

OTAY WATER DISTRICT  
FINANCE, ADMINISTRATION AND COMMUNICATIONS  
COMMITTEE MEETING  
and  
SPECIAL MEETING OF THE BOARD OF DIRECTORS

2554 SWEETWATER SPRINGS BOULEVARD  
SPRING VALLEY, CALIFORNIA  
BOARDROOM

**MONDAY**  
**September 14, 2009**  
**12:30 P.M.**

This is a District Committee meeting. This meeting is being posted as a special meeting in order to comply with the Brown Act (Government Code Section §54954.2) in the event that a quorum of the Board is present. Items will be deliberated, however, no formal board actions will be taken at this meeting. The committee makes recommendations to the full board for its consideration and formal action.

**AGENDA**

1. ROLL CALL
2. 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

**DISCUSSION ITEMS**

3. 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) [15 minutes]
4. ADOPT RESOLUTION NO. 4149 REVISING BOARD OF DIRECTORS POLICIES 14, USE OF DISTRICT VEHICLES AND CAR ALLOWANCE; AND 19, TOBACCO FREE CAMPUS (WILLIAMSON) [5 minutes]
5. 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 EXISTING SERVICE AGREEMENT WITH DELTA HEALTH SYSTEMS CORPORATION, THE DISTRICT'S TPA, TO EXTEND THE TERM OF THE AGREEMENT AND REPLACE THE DENTAL NETWORK (WILLIAMSON) [10 minutes]

6. APPROVE THE TRANSITION IN GOVERNANCE OF THE WATER CONSERVATION GARDEN FROM THE JOINT POWER AUTHORITY TO A NON-PROFIT ORGANIZATION (GRANGER) [10 minutes]
7. UPDATE ON LARRY C. LARSON SAFETY AWARD FOR 2009 (CUDAL) [5 minutes]
8. ADJOURNMENT

BOARD MEMBERS ATTENDING:

Jaime Bonilla, Chair  
Jose Lopez

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 670-2280 at least 24 hours prior to the meeting.

#### Certification of Posting

I certify that on September 11, 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 24 hours in advance of the meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on September 11, 2009.

  
\_\_\_\_\_  
Susan Cruz, District Secretary



# AGENDA ITEM 3

## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	October 7, 2009
SUBMITTED BY:	James Cudlip, Finance Manager <i>J. Cudlip</i>	W.O./G.F. NO:	DIV. NO. All
APPROVED BY:	Joseph R. Beachem, Chief financial Officer <i>J. Beachem</i> (Chief)		
APPROVED BY:	German Alvarez, Assistant General Manager (Asst. GM):		
SUBJECT:	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		

### GENERAL MANAGER'S RECOMMENDATION:

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.

### COMMITTEE ACTION:

See Attachment A.

### BACKGROUND:

The District originally issued General Obligation Bonds, Series 1992 of Improvement District No. 27, in the amount of \$11,500,000, the proceeds of which were used primarily to finance the construction of a 30 million gallon storage reservoir as well as replacement of existing pipeline and the construction of new pipeline to provide distribution to and from the reservoir.

In 1998 the District refinanced this debt by issuing \$11,835,000 of General Obligation Refunding Bonds, thereby obtaining a lower interest rate and projected savings of approximately \$30,000 per year over the remaining life of the debt. A portion of these bonds mature and are redeemed each year, with the final maturity and redemption scheduled for September 2022. However, beginning September 1, 2009 and thereafter all remaining bonds may be

redeemed, at the option of the District, at a redemption price equal to the principal amount together with interest accrued thereon to the date fixed for redemption, with no premium. Presently there is approximately \$7,960,000 of these Series 1998 GO bonds outstanding.

**ANALYSIS:**

Current economic conditions, to include continuing low market interest rates, have once again combined to give the District an opportunity to refinance these bonds and attain a significant savings from the present bond obligations. The outstanding bonds bear interest over their remaining 13 years at an average 5%. Current interest rates for bonds with the same credit quality and years to maturity are 3.7%.

Financial estimates prepared by the District's financial advisor, Harrell & Company Advisors, LLC, project that savings of approximately \$46,700 per year could be realized by refunding the outstanding debt at this time. Total savings over the remaining 13 year life of the bonds is estimated to be in excess of \$600,000, and the present value of these savings amounts to over \$488,000. While market conditions may change at any time, these estimates include provisions for reasonable market fluctuations over the next 30 - 60 days.

The District makes semi-annual bond payments using funds collected from customers in ID 27. The District collects these funds via the County tax roll. There are approximately 26,000 customers in ID 27, which would result in an average annual tax savings of approximately \$1.80 per customer parcel, or 6.2% of the current average tax levy of \$29. These savings will be realized directly by the customers of ID 27 as a reduction in the tax bills on their property.

Based on these positive projections, it is recommended that the Board authorize staff to proceed with the process of issuing new bonds to refund the Series 1998 GO Bonds so as to "lock in" the maximum amount of savings as quickly as possible. The current savings estimate represents, on a present value basis, about 6% of the outstanding bonds. The District's Debt Policy requires that no refunding be commenced unless the District can demonstrate at least a 5% present value savings. The refunding complies with the District's Debt Policy.

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

Projected total savings over 13 years in excess of \$600,000, with a present value of these savings of \$488,000. The expected principal amount of bonds to be issued is \$8.2 million.

**STRATEGIC GOAL:**

Demonstrate financial health through formalized policies, prudent investing, and efficient operations.

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

None.



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

Attachments:

- A) Committee Action Form
- B) Bond Refunding Presentation
- C) Resolution No. 4147
- D) Resolution No. 4148
- E) Preliminary Official Statement
- F) Summary Notice of Sale
- G) Official Notice of Sale
- H) Continuing Disclosure Certificate
- I) Paying Agent Agreement
- J) Escrow Agreement



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	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
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### COMMITTEE ACTION:

That the Finance, Administration and Communications Committee recommends that the Board 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.

### NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.

	 <p><b>1998 General Obligation Bonds Refunding</b></p>
	<p><i>September 14, 2009</i></p>

<p><b>Today's Recommendation</b></p>
<ul style="list-style-type: none"><li>▪ <b>Authorize the Sale and Issuance of Not to Exceed \$9,000,000 of 2009 General Obligation Refunding Bonds for Improvement District No. 27</b></li><li>▪ <b>Approve Terms of Sale and Form of Documents and Authorize the General Manager and Chief Financial Officer to Execute and Deliver Related Documents</b></li></ul>

## **Improvement District No. 27**

- **Formed in 1989 by vote of Landowners**
- **Approved Ad Valorem Taxes to be Levied to Pay up to \$100 Million of General Obligation Bond Debt**

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## **Improvement District No. 27**

**\$11,500,000  
1992 General Obligation  
Bonds Issued**

- **30 MG Storage Reservoir**
- **Replace Existing Pipelines**
- **New Pipeline**

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## ID 27 General Obligation Bonds

### 1992 GO Bonds:

- Interest Rates 6.0% - 6.5%
- Refunded in 1998

### 1998 GO Bonds:

- Interest Rates 4.5% - 5.0%
- Mature on September 1, 2022

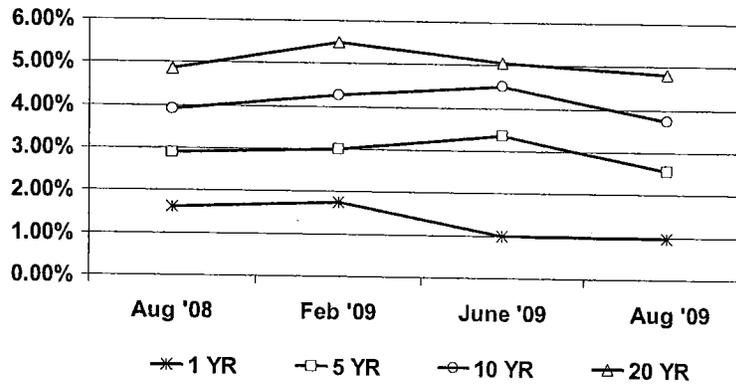
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## ID 27 GO Bond Tax Rates

	Per \$100 of AV	Tax Based on \$400,000 Home Value
2005-06	.010	\$40
2006-07	.007	28
2007-08	.006	24
2008-09	.005	20
2009-10	.005	20
2010-11 (Est.)	.006	24

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## Interest Rates – AAA Rated Bonds



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## Refunding

**Refunding 1998 Bonds Can Reduce Debt Service by 6% per Year for Remaining 13 Years**

- Reduce Debt Service from \$850,000 to \$800,000
- Reduce Ad Valorem Tax Levy from \$24 per Parcel to \$22 per Parcel

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## Refunding Participants

- **Issuer**
- **Bond Counsel**
- **Disclosure Counsel**
- **Financial Advisor**
- **Paying Agent**

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## Refunding Documents

- **Resolution**
- **Official Statement**
- **Continuing Disclosure Certificate**
- **Official Notice of Sale**
- **Notice of Intention to Sell Bonds**

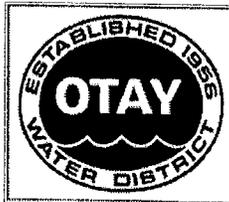
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## Refunding Schedule

- Sept 14 – Finance Committee Meeting**
- Sept 15 – Submit Documents to Credit Rating Agencies**
- Sept 30 – Receive Credit Ratings**
- Oct 7 – Board Approval of Financing**
- Oct 21 – Bond Sale (Competitive)**
- Nov 4 – Bond Closing**

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## Questions



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Resolution No. 4147

A RESOLUTION OF THE BOARD OF DIRECTORS OF OTAY WATER DISTRICT PRESCRIBING THE TERMS OF SALE OF NOT TO EXCEED \$9,000,000 PRINCIPAL AMOUNT OF OTAY WATER DISTRICT IMPROVEMENT DISTRICT NO. 27, 2009 GENERAL OBLIGATION REFUNDING BONDS (SAN DIEGO COUNTY, CALIFORNIA); APPROVING THE FORM OF AN OFFICIAL NOTICE OF SALE AND A NOTICE OF INTENTION TO SELL BONDS; APPROVING THE FORM OF ESCROW AGREEMENT; AUTHORIZING THE OFFICIAL STATEMENT RELATING THERETO; APPROVING THE FORM OF THE CONTINUING DISCLOSURE CERTIFICATE; RATIFYING CERTAIN ACTIONS PREVIOUSLY TAKEN AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND ACTIONS RELATING THERETO

WHEREAS, the Board of Directors ("Board") of Otay Water District (the "District") duly caused a special election to be held in a proposed uninhabited improvement district designated "Improvement District No. 27 of Otay Water District" on October 31, 1989 for the purpose of voting to establish Improvement District No. 27 ("Improvement District No. 27") and for the issuance of bonds to raise money for the acquisition, construction and completion of water improvements and works, including, but not limited to, all engineering, inspection, legal and consultant fees and other costs incidental and in connection with such acquisition and construction; and

WHEREAS, more than two-thirds of the votes cast were in favor of establishing Improvement District No. 27 and issuing said bonds; and

WHEREAS, pursuant to said election on November 18, 1989, the Board adopted Resolution No. 2836, establishing Improvement District No. 27 of the District and providing for the issuance of not to exceed \$100,000,000 aggregate principal amount of bonds of the District for Improvement District No. 27; and

WHEREAS, by Resolution No. 3186 adopted by the Board on November 19, 1992, the District issued its Otay Water District General Obligation Bonds for Improvement District No. 27, Series 1992, in the aggregate principal amount of \$11,500,000 which were advanced-refunded on June 24, 1998 with proceeds of the 1998 Bonds (defined below); and

WHEREAS, by Resolution No. 3744 adopted by the Board on May 13, 1998, the District issued its Otay Water District Improvement District No. 27, General Obligation Refunding Bonds, Series 1998 (the "1998 Bonds"), in the aggregate principal amount of \$11,835,000 of which \$7,960,000 currently remain outstanding as of September 1, 2009; and

WHEREAS, this Board deems it necessary and desirable that the District offer for sale, on or about October 21, 2009, general obligation refunding bonds designated "Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (San

Diego County, California)” (the “Refunding Bonds”) in the principal amount of not to exceed \$9,000,000 in accordance with the sale terms and in the manner hereinafter prescribed, for the purpose of refunding the outstanding 1998 Bonds and paying the Costs of Issuance (as that term is defined in the Resolution of Issuance defined below); and

WHEREAS, there has been submitted to this Board a resolution providing the terms of issuance of the Refunding Bonds (the “Resolution of Issuance”), a proposed form of Preliminary Official Statement describing the Refunding Bonds, a proposed form of Notice of Sale, a proposed form of Notice of Intention to Sell Bonds and other related documents herein described; and

WHEREAS, the Board desires to authorize the purchase of a municipal bond insurance policy if, at the time of sale of the Refunding Bonds it is determined that such purchase is in the best interest of the District; and

WHEREAS, the Board anticipates that the aggregate amount of tax-exempt obligations to be issued by the District during calendar year 2009, will not exceed \$30,000,000 and the Board believes that it is in its best interest to designate the Refunding Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, this Board wishes to ratify and approve the retention of Harrell & Company Advisors, LLC, as Financial Advisor to the District, Garcia Calderón Ruíz, LLP, as Bond Counsel to the District and Stradling Yocca Carlson & Rauth, a Professional Corporation, as Disclosure Counsel to the District, in connection with the Refunding Bonds.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Otay Water District, as follows:

SECTION 1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.

SECTION 2. Issuance and Sale of Refunding Bonds. The Board hereby authorizes the issuance and sale of not to exceed \$9,000,000 principal amount of bonds to be designated as “Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (San Diego County, California)” (the “Refunding Bonds”). The Board hereby authorizes the General Manager and the Chief Financial Officer of the District, each, to determine the sale date, the maturity dates and the redemption dates of the Refunding Bonds, subject to the following terms and conditions: (i) the true interest cost of the Refunding Bonds shall not exceed 5% (as such term is defined in the Official Notice of Sale described and defined in Section 4 hereof); and (ii) the Refunding Bonds shall have a final maturity on or prior to September 1, 2022.

