. Seller hereby provides District with a twenty (20) year warranty for the registers and Transmitters consisting of a full replacement warranty for ten (10) years and a tiered warranty for an additional ten (10) years reflecting a percent discount from years 11 through 20 of the warranty, all as set forth in Exhibit D under the form of warranty entitled "Dialog 3G-DS Component Warranty". Seller hereby extends such warranty to provide District with the same coverage for the Prior Meters as set forth in the letter entitled "Supplemental Warranty" and attached hereto under Exhibit D. In addition, Seller hereby provides coverage for the body of the AMR Meters and Prior Meters in accordance with the terms of the warranty entitled "Utility Products Performance Warranty" attached hereto under Exhibit D. Seller will extend or upgrade such warranties from time to time as required to provide District any benefits greater than the ones described under the Warranty which Seller makes available to another customer or to all its customers. In connection with each meter sold or provided by Seller to District, and each meter or Transmitter replaced by Seller pursuant to the Warranty, the Warranty shall become effective sixty (60) calendar days from the date the meter or Transmitter is shipped to District, and, for every replacement meter, Transmitter or other part, on the date the part is either shipped to District or installed by Seller, as applicable, and shall remain in effect as provided under the Warranty;

I. Compliance with laws. All items sold by Seller hereunder shall be in conformance with AWWA Standards (including ANSI/AWWA C708-05, as hereinafter amended or supplemented) and all other applicable laws, rules and regulations, including Proposition 65 of the State of California. Seller shall be responsible for obtaining any required permits, inspection certificates or any other documentation of compliance required in connection with any such items. Failure to comply with those standards or permits may subject Seller to a product's liability action in accordance with the laws of the State of California;

J. Manufacturing Standards and Testing. Seller shall test or cause to be tested each batch of meters in accordance with its practice and procedures before delivering same to District;

K. Product Recall. If a government entity with jurisdiction over Seller, the AMR Meters or the Transmitters, a court of competent jurisdiction or Seller at any time determines, finds and determines (or orders) that the AMR Meters, or any particular batch or series, should be recalled, or that a manufacturing defect renders the meters not fit for the purpose for which they are intended, Seller shall be responsible for all costs and expenses of the recall. For purposes of this Agreement, said costs and expenses include without limitation, the removal, transportation, disposal and replacement of the AMR Meters. Replacement meters shall be reliable radio transmitter read water meters capable of transmitting data to either a laptop or handheld device;

L. Time is of the Essence. Seller agrees and understands that time and accuracy are of the essence to District in connection with meter readings. Seller will place an agreed upon number of meters and parts in consignment with District to facilitate the replacement or repair of any meters under the warranty within forty-eight (48) hours of notification of failure of a meter;

M. Rejected Meters/Shortages. Upon notice by District to Seller that a meter arrived in a damaged, defective or nonconforming condition, or any shortage in quantity of any shipment of meters, Seller shall replace the rejected meter or make up the shortage as soon as possible at no cost to District;

N. Consignment Meters. At all times during the term of this Agreement, Seller will maintain no less than two (2) boxes of ¾ x 7.5" and two (2) boxes of ¾ x 9" on consignment with District to be used to replace any defective, nonconforming or failed meter and shall replace such consignment meters when used in accordance herewith. Seller will provide a greater number of consignment meters, or different sizes of meters, upon agreement by the Parties. There will be no charge or cost to District for consignment meters, provided that said meters, or parts thereof, shall only be used as needed under the Warranty or as provided above upon failure rate of meters.

### VIII. Insurance and Indemnification

A. Seller Insurance. Seller shall procure, and maintain during the term of this Agreement, from insurance companies with a Best rating of A VII or better, commercial general liability insurance and all other insurance required to be maintained by Seller under all laws applicable to Seller.

B. Seller Indemnification. Seller shall defend, indemnify and hold harmless District, its Board of Directors and each member thereof, its officers, agents, attorneys, insurers and representatives against any and all liability, damages, costs or expenses resulting from any claim, action, proceeding, lawsuit or other occurrence of similar nature, in connection with the manufacture, design, sale, title, intellectual property or any other right or interest in or to the AMR Meters and/or the Prior Meters and/or arising out of the negligence of Seller, its board, subcontractors, agents or employees. The extent of this indemnification includes, but is not limited to, Seller's obligation to reimburse all amounts paid by District to Seller hereunder if a court determines that Seller had no right to sell the meters to District as provided under this Agreement or that the meters were no manufactured in accordance with the applicable AWWA or California Proposition 65 standards.

C. District Indemnification. District shall defend, indemnify, and hold harmless Seller, its board, agents and employees against any and all liability, damages, costs or expenses resulting from any third-party claims made or suits brought against Seller (that are not related to the issues covered by Seller Indemnification) and which arise out of the negligent storage, handling, installation or use by District of the AMR Meters, Prior Meters or Transmitters.

### IX. Successors and Assigns; Notice

A. This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement shall be made without prior written consent of the other Party to this Agreement. Any attempt by the Seller to assign or otherwise transfer any interest in this Agreement without the prior written consent of District shall be void. Since the primary consideration of District in entering this Agreement is the qualifications of the

Seller, as opposed to a low bid, District will refuse to consent to assignments if it considers the assignee to have lesser qualifications.

B. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, or via facsimile, provided that sender shall retain and be able to produce proof of successful fax, addressed to:

**District:**

Otay Water District  
2554 Sweetwater Springs Boulevard  
Spring Valley, California 91978-2004  
Phone: (619) 670-2280  
Fax: (619) 660-0829  
Attention: General Manager

**Seller:**

Master Meter, Inc.  
101 Regency Parkway  
Mansfield, Texas 76063  
Phone: (800) 765-6518  
Fax: (817) 842-8100  
Attention: Jerry Potter, President

Any notice given as indicated above shall be effective upon date of mailing or facsimile delivery.

**X. Miscellaneous**

A. Entire Agreement. This Agreement and the attached Exhibits represent the entire understanding by and between District and the Seller as to those matters contained herein. All Exhibits, documents or certificates attached to or referenced in this Agreement are incorporated into this Agreement as if fully set forth herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

B. Amendment. This Agreement may not be modified or altered except in writing signed by the Parties.

C. Applicable Laws. The Agreement shall be interpreted in accordance with the laws of the State of California without regard to its conflict of laws principles.

D. Venue. The proper venue for the resolution of any dispute hereunder which the Parties are unable to resolve in an amicable manner shall be with the superior courts within the County of San Diego, California. Each Party hereby submits to the jurisdiction of said courts.

E. Drafting. The terms of this Agreement have been negotiated by the Parties and the Agreement shall be considered to have, and shall be construed as it has, been drafted by both Parties.

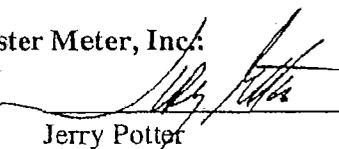
F. Effect of Waiver. No waiver of any default or other provision hereof, or failure of either Party to enforce a right hereunder, shall be deemed a permanent waiver of said term, right or provision or prevent or limit the enforcement of any other concurrent violation of the waived right, default or provision in the future.



XI. *Execution. Each person executing and delivering this Agreement represents to the other Party that it has full authority to enter into and execute this Agreement and bind the Party on whose behalf it is signing to comply with all terms and conditions of this Agreement.*

Effective Date= Date of Approval by Board of Directors of District = 12 - 7, 2005

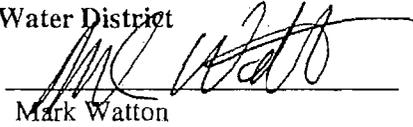
Master Meter, Inc:

By:   
Jerry Potter

Its: President

Date: 11/7/05

Otay Water District

By:   
Mark Watton

Its: General Manager

Date: 12-7-05

COPIES:  FILE (1 Orig.),  Seller (1 Orig),  PROJECT MANAGER,  ACCOUNTS PAYABLE

APPROVED AS TO FORM:

 12-7-2005  
Yuri Calderon  
General Counsel  
Otay Water District

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## EXHIBIT B

### Additional AMR Water Meters

#### Dialog Meter Descriptions

- ¾ x 7.5 BL06-2GD-NAA-2-3G or equal or superior Master Meter meter
- ¾ x 9 BL07-2GD-NAA-2-3G or equal or superior Master Meter meter
- 1" MJ09-2(G or L)D-(N or A)AA-2-3G or equal or superior Master Meter meter
- 1 1/2" MJ11-2(G or L)D-(N or A)AA-2-3G or equal or superior Master Meter meter
- 2" MJ13-2(G or L)D-(N or A)AA-2-3G or equal or superior Master Meter meter

At the option of District, as specified at the time each order is placed, an Additional AMR Water Meter will be either as identified above, or any other similar, equivalent or better meter. All meters purchased shall be counted towards the aggregate number used to identify the pricing category of the meter purchase, provided that, if the pricing schedule for the meter ordered is different from the pricing schedule attached to this Agreement as Exhibit C, the proper pricing schedule shall be used to set the price of the meter so purchased.

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**EXHIBIT A**

**Scheduled AMR Water Meters  
Price and Delivery Schedule**

**Price Schedule for Scheduled AMR Meters**

<u>Size</u>	<u>Price per meter</u>
¾ x 7.5"	\$112.50
¾ x 9"	125.00
1"	135.38
1- ½"	215.38
2"	275.38

**Price and Delivery Schedule for Scheduled AMR Meters**

<u>Delivery Date</u>	<u>Quantity</u>	<u>Description</u>	<u>Price per Meter</u>	<u>Total</u>
January 1, 2006	500	¾ x 7.5"	\$112.50	\$ 56,250
	2750	¾" x 9"	125.00	343,750
March 25, 2006	500	¾ x 7.5"	112.50	56,250
	2750	¾" x 9"	125.00	<u>343,750</u>
<b>TOTAL</b>	<b>6,500</b>			<b>\$800,000</b>

JP

## EXHIBIT B

### Additional AMR Water Meters

#### Dialog Meter Descriptions

- ¾ x 7.5      BL06-2GD-NAA-2-3G or equal or superior Master Meter meter
- ¾ x 9        BL07-2GD-NAA-2-3G or equal or superior Master Meter meter
- 1"            MJ09-2(G or L)D-(N or A)AA-2-3G or equal or superior Master Meter meter
- 1 1/2"       MJ11-2(G or L)D-(N or A)AA-2-3G or equal or superior Master Meter meter
- 2"            MJ13-2(G or L)D-(N or A)AA-2-3G or equal or superior Master Meter meter

At the option of District, as specified at the time each order is placed, an Additional AMR Water Meter will be either as identified above, or any other similar, equivalent or better meter. All meters purchased shall be counted towards the aggregate number used to identify the pricing category of the meter purchase, provided that, if the pricing schedule for the meter ordered is different from the pricing schedule attached to this Agreement as Exhibit C, the proper pricing schedule shall be used to set the price of the meter so purchased.

## EXHIBIT C

### Price Schedule for Purchase of 3G Meters by the Otay Water District

METER SIZE	Material	No. of Meters	0-5,000	5001-10,000	10,001-15,000	≤15,001+
		List Price/ Multiplier	0.51	0.49	0.48	0.46
			PRICE (per meter)	PRICE (per meter)	PRICE (per meter)	PRICE (per meter)
3/4 x 7.5"	EnviroBrass	\$312.52	\$159.39	\$153.13	\$150.01	\$143.76
1"	Bronze	365.22	186.26	178.96	175.31	168.00
1.5"	Bronze	574.12	292.80	281.32	275.58	264.10
2"	Bronze	705.34	359.72	345.62	338.56	324.46
1"	EnviroBrass	401.69	204.86	196.83	192.81	184.78
1.5"	EnviroBrass	661.02	337.12	323.90	317.29	304.07
2"	EnviroBrass	825.26	420.88	404.38	396.12	379.62

METER SIZE	Material	No. of Meters	0-5,000	5001-10,000	10,001-15,000	≤15,001+
		List Price/ Multiplier	0.49	0.47	0.46	0.45
			PRICE (per meter)	PRICE (per meter)	PRICE (per meter)	PRICE (per meter)
3/4 x 9"	EnviroBrass	348.56	170.79	163.82	160.34	156.85

Seller and District have agreed that, in consideration of the discount given by Seller to District in connection with the Scheduled AMR Water Meters, District will initially purchase Additional AMR Water Meters at the list price multiplier under the first column, above, (.51), except for any 3/4 x 9" meters in connection with which the special schedule above has been agreed upon. There will be no credits or reimbursement for any meters purchased under a higher multiplier, however, District and Seller has agreed that the multipliers identified above will apply to the purchase by District of any other meters of Seller.

**EXHIBIT D**

**Warranty**

**See Attached**

### DIALOG® 3G-DS Component Warranty

DIALOG 3G-DS registers and external transmitters (herein know as "product") are warranted to be free from defects in materials and workmanship for Ten (10) years from date of shipment by Master Meter and at a prorated replacement cost of list price during the following Ten (10) years based on the discounted rate value listing below.

All other 3G-DS System components are warranted to be free from defects in materials and workmanship for One (1) year from date of shipment by Master Meter.

If a product fails to perform as warranted, Master Meter will repair or replace the product, at Master Meter's sole option, at no charge to the customer, subject to the terms of the warranty. This warranty shall not be applicable to products that have been damaged by willful misconduct, negligence, vandalism, act of God, exposure to adverse service conditions or improper installation, use or repair.

Master Meter's liability under this warranty is expressly limited to repair or replacement of the product, at Master Meter's option. The repaired or replacement product will maintain the original meter's warranty based on the original purchase date. The customer must pay for freight cost of the returned product or products to the factory or service center designated by Master Meter. The product replaced becomes the property of Master Meter.

Master Meter further warrants that any 3G register or external transmitter installed shall be free from battery defects in manufacturing and design for a period of ten (10) years from the date of shipment in the relevant DIALOG 3G-DS product (such period is defined as the "Battery Warranty Period"). Master Meter will repair or replace a product that is non-performing due to battery failure free of charge for the first Ten (10) years and at a prorated replacement cost based on the current list price during the remaining Ten (10) years as follows:

Year of Failure	Replacement Cost
1-10	Full Replacement
11	30%
12	35%
13	40%
14	45%
15	50%
16	55%
17	60%
18	65%
19	70%
20	75%



DISCOUNT PERCENTAGES WILL BE APPLIED AGAINST PUBLISHED LIST PRICES IN EFFECT AT THE TIME THE PRODUCT IS ACCEPTED BY MASTER METER UNDER WARRANTY CONDITIONS. THE WARRANTIES CONTAINED ABOVE HEREOF ARE THE ONLY WARRANTIES WITH RESPECT TO THE LISTED PRODUCTS, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, BETWEEN THE PARTIES OR ARISING BY LAW. IN PARTICULAR, MASTER METER DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THESE WARRANTIES SHALL BE VOID IN THE EVENT THAT THE FAILURE OR DEFECT IN THE LISTED PRODUCT HAS ARISEN AS A RESULT OF THE PRODUCT BEING USED FOR ANY PURPOSE OTHER THAN THAT WHICH WAS INTENDED AND APPROPRIATE AT THE TIME OF MANUFACTURE INCLUDING USE IN A CONFIGURATION OTHER THAN AS RECOMMENDED BY MASTER METER OR AS A RESULT OF IMPROPER INSTALLATION OR MAINTENANCE. MASTER METER'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE. MASTER METER SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY MASTER METER, OR ANY UNDERTAKINGS, ACT OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.

FORM MM1008 06/20/2005



101 REGENCY PARKWAY  
MANSFIELD, TX 76063  
817-842-8000  
FAX 817-842-8100

### Supplemental Warranty

Master Meter specifically agrees to extend our 3GDS warranty to all of the 3GNB units that the Otay Water District currently has within its coverage area as of November 1, 2005. The warranty period on these units began when they were shipped to the District or an authorized Master meter Distributor. The additional Warranty becomes effective when and only when the contract titled "Agreement Between the Otay Water District and Master Meter Inc. to provide for the purchase, sale, and warranty of certain water meters" is executed.

Jerry Potter

President  
Master Meter Inc.

## UTILITY PRODUCTS PERFORMANCE WARRANTY

- Multi-jet Meters manufactured by Master Meter, Inc. are warranted to perform to AWWA new meter accuracy standards, and to be free from defects in materials and workmanship, for a period of two (2) years from date of Master Meter shipment.

- Additionally, Master Meter Multi-jet Meters will perform to AWWA repaired meter accuracy standards for fifteen (15) years from Master Meter shipment date, or the registration limits indicated, whichever occurs first:

5/8" - 1.5 million gallons    3/4" - 2.25 million gallons    1" - 3.0 million gallons  
1-1/2" - 5.5 million gallons    2" - 8.0 million gallons

- Master Meter 2" to 8" waterworks bronze body and 10" and 12" cast iron body MM1 Turbine Meters are warranted to perform to AWWA accuracy standards, and be free from material and workmanship defects, for two (2) years from date of Master Meter shipment. Master Meter 2" to 8" cast iron body WT Turbine Meters and Fire Hydrant Meters are warranted to perform to AWWA accuracy standards, and be free from material and workmanship defects, for one (1) year from date of Master Meter shipment.

- Master Meter 2" to 6" DB Compound Meters are warranted to meet AWWA performance standards, and be free from defects in materials and workmanship, for two (2) years from date of Master Meter shipment. Further, the Multi-jet Meter installed for low flow measurement in the DB Compound Meter is covered by the Multi-jet Meter performance warranty as described above.

- Master Meter Electromagnetic Flowmeters, including sensors and converters, are warranted to be free from defects in materials and workmanship for one (1) year from date of Master Meter shipment.

- The waterworks bronze maincases for 5/8" to 2" Multi-jet Meters are warranted to be free from defects in materials and workmanship for twenty-five (25) years from the date of shipment by Master Meter.

- Direct read and DIALOG® System registers are warranted to be free from material and workmanship defects for fifteen (15) years from date of Master Meter shipment. Electrical Output and Rate of Flow registers are warranted to be free from material and workmanship defects for one (1) year from date of Master Meter shipment.

- DIALOG System Electronic Modules are warranted to be free from defects in materials and workmanship for ten (10) years from date of shipment by Master Meter. All other DIALOG System components are warranted to be free from material and workmanship defects for one (1) year from date of shipment by Master Meter.

- All Master Meter products not specifically identified above are warranted to be free of defects in materials and workmanship for one (1) year from date of Master Meter shipment.

- If a product fails to perform as warranted, Master Meter will repair or replace the product, at Master Meter's option, at no charge to the customer, subject to the terms of the warranty.

- This warranty shall not be applicable to products that have been damaged by willful misconduct, negligence, vandalism, act of God, exposure to adverse service conditions or improper installation, use or repair.

- Master Meter's liability under this warranty is expressly limited to repair or replacement of the product, at Master Meter's option, upon the customer's returning the product to the factory or service center designated by Master Meter and paying freight cost to and from such factory or service center. The product replaced becomes the property of Master Meter. Master Meter shall not be liable for special, incidental, indirect or consequential damages of any kind.

THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR GUARANTEES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.



041201

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## EXHIBIT E



# 3G Trouble Shooting Guide

Problems that can occur out in the field when reading 3G installed routes:

1. No transmission from unit (3G under the glass, universal 3G single or dual switch, and WR clip on).
2. Transmitter number mismatches.
3. Receiver failure.
4. Cable failure: Antenna cable between the receiver and antenna, USB cable or RS 232 cable between the receiver and PC.
5. Reads not matching: PC read to odometer read.
6. Wrong user codes

### No Transmission from unit or weak transmission:

1. List of things to check.
  - a) Check cable connection between receiver and computer is not loose
  - b) Check the antenna connection to the receiver is not loose.
  - c) Check that the receiver is on, and the led is blinking orange or solid orange.
  - d) Check that the stop button in your route management software wasn't accidentally clicked.
  - e) Make sure you've imported the correct route.
  - f) Make sure you are close to the pit of transmitting register if trouble shooting.
  - g) Check the pit status, it can be filled with dirt or water which can at times attenuate RF signals
  - h) Cross check the transmitting number on the register or Universal to the number and address it corresponds to in the route.
  - i) Try communicating with another unit then try the problematic unit once more.
  - j) Query the unit using the 3G technician software for TX ON/OFF; if TX is of, activate unit. If TX is ON check Transmission interval; the transmission interval for a drive-by system should be 10 seconds and for fixed area network, Sub-metering only, it should be 300 seconds.
  - k) If the unit is transmitting, check the user code and make changes if it is different.
  - l) If all above is checked and the unit is not responding replace register or WR. Note; when replacing the 3G register on a bottom load meter you don't have to turn the water off and take the meter out of the pit. Refer to 3G register change out guide. If you are replacing WR, refer to the WR installation guide.

### Transmitter number mismatches:

When a transmitting number doesn't match the number in the route management software, you will get a no response meaning the number/address will not clear from the list in the bottom window of your Route management software; it could be possible that the number assigned to the particular address may in fact be transmitting from another location. It is always good to cross check numbers in your software to the transmitting number for verification when ever you are confronted with an unusual read or no read.

If numbers are mismatched, make necessary corrections in local data base

**Receiver failure:**

Make sure the receiver is fully charged at all times; when charging, make sure the receiver is turned off. When using in drive-by, make sure the power is always plugged.

**Cable failure:**

Cables are very important components of the system. Be careful when handling, plugging, unplugging, and installing cables to your receiver and computer.

Typical failures of cables are: loose connections, cuts in the cable, tangled cables, and end connections stripped from the cable.

**Reads not matching: PC read to odometer read.**

This is identified when there is an abnormal difference in usage in the reports printed from the reads.

Note: before any changes verify that the number in the route is the same as the transmitter number you are trouble shooting.

1. In this case you need to compare the pc read to the odometer read of the meter with the problem using the 3G technician software.
2. If the read difference is more than 3 pulses, this means that the register is not registering properly, if this is the case replace register. Refer to register change out guide.

**Alerts/statuses:**

Leak (Alarm), CCW, and Tamper are the three statuses transmitted from the 3G register.

**Leak (Alarm):** This means that there is a leak at that location on the customer's side. This will appear on your screen only if water is being used continuously for 24 hours.

Locations with leaks need to be double checked to verify the leak status. Some leaks will not be noticeable. The register is very sensitive and will detect the slightest movement in the line. It will detect a leak as small as a commode leak in the bathroom. If it is a temporary leak the alarm will reset itself.

**CCW:** This means counter clockwise read. This will appear on your screen if water flows in the opposite direction as much as 30 gallons or more, or if the meter was installed in the wrong direction.

When you receive a CCW status you can interrogate the unit to see how much water passed through the meter CCW. You can reset the status and the CCW read to zero any time after problem is taken care of.

CCW is also helpful in installations. If a meter is installed facing the wrong direction, once 30 gallons of water passes through the meter, it will send a CCW status

**Tamper:** This will appear on your screen when meter is tampered with a magnet.

# AGENDA ITEM 7e



## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Frank Anderson, Utility Services Manager <i>FA</i>	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)	Pedro Porras, <i>[Signature]</i> Chief, Water Operations		
APPROVED BY: (Asst. GM):	Manny Magaña, <i>[Signature]</i> Assistant General Manager, Engineering & Operations		
SUBJECT:	Authorize the General Manager to Purchase Large Meters		

### GENERAL MANAGER'S RECOMMENDATION:

That the Board authorize the General Manager to:

1. Purchase 3" and larger (large) Master Meter, Inc. radio-read (AMR) meters as needed to complete the retrofit of existing manual read meters to AMR meters within the District's existing AMR routes, and
2. Purchase additional large Master Meter, Inc., or other manufacuted, radio-read meters on an as-needed basis as required to meet the Districts large meter needs.

### COMMITTEE ACTION:

See Attachment "A"

### PURPOSE:

To obtain Board authorization for the General Manager to purchase large meters to complete the District's AMR meter retrofitting program and as required to meet the District's on-going large meter needs.

It is anticipated that the AMR retrofit program should be completed no later than FY 2014. Meters for the AMR retrofit program will be purchased under the AMR Retrofit CIP.

Large meters purchased to replace under-registering meters per AWWA standards and for new meter requirements will be purchased separately on an as-needed basis from Master Meter, Inc. or from a different vendor, as dictated by its application. These meters will be purchased from a specific Large Meter Testing Program CIP funding account or from the an operating budget as appropriate.

**ANALYSIS:**

For the purpose of these projects, large meters are considered three-inch and larger; therefore, in order to fully complete the routes as AMR routes, and ensure a more accurate consumption reading, a specific amount of large meters need to be purchased. This process is expected to be completed in conjunction with the AMR Retrofit Program, estimated to take four more years. Staff determined that there is a need to purchase 112 large meters to complete the District's retrofit program.

It is also expected that as a best management practice that the District will regularly flow test all large meters starting with the remaining large meters not yet in AMR routes. During this testing, several meters could be deemed inaccurate and under-registering based on AWWA standards thus reducing revenue to the District. Larger meters typically consume more water and create more revenue for the District. Due to the higher expense of larger meters, expediting the purchase of these large meters in order to recover water loss from the under-registering meters could surpass the current purchase level approval of the General Manager.

The purchasing of new large meters for new installations will be performed separately, on an annual basis, from expected growth, estimated every year per meter sale projections.

**FISCAL IMPACT:**

It is estimated that the cost to purchase the proposed 112 large AMR retrofit program meters will total \$410,088 to be charged against the AMR/Manual Meter Replacement CIP 2458. The annual purchase of these meters is dependant upon the schedule of replacements projected from fiscal year 2010 to fiscal year 2014.

The total budget for the AMR/Manual Meter Replacement CIP 2458 is \$10,447,000. Current expenditures and encumbrances for the CIP, including the meters purchased under this request, and the retrofit meter request if approved, are \$6,734,874.

The total budget for the Large Meter Testing CIP 2484 is \$535,000. This CIP account will fund the contractual testing of large meters, meter testing data analysis by District Engineering staff, and for any large meter purchase deemed necessary due to failing test results. Current expenditures and encumbrances for this CIP are \$ 7,524.

AMR/Manual Meter Replacement Expenditure Summary:

AMR/Meter Replacement CIP 2458 Budget:		\$ 10,447,000
Expenditures and Encumbrances to Date with proposed purchase of two-inch and smaller AMR meters:	\$6,324,786	
Proposed Large Meter Purchase:	\$410,088	
Total Expenditures and Proposed Encumbrances:		\$6,734,874
Projected Balance of AMR/Meter Replacement CIP 2458 Budget:		\$ 3,712,126
Large Meter Testing CIP 2484 Budget:		\$535,000
Current Expenditures:	\$7,524	
Current Balance of Large Meter Testing CIP 2484 Budget:		\$527,476

**STRATEGIC GOAL:**

Implementation of the AMR/Meter Replacement program and Large Meter Testing program per schedule.

**LEGAL IMPACT:** \_\_\_\_\_

None

**LEGAL IMPACT:** \_\_\_\_\_

None



\_\_\_\_\_  
**General Manager**

Attachment "A", Committee Action

QA/QC approval:

Name: Tim Kuran

Date: 9-17-2009



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Approval to Purchase Additional Large Meters
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on September 28, 2009 and the following comments were made:

- Staff is requesting that the General Manager be authorized to purchase 3" and larger (large) Master Meter, Inc. radio-read (AMR) meters to replace the existing manual read meters to AMR meters within the District's existing AMR routes. In order to meet the District's large meter needs, staff also recommended the purchase of additional large radio-read meters on an as-needed basis.
- Staff stated that the new large meters could be master meters and will meet AWWA standard requirements.
- Staff indicated that the District will regularly flow test all large meters, starting with the remaining large meters that are not yet in AMR routes.
- The committee inquired if there is an industry average for quantifying what is considered an "inaccurate" meter. It was noted that the District utilizes AWWA M6 Standards to test meters. The standard indicates that the average accuracy limit is  $\pm 5\%$  (note that the specific percentage is related to the size of the meter).
- The Committee inquired about the "Large Meter Testing CIP 2484 Budget" of \$535,000, and asked why the "Proposed Large Meter Purchase" is only \$410,088. Staff indicated that there are two CIP's related to this request. CIP 2458 identifies \$410,088 for the purchase of large meters for the AMR/Meter Replacement Program. CIP 2484 identifies \$535,000 to obtain a contractor to test all large meters, analyze the test data, and retrofit existing infrastructure. The total requested by staff is \$945,088 (or \$410,088 + \$535,000).