SECTION 3. Official Notice of Sale. The form of Official Notice of Sale (the “Official Notice of Sale”) inviting bids for the Refunding Bonds, in substantially the same form set forth as Exhibit A hereto, is hereby approved and adopted, with such corrections, revisions or additions as may be acceptable to Bond Counsel and the General Manager and the Chief

Financial Officer. Harrell & Company Advisors, LLC (the "Financial Advisor") is hereby authorized to distribute or cause to be distributed to prospective bidders for the Refunding Bonds copies of the Official Notice of Sale, subject to such corrections, revisions or additions as may be acceptable as set forth above. The General Manager and the Chief Financial Officer, each, is hereby authorized to approve amendments to the Official Notice of Sale from time to time, as shall be required to cause the Official Notice of Sale to contain any further information required to accurately describe the Refunding Bonds.

SECTION 4. Publication of Notice of Intention to Sell Bonds. The form of proposed Notice of Intention to Sell Bonds for the Refunding Bonds (the "Notice of Intention to Sell Bonds"), in substantially the form set forth as Exhibit B hereto, is hereby approved and adopted, with such corrections, revisions or additions as may be acceptable to Bond Counsel and the Chief Financial Officer. The Financial Advisor is hereby authorized to cause the Notice of Intention to Sell Bonds to be published as follows:

- (i) Once, at least 15 days prior to the sale date in the Bond Buyer, a financial publication generally circulated throughout the State; and
- (ii) Once, at least 5 days prior to the sale date, in a newspaper of general circulation published in San Diego County.

SECTION 5. Solicitation of Competitive Bids. The Board hereby authorizes the solicitation of competitive bids for the purchase of the Refunding Bonds on the date and at the place determined in accordance with the Official Notice of Sale.

SECTION 6. Approval of Official Statement. The form of proposed Preliminary Official Statement describing the Refunding Bonds (the "Preliminary Official Statement") submitted to the Board is hereby approved and adopted as the Official Statement describing the Refunding Bonds, with such corrections, revisions and additions as may be determined to be necessary or desirable by Bond Counsel, Disclosure Counsel or the Financial Advisor and the Chief Financial Officer and the General Manager of the District. The General Manager and Chief Financial Officer, each, is hereby authorized and directed to cause the distribution of the Preliminary Official Statement deemed final for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, and to sign a certificate to that effect. The Financial Advisor is hereby authorized and directed to cause to be printed and mailed or electronically distributed to prospective bidders for the Refunding Bonds copies of the Preliminary Official Statement in substantially the form of the Preliminary Official Statement approved and adopted hereby, as completed, corrected or revised. The General Manager and Chief Financial Officer, each, is authorized and directed to approve the final Official Statement with respect to the Refunding Bonds, which final Official Statement shall be in the form of the Preliminary Official Statement, with such corrections, revisions and additions as may be determined to be necessary or desirable to reflect the terms of the sale of the Refunding Bonds and to comply with applicable federal securities laws, such approval to be evidenced by the execution and delivery thereof. The Financial Advisor is hereby authorized and directed to cause to be printed and mailed or electronically distributed copies of the final Official Statement to all initial purchasers of the Refunding Bonds.

SECTION 7. Award of Refunding Bonds; Insurance. The General Manager and the Chief Financial Officer, each, is hereby authorized to award the Refunding Bonds to the bidder whose bid represents the lowest true interest cost to the District, all in accordance with the procedures described in the Official Notice of Sale. The General Manager or the Chief Financial Officer shall provide copies of the Bond Award as soon as practicable to the Financial Advisor; provided, however, that failure to provide such copies shall not affect the validity of the Bond Award.

If the District determines it is in its best interest to acquire municipal bond insurance to provide credit enhancement with respect to the Bonds, the General Manager and the Chief Financial Officer, each, is hereby authorized to make such determination and is further authorized to enter into an agreement with the selected municipal bond insurer and to deliver in connection therewith such documents and certificates as required to give effect to such determination.

SECTION 8. Notice of Sale. The District has caused a Report of Proposed Debt Issuance to be filed with the California Debt and Investment Advisory Agency ("CDIAC"), in the form required by the State of California (the "State") and such report is hereby ratified, approved and confirmed. Following the sale, the District shall cause a Report of Final Sale to be filed with CDIAC as required by law.

SECTION 9. Continuing Disclosure Certificate. The form of Continuing Disclosure Certificate issued by the District to permit the original purchaser of the Refunding Bonds to comply with Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, submitted to the Board is hereby approved and adopted as the Continuing Disclosure Certificate. The General Manager and the Chief Financial Officer, each, is hereby authorized and directed to execute the Continuing Disclosure Certificate on behalf of the District and to approve such additions, corrections and revisions as may be determined to be necessary or desirable to comply with applicable federal securities laws, such approval to be evidenced by the execution and delivery thereof. The General Manager or the Chief Financial Officer, each, is authorized to deliver the Continuing Disclosure Certificate to the original purchaser of the Refunding Bonds.

SECTION 10. Approval of the Escrow Agreement. The form of the Escrow Agreement submitted to the Board and to be entered into by an between the District and Union Bank of California, N.A., as escrow agent, (the "Escrow Agreement"), providing for the deposit of cash or the purchase and deposit of federal securities to secure the payment of the principal and redemption price of and interest on the 1998 Bonds, is hereby approved, and the General Manager or the Chief Financial Officer, each, is hereby authorized and directed for and in the name and on behalf of the District to execute and deliver the Escrow Agreement in substantially the form hereby approved with such changes therein as the officer executing the agreement may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 11. Approval of the Paying Agent. Union Bank of California, N.A., is hereby appointed as paying agent, registrar and/or fiscal agent (the "Paying Agent") for the Refunding Bonds. The form of the Paying Agent Agreement submitted to the Board and to be

entered into by an between the District and the Paying Agent, is hereby approved, and the General Manager or the Chief Financial Officer, each, is hereby authorized and directed for and in the name and on behalf of the District to execute and deliver the Paying Agent Agreement in substantially the form hereby approved with such changes therein as the officer executing the agreement may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Each District Representative is hereby authorized to direct the Paying Agent, either in a certificate or pursuant to the terms of an agreement with the Paying Agent, to establish an account for the payment of Costs of Issuance not otherwise paid by or at the direction of the initial purchaser, on behalf of the District. The Costs of Issuance are estimated to be in an amount not-to-exceed \$150,000, including the Financial Advisor, Bond Counsel, and Disclosure Counsel fees, bond insurance premium (if any), costs of printing the Official Statement, rating agency fees, Paying Agent fees, and other related costs (excluding any initial purchaser discount). Final Costs of Issuance will be determined and presented to the Board subsequent to sale of the Bonds.

SECTION 12. Official Actions. The President of the Board, the Secretary of the Board, the General Manager, the Chief Financial Officer, and any and all other officers of the District are each authorized and directed in the name and on behalf of the District to execute and deliver any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate the lawful issuance, sale and delivery of the Refunding Bonds. Whenever in this Resolution any officer of the District is authorized to execute any document or take any action, such execution or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

SECTION 13. Relationship to Resolution of Issuance. In the event of any conflict between this Resolution and the Resolution of Issuance relating to the terms of the Refunding Bonds, the Resolution of Issuance shall control. Without limiting the foregoing, the District is not obligated to transfer money from the General Fund of the District to the Debt Service Fund established under the Resolution of Issuance to pay for principal and/or interest on the Refunding Bonds.

SECTION 14. Designation of the Refunding Bonds as Qualified Tax Exempt Obligations. The Refunding Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. The Board reasonably anticipates that the District, together with all subordinate entities of the District, will not issue tax-exempt obligations greater than \$30,000,000 during the calendar year in which the Refunding Bonds are issued.

SECTION 15. Ratification. All actions heretofore taken by officials, employees and agents of the District with respect to the sale and issuance of the Refunding Bonds are hereby approved, confirmed and ratified.

SECTION 16. Effective Date of Resolution. This Resolution shall take effect from and after the date of its passage and adoption.

ADOPTED, SIGNED AND APPROVED this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2009.

By: \_\_\_\_\_  
President of the Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary to the Board of Directors

\*\*\*\*\*

STATE OF CALIFORNIA                    )  
  )  
SAN DIEGO COUNTY                    )

The undersigned Secretary to the Board of Directors hereby certifies that the foregoing Resolution No. \_\_\_\_\_, was duly adopted by the Board of Directors of the Otay Water District at a meeting thereof held on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2009, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: \_\_\_\_\_  
Susan Cruz, Secretary to the Board of Directors  
of the Otay Water District

**EXHIBIT A**

**OFFICIAL NOTICE OF SALE**

**[TO COME]**

**EXHIBIT B**  
**NOTICE OF INTENTION TO SELL BONDS**

**[TO COME]**

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RESOLUTION NO. 4148

RESOLUTION OF THE OTAY WATER DISTRICT BOARD OF DIRECTORS PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$9,000,000 PRINCIPAL AMOUNT OF OTAY WATER DISTRICT IMPROVEMENT DISTRICT NO. 27, 2009 GENERAL OBLIGATION REFUNDING BONDS (SAN DIEGO COUNTY, CALIFORNIA)

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Resolution No. 4148

A RESOLUTION OF THE OTAY WATER DISTRICT BOARD OF DIRECTORS PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$9,000,000 PRINCIPAL AMOUNT OF OTAY WATER DISTRICT IMPROVEMENT DISTRICT NO. 27, 2009 GENERAL OBLIGATION REFUNDING BONDS (SAN DIEGO COUNTY, CALIFORNIA)

WHEREAS, pursuant to the Municipal Water District Law of 1911, being Division 20 of the Water Code of the State of California, (the "Law"), the Board of Directors ("Board") of the Otay Water District (the "District") caused a special election to be duly and regularly held on October 31, 1989 within what was then a proposed uninhabited area tentatively designated "Improvement District No. 27 of the Otay Water District"; and

WHEREAS, at said election, the voters of the proposed improvement district approved by unanimous vote of those voting the following proposition:

"Shall Otay Water District form Improvement District No. 27 and incur a bonded indebtedness for Improvement District No. 27 thereof in the principal sum of \$100,000,000 for the purpose of acquisition, construction and completion of water improvements and works, including but not limited to, all engineering, inspection, legal and financial consultant fees and other costs incidental to and in connection with such acquisition and construction."

WHEREAS, pursuant to said election, the Board adopted Resolution No. 2836 (the "ID Resolution"), on November 1, 1989, establishing Improvement District No. 27 of the Otay Water District, as the boundaries may change by annexation from time to time, ("ID 27") and providing for the issuance of not to exceed \$100,000,000 for the purposes approved by the voters; and

WHEREAS, pursuant to Resolution No. 3186, adopted by the Board on November 19, 1992 (the "1992 Bond Resolution"), the District previously issued \$11,500,000 Otay Water District General Obligation Bonds for Improvement District No. 27, Series 1992 (the "1992 Bonds"), which were advanced-refunded on or about June 24, 1998 with proceeds of the 1998 Bonds (defined below); and

WHEREAS, pursuant to Resolution No. 3744, adopted by the Board on May 13, 1998 (the "1998 Bond Resolution"), the District issued its \$11,835,000 Otay Water District Improvement District No. 27, General Obligation Refunding Bonds, Series 1998 (the "1998 Bonds") of which \$7,960,000 currently remain outstanding (the "1998 Bonds"); and

WHEREAS, pursuant to Section 71854 of the Law, being Division 20 of the Water Code of the State of California, and Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Act") the Board may authorize and cause to be issued refunding bonds of the District to refund the 1998 Bonds; and

WHEREAS, this Board deems it necessary and desirable that the District offer for sale on or about October 21, 2009 general obligation refunding bonds designated "Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (San Diego County, California)" (the "Refunding Bonds") in the principal amount of not to exceed \$9,000,000

according to the terms and in the manner hereinafter set forth for the purpose of refunding in whole the 1998 Bonds; and

WHEREAS, the issuance of Refunding Bonds to redeem the 1998 Bonds as herein contemplated shall not be construed as the incurring or increasing of an indebtedness and the approval of the voters is not required for the issuance of the Refunding Bonds.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Otay Water District, as follows:

SECTION 1. Definitions. Unless the context otherwise requires the following terms shall have the meanings indicated next to them:

“Administrative Expenses” means the administrative costs with respect to the determination, apportionment, levy and collection of the taxes and any other costs related to the Bonds for which the taxes may be levied in accordance with the law.

“Authorized Investment” means, subject to applicable law:

(a) Direct obligations of the United States of America (including Treasury Bills, Bonds, Notes, obligations issued or held in book-entry form on the books of the Department of the Treasury) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

(b) The Local Agency Investment Fund (LAIF) of the State of California, created pursuant to Section 16429.1 of the California Government Code.

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

- (i) Federal Home Loan Bank System
- (ii) Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)
- (iii) Federal National Mortgage Association (FNMA or “Fannie Mae”)
- (iv) Government National Mortgage Association (GNMA or “Ginnie Mae”)
- (v) Student Loan Marketing Association (“Sallie Mae”)
- (vi) Federal Farm Credit Bank (DDCB)

(d) Certificates of deposit or demand deposit accounts; provided that such instruments are interest bearing and fully insured by the Federal Deposit Insurance Corporation (FDIC).

(e) Bills of Exchange or Time Drafts drawn on and accepted by a commercial bank, otherwise known as Bankers Acceptances (BA), which are eligible for purchase by the Federal Reserve System.

(f) Commercial Paper rated, at the time of purchase, "A1+" or better by S&P and maturing no later than 270 calendar days from the date of purchase.

(g) Medium term notes, defined as all corporate debt securities with a maximum remaining maturity of five years or less.

(h) Money market mutual funds that invest only in securities described in subparagraph (a), above.

(i) Any other investments authorized under the provisions of the California Government Code and approved by the District.

"Bonds" or "Refunding Bonds" means the Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (San Diego County, California).

"Bond Counsel" means Garcia Calderón Ruíz, LLP, or any attorney or firm of attorney nationally recognized for expertise in rendering opinions as to the legality and tax exempt status of securities issued by public entities.

"Bond Register" means the books which the Paying Agent shall keep or cause to be kept on which the registration and transfer of the Bonds shall be recorded.

"Bondowner" or "Registered Owner" or any similar term, when used with respect to the Bonds, means any person who shall be the registered owner of any Bond.

"Bond Year" means the twelve-month period commencing March 1 in any year and ending on the last day of February in the next succeeding year, both dates inclusive; provided however, that the first Bond Year shall commence on the dated date of the Bonds and shall end on February 28, 2010, both dates inclusive.

"Business Day" means each Monday through Friday of each week other than federal, banking or State of California holidays.

"Board of Directors" or "Board" means the Board of Directors of the Otay Water District.

"Closing Date" means the date on which the Bonds are issued and delivered to the original purchaser thereof in exchange for the purchase price of the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended and the regulations issued thereunder, as the same may be amended from time to time and any successor provisions of law. Reference to any particular section of the Code shall be deemed to be a reference to any successor to any such section.

"Continuing Disclosure Certificate" means that certain Continuing Disclosure Certificate executed by the District and dated the Closing Date, as it may be amended from time to time in accordance with the terms thereof.

"Costs of Issuance" means the administrative costs of the District and all costs related to the issuance of the Bonds, including but not limited to, costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Paying

Agent (including any applicable fees of counsel to the Paying Agent), legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, letter of credit fees and bond insurance premiums (if any), fees and charges for preparation, execution and safekeeping of the Bonds, municipal bond insurance premiums, and any other cost, charge or fee in connection with the issuance of the Bonds or the defeasance of the 1998 Bonds.

“County” means the County of San Diego, California.

“Debt Service Fund” means the Fund by that name established by Section 12 hereof.

“District” means the Otay Water District.

“District Representative” means the General Manager, the Chief Financial Officer or any other person designated by the General Manager or authorized by resolution of the Board to act on behalf of the District with respect to this Resolution and the Bonds.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Escrow Agreement” means the escrow deposit and trust agreement between the District and the escrow agent named therein relating to the defeasance of the 1998 Bonds.

“Escrow Fund” means the account by that name established pursuant to the Escrow Agreement.

“Excess Investment Earnings” means that term as defined in the Tax Certificate relating to the Bonds.

“Federal Securities” means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

“Fiscal Year” means the term from July 1 of any year to June 30 of the following calendar year.

“Gross Proceeds” means that term as defined in the Tax Certificate.

“Improvement District No. 27” or “ID 27” means that certain improvement district of the District, as the boundaries may change by annexation from time to time, formed pursuant to Resolution No. 2836 of the Board adopted on November 1, 1989.

“Interest Payment Date” means each March 1 and September 1, commencing on March 1, 2010.

“Law” means the Municipal Water District Law of 1911, being Division 20, commencing with Section 71000 of the Water Code of the State.

“1998 Bonds” means the \$11,835,000 Otay Water District Improvement District No. 27 General Obligation Refunding Bonds, Series 1998.

“Outstanding” means, with respect to the Bonds, all Bonds issued by the District and authenticated and delivered by the Paying Agent under this Resolution except:

(1) Bonds theretofore called by the Paying Agent or surrendered to the Paying Agent for cancellation; and

(2) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Paying Agent pursuant to this Resolution.

“Parity Bonds” means all bonds, notes or other similar evidences of indebtedness hereafter issued, payable out of *ad valorem* taxes levied by the District solely on property in ID 27 and which, as provided in this Resolution or any Supplemental Resolution of the District, rank on a parity with the Bonds.

“Paying Agent” means Union Bank, N.A. and any successor thereto.

“Record Date” means the 15th day of the month immediately preceding an Interest Payment Date.

“Refunding Bond Law” means Article 9 (commencing with Section 53550) and Article 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

“Resolution” means this Resolution, as hereafter amended or supplemented pursuant to the terms hereof.

“Sale Resolution” means the Resolution No. 4147 of the Board prescribing the sale terms of the Refunding Bonds.

“Supplemental Resolution” means any resolution authorizing the issuance of Parity Bonds subsequent to the issuance of the Bonds.

“Term Bonds” means Bonds, if any, subject to mandatory sinking fund redemption pursuant to Section 9(b) hereof.

**SECTION 2. Equality of Bonds, Security.** Pursuant to the Law and this Resolution, the Bonds shall be equally payable from *ad valorem* taxes levied for such purpose without priority for number, date of Bonds, date of sale, date of execution, or date of delivery, and the payment of the interest on and principal of the Bonds and any premiums upon the redemption thereof shall be paid from *ad valorem* taxes levied for such purpose and such other revenues of the District as the Board of Directors may designate therefor. The District has the power, is obligated and hereby covenants to levy *ad valorem* taxes upon all property within Improvement District No. 27 subject to taxation by the District, without limitation of rate or amount for the payment of the Bonds and the interest thereon.

Nothing in this Resolution or in any Supplemental Resolution shall preclude: (a) the redemption prior to maturity of any Bonds subject to call and redemption and payment of said Bonds from proceeds of refunding bonds issued under the Law and the Refunding Law as the same now exists or as may be hereafter amended, or under any other law of the State of

California; or (b) the issuance, subject to the limitations contained herein, of Parity Bonds which shall be payable from *ad valorem* taxes levied for such purpose.

SECTION 3. Findings Amount, Issuance, Purpose and Nature of Bonds. The Board of Directors hereby finds and determines that prudent management of the fiscal affairs of the District requires the issuance of the Bonds under the provisions of the Refunding Bond Law, and that it may do so without submitting the question of the issuance of the Refunding Bonds to a vote of the qualified electors within Improvement District No. 27. The Board of Directors further finds that the total net interest cost to maturity on the Refunding Bonds plus the principal amount of the Bonds, does not exceed the total net interest cost to maturity on the 1998 Bonds plus the principal amount of the 1998 Bonds. Under and pursuant to the Law and the Refunding Law, the Refunding Bonds in an amount not to exceed \$9,000,000 shall be issued for the purpose of refunding the 1998 Bonds. The Refunding Bonds shall be and are general obligations of Improvement District No. 27 and shall be payable as to the principal thereof and interest thereon and any premiums upon the redemption thereof from *ad valorem* taxes levied and hereby pledged for such purpose and from such other legally available funds of the District as the Board may designate therefor.

SECTION 4. Description of Bonds; Interest Rates. The Refunding Bonds shall be dated the date of issuance, shall be issued in fully registered form in denominations of \$5,000 or any integral multiple thereof and shall be numbered as determined by the Paying Agent. The Bonds shall be designated "Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (San Diego County, California)." The Bonds shall mature and be payable on September 1 in the years and in the aggregate principal amounts to be fixed at the time of the award of the Bonds and shall bear interest at the rates to be fixed at the time of the award of the Bonds, but not to exceed twelve percent (12%) per annum. Interest shall be payable on each Interest Payment Date until the principal sum of each Bond has been paid; provided, however, that if at the maturity date of any Bond (or if the same is redeemable and shall be duly called for redemption, then at the date fixed for redemption) funds are available for the payment or redemption thereof, in full accordance with the terms of this Resolution, such Bond shall then cease to bear interest. Interest on the Bonds shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 5. Medium and Payment. The Bonds shall be payable both as to principal and interest, and as to any premiums upon the redemption thereof, in lawful money of the United States of America. The principal of the Bonds and any premiums due upon the redemption thereof shall be payable upon presentation thereof at the principal corporate trust office of the Paying Agent in Los Angeles, California. Interest on any Bond shall be payable from the Interest Payment Date next preceding the date of authentication of that Bond, unless (i) the date of authentication is an Interest Payment Date, in which event interest shall be payable from such date of authentication, (ii) the date of authentication is after a Record Date but on or prior to the immediately succeeding Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (iii) the date of authentication is prior to the close of business on the first Record Date in which event interest shall be payable from the Closing Date; provided, however, that if at the time of authentication of any Bond, interest is in default, interest on that Bond shall be payable from the last Interest Payment Date to which the interest has been paid or made available for payment. Interest on any Bond shall be paid to the person whose name shall appear in the Bond Register as the Owner of such Bond as of the close of business on the Record Date. Such interest shall be paid by check of the Paying Agent mailed by first class mail, postage

prepaid, to the Bondowner at his or her address as it appears on the Bond Register; provided, however, that the registered owner of the Bonds in an aggregate principal amount of at least \$1,000,000 may submit a written request to the Paying Agent on or before the Record Date preceding any Interest Payment Date for payment of interest hereon by wire transfer to a commercial bank located in the United States of America.

SECTION 6. Form of Bonds; Authentication. The Bonds, the form of the Paying Agent's certificate of authentication and registration and the form of assignment to appear thereon shall be substantially in the form attached hereto as Exhibit A, which is incorporated herein by reference, with such necessary or appropriate variations, omissions and insertions, as permitted or required by this Resolution or by the Law. The delivery of the Bonds to the Paying Agent shall constitute evidence of the approval of any such variations, omissions and insertions.

Only such Bonds as shall bear thereon a certificate of authentication and registration in the form set forth in Exhibit A attached hereto, executed and dated by the Paying Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such certificate of the Paying Agent shall be conclusive evidence that the Bonds so registered have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Resolution.

SECTION 7. Execution of Bonds. The Bonds shall be signed by the manual or facsimile signatures of the President of the Board and the Chief Financial Officer and countersigned manually or by facsimile by the Secretary. In case any one or more of the officers who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed have been authenticated and delivered by the Paying Agent (including new Bonds delivered pursuant to the provisions hereof with reference to the transfer and exchange of Bonds or to lost, stolen, destroyed or mutilated Bonds) such Bonds may, nevertheless be authenticated and delivered as herein provided.

SECTION 8. Book Entry System.

(a) Original Delivery. The Bonds shall be initially delivered in the form of a separate single fully registered Bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Registration Books in the name of Cede & Co. (the "Nominee"). Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the District and the Paying Agent shall have no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Depository holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the District and the Paying Agent shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than an Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the District elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other

person, other than an Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds.

(b) Registration; DTC Deemed Owner. The District and the Paying Agent may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for all purposes (including payment of principal, premium or interest on the Bonds, for the giving of notices of redemption and any other purpose whatsoever) of this Resolution, and the District shall not be affected by any notice to the contrary. The District shall not have any responsibility or obligation to any participant of DTC (a "Participant"), any person claiming a beneficial ownership interest in the Bonds under or through DTC or a Participant, or any other person which is not shown on the Bond Register as being an owner, with respect to the accuracy of any records maintained by DTC or any Participant, the payment by DTC or any Participant of any amount in respect of the principal or interest, or any notice, communication or other dealings with respect to the Bonds. The District and the Paying Agent shall pay all principal and interest with respect to the Bonds only to DTC, and all such payments shall be valid and effective to fully satisfy and discharge the District's obligations with respect to the principal and interest with respect to the Bonds to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Bond evidencing the obligation of the District to make payments of principal, interest and premium, if any, pursuant to this Resolution. Upon delivery by the Depository of written notice to the effect that the Depository has determined to substitute a new nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the District shall promptly deliver a copy of the same to the Paying Agent.

(c) Transfer or Exchange. The registration of any Bond may, in accordance with its terms, be transferred upon the Bond Register by the person in whose name it is registered, in person or by his or her duly authorized attorney or legal representative, upon surrender of such Bond for cancellation at the principal corporate trust office of the Paying Agent designated for such purpose accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent and duly executed by the Bondowner or his or her duly authorized attorney or legal representative. Bonds may be exchanged at the principal corporate trust office of the Paying Agent for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity. The Paying Agent will not charge the Bondowner for any new Bond issued upon any exchange, but may require the Bondowner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. Whenever any Bond or Bonds shall be surrendered for registration of transfer or exchange, the District shall execute and the Paying Agent shall authenticate and deliver a new Bond or bonds of the same maturity and interest rate, and for like aggregate principal amount; provided that the Paying Agent shall not be required to register transfers or make exchanges of Bonds (i) for a period of 15 days next preceding any date selected for redemption of Bonds, or (ii) any Bonds selected for redemption.

(d) Physical Certificates. If the District determines that it is in the best interest of any beneficial owners that they be able to obtain physical certificates evidencing Bonds and delivers a written certificate to DTC to that effect, DTC shall notify the Participants of the availability through DTC of Bonds. In such event, the District shall issue, transfer and exchange such Bond certificates as requested by DTC and any other owners in appropriate amounts.

(e) DTC Successors. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the District and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the District shall be obligated to deliver Bonds as described in this Resolution. Whenever DTC requests the District to do so, the District will cooperate with DTC in taking appropriate action after reasonable notice to (i) make available one or more separate Bonds to any DTC Participant having Bonds credited to its DTC account or (ii) arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

(f) Payments to Nominee. Notwithstanding any other provision of this Resolution to the contrary, so long as any Bond is registered in the name of the Nominee, all payments by the District or the Paying Agent with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

#### SECTION 9. Redemption of Bonds.

(a) Optional Redemption. The Bonds shall not be subject to optional redemption.

(b) Mandatory Sinking Fund Redemption. If, and as specified in the bid of the winning bidder for the Bonds, any maturity of the Bonds is designated as "Term Bonds," which are subject to mandatory sinking fund redemption on September 1 in each of the years set forth in such bid, at a redemption price equal to 100% of the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption. The certificate of sale or certificate of award or other documentation evidencing the sale of the Bonds may provide that the Bonds shall not be subject to mandatory sinking fund redemption.

(c) Selection of Bonds for Redemption. If less than all of the Outstanding Bonds of any one maturity are to be redeemed, the Paying Agent shall select the Outstanding Bonds of such maturity to be redeemed by lot in any manner deemed fair by the Paying Agent. In selecting portions of such Bonds, the Paying Agent shall treat each such Bond as representing individual Bonds of \$5,000 denominations each, which may be separately redeemed. The Paying Agent shall promptly notify the District in writing the Bonds, or portions thereof, selected for redemption.

(d) Notice of Redemption. When the Paying Agent shall receive notice from the District of its election to redeem Bonds, or when Bonds are otherwise to be redeemed pursuant to this Section 9, the Paying Agent shall give notice, in the name and at the expense of the District, of the redemption of such Bonds. Such notice of redemption shall (a) specify the numbers of the Bonds selected for redemption, except that where all the Bonds are subject to redemption, or all the Bonds of one maturity are to be redeemed, the numbers thereof need not be specified; (b) state the date fixed for redemption; (c) state the redemption price; (d) state the place or places where the Bonds are to be redeemed; (e) in the case of Bonds to be redeemed only in part, state the portion of the Bond which is to be redeemed; (f) state the CUSIP numbers of the Bonds to be redeemed; and (g) state the maturity date of the Bonds to be redeemed in whole or in part. Such notice shall further state that on the date fixed for redemption there shall become due and payable on each Bond, or portion thereof called for redemption, the principal thereof, together with any premium, and interest accrued to the redemption date, and that from and after such date, interest thereon

shall cease to accrue and be payable. At least thirty (30) days but no more than forty-five (45) days prior to the redemption date, the Paying Agent shall mail by first class mail, a copy of such notice, postage prepaid, to the respective Bondowners of the Bonds to be redeemed at their addresses appearing on the Bond Register. The actual receipt by the Bondowner of such notice of redemption shall not be a condition precedent thereto, and failure to receive such notice shall not affect the validity of the proceedings for the redemption of such Bonds, or the cessation of interest on the redemption date. A certificate by the Paying Agent that notice of such redemption has been given as herein provided shall be conclusive as against all parties, and it shall not be open to any Bondowner to show that he or she failed to receive notice or such redemption.