Following the discussion, the Committee supported staffs' recommendation and presentation to the full board on the consent calendar.



# AGENDA ITEM 7f

## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	James F. Peasley <i>JF Peasley</i> Engineering Manager	W.O./G.F. NO:	P2010- DIV. NO. ALL 001101
APPROVED BY: (Chief)	Rod Posada <i>R Posada</i> Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña <i>M Magaña</i> Assistant General Manager, Engineering & Operations		
SUBJECT:	Authorization of General Manager to Execute a Non-Competitive Professional Services Agreement with MWH Americas Inc. for a North District-South District Service Area Intertie Study		

### GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District's (District) Board of Directors (Board) authorize the General Manager to execute a non-competitive professional services agreement with MWH Americas Inc. (MWH), a professional engineering consulting firm, to prepare for the District a North District-South District Service Area Intertie Study in an amount not to exceed \$119,505.

### COMMITTEE ACTION:

Please see Attachment A.

### PURPOSE:

That the Board authorize the General Manager to execute a non-competitive professional services agreement with MWH in an amount not to exceed \$119,505 for preparation of a North District-South District Service Area Intertie Study (Study).

### ANALYSIS:

In April 2007 staff made a presentation to the Board regarding the Integrated Water Resources Plan (IRP). The IRP formalized the development of strategies and approaches for water supply diversification, which included the continued exploration of the feasibility for local water treatment plant supply opportunities and pursuit of a North District to South District inter-connection.

The Sweetwater Authorities (SWA) Robert A. Perdue Water Treatment Plant (Perdue WTP) is one such obvious example of supply diversification and the conveyance system can also be used for a North District to South District interconnection. Staff has had discussions with SWA staff regarding the feasibility of potential cooperative efforts to implement mutually beneficial projects consistent with the goals and objectives of the IRP.

Given the current water supply uncertainties and supportive encouragement from SWA, it is believed that it is a good time to pursue the important Perdue WTP opportunity.

The scope of work for the Study, Attachment B, includes the evaluation of conveyance, pumping, and storage system requirements to convey the SWA Perdue WTP supply and interconnection between the North District and South District Systems, as well as an evaluation of various routing and site alternatives. The South District to North District interconnection would be capable of conveying Rosarito Desalination water supplies to the North District.

Mr. William Moser, with MWH, has recent and extensive past experience of 37 years with regional water systems in San Diego County working on water supply and conveyance for SDCWA, SWA, Helix Water District, and the District. Mr. Moser is well respected, is held in high regard, and has developed an excellent level of trust with SWA and District staff. Staff believes, and is confident, that it is in the District's best interest to have MWH, with Mr. Moser as project manager, to perform the Study scope of work.

Mr. Moser is very familiar with Water District facilities, through preparation of the District's 1995 Water Resources Master Plan, and familiar with the water facilities and SWA Perdue WTP's numerous projects since 1985 and its past Master Plans. Mr. Moser recently prepared a brief technical memorandum on options for connection to SWA system, which will serve as a starting point for this proposed Study.

The schedule to award the MWH professional services consultant contract for the Study is October 2009. The Study effort is projected to take four to five months, with completion projected in March 2010.

**FISCAL IMPACT:**



The total budget for CIP P2010, Sweetwater Authority Perdue WTP Connection to 36-Inch Main, for the next six years is \$4,000,000 approved as a part of the Fiscal Year 2010 budget process.

Expenditures to date are \$11,209.86. Total expenditures, plus outstanding commitments and forecasts to date, are approximately \$130,714.86.

Based on a review of the budget, the Project Manager anticipates the budget will be sufficient to support the Study effort.

Finance has determined that 40% of the funding is available from the Expansion Fund and 60% of the funding is available from the Betterment Fund.

**STRATEGIC GOAL:**

Preparation of a North District-South District Service Area Intertie Study supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, and efficient manner," and the District's Strategic Goal, in planning for infrastructure and supply to meet current and future potable water demands.

**LEGAL IMPACT:** \_\_\_\_\_

Legal counsel reviewed District policies and determined that the Board, at its discretion, may authorize and direct the General Manager to enter into non-competitive professional services agreements.



\_\_\_\_\_  
**General Manager**

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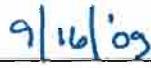
JFP/RP:jf

Attachments: Attachment A  
Attachment B

QA/QC Approval:



\_\_\_\_\_  
NAME



\_\_\_\_\_  
DATE



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>  P2010-001101	Authorization of General Manager to Execute a Non-Competitive Professional Services Agreement with MWH Americas Inc. for a North District-South District Service Area Intertie Study
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on September 28, 2009 and the following comments were made:

- Staff is requesting approval of a non-competitive professional services agreement with MWH Americas Inc. to prepare the North District-South District Service Area Intertie Study in an amount not-to-exceed \$119,505.
- Staff is recommending that the contract be awarded to MWH Americas, Inc., with Mr. Moser as project manager, to perform the Study. Mr. Moser is very familiar with the District's facilities as he prepared the District's 1995 Water Resources Master Plan. He is also familiar with SWA's water facilities and the Perdue WTP's numerous projects. Staff stated that Mr. Moser has 37 years of experience with regional water systems in San Diego County working on water supply and conveyance for SDCWA, SWA, Helix Water District, and Otay Water District. Staff stated that Mr. Moser was instrumental in documenting the justification in obtaining \$4.2 million from CWA for the District's East County Regional Treated Water Improvement Program and that he has developed a high level of mutual trust with SWA and the District.
- Staff indicated that the additional purpose of the Study is to consider another alternative supply for potable water from the SWA Perdue WTP should it prove viable.
- Staff noted that the intertie project would allow the District to move any acquired water supplies available to the North District, such as the Helix WD Levy WTP source, to the South District and also move any acquired water supplies available in the South District, such as the possible Rosarito sea water desalination source, to the

North District. The study will focus on the Coral Canyon alignment along with a SWA Perdue WTP supply opportunity.

- In addition, should the alternative water supply from the SWA Perdue WTP any time of the year become a reality, it would allow for the deletion of a large reservoir currently identified in the District's CIP as it would no longer be required.
- There was discussion regarding the decision to sole source the study contract. It was indicated that Mr. Moser has the expertise and knowledge of both SWA and District's system and should other vendors bid on the contract, they would need to contract with Mr. Moser to complete the study. Thus, it was decided to sole source the contract.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full board on the consent calendar.

## **ATTACHMENT B**

### **OTAY WATER DISTRICT**

#### **North District-South District Service Area Intertie Study**

##### **Scope of Work**

###### **Objectives:**

The North District to South District Service Area Intertie Study (Study) and subsequent report preparation will address three potential alternatives to meet the following two primary objectives:

1. Obtain perhaps up to 10,000 gallons per minute (gpm) from Sweetwater Authority (SWA) in the winter months and possibly in emergency conditions such as scheduled or unscheduled treated water pipeline shutdowns (i.e., Pipeline Number 4) by the San Diego County Water Authority (SDCWA).
2. Convey treated water from the Otay Water District (WD) North District to the South District and from the South District to the North District service areas during normal or emergency conditions. Water supplied from the proposed Rosarito Desalination Plant could be conveyed to the North District via the interconnection.

Three general alignments are to be addressed; Western alignment, RWCWRF force main, alignment, and Proctor Valley alignment. The goal is to provide two benefits, (1) a link between the 640 Pressure Zone of Regulatory System using the existing 36-inch transmission main in San Carlos Street as the northern connection point, which is connected to the SDCWA Otay WD No. 11 Flow Control Facility (FCF) in Paradise Valley Road and the 624 Pressure Zone in the Central Area System in H Street and (2) as an emergency 10,000 gpm supply source connected to SWA with the treatment at the Robert A. Perdue Water Treatment Plant (Perdue WTP) located at the Sweetwater Reservoir.

###### **Approach:**

Brief descriptions of the RWCWRF force main and the Proctor Valley alignment options will be presented in the report along with the reasons that they are not competitive with the western alignment possibilities. These reasons include the need to wait for development along Proctor Valley Road (not build now and then later having to move a pipeline), pumping to 1296 hydraulic grade elevation only to bleed back to 640 elevation, the need to upgrade existing pump stations, etc.

The RWCWRF force main alignment involves three pump stations (all new) – two feed north to south and one feeds south to north. It would also be necessary to review the capacities of pump stations from the 624 Pressure Zone to the 980 Pressure Zone to assure water can flow in this direction.

The Proctor Valley Road alignment would require one new pump station at Perdue WTP and evaluation of the 832-1 Pump Station, 944-1 Pump Station, and 1296-1 Pump Station for the north to south flow. The south to north would require review of existing pump stations plus a new station to the 1296 Pressure Zone.

There are a number of potential pipeline alignments for the western alternative as could be multiple connection points to the SWA system. It has been assumed that two connection points and no more than four pipeline alignments will be presented.

It has also been presumed that Otay WD will provide support. One area will be in the preparation of GIS graphics that can be used to illustrate pipeline locations and to determine pipeline construction lengths. The second will be to run the Otay WD network model to provide hydraulic information in determining pipeline size and pump station total dynamic head.

### **Western Alternative(s)**

A previously prepared technical memorandum described a pump station and pipeline that would connect to pipelines of the SWA in Bonita Valley and run in Central Avenue and Corral Canyon Road to H Street or in a combination of Conduit Road, San Miguel Road., Proctor Valley Road., and Corral Canyon Road to H Street. From either of these an extension to the San Carlos Street or to the FCF on Paradise Valley Road needs to be identified and costs estimated.

For the South District to North District flow condition it has been determined that water would be pumped from the 624 Pressure Zone into the 711 Pressure Zone (the existing pumping capacity is adequate) and from there through the proposed pipeline to the North District 640 Pressure Zone.

For the North District to South District flow condition it has been determined that a pipeline be also connected to the South 624 Pressure Zone and that a booster pump station would be required to move the water from the 640 Pressure Zone in the north to the 624 Pressure Zone in the south.

A second pump station would be required to move water from SWA to either of the Otay WD pressure zones.

Valving and metering will be required to allow the multiple flow scenarios.

The ability for SWA to take water from the new pipeline in an emergency will also be defined including the type of facility required.

### **Scope of Work**

Project Administration and report QA/QC.

Project Meetings:

- Kickoff meeting with Otay WD and SWA
- Progress Meetings with Otay WD (assume three)
- Coordination meetings with Otay WD and SWA (assume three)

Establish design condition for 10,000 gpm emergency supply outage scenario

- Perdue WTP to Central Area System 624 Pressure Zone

- Perdue WTP to Regulatory System 640 Pressure Zone
- Month of emergency, i.e. what is demand condition of the system
- Flow to be taken from Perdue WTP during winter months
- Flow to be taken from Perdue WTP during summer to keep pipeline water fresh
- Flow to be transferred from 640 Pressure Zone to 624 Pressure Zone
- Flow to be transferred from 624 Pressure Zone to 640 Pressure Zone

Determine and map up to four pipeline alignment possibilities and points of connection to SWA, the North District service area, and the South District service area. Meet with Otay WD and SWA to verify and modify as necessary. Identify major utility crossings such as drainage, SDCWA aqueduct, Otay WD, and SWA transmission mains. Have Otay WD staff prepare GIS scaled maps illustrating pipeline locations.

Prepare hydraulic analyses of each alignment for each flow condition and for the likely demand in two seasons (summer or winter). Prepare schematics that illustrate connection points, valve arrangements, and meter locations to satisfy all flow conditions. This requires network analyses by Otay WD.

Prepare preliminary hydraulic profiles.

Determine makeup of each pump station for three conditions; pumping from Perdue WTP, pumping from North to South District and South to North District service areas. Determine if one or two pump stations are required. Make preliminary selection of pumps and prepare scaled mechanical layout.

Identify two potential locations for each pump station.

Meet with SWA and Otay WD to present preliminary layout and findings and solicit comment and input on SWA facilities that need to be upgraded, expanded, modified, etc. Modify, as appropriate, and estimate operating costs for annual and emergency take from the Perdue WTP.

Prepare table(s) of total capital cost for each of the three alternatives using unit cost estimates for pipeline and pump station construction estimates. Add reasonable factor for engineering and administration and contingency costs.

The construction cost estimates will be an **AACE International CLASS 5 Cost Estimate**. Class 5 estimates are generally prepared based on very limited information, and subsequently have wide accuracy ranges. Typically, engineering is from 2% to 10% complete. They are often prepared for strategic planning purposes, market studies, assessment of viability, project location studies, and long range capital planning. Virtually all Class 5 estimates use stochastic estimating methods such as cost curves, capacity factors, and other parametric techniques. Expected accuracy ranges are from -20% to -50% on the low side and +30% to +100% on the high side, depending on technological complexity of the project, appropriate reference information, and the inclusion of an appropriate contingency determination. Ranges could exceed those shown in unusual circumstances.

Prepare table(s) of annual cost using data from SWA for purchase from Perdue WTP and energy costs assuming \$0.16/kWh. Add pump station maintenance costs but no annual maintenance for pipelines.

Show annual costs with and without capital amortization; for annual cost of capital assume projects are funded using 25 year bonds at 5% interest.

Coordinate with the Otay WD environmental staff to prepare Initial Check List – provide mapping, and respond to questions.

Prepare a draft and final reports. Draft report will be submitted in pdf and word format on a compact disc. The final report will be printed with 10 copies for Otay WD and 10 copies for SWA.