(e) Effect of Notice and Availability of Redemption Money. Notice of redemption having been duly given, as provided in this Section 9, and the amount necessary for the redemption having been made available for that purpose:

(1) The Bonds, or portions thereof, designated for redemption shall on the date fixed for redemption, become due and payable at the redemption price thereof as provided in this Resolution, anything in this Resolution or in the Bonds to the contrary notwithstanding;

(2) Upon presentation and surrender thereof at the principal corporate trust office of the Paying Agent, such Bonds shall be redeemed at the said redemption price;

(3) From and after the redemption date the Bonds or portions thereof so designated for redemption shall be deemed to be no longer outstanding and such Bonds or portions thereof shall cease to bear further interest; and

(4) From and after the date fixed for redemption no Bondowner of any of the Bonds or portions thereof so designated for redemption shall be entitled to any of the benefits of this Resolution, or to any other rights, except with respect to paying of the redemption price and interest accrued to the redemption date from the amounts so made available.

The check of the Paying Agent in paying of the redemption price for each Bond surrendered for redemption shall specify the CUSIP number of the Bond thereby redeemed.

SECTION 10. Application of Proceeds of Refunding Bonds. Upon receipt of payment for the Refunding Bonds when the same shall have been duly sold by the District, the Chief Financial Officer shall forthwith deposit or cause the transfer of such amounts in the following respective funds:

(i) The Chief Financial Officer shall set aside in the 2009 General Obligation Refunding Bonds Debt Service Fund (the "Debt Service Fund"), for future transfer to the Paying Agent, accrued interest, if any, received upon the sale of the Refunding Bonds;

(ii) The Chief Financial Officer shall cause a portion of the proceeds of the Refunding Bonds to be transferred to the Escrow Agent, appointed under the Sale Resolution, who shall set aside such amount, together with any other moneys provided therefor, in the Escrow Fund created under the Escrow Agreement to be used for the refunding of the 1998 Bonds; and

(iii) The Chief Financial Officer shall cause a portion of the proceeds of the Refunding Bonds to be forwarded to the Paying Agent for the payment of certain Costs of Issuance of the Refunding Bonds.

SECTION 11. Levy of Taxes. The Board has the power and shall cause *ad valorem* taxes to be levied on all taxable property within Improvement District No. 27, in an amount sufficient to pay the principal of and interest on the Bonds when due. The District shall determine the amounts necessary to be raised by taxation during each Fiscal Year for the payment of the principal of and interest on the Bonds, and shall fix the rate of tax to be levied for such purposes. Within a reasonable time prior to the time when the Board of Supervisors of the County of San Diego is required by law to levy taxes for County purposes for each Fiscal Year, the District shall certify to said Board of Supervisors the rate of tax so fixed and shall furnish to the County Auditor a statement in writing containing an estimate of the minimum amount required during the Fiscal Year for the payment of principal of and interest on the Bonds. The Board shall direct that, at the time and in the manner required by law for the levying of taxes for County purposes, said Board of Supervisors shall levy, in addition to such other taxes as may be levied by such Board of Supervisors, at the rate so fixed and determined, a tax upon the taxable property within the District for said purposes, and it is made the duty of said Board of Supervisors to levy the tax so required and it shall be the duty of all officers of the County of San Diego charged with the duty of collecting taxes to collect such taxes in time, form and manner as County taxes are collected and when collected to pay the same to the District.

SECTION 12. Debt Service Fund. The Board agrees to pledge, and hereby pledges, the Debt Service Fund for the payment of the principal of and interest on the Bonds when and as the same become due, including the principal of any Term Bond required to be paid upon the mandatory sinking fund redemption thereof. The Chief Financial Officer shall administer the Debt Service Fund and make disbursements therefrom in the manner set forth in this Section 12.

All moneys derived from the tax levies described in Section 11, above, and all other moneys, if any, allocated and designated by the District for payment of the Bonds and the interest thereon shall be deposited by the Chief Financial Officer in the Debt Service Fund.

On the last Business Day of February and August in each year, the Chief Financial Officer shall transfer amounts in the Debt Service Fund to the Paying Agent to the extent required to pay the principal of and interest and redemption premium (if any) on the Bonds when due. The Paying Agent, in turn, shall pay such moneys to DTC to pay the principal of and interest on the Bonds. Any moneys remaining in the Debt Service Fund after the Bonds and the interest thereon have been paid, or provision for such payment has been made, may be used and applied in the then-current fiscal year as determined by the Chief Financial Officer to pay or reimburse Administrative Expenses, including Paying Agent Fees and County fees and costs in connection with the levy of *ad valorem* taxes.

If after all of the Bonds have been paid and cancelled, or redeemed and cancelled, there are moneys remaining in the Debt Service Fund, said moneys may be used for any lawful purposes of the District.

SECTION 13. Investments. Obligations purchased as investments of moneys in any of the funds and accounts in which investments are authorized shall be deemed at all times to be a part of such funds and accounts. Except for investment earnings which constitute Excess

Investment Earnings which shall be deposited in the Rebate Fund for rebate to the United States, all investment earnings shall be deposited in the Debt Service Fund. Subject to the restrictions set forth herein, moneys in said funds and accounts may from time to time be invested by the Chief Financial Officer in Authorized Investments, or if no such written direction is given, in United States Treasury bills and notes, provided that; moneys in the Debt Service Fund shall be invested only in obligations which will by their terms mature on such dates so as will ensure the payment of principal of and interest on the Bonds as the same become due.

SECTION 14. Warranty. The District shall preserve and protect the security of the Bonds and the rights of the Bondowners and warrant and defend their rights against all claims and demands of all persons.

SECTION 15. Covenants. So long as any of the Bonds issued hereunder are Outstanding and unpaid, the District makes the following covenants with the Bondowners under the provisions of the Law and this Resolution, which covenants are necessary, and desirable to secure the Bonds and tend to make them more marketable.

(a) Punctual Payment. The District covenants that it will duly and punctually pay or cause to be paid the principal of and interest on every Bond issued hereunder, on the date, at the place and in the manner mentioned in the Bonds and in accordance with this Resolution, all in strict conformity with the terms of the Bonds and this Resolution, and that it will faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and all resolutions supplemental hereto and of the Bonds issued hereunder, and that time of such payments and performance is of the essence of the District's contract with the Bondowners.

(b) Levy of Taxes. This Board of Directors shall cause *ad valorem* taxes to be levied upon all property within Improvement District No. 27 subject to taxation by the District, without limitation of rate or amount to pay principal, interest with respect to the Bonds and any Parity Bonds.

(c) Extension of Time for Payment. To prevent any accumulation of claims for interest after maturity, the District will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest. In case any such claim for interest shall be extended or funded, whether or not with the consent of the District, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Resolution, except subject to the prior payment in full of the principal of all Bonds then Outstanding and of all claims for interest which shall not have so extended or funded.

(d) Further Assurances. The District will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Resolution, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Resolution.

(e) Tax Covenants. The District shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest on the Bonds to become includable in gross income for federal income tax purposes. To that end, the District hereby makes the following specific covenants:

(i) Private Business Use Limitation. The District shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to become "private activity bonds" within the meaning of Section 141(a) of the Code.

(ii) Private Loan Limitation. The District shall assure that the proceeds of the Bonds are not used to make or finance a loan (other than loans constituting nonpurpose obligations as defined in the Code of constituting assessments) to personas other than state or local government units.

(iii) Federal Guarantee Prohibition. The District shall not make any action or permit of suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(iv) No Arbitrage. The District shall not take, or permit or suffer to be taken by the Paying Agent or otherwise, any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(f) Continuing Disclosure. The District hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding and other provisions of this Resolution, failure of the District to comply with the Continuing Disclosure Certificate shall not be considered an event of default hereunder; however, any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this paragraph. For purposes of this paragraph, "Beneficial Owner" means any person which (a) has the power, direct or indirectly, to vote or contest with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) or (b) is treated as the owner of any Bonds for federal income tax purposes.

SECTION 16. Rebate. The District shall pay to the United States of America from time to time all Excess Investment Earnings required to be paid pursuant to the Code. Payments to the United States of America shall be made to the address prescribed by the Code, together with such reports and statements as may be prescribed by the Code. In connection with such obligation:

(i) The District shall comply with all applicable provisions of the Code relating to the calculation of Excess Investment Earnings. Such calculations shall be made by or on behalf of the District at such times, and in such manner, as shall be required pursuant to all applicable provisions of the Code.

(ii) The District shall assure that Excess Investment Earnings on the Bonds are not paid or disbursed except as required in this Section 16. To that end, the District shall assure that investment transactions of such amounts are on an arm's length basis. In the event that Gross Proceeds or Excess Investment Earnings are invested in Nonpurpose Obligations which consist of certificates of deposit or investment contracts, investment in such Nonpurpose Obligations shall be made in accordance with the procedures described in applicable Code as from time to time in effect.

(iii) The District shall keep, and retain for a period of six (6) years following the retirement of the Bonds, records of the determinations made pursuant to this Section 16.

(iv) The District may provide for the employment of independent attorneys, accountants and consultants and consults compensated on such reasonable basis as the District may deem appropriate.

Any of the provisions of this Section 16 may be amended, modified or deleted in any manner whatsoever in the event that the District shall obtain an opinion of Bond Counsel stating that such amendment, modification or deletion will not cause interest on the Bonds to be includable in gross income of the Owners for federal income tax purposes.

SECTION 17. Rebate Fund. On such date as may be specified by the District pursuant to Section 16, the Chief Financial Officer shall cause to be deposited in a special fund designated as the "Rebate Fund," which the Chief Financial Officer shall cause to be established, maintained and held, an amount determined to be subject to rebate to the United States of America in accordance with Section 16. Amounts in the Rebate Fund shall be applied and disbursed solely for the purpose of making rebate payments to the United States of America and at the times set forth in calculations made by the District pursuant to Section 16.

SECTION 18. Mutilated Lost or Destroyed Bonds. If any Bond shall become mutilated, the District shall execute, and the Paying Agent shall authenticate and deliver, a new Bond of like tenor and maturity in exchange and substitution for the Bond so mutilated, but only upon surrender to the Paying Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Paying Agent shall be cancelled and delivered to the District. If any Bond so surrendered to the paying Agent shall be cancelled and delivered to the District. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Paying Agent and, if such evidence is satisfactory to the Paying Agent and , if indemnity satisfactory to the Paying Agent and the District shall be given, the District shall execute, and the Paying Agent shall authenticate and deliver, a new Bond of like tenor and maturity, numbered and dated as the Paying Agent shall determine in lieu of and in substitution for the Bond so lost, destroyed or stolen. The District and the Paying Agent may charge the Owner of any mutilated, lost, destroyed or stolen Bond the reasonable expense incurred by them in replacing such Bond. Any Bond issued under the provisions of this Section 18 in lieu of any Bond alleged to be lost, destroyed or stolen, shall be equally and proportionately entitled to the benefit hereof with all other Bonds secured hereby. The Paying Agent shall not treat both the original Bond and any duplicate Bond as being outstanding for the purpose of determining the principal amount of Bonds which may be executed, authenticated and delivered hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Bond in replacement of a Bond which has been mutilated, lost, destroyed or stolen, and which has matured, the Paying Agent may make payment with respect to such Bond upon receipt of an indemnity satisfactory to the Paying Agent.

SECTION 19. Temporary Bonds. Any Bonds issued under this Resolution may be initially issued in temporary form exchangeable for definitive bonds. The temporary bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the District and may contain such reference to any of the provisions of this Resolution as may be appropriate. Every temporary Bond shall be executed by the District in substantially the same

manner as provided in Section 7 hereof. If the District issues temporary Bonds it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds may be surrendered for cancellation at the principal corporate trust office of the Paying Agent in Los Angeles, California, and the District shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of the same interest rates and maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Resolution as definitive Bonds issued hereunder.

SECTION 20. Defeasance.

(a) Discharge of Resolution. Bonds may be paid by the District in any of the following ways, provided that the District also pays or causes to be paid any other sums payable hereunder by the District;

(i) by paying or causing to be paid the principal of and interest on Bonds Outstanding, as and when the same become due and payable;

(ii) by depositing, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 20(c)) to pay or redeem Bonds Outstanding; or

(iii) by delivering to the Paying Agent, for cancellation by it, Bonds Outstanding.

If the District shall pay all Bonds Outstanding and shall also pay or cause to be paid all other sums payable hereunder by the District, then and in that case, at the election of the District (evidenced by a certificate of a District Representative, filed with the Paying Agent, signifying the intention of the District to discharge all such indebtedness and this Resolution), and notwithstanding that any Bonds shall not have been surrendered for payment, this Resolution and other assets held under this Resolution and all covenants, agreements, and other obligations of the District under this Resolution shall cease, terminate, become void and be completely discharged and satisfied, except only as provided in Section 20(b). In such event, upon request of the District, the Paying Agent shall cause an accounting for such period or periods as may be requested by the District to be prepared and filed with the District and shall execute and deliver to the District all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Paying Agent shall pay over, transfer, assign or deliver to the District all moneys or securities or other property held by it pursuant to this Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

(b) Discharge of Liability on the Bonds. Upon the deposit, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 20(c)) to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in Section 9(d) provided or provision satisfactory to the Paying Agent shall have been made for the giving of such notice, then all liability of the District in respect of such Bond shall cease and be completely discharged, except only that thereafter the Owner thereof shall be entitled only to payment of the principal of and interest on such Bond by the District, and the District shall remain liable for such payment, but only out of such money or

securities deposited with the Paying Agent as aforesaid for such payment, provided further, however, that the provisions of Section 20(d) shall apply in all events.

The District may at any time surrender to the Paying Agent for cancellation by it any Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

(c) Deposit of Moneys or Securities with the Paying Agent. Whenever in this Resolution it is provided or permitted that there be deposited with or held in trust by the Paying Agent money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Paying Agent in the funds and accounts established pursuant to this Resolution and shall be:

(i) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of the Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in Section 9(d) provided or provision satisfactory to the Paying Agent shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or redemption price of such Bonds and all unpaid interest thereon to the redemption date; or

(ii) Federal Securities (not callable or prepayable by the issuer thereof prior to maturity) the principal of and interest on which when due, in the opinion of a certified public accountant delivered to the District, will provide money sufficient to pay the principal or redemption price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or redemption price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Section 9(d) or provision satisfactory to the Paying Agent shall have been made for the giving of such notice, provided, in each case, that the Paying Agent shall have been irrevocably instructed (by the terms of this Resolution or by request of the District) to apply such money to the payment of such principal or redemption price and interest with respect to such Bonds.