The scope and fee are based on the assumption that Otay WD and SWA will provide the following:

- GIS support by Otay WD to prepare graphics of pipeline alignments and site plans for pump stations.
- Hydraulic network analyses of existing and proposed major pipelines in the 640, 624, and 711 Pressure Zones to determine the hydraulic grade line required at the pump station location options.
- Participation in the initial workshop to define alignments and connection points to existing facilities.
- Details on existing facilities (i.e., pipeline materials and size, etc.) that will be part of, or connected to, new facilities developed in the Study.





# AGENDA ITEM 7g

## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Lisa Coburn-Boyd <i>LCB</i> Environmental Compliance Specialist	PROJECT/ SUBPROJECTS:	R2096-004000    DIV. NO.    4 R2095-004000 S2018-004000
	Ron Ripperger <i>RR</i> Engineering Manager		
APPROVED BY: (Chief)	Rod Posada <i>R. Posada</i> Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña <i>M. Magaña</i> Assistant General Manager, Engineering and Operations		
SUBJECT:	Award of a Professional Engineering Services Contract for the Ralph W. Chapman Water Reclamation Facility Upgrade Project		

### GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorize the General Manager to execute a Professional Engineering Services agreement with MWH Americas, Inc. (MWH), a professional engineering consulting firm, for the Ralph W. Chapman Water Reclamation Facility (RWCWRF) Upgrade Project in an amount not to exceed \$460,000.

### COMMITTEE ACTION:

Please see Attachment A.

### PURPOSE:

That the Board authorize the General Manager to execute a Professional Engineering Services agreement with MWH in an amount not to exceed \$460,000 for the RWCWRF Upgrade Project.

### ANALYSIS:

The District's RWCWRF Upgrade Project consists of three CIP projects (CIP Nos. R2095, R2096, and S2018) that were combined

for this engineering services contract. The three projects are related because they are all components of an overall upgrade of the RWCWRF.

The first component of the upgrade project is the modification of the treatment process at the facility to improve the reduction of Total Nitrogen in the treatment plant effluent. The RWCWRF treatment process must be modified to improve nitrogen reduction because the Facility has not been meeting its monthly average effluent discharge limit of 9.4 mg/L total nitrogen. A Nitrogen Reduction Study of the treatment process was conducted in early 2009 by PBS&J. The conclusion of the Study was that the treatment process could be modified by the addition of an anoxic zone prior to the aeration zone (pre-anoxic) to meet the effluent requirements for total nitrogen (T-N). An abandoned aeration basin on the east side of the current aeration basin can be refurbished for use as the anoxic basin.

The second upgrade component is the rehabilitation of the facility's process air blower system. Currently, the RWCWRF blower system consists of two sets of blowers and associated piping. One set, which was installed in 1980, is seldom used since they were replaced in 1992 by two larger blowers. Under current plant operations, a single blower is used to supply air to the grit chamber, aerated channels, activated sludge basins, and filters. A Study of the process air blower system was done by District staff earlier this year. This Study concluded that the replacement of the existing blower equipment, controls, and piping would make the system more efficient and result in significant cost savings.

The third part of the facility upgrade is the enhancement of the level of automation at the RWCWRF. An Automation Enhancements Assessment of the facility was completed by Westin Engineering in 2008. The report provided an assessment of the processes, control approaches, and SCADA system with recommendations for improvements and an Action Plan. The work for this task under the contract will include miscellaneous improvements of facility automation at the Process Area Controller level utilizing some of the recommendations from the Westin Study as a basis for the design of the system.

The final component of the project is the removal of the damaged filter backwash storage reservoir floating cover at the facility and the design of a replacement cover. The replacement cover may be another floating cover or a fixed cover depending on the existing needs of the facility.

A Request for Proposals to provide the engineering services was issued on August 13, 2009 to eleven consulting firms. These eleven firms had submitted Letters of Interest and Statements of Qualifications in response to the advertisement for engineering services for the project. On September 2, 2009, three proposals were received from the following firms:

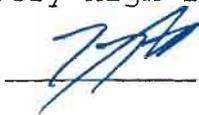
- Lee & Ro
- Malcolm-Pirnie
- MWH

The eight firms that chose not to propose are AECOM, Alfa Tech, Bailey Environmental, Carollo, PBS&J, RBF, RMC, and Tetra Tech.

In accordance with the District's Policy 21, staff evaluated and scored all written proposals and also conducted oral interviews with the three firms. The interview selection panel was comprised of five (5) Staff members. After completion of the interviews, the panel completed the consultant ranking process and concluded that MWH was the most qualified consultant, with the best overall proposal. References for MWH were checked and received high ratings. A summary of the complete evaluation is shown in Attachment B.

District Staff met with MWH to negotiate the fee and review the proposed scope of work. Staff added a component to the scope of work to provide construction support services and asked MWH to provide a cost proposal for these services. MWH reduced their costs for the project management, preliminary design and bid services tasks of their original cost proposal from \$160,000 to \$124,500 and added the costs for construction support services, \$70,000. These changes resulted in a net increase of \$34,500 in the cost of the project. District Staff is confident that MWH will perform to a very high level.

**FISCAL IMPACT:**



The funding for the engineering services for the RWCWRF Upgrade Project will be available from the budgets of the three CIP projects, R2095, R2096, and S2018. The approved total budget for R2095 is \$75,000, the approved total budget for R2096 is \$1,000,000, and the approved total budget for S2018 is \$50,000.

Based on a review of the budget, the Project Manager anticipates the budgets will be sufficient to support the engineering services. The funds for the engineering services will be

expended in FY2010. See Attachment C-1, C-2, and C-3 for additional details on the expenditures for each CIP Project.

Finance has determined that 100% of the funding is available from the General Replacement Fund for CIP projects R2095 and R2096 and that 100% of the funding is available from the Sewer Betterment Fund for CIP project S2018.

**STRATEGIC GOAL:**

This project supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, and efficient manner." This project also supports the District's Strategic Goal, "To develop and implement Treatment Plant Enhancements including automation for remote operation and shutdown, technology improvements, and upgrade of facilities."

**LEGAL IMPACT:**

None.

  
\_\_\_\_\_  
**General Manager**

P:\WORKING\CIP R2096 - RWCWRF Blower System Rehab-Replace\Staff Reports\RWCWRF Upgrade Project - Staff Report\_09-14-09 doc

LCB/RR:jf

- Attachments: Attachment A  
Attachment B  
Attachment C-1  
Attachment C-2  
Attachment C-3

QA/QC Approved:

 \_\_\_\_\_  \_\_\_\_\_  
NAME DATE



## ATTACHMENT A

SUBJECT/PROJECT:	
R2096-004000	Award of a Professional Engineering Services Contract for the Ralph W. Chapman Water Reclamation Facility Upgrade Project
R2095-004000	
S2018-004000	

### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on September 28, 2009 and the following comments were made:

- Staff is requesting approval of a Professional Engineering Services agreement with MWH Americas, Inc. for the Ralph W. Chapman Water Reclamation Facility (RWCWRF) Upgrade Project in an amount not-to-exceed \$460,000.
- A request for proposal was sent to eleven consulting firms on August 13, 2009 and three proposals were received. Staff indicated that in accordance with Policy 21, staff evaluated and scored all written proposals and conducted oral interviews with the three firms. The interview selection panel was comprised of five (5) staff members from various departments. After completing the consultant ranking process, staff concluded that MWH was the most qualified consultant, with the best overall proposal.
- Staff explained the four components of the Upgrade Project:
  - Modify the treatment process to improve the reduction of total nitrogen in the treatment plant effluent;
  - Rehabilitate the facility's process air blower system to increase efficiency and lower energy cost;
  - Enhance the level of automation at the RWCWRF;
  - Remove the damaged filter backwash storage reservoir floating cover and design a replacement cover.
- Staff indicated that the reduction in total nitrogen is necessary to meet the permit limits for the facility.

Also, an evaluation had been conducted to determine the benefits of the components of the Upgrade Project. Staff indicated that the upgraded facility would provide energy savings through the enhancement of the blower system and the repair of leaks in the process air piping. It was found that the blowers were oversized for the facility and they will be replaced with a system that allows for various speeds that are appropriate for the individual processes. The study also identified that the pipes were leaking air at various areas (energy is lost through air loss). A separate study had also identified ways to optimize the plant through automation to make it more efficient and require less manpower. The upgrade project should provide a significant amount of cost savings, however, it is difficult to quantify until the system design is complete and operational.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full board as a consent item.

# ATTACHMENT B

## SUMMARY OF PROPOSAL RANKINGS BY PANEL MEMBERS

### < RWCWRF UPGRADE PROJECT >

		← WRITTEN →						← ORAL →				TOTAL SCORE	AVERAGE SCORE	References	
		Qualifications of Staff	Understanding of scope, schedule, resources	Soundness and Viability of Proposed Project Plan	Proposed Fee	Consultant's commitment to DBE	SUBTOTAL	AVERAGE SUBTOTAL SCORE	Additional creativity, insight to issues	Strength of project manager	Presentation, communication skills				Quality of response to questions
<b>SCORE</b>		20	20	25	35	Y/N	100		15	15	10	10	150 **		Pass/Fail
<b>Lee &amp; Ro</b>	<i>Lisa Coburn-Boyd</i>	15	12	18	35	Y	80	86	11	11	7	6	115	119	
	<i>Brandon DiPietro</i>	18	18	24	35		95		12	11	5	6	129		
	<i>Jim Peasley</i>	10	10	15	35		70		8	7	8	5	98		
	<i>Rod Posada</i>	20	19	24	35		98		10	12	8	8	136		
	<i>Gary Stalker</i>	16	15	20	35		86		10	8	6	8	118		
<b>Malcolm-Pirnie</b>	<i>Lisa Coburn-Boyd</i>	18	17	20	15	Y	70	71	12	11	7	7	107	110	
	<i>Brandon DiPietro</i>	17	16	19	15		67		13	15	8	8	111		
	<i>Jim Peasley</i>	20	20	25	15		80		14	15	10	8	127		
	<i>Rod Posada</i>	20	18	22	15		75		10	12	7	7	111		
	<i>Gary Stalker</i>	15	14	20	15		64		9	9	7	7	96		
<b>MWH</b>	<i>Lisa Coburn-Boyd</i>	20	19	24	29	Y	92	87	14	15	9	10	140	133	PASS
	<i>Brandon DiPietro</i>	17	18	23	29		87		15	15	8	10	135		
	<i>Jim Peasley</i>	15	15	20	29		79		15	15	10	9	128		
	<i>Rod Posada</i>	20	18	22	29		89		12	14	9	9	133		
	<i>Gary Stalker</i>	18	18	23	29		88		13	12	9	9	131		

Consultant	Proposed Fee	% Above Lowest Fee	Score
Lee & Ro	\$329,854	Lowest Fee	35
MWH	\$424,309	21-30%	29
Malcolm-Pirnie	\$659,954	91-100%	15

Project Manager: *Lisa Coburn-Boyd* Date: 9/14/09

QC Check: *Bernard Spina* Date: 9/15/09

Engineering Manager: *Ray Tupper* Date: 9/15/09



## ATTACHMENT C-1

<b>SUBJECT/PROJECT:</b>	
R2096-004000	Award of a Professional Engineering Services Contract for the Ralph W. Chapman Water Reclamation Facility Upgrade Project
R2095-004000	
S2018-004000	

Otay Water District

Updated: 09/14/09

### R2095 - RWCWRF - Filter Storage Reservoir Cover

<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment &amp; Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor / Comments</i>
\$75,000					
<b>Planning</b>					
In House/Labor	149	149		149	
				-	
				-	
				-	
				-	
<b>Total Planning</b>	\$ 149	\$ 149	\$ -	\$ 149	
<b>Design</b>					
In House/Labor	2,500		2,500	2,500	
Consultant Contracts	7,500		7,500	7,500	MWH AMERICAS, INC
				-	
				-	
				-	
				-	
<b>Total Design</b>	\$ 10,000	\$ -	\$ 10,000	\$ 10,000	
<b>Construction</b>					
In House/Labor				-	
				-	
				-	
				-	
				-	
				-	
				-	
<b>Total Construction</b>	\$ -	\$ -	\$ -	\$ -	
<b>Grand Total</b>	\$ 10,149	\$ 149	\$ 10,000	\$ 10,149	

PM Signature Lisa Colman Boyd QC Bob Sore Eng. Mgr. Ron Tippen



## ATTACHMENT C-2

<b>SUBJECT/PROJECT:</b>	
R2096-004000	Award of a Professional Engineering Services Contract for the Ralph W. Chapman Water Reclamation Facility Upgrade Project
R2095-004000	
S2018-004000	

Otay Water District  
R2096 - RWCWRF - Blower System Rehabilitation/Re

Updated: 09/14/09

<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment &amp; Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor / Comments</i>
\$1,000,000					
<b>Planning</b>					
In House/Labor	7,319	7,319		7,319	
Consultant Contracts	1,225	1,225	-	1,225	MWH CONSTRUCTORS INC
Service Contracts	250	250	-	250	UNION TRIBUNE PUB CO
	68	68	-	68	SD DAILY TRANSCRIPTS
			-	-	
<b>Total Planning</b>	\$ 8,861	\$ 8,861	\$ -	\$ 8,861	
<b>Design</b>					
In House/Labor				-	
Consultant Contracts	447,500		447,500	447,500	MWH AMERICAS, INC
			-	-	
			-	-	
<b>Total Design</b>	\$ 447,500	\$ -	\$ 447,500	\$ 447,500	
<b>Construction</b>					
In House/Labor				-	
			-	-	
			-	-	
			-	-	
			-	-	
<b>Total Construction</b>	\$ -	\$ -	\$ -	\$ -	
<b>Grand Total</b>	\$ 456,361	\$ 8,861	\$ 447,500	\$ 456,361	

PM Signature Lisa Colman-Boyd QC B. L. Se...