(d) Payment of Bonds after Discharge of Resolution. Notwithstanding any provisions of this Resolution, any moneys held by the Paying Agent in trust for the payment of the principal or redemption price of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Resolution), if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall, upon request of the District, be repaid to the District free from the trusts created by this Resolution, and all liability of the Paying Agent with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the District as aforesaid, the Paying Agent may (at the cost of the District) first mail to the Owners of all Bonds which have not been paid at the addresses shown on the Bond Register maintained by the Paying Agent a notice in such form as may be deemed appropriate by the Paying Agent, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the District of the moneys held for the payment thereof.

SECTION 21. Cancellation of Bonds. All Bonds surrendered to the Paying Agent for payment upon maturity or for redemption shall upon payment thereof be immediately cancelled and destroyed by the Paying Agent, whereupon the Paying Agent shall deliver the certificate of destruction to the District Representative. Any Bond purchased by the District as authorized herein shall be delivered to the Paying Agent and cancelled forthwith and shall not be reissued.

SECTION 22. Supplemental Resolutions or Orders. The District may from time to time, and at any time, without notice to or consent of any of the Bondowners, adopt resolutions or orders supplemental hereto for any of the following purposes:

(i) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Resolution or in any additional resolution or order, provided that such action shall not materially adversely affect the interests of the Bondowners;

(ii) to add to the covenants and agreements of and the limitations and the restrictions upon the District contained in this Resolution, other covenants, agreements, limitations and restrictions to be observed by the District which are not contrary to or inconsistent with this Resolution as theretofore in effect;

(iii) to modify, alter, amend or supplement this Resolution in any other respect which is not adverse to the interests of the Bondowners; and

(iv) to provide for the issuance of Parity Bonds.

Exclusive of the resolutions or orders supplemental hereto provided for in the first or fourth paragraph of this Section 22, the Registered Owners of not less than 60 percent in aggregate principal amount of the bonds then outstanding shall have the right to consent to and approve the adoption by the District of such resolutions or orders supplemental hereto as shall be deemed necessary or desirable by the District for the purpose of waiving, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution; provided, however, that nothing herein shall permit, or be construed as permitting, (a) an extension of the maturity date of the principal of, or the payment date of interest on, any Bond or change the monetary medium in which principal and interest is payable, (b) an advance of the earliest redemption date of any Bond, (c) a reduction in the principal amount of, or redemption premium on, any Bond or the rate of interest thereon, (d) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds the Owners of which are required to consent to such resolution or order, without the consent to such resolution or order, without the consent of the Owners of each Bond affected.

If at any time the District shall desire to adopt a resolution or order supplemental hereto, which pursuant to the terms of this Section 22 shall require the consent of the Bondowners, the District shall so notify the Paying Agent and shall deliver to the Paying Agent a copy of the proposed resolution or order. The Paying Agent shall, at the expense of the District, cause notice of the proposed resolution or order to be mailed, postage prepaid, to all Bondowners at their addresses as they appear in the Bond Register. Such notice shall briefly set forth the nature of the proposed resolution or order and shall state that a copy thereof is on file at the principal corporate

trust office of the Paying Agent for inspection by all Bondowners. The failure of any Bondowner to receive such notice shall not affect the validity of such resolution or order when consented to and approved as in this Section 22 provided. Whenever at any time within forty-five (45) days after the date of the first mailing of such notice, the Paying Agent shall receive an instrument or instruments purporting to be executed by the Owners of not less than 60 percent in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed resolution or order described in such notice, and shall specifically consent to and approve the adoption thereof by the District substantially in the form of the copy thereof referred to in such notice as on file with the Paying Agent, such proposed resolution order, when duly adopted by the District, shall thereafter become a part of the proceedings for the issuance of the Bonds. In determining whether the Owners of 60 percent of the aggregate principal amount of the Bonds have consented to the adoption of any Supplemental Resolution or order, Bonds which are held in the name of the District, shall be disregarded and shall be treated as though they were not outstanding for the purpose of any such determination.

Upon the adoption of any resolution or order supplemental hereto and the receipt of consent to any such resolution or order from the Owners of the appropriate aggregate principal amount of Bonds in instances where such consent is required pursuant to the provisions of this Section 22, this Resolution shall be, and shall be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the district and all Owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced here under, subject in all respects to such modifications and amendments. Notwithstanding anything herein to the contrary, no Supplemental Resolution shall be entered into which would modify the duties of the Paying Agent hereunder, without the prior written consent of the Paying Agent.

**SECTION 23. Paying Agent.** The District hereby appoints Union Bank, N.A. as Paying Agent for the Bonds. The Paying Agent is hereby authorized to and shall mail or wire interest payments to the Bondowners, give notice of meetings of Bondowners and maintain the Bond Register. The Paying Agent is hereby authorized to pay the principal of and premium, if any, on the Bonds when the same are duly presented to it for payment at maturity or on call and redemption, to provide for the registration of transfer and exchange of Bonds presented to it for such purposes, to provide for the cancellation of Bonds, all as provided in this Resolution, and to provide for the authentication of Bonds, and shall perform all other duties assigned to or imposed on it as provide in this Resolution. The Paying Agent shall keep accurate records of all moneys administered by it and all Bonds paid and discharged by it. The Paying Agent initially appointed, and any successor thereto, may be removed by the District and a successor or successors may be appointed; provided that such successor or successors shall be a bank or trust company doing business in and having an office in the city where the predecessor did business and had an office and shall have a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000. So long as any Bonds are outstanding and unpaid the Paying Agent and any successor or successors thereto designated by the District shall continue to be Paying Agent of the District for all of said purposes until the designation of a successor or successors as Paying Agent. The District shall compensate the Paying Agent for the performance of its services hereunder such amounts as the Paying Agent and the District shall agree to in writing, and the compensation of the Paying Agent shall be an Administrative Expense.

A Paying Agent appointed hereunder may resign at any time upon 90 days' written notice and after appointment of a successor. If the District fails to appoint a successor Paying Agent

within such 90 days, the resigning Paying Agent may petition the appropriate court having jurisdiction to appoint a successor Paying Agent. Upon merger, consolidation, or recognition of a Paying Agent, the District will appoint a new Paying Agent, which may be the corporation resulting from such reorganization.

SECTION 24. Liability of Paying Agent. The recitals of fact and all promises, covenants and agreements contained herein and in the Bonds shall be taken as statements, promises, covenants and agreements of the District, and the Paying Agent assumes no responsibility for the correctness of the same and makes no representations as to the validity or sufficiency of this Resolution or of the Bonds, and shall incur no responsibility in respect thereof, other than in connection with its duties or obligations herein or in the Bonds or in the certificate of authentication assigned to or imposed upon the Paying Agent. The Paying Agent shall be under no responsibility or duty with respect to the issuance of the Bonds for value. The Paying Agent shall not be liable and shall be indemnified by the District in connection with the performance of its duties hereunder, except for its own negligence or default.

SECTION 25. Bond Register. The Paying Agent shall keep or cause to be maintained the Bond Register, which shall at all times be open to inspection by the District upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as herein before provided.

SECTION 26. Event of Default and Remedies of Bondowners.

(a) Events of Default. Any one or more of the following events shall constitute an "events of default:"

(i) if default shall be made by the District in the due and punctual payment of the principal of and any installment of interest on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(ii) if default shall be made by the District in the observance of any of the covenants, agreements or conditions on its part in this Resolution or in the Bonds contained, and such default shall have continued for a period of thirty (30) days after written notice thereof to the District Representative; or

(iii) if the District shall file a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, seeking reorganization of the District under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the whole or any substantial part of its property.

(b) Remedies of Bondowners. In an Event of Default, any Bondowner shall have the right, for the equal benefit and protection of all Bondowners similarly situated:

(i) by mandamus, suit, action or proceeding, to compel the District and its members, officers, agents or employees to perform each and every term, provision and covenant

contained in this Resolution and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the District and the fulfillment of all duties imposed upon it;

(ii) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bondowners' rights; or

(iii) upon the happening of any event of default (as defined in Paragraph (a) of this Section 26), by suit, action or proceeding in any court of competent jurisdiction, to require the District and its members and employees to account as if it and they were the trustees of an express trust.

(c) Non-Waiver. Nothing in this Section 26 or in any other provision of this Resolution, or in the Bonds, shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, or affect or impair the right of action against the District, which is also absolute and unconditional, of such Owners to institute suit against the District to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Bondowner shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Bondowners by this Section 26 may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners of the Bonds.

If a suit, action or proceeding to enforce any right or exercise any remedy be abandoned or determined adversely to the Bondowners, the District and the Bondowners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

(d) Remedies not Exclusive. No remedy herein conferred upon the Owners of Bonds shall be exclusive of any other remedy and that each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or thereafter conferred on the Bondowners.

SECTION 27. Execution of Documents and Proof of Ownership. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Resolution to be signed or executed by Bondowners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Bonds. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, and of the ownership of Bonds shall be sufficient for the purposes of this Resolution (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or his attorney of any such instrument and of any instrument appointing any such attorney, may be proved by a signature guarantee of any bank or trust company located within the United States of America. Where any

such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such signature guarantee shall also constitute sufficient proof of his authority; and

(b) As to any Bond, the person in whose name the same shall be registered in the Bond Register shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of or on account of the principal of any such Bond, and the interest thereon, shall be made only to or upon the order of the registered Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond and the interest thereon to the extent of the sum or sums so paid. The Paying Agent shall not be affected by any notice to the contrary.

Nothing contained in this Resolution shall be construed as limiting the Paying Agent to such proof, it being intended that the Paying Agent may accept any other evidence of the matters herein stated which the Paying Agent may deem sufficient. Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done or suffered to be done by the Paying Agent in pursuance of such request or consent.

SECTION 28. Provisions Constitute Contract. The provisions of this Resolution and the Bonds shall constitute a contract between the District and the Bondowners and the provisions hereof and thereof shall be enforceable by any Bondowner for the equal benefit and protection of all Bondowners similarly situated by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is now or may hereafter be authorized under the laws of the State of California in any court of competent jurisdiction. Said contract is made under and is to be construed in accordance with the laws of the State of California.

No remedy conferred hereby upon any Bondowner is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regarding to any other remedy conferred by the Law or any other law of the State of California. No waiver of any default or breach of duty or contract by any Bondowner shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies on said subsequent default or breach. No delay or omission of any Bondowner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed as a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Bondowners may be enforced and exercised as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and the Bondowner shall prevail, said Bondowner shall be entitled to receive reimbursement for reasonable costs, expenses, outlays and attorney's fees and should said suit, action or proceeding be abandoned, or be determined adversely to the Bondowners then, and in every such case, the District and the Bondowners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

After the issuance and delivery of the Bonds this Resolution shall be irrevocable, but shall be subject to modification to the extent and in the manner provided herein, but to no greater extent and in no other manner.

SECTION 29. Unclaimed Moneys. Notwithstanding any provisions of this Resolution, subject to applicable State of California escheat laws, any moneys held by the Paying Agent in

trust for the payment of the principal or premium, if any, or interest on, any Bonds and remaining unclaimed for one year after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by declaration as provided in this Resolution), if such moneys were so held at such date, or one year after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the District free from the lien created by this Resolution, and all liability of the Paying Agent with respect to such moneys shall thereupon cease and the Bondowners shall upon such payment look only to the District for payment; provided, however, that before the repayment of such moneys to the issuer, the Paying Agent may (at the cost of the District) first publish at least once in a financial newspaper or journal a notice, in such form as may be deemed appropriate by the Paying Agent, with respect to the provisions relating to the repayment to the District of the moneys held for the payment thereof.

SECTION 30. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Resolution, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Resolution and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Resolution and the bonds issued pursuant hereto shall remain valid and the Bondowners shall retain all valid rights and benefits accorded to them under this Resolution and the constitution and Laws of the State of California.

SECTION 31. General Authorization. The President of the Board, the General Manager and the Chief Financial Officer are hereby each respectively authorized to do and perform from time to time any and all acts and things consistent with this Resolution necessary or appropriate to carry the same into effect, including but not limited to securing bond insurance, paying Costs of Issuance, entering into a Letter of Representations with DTC, filing reports with the State of California and filing reports with the United States Treasury.

SECTION 32. Effective Date. This Resolution shall take effect upon adoption.

**ADOPTED, SIGNED AND APPROVED** this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2009.

By: \_\_\_\_\_  
President of the Board of Directors  
Otay Water District

ATTEST:

By: \_\_\_\_\_  
Susan Cruz  
Secretary to the Board of Directors

\* \* \* \* \*

STATE OF CALIFORNIA )

SAN DIEGO COUNTY

)  
)

The undersigned Secretary to the Board of Directors hereby certifies that the foregoing Resolution No. 4148, was duly adopted by the Board of Directors of the Otay Water District at a meeting thereof held on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2009, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: \_\_\_\_\_  
Susan Cruz, Secretary to the Board of Directors  
of the Otay Water District

**EXHIBIT A  
FORM BOND**

**REGISTERED  
NO. R - \_\_\_\_**

**REGISTERED  
\*\*\*\$\_\_\_\_\_\*\*\***

**OTAY WATER DISTRICT  
IMPROVEMENT DISTRICT NO. 27  
2009 GENERAL OBLIGATION REFUNDING BONDS  
(SAN DIEGO COUNTY, CALIFORNIA)**

**INTEREST RATE:      MATURITY DATE:      DATED AS OF:      CUSIP:**

**REGISTERED OWNER: CEDE & CO.**

**PRINCIPAL AMOUNT: \_\_\_\_\_ Dollars**

The Otay Water District ("District"), a municipal water district organized and existing pursuant to the Municipal Water District Act of 1911, commencing with Section 71000 of the Water Code of the State of California ("State"), for value received, promises to pay to the Registered Owner named above, or registered assigns, on the Maturity Date set forth above or upon prior redemption hereof, the Principal Amount specified above and to pay interest thereon, each payment to be made in lawful money of the United States of America, from the interest payment date next preceding the date of authentication of this bond (unless this bond is authenticated as of a date during the period from the Record Date (as defined herein) next preceding any interest payment date to such interest payment date, inclusive, in which event it shall bear interest from such interest payment date, or unless this bond is authenticated on or before February 15, 2010, in which event it shall bear interest from the date hereof) at the interest rate per annum stated above, payable commencing on March 1, 2010, and thereafter on March 1 and September 1 in each year, until the Principal Amount is paid or provided for.