Eng. Mgr. J. Roy Pappas



### ATTACHMENT C-3

<b>SUBJECT/PROJECT:</b>	
R2096-004000	Award of a Professional Engineering Services Contract for the Ralph W. Chapman Water Reclamation Facility Upgrade Project
R2095-004000	
S2018-004000	

Otay Water District

Updated: 09/14/09

#### S2018 - RWCWRF - Secondary Process Automation

Budget \$50,000	Committed	Expenditures	Outstanding Commitment &	Projected Final Cost	Vendor / Comments
<b>Planning</b>					
In House/Labor			-	-	
			-	-	
			-	-	
			-	-	
<b>Total Planning</b>	\$ -	\$ -	\$ -	\$ -	
<b>Design</b>					
In House/Labor	1,500		1,500	1,500	
	5,000		5,000	5,000	
			-	-	
			-	-	
<b>Total Design</b>	\$ 6,500	\$ -	\$ 6,500	\$ 6,500	
<b>Construction</b>					
In House/Labor	2,060	2,060		2,060	
Materials & Supplies	4,113	4,113	-	4,113	CABLES PLUS LLC
			-	-	
			-	-	
			-	-	
<b>Total Construction</b>	\$ 6,173	\$ 6,173	\$ -	\$ 6,173	
<b>Grand Total</b>	\$ 12,673	\$ 6,173	\$ 6,500	\$ 12,673	

PM Signature: Lisa Colman-Boyd    QC: Barb Sage    Eng. Mgr.: Ron Tipperger

# AGENDA ITEM 7h



## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Daniel Kay <i>OK</i> Associate Civil Engineer	PROJECT/ SUBPROJECT:	P1210- 003000
	Ron Ripperger <i>[Signature]</i> Engineering Manager	DIV. NO.	ALL
APPROVED BY: (Chief)	Rod Posada <i>[Signature]</i> Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña <i>[Signature]</i> Assistant General Manager, Engineering and Operations		
SUBJECT:	Award of an As-Needed Electrical Design Services Contract for Fiscal Years 2010 and 2011		

### GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorizes the General Manager to enter into an agreement for Professional Services for As-Needed Electrical Design Services with Engineering Partners, Inc. (EPI) in an amount not to exceed \$100,000 during Fiscal Years 2010 and 2011 (ending June 30, 2011).

### COMMITTEE ACTION:

Please see Attachment A.

### PURPOSE:

To obtain Board authorization for the award of a professional services contract for electrical design services on an as-needed basis in support of the District's Capital Improvement Program (CIP). The contract amount is not to exceed \$100,000 for Fiscal Years 2010 and 2011 commencing upon Board approval.

### ANALYSIS:

The District will require the professional services of an electrical design consultant to perform electrical design in support of the District's CIP projects for Fiscal Years 2010 and

2011. The As-Needed Electrical Design Services contract will provide the District with the ability to obtain consulting services in a timely and efficient manner and on an as-needed basis.

The District will require the expertise of an electrical design consultant to design electrical systems for a variety of CIP projects. The District incurs expenses in requesting, reviewing, and ranking proposals, checking references, and preparing staff reports for Committee and Board approval. The electrical design services, individually, are small enough that preparation of formal proposals by consultants becomes expensive and these costs are then passed on to the District and the time that is lost in obtaining these formal proposals can delay projects. For these reasons, it is more efficient and cost effective to issue a contract on an as-needed basis. This concept has also been used in the past for other disciplines like geotechnical, engineering design, and environmental services.

The District will issue task orders to the Consultant for specific projects during the contract period. The Consultant will then prepare a detailed scope of work, schedule, and cost estimate for each task order assigned under the contract. Upon written task order and authorization from the District, the Consultant will then proceed with the project as described in the scope of work.

The CIP projects that are estimated to require electrical design services for Fiscal Years 2010 and 2011, at this time, are listed below:

CIP	DESCRIPTION	ESTIMATED COST
P2185	640 Reservoirs - Pump Station Modifications	\$15,000
P2473	711-1 Pump Station Modification	\$10,000
P2487/ P2488	Interconnection Projects	\$10,000
P2370	Dorchester Reservoir and Pump Station Demolition	\$5,000
P2474	Fuel Storage Covers and Containment	\$5,000
R2048	Otay Mesa Distribution Pipelines and Conversions	\$5,000
R2087	20-inch Recycled Pipeline - Wueste Road - Pressure Reducing Station	\$10,000
R2091	944-1 Pump Station Upgrade	\$20,000
	<b>TOTAL:</b>	<b>\$80,000</b>

The electrical design scopes for the above projects are estimated from preliminary information and past projects. Future CIP projects may require the need for electrical design services during Fiscal Years 2010 and 2011. Therefore, staff believes that a \$100,000 cap on the As-Needed Electrical Design Services contract is adequate.

The contract is not to exceed \$100,000 for all task orders. Fees for professional services will be charged to the CIP Projects for which the electrical designs are performed.

This As-Needed Electrical Design Services contract does not commit the District to any expenditure until a task order is approved to perform work on a CIP Project. The District does not guarantee work to the consultant, nor does the District guarantee to the consultant that it will expend all of the funds authorized by the contract on professional services.

The District solicited electrical design services by placing an advertisement on the District's website, San Diego Union Tribune, and the San Diego Daily Transcript on August 3, 2009. Nine (9) firms submitted a letter of interest and a statement of qualifications. The Request for Proposal (RFP) for As-Needed Electrical Design Services was sent to all nine (9) firms resulting in four (4) proposals received on August 25, 2009. They are as follows:

- BSE Engineering
- Engineering Partners, Inc.
- Lee & Ro, Inc.
- Richard Brady & Associates

The five (5) firms that chose not to propose are Carollo Engineers, G4 Engineering, MPA, Malcom Pirnie, and Tanner Engineering.

In accordance with the District's Policy 21, staff evaluated and scored all written proposals. Since the value of the contract amount is less than \$200,000, no interviews are required. EPI received the highest score for their services based on their experience, understanding of the scope of work, proposed method to accomplish the work, and their composite hourly rate. EPI was the most qualified consultant with the best overall proposal. A summary of the complete evaluation is shown in Attachment B.

**FISCAL IMPACT:**

    *JJA*    

The funds for this contract will be expended from the CIP projects noted previously. The fees for professional services requested herein are available in the authorized CIP project budgets. This contract is for professional services based on the District's need and schedule, and expenditures will not be made until a task order is approved by the District for the consultant's professional services on a specific CIP project.

The Project Manager anticipates that the budget will be sufficient to support the professional services required for specific CIP projects previously noted.

**STRATEGIC GOAL:**

This projects supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, and efficient manner," and the District's Strategic Goal, in planning for infrastructure and supply to meet current and future potable water demands.

**LEGAL IMPACT:**

\_\_\_\_\_

None.

    *Mel W...*    

**General Manager**

P:\WORKING\As Needed Services\Electrical\FY 2010-2011\Staff Report\BD 10-07-09, As-Needed Electrical Services.doc

DK/RR:jf

Attachments: Attachment A  
Attachment B

QA/QC Approval:

    *Lisa Colman-Boyd*      
Name

    *9-17-09*      
Date



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b> P1210-003000	Award of an As-Needed Electrical Design Services Contract for Fiscal Years 2010 and 2011
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on September 28, 2009 and the following comments were made:

- Staff is requesting approval of an agreement for Professional Services for As-Needed Electrical Design Services with Engineering Partners, Inc. (EPI) in an amount not-to-exceed \$100,000 during Fiscal Years 2010 and 2011 (ending June 30, 2011).
- Staff indicated that in accordance with the District's Policy 21, staff evaluated and scored all written proposals; and since the value of the contract amount is less than \$200,000, no interviews were required. Staff stated that EPI received the highest score and was the most qualified consultant with the best overall proposal. In addition, staff indicated that the District has worked with EPI on the 1296-3 Reservoir and the 36-Inch Pipeline projects.
- The Committee inquired if staff was considering an as-needed contract because it would provide flexibility in obtaining services as opposed to including it in proposals. Staff indicated that it is more efficient to issue a contract on an as-needed basis because bids are expensive and time consuming, and the time that is lost in obtaining formal proposals can delay projects.
- Staff indicated that the As-Needed Electrical Design Services contract does not commit the District to any expenditure until a task order is approved to perform work on a CIP Project. In addition, the District does not guarantee work to the consultant, nor does the District guarantee to the consultant that it will expend all of the funds authorized by the contract.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full board on the consent calendar.

# ATTACHMENT B

## SUMMARY OF PROPOSAL RANKINGS BY PANEL MEMBERS

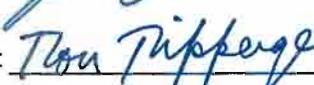
### Professional As-Needed Electrical Design Services

		WRITTEN					TOTAL SCORE	AVERAGE SCORE	References
		Qualifications of Staff	Understanding of scope, schedule, resources	Soundness and Viability of Proposed Project Plan	Composite Hourly Rate <sup>1</sup>	Consultant's commitment to DBE			
SCORE		20	20	25	35	Y/N	100		Pass/Fail
<b>BSE Engineering</b>	<i>Daniel Kay</i>	18	18	22	35	Y	93	88	
	<i>Ron Ripperger</i>	17	16	20	35		88		
	<i>Don Anderson</i>	16	16	17	35		84		
	<i>Bob Kennedy</i>	12	15	15	35		77		
	<i>Rod Posada</i>	20	20	24	35		99		
<b>Engineering Partners, Inc. (EPI)</b>	<i>Daniel Kay</i>	17	17	21	34	Y	89	91	Pass
	<i>Ron Ripperger</i>	17	18	22	34		91		
	<i>Don Anderson</i>	18	17	17	34		86		
	<i>Bob Kennedy</i>	18	18	22	34		92		
	<i>Rod Posada</i>	19	19	24	34		96		
<b>Lee &amp; Ro, Inc.</b>	<i>Daniel Kay</i>	18	18	21	33	Y	90	89	
	<i>Ron Ripperger</i>	17	17	21	33		88		
	<i>Don Anderson</i>	17	18	17	33		85		
	<i>Bob Kennedy</i>	17	17	20	33		87		
	<i>Rod Posada</i>	19	18	23	33		93		
<b>Richard Brady &amp; Associates</b>	<i>Daniel Kay</i>	17	16	20	25	Y	78	74	
	<i>Ron Ripperger</i>	15	15	18	25		73		
	<i>Don Anderson</i>	11	12	11	25		59		
	<i>Bob Kennedy</i>	18	16	20	25		79		
	<i>Rod Posada</i>	18	18	22	25		83		

1. Hourly Rate Calculation Formula =  $35 - \frac{(\text{Consultant Rate} - \text{Min. Rate}) * 10}{(\text{Max. Rate} - \text{Min. Rate})}$

PM Signature: 

QC: 

Engineering Manager: 

# AGENDA ITEM 7i



## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009		
SUBMITTED BY:	Daniel Kay <i>DK</i> Associate Civil Engineer	PROJECT/ SUBPROJECT:	N/A	DIV. NO.	ALL
	Ron Ripperger <i>RR</i> Engineering Manager				
APPROVED BY: (Chief)	Rod Posada <i>RP</i> Chief, Engineering				
APPROVED BY: (Asst. GM):	Manny Magaña <i>MM</i> Assistant General Manager, Engineering and Operations				<i>M. Magaña</i>
SUBJECT:	Award of As-Needed Geotechnical Services Contract for Fiscal Years 2010 and 2011				

### GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorizes the General Manager to enter into an agreement for Professional Services for As-Needed Geotechnical Services with Southern California Soil and Testing, Inc. (SCST) for an amount not to exceed \$175,000 during Fiscal Years 2010 and 2011 (ending June 30, 2011).

### COMMITTEE ACTION:

Please see Attachment A.

### PURPOSE:

To obtain Board authorization for the award of a professional services contract for geotechnical services on an as-needed basis in support of the District's Capital Improvement Program (CIP). The contract amount is not to exceed \$175,000 for Fiscal Years 2010 and 2011 commencing upon Board approval.

**ANALYSIS:**

The District will require the services of a geotechnical consultant to perform studies in support of the District's CIP projects for Fiscal Years 2010 and 2011. The As-Needed Geotechnical Services contract will provide the District with the ability to obtain consulting services in a timely and efficient manner and on an as-needed basis.

The District will require the expertise of a geotechnical consultant to conduct investigations for a variety of CIP projects. The District incurs expenses in requesting, reviewing, and ranking proposals, checking references, and preparing staff reports for Committee and Board approval. The investigations, individually, are small enough that preparation of formal proposals by consultants becomes expensive and these costs are passed on to the District. For these reasons, it is more efficient and cost effective to issue a contract on an as-needed basis. This concept has also been used in the past for other disciplines like engineering design, electrical, and environmental services.

The District will issue task orders to the Consultant for specific projects during the contract period. The Consultant will then prepare a detailed scope of work, schedule, and cost estimate for each task order assigned under the contract. Upon written task order authorization from the District, the Consultant shall then proceed with the project as described in the scope of work.

The CIP projects that are estimated to require geotechnical investigations for Fiscal Years 2010 and 2011, at this time, are listed below:

<b>CIP</b>	<b>DESCRIPTION</b>	<b>ESTIMATED COST</b>
P2434	Rancho Del Rey Groundwater Well Development	\$30,000
P2482	Otay Mesa Lot 7 Groundwater Well System	\$20,000
P2488/ P2489	Interconnection Projects	\$20,000
R2058	16-inch Recycled Pipeline - Airway Road	\$15,000
R2077	24-inch Recycled Pipeline - Alta Road	\$15,000
P2087	20-inch Recycled Pipeline - Wueste Road	\$15,000
S2019	Avocado Blvd. 8-inch Sewer Replacement	\$15,000
S2020	Calavo Dr. 8-inch Sewer Replacement	\$15,000
<b>TOTAL:</b>		<b>\$145,000</b>

The geotechnical scopes for the above projects are estimated from preliminary information and planning studies. The geotechnical scopes of the projects may change during the design phase, potentially increasing geotechnical study costs. Similarly, industry-wide increases in the cost of performing geotechnical investigations, such as fees for drilling and excavation subcontractors, insurance, and regulatory compliance, may also increase the cost of performing geotechnical studies. Therefore, staff believes that a \$175,000 cap on the As-Needed Geotechnical Services contract is appropriate.

The contract is not to exceed \$175,000 for all task orders. Fees for professional services will be charged to the CIP Projects for which the investigations are performed.

This As-Needed Geotechnical Services contract does not commit the District to any expenditure until a task order is approved to perform work on a CIP Project. The District does not guarantee work to the consultant, nor does the District guarantee to the consultant that it will expend all of the funds authorized by the contract on professional services.

The District solicited geotechnical services by placing an advertisement on the District's website, San Diego Union Tribune, and the San Diego Daily Transcript on August 3, 2009. Twenty-Three (23) firms submitted a letter of interest and a statement of qualifications. The Request for Proposal (RFP) for As-Needed Geotechnical Services was sent to all twenty-three (23) firms resulting in ten (10) proposals received on August 25, 2009. They are as follows:

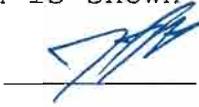
- GEI Consultants
- Geocon, Inc.
- Geo-Logic Associates
- Geotechnics, Inc.
- Koury Geotechnical Services, Inc.
- MTGL, Inc.
- Ninyo & Moore
- Nova Engineering & Environmental
- Southern California Soils & Testing
- TGR Geotechnical, Inc.

The thirteen (13) firms that chose not to propose are Bureau Veritas North America Inc., Carollo Engineers, Construction Testing & Engineering, EEI Geotechnical & Environmental, Group Delta, Kleinfelder, KPR Consulting, Krazan & Associates Inc., Leighton Consulting, Professional Services Industries Inc.,

Southern California Geotechnical, Southland Geotechnical Consultants, and United Inspection & Testing.

In accordance with the District's Policy 21, staff evaluated and scored all written proposals. SCST received the highest score for their services based on their experience, understanding of the scope of work, proposed method to accomplish the work, and their composite hourly rate. SCST was the most qualified consultant with the best overall proposal. A summary of the complete evaluation is shown in Attachment B.

**FISCAL IMPACT:**



The funds for this contract will be expended from the CIP projects noted previously. The fees for professional services requested herein are available in the authorized CIP project budgets. This contract is for professional services based on the District's need and schedule, and expenditures will not be made until a task order is approved by the District for the consultant's professional services on a specific CIP project.

The Project Manager anticipates that the budget will be sufficient to support the professional services required for specific CIP projects previously noted.

**STRATEGIC GOAL:**

This project supports the District's Mission statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, and efficient manner," and the District's Strategic Goal, in planning for infrastructure and supply to meet current and future potable water demands.

**LEGAL IMPACT:**

None.



**General Manager**

DK/RR/RP:jf

Attachments: Attachment A  
Attachment B

QA/QC Approval:

Name: Lisa Colman-Boyd Date: 9-17-09



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b> Various	Award of As-Needed Geotechnical Services Contract for Fiscal Years 2010 and 2011
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on September 28, 2009 and the following comments were made:

- Staff is requesting approval of an agreement for Professional Services for As-Needed Geotechnical Services with Southern California Soil and Testing, Inc. (SCST) in an amount not-to-exceed \$175,000 during Fiscal Years 2010 and 2011 (ending June 30, 2011).
- Staff indicated that in accordance with the District's Policy 21, staff evaluated and scored all written proposals; and since the value of the contract amount is less than \$200,000, no interviews were required. Staff stated that SCST received the highest score and was the most qualified consultant with the best overall proposal.
- The Committee inquired about staff's consideration of other consultants' scoring second or third, as opposed to awarding the contract to the highest scorer. Staff indicated that the review panel consists of various staff members from Operations to Engineering (different panel members are selected for each project). Panel members do not only consider the "Summary of Proposal Rankings by Panel Members" worksheet score, but also hold discussions to decide which consultant is the most qualified to perform the District's needs.
- The Committee thanked staff for identifying the projects that would utilize the Geotechnical Services contract on page 2 of the staff report. It is very helpful to members of the board to see how monies will be utilized.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full board on the consent calendar.

# ATTACHMENT B

## SUMMARY OF PROPOSAL RANKINGS BY PANEL MEMBERS

### Professional As-Needed Geotechnical Services

		WRITTEN					TOTAL SCORE	AVERAGE SCORE	References
		Qualifications of Staff	Understanding of scope, schedule, resources	Soundness and Viability of Proposed Project Plan	Composite Hourly Rate <sup>1</sup>	Consultant's commitment to DBE			
SCORE		20	20	25	35	Y/N	100		Pass/Fail
<b>GEI Consultants</b>	Daniel Kay	18	18	22	30	Y	88	88	
	Lisa Coburn-Boyd	18	19	24	30		91		
	Jerry Munoz	18	20	22	30		90		
	Brandon DiPietro	18	16	20	30		84		
	Rod Posada	18	19	22	30		89		
<b>GeoCon, Inc.</b>	Daniel Kay	19	19	23	27	Y	88	82	
	Lisa Coburn-Boyd	18	18	23	27		86		
	Jerry Munoz	15	17	18	27		77		
	Brandon DiPietro	16	17	20	27		80		
	Rod Posada	16	18	20	27		81		
<b>Geo-Logic Associates</b>	Daniel Kay	18	18	23	25	Y	84	81	
	Lisa Coburn-Boyd	19	18	23	25		85		
	Jerry Munoz	16	18	20	25		79		
	Brandon DiPietro	16	17	18	25		76		
	Rod Posada	16	17	21	25		79		
<b>Geotechnics, Inc.</b>	Daniel Kay	16	16	20	33	Y	85	84	
	Lisa Coburn-Boyd	19	17	22	33		91		
	Jerry Munoz	12	15	15	33		75		
	Brandon DiPietro	17	17	18	33		85		
	Rod Posada	16	16	19	33		84		
<b>Koury Geotechnical Services, Inc.</b>	Daniel Kay	16	11	14	28	Y	69	74	
	Lisa Coburn-Boyd	16	15	20	28		79		
	Jerry Munoz	17	17	18	28		80		
	Brandon DiPietro	12	11	13	28		64		
	Rod Posada	16	16	19	28		79		
<b>MTGL, Inc.</b>	Daniel Kay	17	17	21	34	Y	89	91	
	Lisa Coburn-Boyd	18	18	22	34		92		
	Jerry Munoz	18	20	21	34		93		
	Brandon DiPietro	18	18	20	34		90		
	Rod Posada	17	19	22	34		92		
<b>Ninyo &amp; Moore</b>	Daniel Kay	18	17	22	29	Y	86	87	
	Lisa Coburn-Boyd	19	19	23	29		90		
	Jerry Munoz	19	18	23	29		89		
	Brandon DiPietro	18	19	20	29		86		
	Rod Posada	18	18	20	29		85		
<b>Nova Engineering &amp; Environmental</b>	Daniel Kay	17	17	21	35	Y	90	87	
	Lisa Coburn-Boyd	18	17	22	35		92		
	Jerry Munoz	15	14	14	35		78		
	Brandon DiPietro	16	18	16	35		85		
	Rod Posada	17	16	20	35		88		

		WRITTEN						References	
		Qualifications of Staff	Understanding of scope, schedule, resources	Soundness and Viability of Proposed Project Plan	Composite Hourly Rate <sup>1</sup>	Consultant's commitment to DBE	TOTAL SCORE		AVERAGE SCORE
SCORE		20	20	25	35	Y/N	100	Pass/Fail	
Southern California Soil & Testing	Daniel Kay	18	18	23	32	Y	91	92	Pass
	Lisa Coburn-Boyd	18	18	22	32		90		
	Jerry Munoz	19	20	25	32		96		
	Brandon DiPietro	18	19	20	32		89		
	Rod Posada	20	20	24	32		96		
TGR Geotechnical, Inc.	Daniel Kay	17	16	16	29	Y	78	80	
	Lisa Coburn-Boyd	17	16	21	29		83		
	Jerry Munoz	13	15	16	29		73		
	Brandon DiPietro	18	17	17	29		81		
	Rod Posada	18	18	22	29		87		

1. Hourly Rate Calculation Formula =  $35 - \frac{(\text{Consultant Rate} - \text{Min. Rate}) * 10}{(\text{Max. Rate} - \text{Min. Rate})}$

PM Signature: 

QC: 

Engineering Manager: 



# AGENDA ITEM 7j

## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Daniel Kay <i>DK</i> Associate Civil Engineer	PROJECT/ SUBPROJECT:	Various DIV.NO. ALL
	Ron Ripperger <i>RR</i> Engineering Manager		
APPROVED BY: (Chief)	Rod Posada <i>RP</i> Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña <i>MM</i> Assistant General Manager, Engineering and Operations		
SUBJECT:	Award of As-Needed Engineering Design Services Contract for Fiscal Years 2010 and 2011		

### GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorizes the General Manager to enter into an Agreement for Professional Services for As-Needed Engineering Design Services with Lee & Ro, Inc. (Lee & Ro) in an amount not to exceed \$175,000 during Fiscal Years 2010 and 2011 (ending June 30, 2011).

### COMMITTEE ACTION:

Please see Attachment A.

### PURPOSE:

To obtain Board authorization for the award of a professional services contract for engineering design services on an as-needed basis in support of the District's Capital Improvement Program (CIP). The contract amount is not to exceed \$175,000 for Fiscal Years 2010 and 2011 commencing upon Board approval.

### ANALYSIS:

The District will require the professional services of an engineering consultant in support of the District's CIP projects for Fiscal Years 2010 and 2011. The As-Needed Engineering Design Services contract will provide the District with the ability to obtain consulting services in a timely and efficient manner and on an as-needed basis.

The District will require the expertise of an engineering consultant to provide civil engineering design for a variety of CIP projects. The District incurs expenses in requesting, reviewing and ranking proposals, checking references, and preparing staff reports for Committee and Board approval. The engineering design services, individually, are small enough that preparation of formal proposals by consultants becomes expensive and these costs are passed on to the District. For these reasons, it is more efficient and cost effective to issue a contract on an as-needed basis. This concept has also been used in the past for other disciplines like geotechnical, electrical, and environmental services.

The District will issue task orders to the Consultant for specific projects during the contract period. The Consultant will then prepare a detailed scope of work, schedule, and cost estimate for each task order assigned under the contract. Upon written task order authorization from the District, the Consultant shall then proceed with the project as described in the scope of work.

The CIP projects that are estimated to require engineering design services for Fiscal Years 2010 and 2011, at this time, are listed below:

<b>CIP</b>	<b>DESCRIPTION</b>	<b>ESTIMATED COST</b>
P2496	Otay Lakes Road Utility Relocations	\$90,000
S2019	Avocado Blvd. 8-inch Sewer Replacement	\$35,000
S2020	Calavo Drive 8-inch Sewer Replacement	\$20,000
S2021	Jamacha Road 8-inch Sewer Replacement	\$15,000
S2022	Hidden Mesa Drive 8-inch Sewer Rehabilitation	\$15,000
	<b>TOTAL:</b>	<b>\$175,000</b>

The engineering design scopes for the above projects are estimated from preliminary information and past projects. Therefore, staff believes that a \$175,000 cap on the As-Needed Engineering Design Services contract is adequate.

The contract is not to exceed \$175,000 for all task orders. Fees for professional services will be charged to the CIP Projects for which the engineering designs are performed.

This As-Needed Engineering Design Services contract does not commit the District to any expenditure until a task order is approved to perform work on a CIP Project. The District does not guarantee work to the consultant, nor does the District guarantee to the consultant

that it will expend all of the funds authorized by the contract on professional services.

The District solicited engineering design services by placing an advertisement on the OWD website, San Diego Union Tribune, and the San Diego Daily Transcript on August 3, 2009. Twenty-Two (22) firms submitted a letter of interest and a statement of qualifications. The Request for Proposal (RFP) for As-Needed Design Services was sent to all twenty-two (22) firms resulting in fifteen (15) proposals received on August 25, 2009. They are as follows:

- Carollo Engineers
- Fuscoe Engineering
- HDR Engineering, Inc.
- Hunsaker & Associates, Inc.
- J.C. Heden & Associates, Inc.
- Kennedy/Jenks Consultants
- Lee & Ro, Inc.
- Masson & Associates, Inc.
- Nasland Engineering
- O'Day Consultants
- PBS&J
- RCE Consultants, Inc.
- Richard Brady & Associates
- Spear & Associates, Inc.
- Tran Consulting Engineers

The seven (7) firms that chose not to propose are AECOM, Psomas, Harris & Associates, Tetra Tech, KPR Consulting Inc., Malcom Pirnie, and MWH.

In accordance with the District's Policy 21, staff evaluated and scored all written proposals. Lee & Ro received the highest score for their services based on their experience, understanding of the scope of work, proposed method to accomplish the work, and their composite hourly rate. Lee & Ro was the most qualified consultant with the best overall proposal. A summary of the complete evaluation is shown in Attachment B.

**FISCAL IMPACT:**

A handwritten signature in black ink, appearing to be 'JJA', is written over a horizontal line.

The funds for this contract will be expended from the CIP projects noted previously. The fees for professional services requested

herein are available in the authorized CIP project budgets. This contract is for professional services based on the District's need and schedule, and expenditures will not be made until a task order is approved by the District for the consultant's professional services on a specific CIP project.

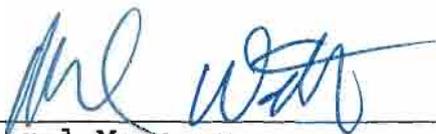
The Project Manager anticipates that the budget will be sufficient to support the professional services required for the specific CIP projects previously noted.

**STRATEGIC GOAL:**

This project supports the District's Mission statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, and efficient manner," and the District's Strategic Goal, in planning for infrastructure and supply to meet current and future potable water demands.

**LEGAL IMPACT:**

None.