The principal hereof is payable to the registered owner hereof upon the surrender hereof at the principal corporate trust office of Union Bank, N.A. (the "Paying Agent") in Los Angeles, California, or such other office as may be designated by the Paying Agent for such purpose. The interest hereon is payable to the person whose name appears on the bond registration books of the Paying Agent as the registered owner hereof as of the close of business on the 15th day of the month preceding an interest payment date (the "Record Date"), whether or not such day is a business day, such interest to be paid by check mailed to such registered owner at the owner's address as it appears on such registration books, or at such other address filed with the Paying Agent for that purpose; provided, however, that the registered owner of the Bonds in an aggregate principal amount of at least \$1,000,000 may submit a written request to the Paying Agent on or before the Record Date preceding any interest payment date for payment of interest hereon by wire transfer to a commercial bank located in the United States of America.

This bond is one of a duly authorized issue of bonds of like tenor amounting in the aggregate to the stated amount of \$ \_\_\_\_\_ and designated as "Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (San Diego County, California)" (the "Bonds").

The Bonds are being issued pursuant to the provisions of the Municipal Water District Law of 1911, as set forth in the California Water Code, commencing with Section 71000, pursuant to the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, and pursuant to Resolution No. \_\_\_\_\_ of the District adopted on \_\_\_\_\_, 2009 authorizing the issuance of the Bonds (the "Resolution").

The Bonds were authorized (the "Authorization") pursuant to a vote of 2/3 of eligible voters at a special election on October 31, 1989 within an area of the District designated as Improvement District No. 27 ("ID No. 27"). The Bonds are being issued to refund, redeem and defease certain outstanding general obligation bonds previously issued pursuant to the Authorization to refinance the acquisition of certain lands for the benefit of the District and its inhabitants.

This Bond and the issue of which this Bond is one are, to the extent set forth in the Resolution, general obligations of ID No. 27 payable as to both principal and interest from the proceeds of the levy of *ad valorem* taxes on all property subject to such taxes in ID No. 27, which taxes are unlimited as to rate or amount, and from such other legally available funds of the District.

The Bonds are issuable only as fully registered bonds, without coupons, in the denominations of \$5,000 or any integral multiple thereof. Bonds are exchangeable and transferable for Bonds of other authorized denominations at the principal corporate trust office of the Paying Agent, by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Paying Agent, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Paying Agent, all subject to the terms, limitations and conditions provided in the Resolution. Any tax or governmental charges shall be paid by the transferor. The District and the Paying Agent may deem and treat the Registered Owner as the absolute owner of this bond for the purpose of receiving payment of or on account of principal or interest and for all other purposes, and neither the District, nor the Paying Agent shall be affected by any notice to the contrary.

Neither the District nor the Paying Agent will be required to (a) issue or transfer any bond during a period beginning with the opening of business on the 15th day of the month next preceding any Bond Payment Date or any date of selection of Bonds to be redeemed and ending with the close of business on the Bond Payment Date or day on which the applicable notice of redemption is given, or (b) to transfer any Bond which has been called for redemption in whole or in part.

The Bonds are not subject to optional redemption.

The Bonds maturing on \_\_\_\_\_ (the "Term Bonds") are subject to mandatory redemption prior to their stated maturity dates, without a redemption premium, in part by lot, from mandatory sinking fund payments in the years and in the amounts set forth below:



**[FORM OF CERTIFICATE OF AUTHENTICATION]**

This is one of the Bonds described in the within-mentioned Resolution.

U.S. Bank National Association,  
as Paying Agent

By: \_\_\_\_\_  
          - Exhibit -  
          Authorized Signatory

Date: \_\_\_\_\_

**(FORM OF ASSIGNMENT)**

For value received, the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)  
the within Bond and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_,  
attorney, to transfer the same on the bond register of the Paying Agent, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a  
qualified guarantor

\_\_\_\_\_  
NOTICE: The signature on this assignment must  
correspond with the name(s) as written on  
the face of the within Bond in every  
particular without alteration or enlargement  
or any change whatsoever.

**DTC LEGEND**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

DRAFT AS OF SEPTEMBER 10, 2009

**NEW ISSUE - BOOK-ENTRY-ONLY****RATINGS**

Standard &amp; Poor's: \_\_\_

Moody's: \_\_\_

(See "CONCLUDING INFORMATION - Ratings on the Bonds" herein)

*In the opinion of Garcia Calderón Ruiz, LLP, San Diego, California ("Bond Counsel"), based upon an analysis of existing statutes, regulations, rulings, and court decisions and assuming, among other things, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excludable from gross income for federal income tax purposes and is exempt from State of California personal income taxes. In the opinion of Bond Counsel, interest on the Bonds is not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations, although Bond Counsel observes that such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See "LEGAL MATTERS - Tax Matters" herein. The District has designated the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986.*

**\$8,285,000\***

**OTAY WATER DISTRICT  
IMPROVEMENT DISTRICT NO. 27  
2009 GENERAL OBLIGATION REFUNDING BONDS  
(San Diego County, California)  
(BANK QUALIFIED)**

**Dated: Date of Issuance****Due: September 1, as Shown  
on the Inside Front Cover.**

The cover page contains certain information for quick reference only. It is not a summary of the issue. Potential investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (the "Bonds"), in the aggregate amount of \$8,285,000,\* are being issued to refund the outstanding Otay Water District Improvement District No. 27 San Diego County, California General Obligation Refunding Bonds, Series 1998 (the "1998 Bonds"). The Bonds are being issued under the laws of the State of California (the "State") and pursuant to a resolution adopted by the Board of Directors (the "Board") of the Otay Water District (the "District"). See "INTRODUCTION - Authorization; Purpose" herein.

Interest on the Bonds is payable on March 1, 2010, and semiannually thereafter on September 1 and March 1 of each year until maturity (each, a "Interest Payment Date") (see "THE BONDS - General Provisions" herein). The Bonds are not subject to optional redemption prior to maturity. The Bonds are subject to mandatory sinking fund redemption as described herein.

The Bonds are general obligations of Improvement District No. 27 of the District ("ID 27"), and the Board is empowered and obligated to levy *ad valorem* taxes, without limitation of rate or amount, upon all property within ID 27 subject to taxation (except for certain classes of personal property which is taxable at a limited rate), for the payment of interest on and principal of the Bonds when due (see "SECURITY FOR THE BONDS" herein). The Bonds are offered, when, as and if issued, subject to the approval as to their legality by Garcia Calderón Ruiz, LLP, San Diego, California, Bond Counsel, and certain other conditions. Certain legal matters will be passed on for the District by Garcia Calderón Ruiz, LLP, San Diego, California, as General Counsel to the District, and by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, as Disclosure Counsel. It is anticipated that the Bonds, in book-entry form, will be available for delivery in New York, New York on or about November 4, 2009, for deposit with The Depository Trust Company (see "APPENDIX F - DTC AND THE BOOK-ENTRY-ONLY SYSTEM" herein).

The date of this Official Statement is \_\_\_\_\_, 2009.

\* Preliminary, subject to change.

**\$8,285,000\***  
**OTAY WATER DISTRICT**  
**IMPROVEMENT DISTRICT NO. 27**  
**2009 GENERAL OBLIGATION REFUNDING BONDS**  
**(San Diego County, California)**

MATURITY SCHEDULE  
(Base CUSIP®† \_\_\_\_\_)  
\$ \_\_\_\_\_ Serial Bonds

<b>Maturity Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Reoffering</b>	<b>CUSIP®†</b>
<b><u>September 1</u></b>	<b><u>Amount</u></b>	<b><u>Rate</u></b>	<b><u>Yield</u></b>	<b><u>Number</u></b>
2010				
2011				
2012				
2013				
2014				
2015				
2016				
2017				
2018				
2019				
2020				
2021				
2022				

\* Preliminary, subject to change.

† CUSIP® A registered trademark of the American Bankers Association. Copyright © 1999-2009 Standard & Poor's, a Division of The McGraw-Hill Companies, Inc. CUSIP® data herein is provided by Standard & Poor's CUSIP® Service Bureau. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP® Service Bureau. CUSIP® numbers are provided for convenience of reference only. Neither the District, the Financial Advisor nor the Underwriter takes any responsibility for the accuracy of such numbers.

## GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

**Use of Official Statement.** This Official Statement is submitted in connection with the offer and sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not to be construed as a contract with the purchasers of the Bonds.

**Estimates and Forecasts.** When used in this Official Statement and in any continuing disclosure by the District, in any press release and in any oral statement made with the approval of an authorized officer of the District or any other entity described or referenced herein, the words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimate," "project," "forecast," "expect," "intend" and similar expressions identify "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

**Limit of Offering.** No dealer, broker, salesperson or other person has been authorized by the District to give any information or to make any representations in connection with the offer or sale of the Bonds other than those contained herein and if given or made, such other information or representation must not be relied upon as having been authorized by the District, the Financial Advisor or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

**Involvement of Underwriter.** The Underwriter has submitted the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

**Information Subject to Change.** The information and expressions of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the District, ID 27, or any other entity described or referenced herein since the date hereof. All summaries of the documents referred to in this Official Statement are made subject to the provisions of such documents, respectively, and do not purport to be complete statements of any or all of such provisions.

**Stabilization of Prices.** In connection with this offering, the Underwriter may overallocate or effect transactions which stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time. The Underwriter may offer and sell the Bonds to certain dealers and others at prices lower than the public offering prices set forth on the inside front cover page hereof and said public offering prices may be changed from time to time by the Underwriter.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXCEPTION FROM THE REGISTRATION REQUIREMENTS CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

While the District maintains an internet website for various purposes, none of the information on that website is intended to assist investors in making any investment decision or to provide any continuing information with respect to the Bonds or any other bonds or obligations of the District or ID 27.

**OTAY WATER DISTRICT  
SAN DIEGO COUNTY, CALIFORNIA**

**BOARD OF DIRECTORS**

Gary D. Croucher, *President - Division 3*  
José Lopez, *Vice President - Division 4*  
Jaime Bonilla, *Treasurer - Division 2*  
Larry Breitfelder, *Division 1*  
Mark Robak, *Division 5*

---

**MANAGEMENT TEAM**

Mark Watton, *General Manager*  
German Alvarez, *Assistant General Manager Finance & Administration*  
Manny Magaña, *Assistant General Manager Engineering & Operations*  
Joseph R. Beachem, *Chief Financial Officer*  
Rom Sarno, Jr., *Chief of Administrative Services*  
Geoff Stevens, *Chief Information Officer*  
Rod Posada, *Chief of Engineering*  
Pedro Porras, *Chief of Water Operations*

---

**PROFESSIONAL SERVICES**

**Bond Counsel**

Garcia Calderón Ruíz, LLP  
San Diego, California

**Disclosure Counsel**

Stradling Yocca Carlson & Rauth, a Professional Corporation  
Newport Beach, California

**General Counsel to the District**

Garcia Calderón Ruíz, LLP  
San Diego, California

**Financial Advisor**

Harrell & Company Advisors, LLC  
Orange, California

**Paying Agent**

Union Bank, N.A.  
Los Angeles, California

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**OFFICIAL STATEMENT**  
**\$8,285,000\***  
**OTAY WATER DISTRICT**  
**IMPROVEMENT DISTRICT NO. 27**  
**2009 GENERAL OBLIGATION REFUNDING BONDS**  
**(San Diego County, California)**

This Official Statement which includes the cover page and appendices (the "Official Statement") is provided by the District to furnish certain information concerning the Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (the "Bonds"), in the aggregate principal amount of \$8,285,000\*.

**INTRODUCTION**

*This Introduction contains only a brief description of this issue and does not purport to be complete. The Introduction is subject in all respects to more complete information in the entire Official Statement and the offering of the Bonds to potential investors is made only by means of the entire Official Statement and the documents summarized herein. Potential investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision with respect to the Bonds (see "BOND OWNERS' RISKS" herein.*

**The District**

The Otay Water District was established in 1956. The District is a municipal water district organized and existing under and in accordance with the Municipal Water District Law of 1911, being Division 20 of the Water Code of the State of California, commencing with Section 71000, as amended (the "Law"). The District's boundaries currently encompass an area of approximately 125 square miles in San Diego County, lying immediately east of the San Diego metropolitan area and running from the City of El Cajon south to the Mexican border, abutting the cities of El Cajon and La Mesa and encompassing most of the City of Chula Vista, certain unincorporated areas of San Diego County and a small portion of the City of San Diego. The District currently serves a population of approximately 195,000. See "APPENDIX B – OTAY WATER DISTRICT."

**Improvement District No. 27**

ID 27 was formed by the Board pursuant to Resolution No. 2836, adopted November 1, 1989. ID 27 consisted of approximately 7,893 acres within the eastern boundaries of the City of Chula Vista when it was formed. Since formation, approximately \_\_ acres of adjacent properties have been annexed into ID 27. See "IMPROVEMENT DISTRICT NO. 27" herein.

**Authorization; Purpose**

At the time of formation of ID 27, there were less than 12 registered voters living within the boundaries of proposed improvement district. At a special election held on October 31, 1989, the landowners within the boundaries of proposed improvement district voted unanimously to authorize the issuance of general obligation bonds for ID 27. The maximum amount of general obligation bonds authorized for ID 27 is \$100,000,000 (the "Authorization").

\* Preliminary, subject to change.

The Bonds are issued pursuant to the Law and the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Refunding Bond Law"), and pursuant to Resolution No. \_\_\_\_\_ adopted by the Board on \_\_\_\_\_, 2009 (the "Resolution"), and are being issued to refund the 1998 Bonds issued by the District on behalf of ID 27.

## **Security and Sources of Repayment**

The Bonds are payable solely from *ad valorem* taxes to be levied within ID 27 pursuant to the California Constitution and other State law. The Board is empowered and is obligated to levy *ad valorem* taxes upon all property subject to taxation within ID 27, without limitation as to rate or amount (except as to certain personal property which is taxable at limited rates), for the payment of principal of and interest on the Bonds, all as more fully described herein. See "SECURITY FOR THE BONDS" herein.

The District does not anticipate issuing additional bonds for ID 27.

## **Legal Matters**

In the opinion of Garcia Calderón Ruíz, LLP, San Diego, California, Bond Counsel, based on an analysis of existing statutes, regulations, rulings and court decisions, and in reliance on certain certificates, opinions, and other things, interest on the Bonds is excludable from gross income for federal income tax purposes and is exempt from State of California personal income taxes. Bond Counsel is also of the opinion that interest on the Bonds is not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations, although Bond Counsel observes that such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. See "LEGAL MATTERS – Tax Matters" and "APPENDIX A" herein.

## **Professional Services**

Union Bank, N.A., Los Angeles, California, will serve as the paying agent, registrar, authentication and transfer agent for the Bonds and perform the functions required of it under the Resolution for the payment of the principal of and interest on the Bonds and all activities related to the redemption of the Bonds. Garcia Calderón Ruíz, LLP, San Diego, California, will act as Bond Counsel and Stradling Yocca Carlson & Rauth, a Professional Corporation Newport Beach, California, will act as Disclosure Counsel. Harrell & Company Advisors, LLC, the Financial Advisor, advised the District as to the financial structure and certain other financial matters relating to the Bonds. Fees payable to Bond Counsel, Disclosure Counsel and the Financial Advisor are contingent upon the sale and delivery of the Bonds.

The District's financial statements for the Fiscal Year ended June 30, 2008, attached hereto as "APPENDIX C" have been audited by Teaman, Ramirez & Smith, Inc., Certified Public Accountants, Riverside, California. The District has not requested nor did the District obtain permission from Teaman, Ramirez & Smith, Inc. to include the audited financial statements as an appendix to this Official Statement. Teaman, Ramirez & Smith, Inc., has not performed any subsequent events review or other procedures relative to these audited financial statements since the date of its letter. Complete copies of all past and current financial statements may be obtained from the District.

Certain unaudited financial information for the Fiscal Year ended June 30, 2009 is included in "APPENDIX C."

## **Offering and Delivery of the Bonds**

The Bonds are offered, when, as and if issued, subject to the approval as to their legality by Garcia Calderón Ruíz, LLP, San Diego, California, as Bond Counsel. It is anticipated that the Bonds, in book-entry form, will be available for delivery through the facilities of The Depository Trust Company on or about November 4, 2009.

## **Information Concerning this Official Statement**

This Official Statement speaks only as of its date. The information set forth herein has been obtained by the District with the assistance of the Financial Advisor from sources which are believed to be reliable and such information is believed to be accurate and complete, but such information is not guaranteed as to accuracy or completeness, nor has it been independently verified and is not to be construed as a representation by the Financial Advisor, Disclosure Counsel or the Underwriter. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended as such and are not to be construed as representations of fact.

**Preliminary Official Statement Deemed Final.** The information set forth herein is in a form deemed final, as of its date, by the District for the purpose of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (except for the omission of certain information permitted to be omitted under the Rule). The information herein is subject to revision, amendment and completion in a Final Official Statement. The information and expressions of opinion herein are subject to change without notice and the delivery of this Official Statement shall not, under any circumstances, create any implication that there has been no change in the information or opinions set forth herein or in the affairs of the District since the date hereof.

**Availability of Legal Documents.** The summaries and references contained herein with respect to the Resolution, the Bonds and other statutes or documents do not purport to be comprehensive or definitive and are qualified by reference to each such document or statute, and references to the Bonds are qualified in their entirety by reference to the form thereof included in the Resolution. Copies of the documents described herein are available for inspection during the period of initial offering of the Bonds at the offices of the Financial Advisor. Copies of these documents may be obtained after delivery of the Bonds from the District at Otay Water District, 2554 Sweetwater Springs Blvd., Spring Valley, California 91978 (619) 670-2222 upon request and payment of a charge for copying, mailing and handling.

# THE BONDS

## General Provisions

**Repayment of the Bonds.** Interest on the Bonds is payable at the rates per annum set forth on the inside front cover page hereof. Interest on the Bonds will be computed on the basis of a year consisting of 360 days and twelve 30-day months. Principal of the Bonds is payable on September 1 in each of the years and in the amounts set forth on the inside front cover page hereof. The Bonds will be issued in the minimum denomination of \$5,000 each or any integral multiple thereof.

Each Bond will be dated as of the Closing Date. Interest on any Bond shall be payable from the Interest Payment Date next preceding the date of authentication of that Bond, unless (i) the date of authentication is an Interest Payment Date, in which event interest shall be payable from such date of authentication, (ii) the date of authentication is after the 15th day of the month immediately preceding an Interest Payment Date (each, a "Record Date") but on or prior to the immediately succeeding Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (iii) the date of authentication is prior to the close of business on the first Record Date in which event interest shall be payable from the Closing Date; provided, however, that if at the time of authentication of any Bond, interest is in default, interest on that Bond shall be payable from the last Interest Payment Date to which the interest has been paid or made available for payment. Interest on any Bond shall be paid to the person whose name shall appear in the Bond Register as the owner of such Bond as of the close of business on the Record Date. Such interest shall be paid by check of the Paying Agent mailed by first class mail, postage prepaid, to the owner at his or her address as it appears on the Bond Register.

Principal of the Bonds will be payable in each of the years and in the amounts set forth on the inside front cover page hereof, upon surrender at the office of Union Bank, N.A., as Paying Agent (the "Paying Agent") in Los Angeles, California, or such other location as the Paying Agent shall designate to the District in writing. Interest on the Bonds will be paid by check of the Paying Agent mailed by first class mail to the person entitled thereto (except for interest paid to an account in the United States of America by wire transfer as requested in writing no later than the applicable Record Date by owners of \$1,000,000 or more in aggregate principal amount of Bonds).

**Book-Entry-Only System.** The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Bonds. Beneficial ownership interests in the Bonds will be initially issued in book-entry only form through DTC's book-entry only system (the "Book-Entry Only System") and the ownership of one fully registered Bond for each maturity of the Bonds will be registered in the name of Cede & Co., as nominee for DTC. So long as Cede & Co. is the Registered Owner of the Bonds, as nominee of DTC, references herein to the Owners or Registered Owners of the Bonds will mean Cede & Co. and will not mean the beneficial owners of the Bonds through DTC's Book-Entry Only System. For a description of the method of payment of principal of and interest on the Bonds and matters pertaining to transfers and exchanges while the Book-Entry-Only System is in place, see "APPENDIX F - DTC AND THE BOOK-ENTRY-ONLY SYSTEM." The District and the Paying Agent shall treat the Registered Owner of the Bonds (which will be DTC so long as the Book-Entry-Only System is in effect) as the absolute owner of the Bonds for the purpose of payment of debt service, giving all notices of redemption and all other matters with respect to the Bonds.

## No Optional Redemption

The Bonds are not subject to optional redemption prior to maturity.

## Mandatory Sinking Fund Redemption

The Bonds maturing September 1, \_\_\_\_ (the "Term Bonds"), are subject to mandatory redemption in part, by lot, commencing September 1, \_\_\_\_, and on each September 1 thereafter to maturity, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from mandatory sinking fund payments, as follows:

### SCHEDULE OF MANDATORY SINKING FUND PAYMENTS TERM BONDS MATURING SEPTEMBER 1, \_\_\_\_

<u>September 1</u> <u>Year</u>	<u>Principal</u> <u>Amount</u>
-----------------------------------	-----------------------------------

## Defeasance

The Bonds may be defeased prior to maturity in the following ways:

- (i) by depositing, in trust, at or before maturity, lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity;
- (ii) by depositing, in trust, at or before maturity, Federal Securities (not callable or prepayable by the issuer thereof prior to maturity) the principal of and interest on which when due will provide money sufficient to pay the principal or redemption price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or redemption price and interest become due.

If the District shall pay all Bonds Outstanding and shall also pay or cause to be paid all other sums payable under the Resolution, then and in that case, at the election of the District (evidenced by a certificate of a District Representative, filed with the Paying Agent, signifying the intention of the District to discharge all such indebtedness and the Resolution), and notwithstanding that any Bonds shall not have been surrendered for payment, the Resolution and other assets held under the Resolution and all covenants, agreements, and other obligations of the District under the Resolution shall cease, terminate, become void and be completely discharged and satisfied.

# THE FINANCING PLAN

## The Refunding Program

On the Closing Date, a portion of the proceeds of the Bonds will be deposited in trust with Union Bank, N.A., as escrow bank (the "Escrow Agent"). The deposit with the Escrow Agent will be in an amount sufficient to pay the redemption price of the 1998 Bonds pursuant to an optional redemption of the 1998 Bonds on December 15, 2009. On the Closing Date, the District will irrevocably elect to redeem all of the 1998 Bonds at a redemption price equal to 100% of the principal amount to be redeemed, without premium, together with accrued interest thereon to December 15, 2009. The lien of the 1998 Bonds, including, without limitation, the pledge of the *ad valorem* taxes levied upon property in ID 27 to repay the 1998 Bonds, will be discharged, terminated and of no further force and effect upon the deposit with the Escrow Agent.

## Estimated Sources and Uses of Funds

The District will receive the proceeds from the sale of the Bonds and will apply them as follows:

### Sources of Funds

Principal Amount of Bonds  
Original Issue Premium (Discount)  
Total Available Funds

### Uses of Funds

Deposit to Escrow Fund  
Costs of Issuance <sup>(1)</sup>  
Underwriter's Discount  
Total Uses

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<sup>(1)</sup> Costs of issuance include fees of Bond Counsel, the Financial Advisor, Disclosure Counsel, the Paying Agent, rating fees, costs of printing the Official Statement, and certain other costs of issuance of the Bonds.

## Debt Service Schedule

The following is the scheduled Debt Service on the Bonds.

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Semi-Annual Payment</u>	<u>Annual Payment</u>
March 1, 2010				
September 1, 2010				
March 1, 2011				
September 1, 2011				
March 1, 2012				
September 1, 2012				
March 1, 2013				
September 1, 2013				
March 1, 2014				
September 1, 2014				
March 1, 2015				
September 1, 2015				
March 1, 2016				
September 1, 2016				
March 1, 2017				
September 1, 2017				
March 1, 2018				
September 1, 2018				
March 1, 2019				
September 1, 2019				
March 1, 2020				
September 1, 2020				
March 1, 2021				
September 1, 2021				
March 1, 2022				
September 1, 2022				
Total				

## SECURITY FOR THE BONDS

### General

The Bonds are general obligations of ID 27. The Board is empowered and obligated to annually levy *ad valorem* taxes, without limitation as to rate or amount, for the payment of the principal and interest on the Bonds as such becomes due and payable, upon all property subject to taxation (except for certain classes of personal property).

Such taxes will be levied annually in addition to all other taxes during the period that the Bonds are outstanding in an amount sufficient to pay the principal of and interest on the Bonds when due. Such taxes, when collected, will be deposited into the Debt Service Fund (the "Debt Service Fund"), which fund is maintained by the District and is kept separate and distinct from all other District funds, and which are required by the Refunding Bond Law to be applied for the payment of principal of and interest on the Bonds when due.

The monies in the Debt Service Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, shall be transferred by the District to the Paying Agent. The Paying Agent will in turn remit the funds to DTC for remittance of such principal and interest to its Participants (as defined herein) for subsequent disbursement to the Beneficial Owners of the Bonds.

The amount of the annual *ad valorem* tax levied by the District to repay the Bonds will be determined by the relationship between the assessed valuation of taxable property in ID 27 and the amount of debt service due on the Bonds in any year. Fluctuations in the annual debt service on the Bonds and the assessed value of taxable property in ID 27 may cause the annual tax rate to fluctuate. Economic and other factors beyond the District's control, such as economic recession, general market decline in land values, reclassification of property to a class exempt from taxation, whether by ownership or use (such as exemptions for property owned by the State and local agencies and property used for qualified educational, hospital, charitable or religious purposes), relocation out of ID 27 or financial difficulties or bankruptcy by one or more major taxpayers or the complete or partial destruction of taxable property caused by a natural or manmade disaster, such as earthquake, flood, wildfire or toxic contamination, could cause a reduction in the assessed value of taxable property within ID 27 and necessitate a corresponding increase in the annual tax rate.

## **Improvement District No. 27**

ID 27 was formed by the Board pursuant to Resolution No. 2836, adopted November 1, 1989, as an uninhabited improvement district (which is defined as an area having less than 12 resident voters at the time of formation). The landowners (voters) of the proposed uninhabited improvement district authorized the issuance of bonds for ID 27 in an amount not to exceed \$100,000,000 for the purpose of the acquisition, construction and completion of water improvements and waterworks within ID 27. General obligation bonds in the amount of \$11,500,000 were issued by ID 27 in 1992 (the "1992 Bonds") to construct a 30 million gallon reservoir as well as the replacement and construction of pipeline facilities associated with the reservoir. Proceeds from the sale of the 1998 Bonds were used for refinancing the 1992 Bonds.

ID 27 consisted of approximately 7,893 acres within the eastern boundaries of the City of Chula Vista when it was created. Since its formation, approximately \_\_\_ acres of surrounding properties have been annexed into ID 27. Such annexed property is served by the facilities constructed with the proceeds of the 1992 Bonds. Additional surrounding property served by these facilities may be annexed into ID 27 in the future. All annexed property is also subject to the *ad valorem* tax levy securing the Bonds.

A map of the current boundaries of ID 27 is show below. The map also indicates the maximum boundary for additional property that may be annexed into ID 27 (approximately \_\_\_ acres) since such property would be served by the facilities constructed with the proceeds of the 1992 Bonds.

**OTAY WATER DISTRICT  
IMPROVEMENT DISTRICT NO. 27  
BOUNDARY MAP**

[insert map]

## **Ad Valorem Property Taxes**

Property taxes for properties situated in ID 27 are assessed and collected by the County of San Diego (the "County"). Taxes arising from the general 1% levy are apportioned among local taxing agencies on the basis of a formula established by State law. Taxes relating to voter-approved indebtedness, such as the Bonds, are allocated to the relevant taxing agency.

The County is permitted under State law to pass on costs for certain services provided to local government agencies including the collection of property taxes. The County imposed a fee on ID 27 of approximately \$1,100 for tax collection services provided in Fiscal Year 2008/09.

## **Taxable Property and Assessed Valuation**

All property is assessed using full cash value as defined by Article XIII A of the State Constitution. See "CONSTITUTIONAL AND STATUTORY LIMITATION ON TAXES AND EXPENDITURES - Article XIII A." State law provides exemptions from *ad valorem* property taxation for certain classes of property such as churches, colleges, nonprofit hospitals and charitable institutions. State law also allows exemptions from *ad valorem* property taxation at \$7,000 of full value of owner-occupied dwellings and 100% of business inventories. Revenue losses to ID 27 from the homeowner's exemption are replaced by the State.