\_\_\_\_\_  
**General Manager**

P:\WORKING\As Needed Services\Engineering Design\FY 2010-2011\Staff Report\BD 10-7-09, As-Needed Engineering Design Services.doc

DK/RR/RP:jf

Attachments: Attachment A  
Attachment B

QA/QC Approved:

Lisa Colman-Boyd  
NAME

9-17-09  
DATE



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b> Various	Award of As-Needed Engineering Design Services Contract for Fiscal Years 2010 and 2011
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on September 28, 2009 and the following comments were made:

- Staff is requesting approval of an agreement for Professional Services for As-Needed Engineering Design Services with Lee & Ro, Inc. (Lee & Ro) in an amount not-to-exceed \$175,000 during Fiscal Years 2010 and 2011 (ending June 30, 2011).
- Staff indicated that representatives from Lee & Ro were in attendance to answer any questions the Committee may have.
- Staff indicated that Lee & Ro was instrumental with the engineering design of the 36-Inch Pipeline project.
- Staff indicated that in accordance with the District's Policy 21, staff evaluated and scored all written proposals; and since the value of the contract amount is less than \$200,000, no interviews were required. Staff stated that Lee & Ro received the highest score and was the most qualified consultant with the best overall proposal.
- The Committee inquired about staff's request of the exact amount of \$175,000 for the CIP projects that are estimated to require Engineering Design services and did not include a buffer similar to the request for Geotechnical or Electrical Design services contracts. Staff indicated that in order to stay in compliance with Policy 21, the fund request would need to be less than \$200,000. The Committee recommended to increase the request to \$199,000 to include a buffer.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full board on the consent calendar.

# ATTACHMENT B

## SUMMARY OF PROPOSAL RANKINGS BY PANEL MEMBERS

### Professional As-Needed Civil Engineering Design Services

		WRITTEN					Consultant's commitment to DBE	TOTAL SCORE	AVERAGE SCORE	References
		Qualifications of Staff	Understanding of scope, schedule, resources	Soundness and Viability of Proposed Project Plan	Composite Hourly Rate <sup>1</sup>					
SCORE		20	20	25	35	Y/N	100		Pass/Fail	
<b>Carollo Engineers</b>	<i>Daniel Kay</i>	18	13	21	29	Y	81	77		
	<i>Ron Ripperger</i>	15	15	20	29		79			
	<i>Frank Anderson</i>	19	16	22	29		86			
	<i>Bob Kennedy</i>	6	6	15	29		56			
	<i>David Charles</i>	16	17	21	29		83			
<b>Fusco Engineering</b>	<i>Daniel Kay</i>	17	17	21	27	Y	82	80		
	<i>Ron Ripperger</i>	14	15	18	27		74			
	<i>Frank Anderson</i>	17	20	23	27		87			
	<i>Bob Kennedy</i>	16	16	20	27		79			
	<i>David Charles</i>	16	15	19	27		77			
<b>HDR Engineering, Inc.</b>	<i>Daniel Kay</i>	19	18	21	27	Y	85	83		
	<i>Ron Ripperger</i>	16	15	18	27		76			
	<i>Frank Anderson</i>	19	20	24	27		90			
	<i>Bob Kennedy</i>	18	18	22	27		85			
	<i>David Charles</i>	16	17	20	27		80			
<b>Hunsaker &amp; Associates, Inc.</b>	<i>Daniel Kay</i>	17	15	15	31	Y	78	77		
	<i>Ron Ripperger</i>	14	14	16	31		75			
	<i>Frank Anderson</i>	18	17	22	31		88			
	<i>Bob Kennedy</i>	11	11	16	31		69			
	<i>David Charles</i>	15	12	18	31		76			
<b>J.C. Heden &amp; Associates, Inc.</b>	<i>Daniel Kay</i>	16	17	21	35	Y	89	89		
	<i>Ron Ripperger</i>	15	15	20	35		85			
	<i>Frank Anderson</i>	19	18	22	35		94			
	<i>Bob Kennedy</i>	16	18	22	35		91			
	<i>David Charles</i>	16	17	20	35		88			
<b>Kennedy / Jenks Consultants</b>	<i>Daniel Kay</i>	17	18	22	28	Y	85	80		
	<i>Ron Ripperger</i>	15	15	20	28		78			
	<i>Frank Anderson</i>	17	17	22	28		84			
	<i>Bob Kennedy</i>	10	13	16	28		67			
	<i>David Charles</i>	18	17	23	28		86			
<b>Lee &amp; Ro, Inc.</b>	<i>Daniel Kay</i>	17	17	21	33	Y	88	90	Pass	
	<i>Ron Ripperger</i>	17	15	22	33		87			
	<i>Frank Anderson</i>	19	18	22	33		92			
	<i>Bob Kennedy</i>	16	19	23	33		91			
	<i>David Charles</i>	18	18	23	33		92			
<b>Masson &amp; Associates, Inc.</b>	<i>Daniel Kay</i>	11	11	15	35	Y	72	75		
	<i>Ron Ripperger</i>	14	14	18	35		81			
	<i>Frank Anderson</i>	15	15	15	35		80			
	<i>Bob Kennedy</i>	6	6	14	35		61			
	<i>David Charles</i>	13	13	18	35		79			

		WRITTEN							
		Qualifications of Staff	Understanding of scope, schedule, resources	Soundness and Viability of Proposed Project Plan	Composite Hourly Rate <sup>1</sup>	Consultant's commitment to DBE	TOTAL SCORE	AVERAGE SCORE	References
SCORE		20	20	25	35	Y/N	100		Pass/Fail
<b>Nasland Engineering</b>	Daniel Kay	17	15	20	30	Y	82	78	
	Ron Ripperger	15	15	19	30		79		
	Frank Anderson	17	16	20	30		83		
	Bob Kennedy	11	14	16	30		71		
	David Charles	14	14	17	30		75		
<b>O'Day Consultants</b>	Daniel Kay	18	17	17	34	Y	86	83	
	Ron Ripperger	14	14	17	34		79		
	Frank Anderson	15	15	14	34		78		
	Bob Kennedy	17	17	20	34		88		
	David Charles	16	14	18	34		82		
<b>PBS&amp;J</b>	Daniel Kay	18	17	22	30	Y	87	86	
	Ron Ripperger	16	15	20	30		81		
	Frank Anderson	18	17	21	30		86		
	Bob Kennedy	19	19	24	30		92		
	David Charles	17	17	22	30		86		
<b>RCE Consultants, Inc.</b>	Daniel Kay	15	15	18	29	Y	77	73	
	Ron Ripperger	15	14	18	29		76		
	Frank Anderson	14	16	15	29		74		
	Bob Kennedy	10	12	15	29		66		
	David Charles	15	12	18	29		74		
<b>Richard Brady &amp; Associates</b>	Daniel Kay	18	16	15	25	Y	74	78	
	Ron Ripperger	13	14	18	25		70		
	Frank Anderson	19	18	22	25		84		
	Bob Kennedy	16	18	21	25		80		
	David Charles	17	18	22	25		82		
<b>Spear &amp; Associates, Inc.</b>	Daniel Kay	8	8	12	31	Y	59	69	
	Ron Ripperger	13	14	18	31		76		
	Frank Anderson	15	15	15	31		76		
	Bob Kennedy	6	6	16	31		59		
	David Charles	15	11	18	31		75		
<b>Tran Consulting Engineers</b>	Daniel Kay	20	19	22	34	Y	95	84	
	Ron Ripperger	15	14	18	34		81		
	Frank Anderson	17	18	18	34		87		
	Bob Kennedy	12	15	17	34		78		
	David Charles	14	14	19	34		81		

1. Hourly Rate Calculation Formula =  $35 \cdot \frac{(\text{Consultant Rate} - \text{Min. Rate}) * 10}{(\text{Max. Rate} - \text{Min. Rate})}$

PM Signature: \_\_\_\_\_

QC: \_\_\_\_\_

Engineering Manager: \_\_\_\_\_

*[Handwritten Signature]*  
*[Handwritten Signature]*  
*[Handwritten Signature]*

# AGENDA ITEM 7k



TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	Yuri Calderon, General Counsel	W.O./G.F. NO:	DIV. NO.
APPROVED BY:	Mark Watton, General Manager		
SUBJECT:	Draft Settlement Agreement in matters of <i>State of California et al., ex rel. Armenta v. James Jones Co., et al.</i> and <i>City of Banning et al. v. James Jones Co. et al.</i>		

**ATTORNEY'S RECOMMENDATIONS:**

Approve the draft settlement reached in the referenced matter and authorize the General Manager to execute and deliver the final settlement agreement, subject to review and approval of changes by the General Counsel and the General Manager; and

Authorize the General Manager and the General Counsel to take all actions necessary to carry out the purpose of the settlement, including accepting settlement payments, delivering documents necessary to dismiss the lawsuits and other related actions.

**BACKGROUND:**

The written settlement agreement contains substantially the terms previously approved by the Board. The General Counsel recommends that the Board approve the draft settlement agreement and authorize the General Manager to execute and deliver it and to take other related actions in connection with the settlement.

**FISCAL IMPACT:** \_\_\_\_\_

Net settlement payment to the District of approximately \$750,000.

**LEGAL IMPACT:** \_\_\_\_\_

The settlement will include dismissal of the *Armenta* and *Banning* lawsuits, including the pending appeal in the *Banning* case.

**COMMITTEE ACTION:** None.

  
\_\_\_\_\_  
General Counsel

Attachment: Draft Settlement Agreement

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release (hereinafter, the "Agreement") is made and entered into by and between the following:

- A. Alameda County Water District, City of Burbank, Helix Water District, Irvine Ranch Water District, Padre Dam Municipal Water District, City of Pomona, Rancho California Water District, City of San Diego, City of San Jose, Sweetwater Authority, Valley Center Municipal Water District (collectively, the "*Armenta* Intervenors"); and
- B. City of Banning, City of Carlsbad, City of Colton, Contra Costa Water District, City of Corona, City of Del Mar, City of Delano, Elsinore Valley Municipal Water District, City of Fullerton, City of Glendale, City of Hemet, City of Huntington Beach, City of La Habra, City of Loma Linda, City of Lompoc, Mesa Consolidated Water District, Moulton Niguel Water District, City of Oceanside, Olivenhain Municipal Water District, Otay Water District, City of Oxnard, Palmdale Water District, City of Pasadena, City of Petaluma, City of Pico Rivera, City of Poway, Rainbow Municipal Water District, City of Redlands, City of Riverside, City of Sacramento, San Bernardino Municipal Water Department, City of Santa Barbara, City of Santa Cruz, Santa Margarita Water District, City of Santa Maria, City of Santa Rosa, City of South Pasadena, City of Upland, Vallecitos Water District, City of Vallejo, Valley of the Moon Water District, City of Westminster, Town of Windsor (collectively, the "*Banning* Plaintiffs"); and
- C. Nora Armenta and the Real Parties in Interest on whose behalf Relator has asserted claims (the "Relator" or "*Qui Tam* Plaintiff"); and

- D. James Jones Company LLC (“Jones”), Mueller Co. Ltd (“Mueller”), Tyco International (“Tyco”), and Watts Water Technologies, Inc., formerly known as Watts Industries, Inc. (“Watts”) (collectively, the “Defendants”).
- E. “Plaintiffs’ Attorneys” shall include counsel and the law firms that have appeared for the Armenta Intervenors, the Banning Plaintiffs, and the Relator.

1. **RECITALS**

WHEREAS, the complaints filed by the Relator in the *Armenta* Action (as defined herein) allege violations by Defendants of the California False Claims Act and were brought in the names of various governmental entities identified in Relator’s complaints; and

WHEREAS, the *Armenta* Intervenors intervened in the *Armenta* Action, and certain of the *Armenta* Intervenors filed Complaints-in-Intervention in the *Armenta* Action incorporating Relator’s allegations and asserting claims under the California False Claims Act and various common-law theories of recovery; and

WHEREAS, the *Banning* Plaintiffs filed complaints alleging certain misconduct by Defendants in the *Banning* Action and asserting claims under various common-law theories of recovery; and

WHEREAS, Defendants have denied all liability in the *Armenta* and *Banning* Actions (collectively the “Actions”); and

WHEREAS the Parties presented their disputes regarding the Claims in mediation to the Honorable Peter D. Lichtman, and on June 10, 2009, reached a settlement subject to approval by the governing boards of the *Armenta* Intervenors and the *Banning* Plaintiffs;

NOW, THEREFORE, the Parties hereby agree as follows:

## 2. AGREEMENT

In consideration of the mutual promises, agreements, releases, covenants, and conditions contained in the recitals above and the provisions set forth below, the sufficiency of such conditions being hereby acknowledged, the Parties agree to settle their disputes regarding the Claims pursuant to the terms stated below.

## 3. DEFINITIONS

The following definitions shall apply in this Agreement:

3.1. As used herein, the term "Actions" shall mean and refer to the *Armenta* Action and the *Banning* Action, as defined herein.

3.2. As used herein, the term "*Armenta* Action" shall mean and refer to the legal action captioned *State of California, et al., ex rel. Nora Armenta v. James Jones Company, et al.*, Case No. BC 173487, pending in the Superior Court of the State of California, County of Los Angeles. The term "*Armenta* Action" shall include, without limitation, all complaints and complaints-in-intervention and shall encompass all allegations made in any pleading or document filed or lodged in the *Armenta* Action.

3.3. As used herein, the term "*Banning* Action" shall mean and refer to the legal action captioned *City of Banning, et al. v. James Jones Company, LLC, et al.*, Case No. BC 321513, pending in the Superior Court of the State of California, County of Los Angeles. The term "*Banning* Action" also shall include the pending appeal entitled *City of Banning, et al. v. James Jones Company, et al.*, Case No. B 214057, pending in the Court of Appeal of the State of California, Second Appellate District, Division One. The term "*Banning* Action" shall include, without limitation, all complaints and shall encompass all allegations made in any pleading or document filed or lodged in the *Banning* Action.

3.4. As used herein, the term "Claims" shall mean and refer to the claims that were or could have been advanced in the Actions by the Plaintiffs.

3.5. As used herein, the "Effective Date" shall mean and refer to the date by which the governing boards of all of the *Armenta* Intervenors and *Banning* Plaintiffs have approved the settlement, all of the Parties have executed this Agreement, and the Court has approved the settlement.

3.6. As used herein, the term "Parties" shall mean and refer collectively to the Plaintiffs and Defendants, and the term "Party" shall mean and refer to any individual Plaintiff, Defendant, or Real Party in Interest, as those terms are defined herein.

3.7. As used herein, the term "Payment Date" shall mean and refer to the date on which the Relator's Attorneys' Fees and Costs and the Settlement Sum, as those terms are defined herein, are paid in full pursuant to the terms of this Agreement.

3.8. As used herein, the term "Plaintiffs" shall mean and refer to the Relator, the *Armenta* Intervenors, the *Armenta* Real Parties in Interest, and the *Banning* Plaintiffs collectively.

3.9. As used herein, the term "Real Parties in Interest" should mean and refer to all the cities, water districts or other government entities (other than the *Armenta* Intervenors) identified in the *Armenta* Action or on whose behalf the Relator instituted or prosecuted the *Armenta* Action.

3.10. As used herein, the term "Relator's Attorneys' Fees and Costs" shall mean and refer to the sum of \$30,000,000, to be paid by Defendants to Relator pursuant to California Code of Civil Procedure Section 12652(g)(8). The Relator's Attorneys' Fees and Costs are exclusive of and in addition to the Settlement Sum and any sums previously paid to settle any portion of the Actions. Neither the payment of the Settlement Sum nor the prior payment of any amount to settle any portion of the Actions shall operate to reduce the amount of the Relator's Attorneys' Fees and Costs to be paid under this Agreement.

3.11. As used herein, the term "Settlement Sum" shall mean and refer to the sum of \$39,000,000, to be paid by Defendants in settlement of the Claims. The

Settlement Sum is exclusive of and in addition to the Relator's Attorneys' Fees and Costs and any sums previously paid to settle any portion of the Actions. Neither the payment of any amount representing Relator's Attorneys' Fees and Costs nor the prior payment of any amount to settle any portion of the Actions shall operate to reduce the amount of the Settlement Sum to be paid under this Agreement.

**4. PAYMENT**

4.1. Within fifteen days after the latest of (i) approval by the Court of this Settlement Agreement; (ii) approval by the Court of the allocation of the Settlement Sum to be proposed by the Relator, the *Armenta* Intervenors, and the *Banning* Plaintiffs; or (iii) execution of this Settlement Agreement by all Parties; Defendants shall pay Plaintiffs the Settlement Sum by wire transfer to the Phillips & Cohen Client Trust Account for distribution as the Court may approve pursuant to Paragraph 8. The Plaintiffs will pay the Relator's share and/or any contingency payment out of the Settlement Sum.

4.2. At the same time as the payment in Paragraph 4.1, Defendants shall pay Relator the Relator's Attorneys' Fees and Costs by wire transfer to the Phillips & Cohen Client Trust Account for distribution to Relator's counsel.

4.3. After payment of the Settlement Sum and the Relator's Attorneys' Fees and Costs pursuant to Paragraphs 4.1 and 4.2, Plaintiffs shall file a dismissal of the Actions with prejudice and Defendants shall have no further liability to the Plaintiffs for the Claims. Phillips & Cohen shall not distribute the sums deposited to its Client Trust Account before the dismissal is filed with the Court.

**5. BASIS OF SETTLEMENT**

No Defendant admits liability for any claim alleged in the Actions, including without limitation any claim under the False Claims Act or for fraud or other intentional wrongdoing or misconduct, whether alleged in any complaint or complaint-in-intervention in the *Armenta* or *Banning* Actions, and this Agreement shall not be construed as an admission of any wrongdoing or liability by Defendants.

6. **RELEASES**

6.1. Subject to the other provisions and limitations set out in this Agreement and effective as of the later of the Effective Date or the Payment Date, Plaintiffs, for themselves, their governing bodies, boards, and commissions, officers, agents, employees, administrators, successors, and assigns, do hereby forego, release, and forever discharge the Defendants, as well as each of Defendants' respective past and present affiliates, parents, subsidiaries, divisions, branches, departments, agencies, predecessors, successors, and the heirs, principals, employees, associates, owners, stockholders, assigns, devisees, agents, distributors, directors, officers, representatives, insurers, lawyers, and predecessors and successors in interest, and each of them, and all persons acting by, through, under, or in concert with Defendants (collectively, the "Defendant Released Parties") from any and all actions; grounds for complaint; causes of action, in law or in equity, in contract, in tort, or otherwise; suits; guarantees of indebtedness; suretyships; debts; liens; contracts; agreements; promises; liability, including all direct and/or indirect liability (including, without limitation, vicarious liability); claims; demands; damages; losses; costs; expenses; defenses; set-offs; or recoupments, of any nature whatsoever, known or unknown to Plaintiffs (regardless of their diligence), suspected or unsuspected, fixed or contingent, which Plaintiffs now have, ever had, or shall have against the Defendant Released Parties, or any of them, arising out of or in any way connected with the Claims or Actions or the facts alleged or asserted or which could have been alleged or asserted in the Claims or in the Actions. The Parties agree to request Judge Ann I. Jones, or such other judge as is presiding over the Actions, to order that the Real Parties in Interest on whose behalf Relator has submitted claims are bound by the releases herein and this Settlement Agreement and Release to the fullest extent permitted by law. Defendants, the *Armenta* Intervenors, the *Banning* Plaintiffs, and Relator shall jointly submit to the Court a Proposed Order approving this Agreement in the form appended hereto as Exhibit A.

6.2. Subject to the other provisions and limitations set out in this Agreement, and effective as of the Effective Date, Defendants, for themselves, their administrators, successors, and assigns, do hereby forego, release, and forever discharge Plaintiffs, as well as each Plaintiff's respective past and present affiliates, governing bodies, boards, commissions, agents, administrators, parents, subsidiaries, divisions, branches, departments, agencies, predecessors, successors, and the heirs, principals, employees, associates, owners, stockholders, assigns, devisees, agents, distributors, directors, officers, representatives, insurers, lawyers, and predecessors and successors in interest, and each of them, and all persons acting by, through, under, or in concert with them (collectively, the "Plaintiff Released Parties") from any and all actions; grounds for complaint; causes of action, in law or in equity, in contract, in tort, or otherwise; suits; guarantees of indebtedness; suretyships; debts; liens; contracts; agreements; promises; liability, including all direct and/or indirect liability (including, without limitation, vicarious liability); claims; demands; damages; losses; costs; expenses; defenses; set-offs; or recoupments, of any nature whatsoever, known or unknown to Defendants (regardless of diligence), suspected or unsuspected, fixed or contingent, which they now have, ever had, or shall have against the Plaintiff Released Parties, or any of them, arising out of or in any way connected with the Claims or Actions or the facts alleged or asserted or which could have been alleged or asserted in the Claims or in the Actions.

6.3. The Parties hereby waive any and all rights that they may have under any and all statutes or laws that purport to limit the scope of a general release, including, without limitation, Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

6.4. The release in Paragraph 6.1 above shall not preclude Plaintiffs from asserting claims for indemnification or contribution in the event that the Plaintiffs are sued by third parties as a result of harm allegedly caused by the parts supplied to the *Armenta* Intervenors, the *Banning* Plaintiffs or the Real Parties in Interest on whose behalf Relator has submitted claims. In any such action, the Plaintiffs will not take the position that Defendants' parts have created any health risk. In addition, neither Plaintiffs nor Plaintiffs' Attorneys in the Actions presently have any evidence indicating that any particular person has suffered actual adverse health effects caused by the parts supplied to the *Armenta* Intervenors, the *Banning* Plaintiffs or the Real Parties in Interest. The representations respecting health effects contained in this paragraph shall not be used for any purpose other than in connection with an action by a third party against any of the Plaintiffs. Nothing in this Agreement waives, releases or affects any rights, defenses or claims that any Plaintiff or Defendant may have against any party in response to any claim for indemnification or contribution.

**7. DISMISSAL OF ACTIONS**

7.1. Promptly upon Court approval of this Agreement, Plaintiffs will take all actions necessary to obtain the dismissal of the Actions with prejudice, except that the Parties stipulate that all disputes arising from or related to this Agreement shall be referred to the Honorable Peter D. Lichtman, or if Judge Lichtman is unable or not available to hear the dispute, such judge as is then presiding over the Actions, and that said trial court shall retain jurisdiction to resolve any such disputes pursuant to California Code of Civil Procedure § 664.6.

7.2. Other than the payment by Defendants of the Relator's Attorneys' Fees and Costs pursuant to Paragraph 4.2 above, Plaintiffs shall bear their own attorneys' fees and costs, subject to any separate agreements among them or orders of the Court concerning the allocation of the Settlement Sum, and Defendants shall bear their own attorneys' fees and costs, subject to any separate agreements among them.

## 8. CONTINGENCIES

The Parties' obligations and releases under this Agreement are contingent upon approval of this Agreement by the governing boards of the *Armenta* Intervenors and the *Banning* Plaintiffs, upon Court approval of the settlement and this Agreement, upon the approval of the allocation of the Settlement Sum to be proposed by the Relator, the *Armenta* Intervenors, and the *Banning* Plaintiffs, upon the dismissal of the Actions (as set forth in Section 7 above), and upon payment of the Settlement Sum and the Relator's Attorneys' Fees and Costs (as set forth in Section 4 above).

## 9. GENERAL PROVISIONS

9.1. The Parties have been represented by their respective attorneys throughout the negotiation and execution of this Agreement and have not relied upon any advice or representation of opposing parties or their attorneys in entering into this Agreement. The Parties have entered into this Agreement freely, without compulsion, and with full understanding and voluntary acceptance of its terms and they hereby assume the risk of any mistake of fact in connection with the true facts involved, which may now be unknown.

9.2. The Parties acknowledge that, subsequent to the execution of this Agreement, the Parties may discover facts or incur or suffer claims which, if known or anticipated, might have materially affected the Parties' or a Party's decision to execute this Agreement. The Parties expressly acknowledge this risk and agree that this Agreement applies to such unknown, unanticipated, or different facts and/or claims, and that the enforceability of this Agreement shall not in any way be affected by such discovery of unknown or unanticipated facts and/or claims.

9.3. This Agreement constitutes the entire agreement between the Plaintiffs and the Defendants with respect to the subject matter contained herein and represents the final, complete, and exclusive expression of the terms and conditions of the Agreement between the Plaintiffs and Defendants. All prior or contemporaneous agreements

between the Plaintiffs and the Defendants, oral or written, with respect to the subject matter of this Agreement are merged herein and superseded hereby. The Defendants and their contributing insurers have pursuant to separate agreement agreed to their respective contributions to the Relators' Attorneys' Fees and Costs and the Settlement Sum. This Agreement is subject to Defendants and their contributing insurers finalizing that separate agreement and depositing their agreed upon portions of Relator's Attorneys' Fees and the Settlement Sum in the trust account described in Paragraphs 4.1 and 4.2. As between the Plaintiffs and Defendants, Plaintiffs and Defendants acknowledge that no Party, or any agent of any Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the Parties (or any individual Party named or referred to herein) to execute this Agreement, and each Party acknowledges that it has not executed this Agreement in reliance on any such promise, representation, or warranty. Notwithstanding anything in this paragraph, prior settlement agreements executed in this action involving any government entities that are not parties to this Agreement are not merged herein or superseded hereby.

9.4. This Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by the Parties hereto.

9.5. If any covenant, term, condition, or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.6. For purposes of construction, this Agreement shall be deemed to have been negotiated and drafted by all of the Parties hereto, and no ambiguity shall be resolved against any Party by virtue of its participation in the drafting of this Agreement. The Agreement shall be construed neutrally and shall not be applied more strictly against one Party than against another.

9.7. This Agreement shall be binding upon each Party and its assigns, successors, heirs, executors, and administrators.

9.8. The Parties agree to use their best efforts to cooperate with each other in good faith and will, without further consideration, execute and deliver further documents or instruments and take such other action as may be reasonably necessary to carry out and effectuate the purposes of this Agreement.

9.9. All notices required or permitted hereunder shall be in writing, and may be sent by facsimile or any form of first-class mail service and addressed to the Party for whom it is intended as follows:

[insert notice addresses]

The Parties may change the addresses provided in this Paragraph 9.9 by notice in writing in accordance with this Paragraph 9.9 to all Parties signed by an appropriate representative of the Party requesting the change.

9.10. Counsel for each Party may retain one complete set of non-electronic records related to the Actions, consisting of pleadings, documents from Plaintiffs, Defendants' or third party files, and work product generated by Plaintiffs' attorneys or experts ("Litigation Documents"). All documents related to the Actions, including any electronic copies, shall be maintained in confidence by Plaintiffs and Plaintiffs' Attorneys and not be disclosed to any third party or used to initiate or prosecute litigation against Defendants, their agents, affiliates, or insurers, except as required by law or ethical rules governing the conduct of attorneys. However, documents that have been filed in open court are not deemed confidential and their use is not restricted by this Agreement. Two years following dismissal of the Actions, Defendants may request that Intervenors' outside counsel and Plaintiffs' Attorneys destroy or return to Defendants all copies of documents produced by Defendants in the Actions, and those law firms shall comply with that request. This confidentiality provision does not preclude the use of Litigation

Documents in defending against malpractice claims or collateral disputes arising directly from this litigation or the conduct of this litigation.

9.11. It is understood and agreed by the Parties hereto that this Agreement is a compromise of disputed claims and allegations and that each Party denies liability for all claims and allegations asserted against it in the Actions. Neither the execution of this Agreement, nor the consideration therefore shall be construed as an admission as to the merits of any such claim or allegation, or as an admission of any allegation of law or fact by any Party hereto.

9.12. The Parties hereby agree that this Agreement is a good-faith settlement of litigation as provided under the laws of the State of California.

9.13. Each person signing this Agreement represents and warrants that he or she has full authority to sign this Agreement on behalf of the Party for whom he or she is signing and warrants that he or she has the ability to bind that Party to the obligations and commitments set forth herein; provided, however, that Nora Armenta represents and warrants only that she has the authority to sign this Agreement on her own behalf and that she has the ability to bind the Real Parties in Interest on whose behalf she has asserted claims only to the extent permitted by law. Nora Armenta disclaims any ability to bind any Real Party in Interest beyond the extent permitted by law.

9.14. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to its conflict of laws principles. The validity and effect of this Agreement, including any claims for breach of any of the terms hereof, shall be governed by the laws of the State of California.

9.15. Duplicate originals of this Agreement will be executed by the Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date as defined above.

[signature blocks -- including all law firms and counsel]