Future assessed valuation growth allowed under Article XIII A (for new construction, certain changes of ownership and 2% inflation) will be allocated on the basis of "situs" among the jurisdictions that serve the tax rate area within which the growth occurs. Local agencies and schools will share the growth of "base" revenues from the tax rate area. Each year's growth allocation becomes part of each agency's allocation in the following year. The availability to such entities of revenue from growth in tax bases may be affected by the establishment of redevelopment project areas which, under certain circumstances, may be entitled to revenues resulting from the increase in certain property values.

Over the last 12 months, the severe economic recession reverberated through the residential housing market in the City of Chula Vista. Between 2008/09 and 2009/10, the assessed valuation of property city-wide declined 10.4%, and declined by 15.6% in ID 27. The County Assessor reports that they reduced the value of 225,000 properties throughout the County in 2009, with an average reduction of \$112,000 for a single family home. Foreclosure rates have also increased significantly in the City of Chula Vista in the last 24 months. It is not possible to determine how many properties in ID 27 are currently subject to foreclosure and the impact that foreclosures will have on the assessed value of property in ID 27 in future years. The District cannot guarantee that market values of property in ID 27 will not decline further.

Set forth in Table No. 1 are assessed valuations for secured and unsecured property within ID 27 since Fiscal Year 1999/00.

**TABLE NO. 1  
OTAY WATER DISTRICT  
IMPROVEMENT DISTRICT NO. 27  
GROSS ASSESSED VALUE OF ALL TAXABLE PROPERTY  
(in thousands)**

<u>Fiscal Year</u>	<u>Total Secured</u>	<u>Unsecured</u>	<u>Total</u>
1999/00	\$ 1,565,459	\$10,721	\$ 1,576,180
2000/01	2,069,731	17,204	2,086,935
2001/02	2,853,070	18,627	2,871,697
2002/03	3,864,066	28,976	3,893,042
2003/04	5,047,625	26,000	5,073,625
2004/05	6,454,910	30,975	6,485,885
2005/06	8,579,577	37,711	8,617,288
2006/07	10,348,663	41,201	10,389,864
2007/08	12,518,644	74,516	12,593,160
2008/09	12,326,016	86,916	12,412,932
2009/10	10,378,405	98,137	10,476,542

Source: San Diego County Auditor-Controller.

## Tax Rates

Table No. 2 summarizes the total *ad valorem* tax rate levied per \$100 of assessed value by all taxing agencies in a typical tax rate area within ID 27 for the last five years. The *ad valorem* tax rate does not reflect special taxes or other assessments that may be levied with respect to certain properties within ID 27 (see "DISTRICT FINANCIAL INFORMATION – Direct and Overlapping Debt" and "BOND OWNERS' RISKS – Factors Affecting Property Tax Security for the Bonds - Debt Burden"). The District currently has approximately \$1.1 million in excess ID 27 tax reserves. These were generated from supplemental assessments in prior years. The District set the tax rate for 2009/10 assuming that it would draw approximately \$250,000 from these reserves to pay debt service.

**TABLE NO. 2  
FOR PROPERTY LOCATED IN  
IMPROVEMENT DISTRICT NO. 27  
TYPICAL AD VALOREM TAX RATE (TRA01265)**

	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>	<u>2008/09</u>	<u>2009/10</u>
General	\$1.00000	\$1.00000	\$1.00000	\$1.00000	\$1.00000	\$1.00000
Chula Vista Elementary School	0.02811	0.02738	0.02662	0.02029	0.01762	0.02507
Sweetwater Union High School	0.01818	0.02252	0.02016	0.04711	0.04621	0.05580
Southwestern Community College	0.01301	0.01505	0.01405	0.01253	0.01320	0.03442
Otay Water District ID 27	0.01200	0.01000	0.00700	0.00600	0.00500	0.00500
MWD	<u>0.00580</u>	<u>0.00520</u>	<u>0.00470</u>	<u>0.00450</u>	<u>0.00430</u>	<u>0.00430</u>
	\$1.07710	\$1.08015	\$1.07253	\$1.09043	\$1.08633	\$1.12459

Source: San Diego County Auditor-Controller.

## **Tax Levies, Collections and Delinquencies**

Taxes are levied for each Fiscal Year on taxable real and personal property which is situated in ID 27 as of the preceding January 1. For assessment and collection purposes, property is classified either as "secured" or "unsecured," and is listed accordingly on separate parts of the assessment roll. The "secured roll" is that part of the assessment roll containing State assessed property and real property having a tax lien which is sufficient, in the opinion of the assessor, to secure payment of the taxes. Other property is assessed on the "unsecured roll."

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of the Fiscal Year. If unpaid, such taxes become delinquent on December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. In addition, property on the secured roll with respect to which taxes are delinquent is sold to the State on or about June 30 of the Fiscal Year. Such property may thereafter be redeemed by payment of the delinquent taxes and the delinquency penalty, plus a redemption penalty of 1½% per month to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to sale by the County Tax Collector.

Property taxes on the unsecured roll are due as of the January 1 lien date and become delinquent, if unpaid on August 31. A 10% penalty attaches to delinquent taxes on property on the unsecured roll, and an additional penalty of 1½% per month begins to accrue on November 1 of the Fiscal Year. The County has four ways of collecting unsecured personal property taxes: (1) a civil action against the taxpayer; (2) filing a certificate in the office of the County Clerk specifying certain facts in order to obtain a judgment lien on certain property of the taxpayer; (3) filing a certificate of delinquency for record in the County Recorder's Office, in order to obtain a lien on certain property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee.

The following is a five year history of the secured tax levy and of uncollected taxes for ID 27. As of September 1, 2009, the District had \$1,180,806 of excess ID 27 tax reserves. The District anticipates that it will draw approximately \$250,000 from these reserves in 2009/10, which was incorporated into the tax rate set for 2009/10 (see "Tax Rates" above).

**TABLE NO. 3  
IMPROVEMENT DISTRICT NO. 27  
PROPERTY TAX COLLECTIONS AND DELINQUENCIES  
AS OF JULY 2009**

	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>	<u>2008/09</u>
Total Levy (Opening Roll) Including Prior Year Receivables	\$ 851,595	\$ 953,206	\$ 865,654	\$ 915,299	\$ 820,851
Prior Year Taxes Receivable	<u>(87,332)</u>	<u>(109,547)</u>	<u>(90,112)</u>	<u>(142,612)</u>	<u>(121,412)</u>
Current Year Tax Levy	\$ 764,262	\$ 843,659	\$ 775,542	\$ 772,686	\$ 699,439
Remitted to the District, Including Supplemental Taxes:					
Secured Taxes	\$ 914,187	\$ 979,476	\$ 744,859	\$ 762,457	\$ 550,399
Stated Secured Utility Taxes	53,579	66,412	75,097	98,611	82,560
Unsecured Taxes	<u>7,958</u>	<u>8,175</u>	<u>4,559</u>	<u>5,547</u>	<u>2,261</u>
	\$ 975,724	\$ 1,054,063	\$ 824,515	\$ 866,615	\$ 635,220
Current Year Unpaid Taxes (Supplemental Taxes)	\$ (211,462)	\$ (210,404)	\$ (48,974)	\$ (93,929)	\$ 64,219
Current Collections as a % of Current Year Tax Levy	127.7%	124.9%	106.3%	112.2%	90.8%
Prior Year Delinquent Collections	\$ 17,499	\$ 25,618	\$ 37,180	\$ 47,855	\$ 110,722
Interest	<u>1,261</u>	<u>2,309</u>	<u>2,299</u>	<u>2,698</u>	<u>1,233</u>
Total Collections	\$ 994,484	\$1,081,990	\$ 863,995	\$ 917,168	\$ 747,175
Total Collections as a % of Current Year Levy	130%	128%	111%	119%	107%

Source: Otay Water District.

Foreclosure rates have increased significantly in the City of Chula Vista in the last 24 months. It is not possible to determine how many properties in ID 27 are currently subject to foreclosure. The foreclosure process takes a certain period of time and is likely to affect the timely payment of property taxes for those properties in foreclosure. Increased delinquency rates could have an adverse effect on the District's ability to make timely payments of principal of and interest on the Bonds if they exceed the amount of excess ID 27 reserves, currently \$1,180,806. Moreover, if mortgage loan defaults increase, bankruptcy filings by homeowners are also likely to increase. Bankruptcy filings by homeowners with delinquent property taxes would delay the commencement and completion of foreclosure proceedings to collect delinquent property taxes.

## Largest Taxpayers

The principal taxpayers in ID 27 based on the 2008/09 tax roll and 2009/10 tax roll are as shown in Table Nos. 4 and 5.

**TABLE NO. 4  
IMPROVEMENT DISTRICT NO. 27  
2008/09 LARGEST TAXPAYERS**

	<u>Property Owner</u>	<u>Land Use</u>	<u>Assessed Valuation</u>	<u>% of Total <sup>(1)</sup></u>
1.	Village II of Otay LP	Residential Development	\$265,673,160	2.16%
2.	GGP-Otay Ranch LP	Shopping Center	183,317,833	1.49
3.	Shea Homes LP	Residential Development	134,552,652	1.09
4.	Regulo Place Apartments Investors LLC	Apartments	113,980,960	0.92
5.	EQR-Teresina LP	Apartments	89,394,657	0.73
6.	EQR-Missions at Sunbow LLC	Apartments	88,805,655	0.72
7.	Rancho Mesa LP	Residential Development	85,503,816	0.69
8.	Brookfield Otay Ranch LLC	Residential Development	64,258,907	0.52
9.	Camden USA Inc.	Apartments	61,550,299	0.50
10.	BRE Properties Inc.	Apartments	48,514,000	0.39
11.	Otay Ranch Twenty-Two LLC	Residential Development	37,880,670	0.31
12.	Eastlake Design District LLC	Commercial	35,141,018	0.29
13.	Otay Ranch Fourteen LLC	Residential Development	34,258,000	0.28
14.	Otay Ranch Village II PC-13 LLC	Residential Development	33,840,818	0.27
15.	Otay Ranch II Sun 12 LLC	Residential Development	32,909,526	0.27
16.	Winding Walk Residential LLC	Residential Development	32,640,000	0.26
17.	Otay Ranch Twenty-One LLC	Residential Development	31,153,509	0.25
18.	Montecito Crossings LLC	Condominiums	29,622,925	0.24
19.	GMAC Model Home Finance LLC	Residential Development	29,105,140	0.24
20.	Sevilla Apartments LP	Apartments	<u>28,808,559</u>	<u>0.23</u>
			\$1,460,912,104	11.85%

<sup>(1)</sup> 2008/09 Local Secured Assessed Valuation: \$12,326,015,751.

Source: California Municipal Statistics, Inc.

**TABLE NO. 5  
IMPROVEMENT DISTRICT NO. 27  
2009/10 LARGEST TAXPAYERS**

	<u>Property Owner</u>	<u>Land Use</u>	<u>Assessed Valuation</u>	<u>% of Total <sup>(1)</sup></u>
1.	Village II of Otay (a)	Vacant Residential	\$199,000,000	1.92%
2.	GGP-Otay Ranch LP	Shopping Center	175,996,663	1.70
3.	Regulo Place Apartments Investors LLC	Apartments	116,184,212	1.12
4.	EQR-Missions at Sunbow LLC	Apartments	90,550,330	0.87
5.	Shea Homes LP	Residential Development (b)	88,951,516	0.86
6.	EQR-Teresina LP	Apartments	72,946,040	0.70
7.	Rancho Mesa LP	Residential Development	64,100,000	0.62
8.	Camden USA Inc.	Apartments	62,753,090	0.60
9.	BRE Properties Inc.	Apartments	49,603,482	0.48
10.	Brookfield Otay LLC	Residential Development	48,060,113	0.46
11.	Otay Ranch Fourteen LLC	Residential Development	37,988,660	0.37
12.	Eastlake Design District LLC	Commercial	36,071,833	0.35
13.	Sevilla Apartments LP	Apartments	29,306,718	0.28
14.	PR II Windstar Pointe Master LLC	Commercial	28,819,080	0.28
15.	Otay Ranch Twenty-Two LLC	Residential Development	28,400,000	0.27
16.	Windingwalk Marketplace LLC	Shopping Center	26,789,260	0.26
17.	Otay Ranch Village II PC-13 LLC	Residential Development	25,300,000	0.24
18.	Winding Walk Residential LLC	Residential Development	25,209,844	0.24
19.	Otay Ranch II Sun 12 LLC	Residential Development	24,600,000	0.24
20.	Otay Ranch Twenty-One LLC	Residential Development	<u>23,300,000</u>	<u>0.22</u>
			\$1,253,930,841	12.08%

<sup>(1)</sup> 2009/10 Local Secured Assessed Valuation: \$10,378,404,507\*.

(a) A portion of the property taxes for 2008/09 are delinquent as of September 8, 2009 for parcels owned by this property owner.

(b) Consists of vacant residential lots and partially or fully developed homes.

\* Based on preliminary tax roll data.

Source: California Municipal Statistics, Inc.

## **Direct and Overlapping Debt**

Set forth below is a direct and overlapping debt report (the "Debt Report") prepared by California Municipal Statistics, Inc., as of September 1, 2009. The Debt Report is included for general information purposes only. The Debt Report generally includes long-term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of the District in whole or in part. Such long-term obligations are not payable from District's General Fund nor are they necessarily obligations secured by property within the District or ID 27. In many cases, long-term obligations issued by a public agency are payable only from the general fund or other revenues of such public agency.

**TABLE NO. 6  
OTAY WATER DISTRICT  
IMPROVEMENT DISTRICT NO. 27  
DIRECT AND OVERLAPPING DEBT**

[ordered]

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Source: California Municipal Statistics, Inc.

## BOND OWNERS' RISKS

*The purchase of the Bonds involves investment risk. If a risk factor materializes to a sufficient degree, it could delay or prevent payment of principal and/or interest represented by the Bonds. Such risk factors include, but are not limited to, the following matters and should be considered, along with other information in this Official Statement, by potential investors.*

### Factors Affecting Property Tax Security for the Bonds

The annual property tax rate for repayment of the Bonds will be based on the total assessed value of taxable property in ID 27 and the scheduled debt service on the Bonds in each year, less any other lawfully available funds applied by the District for repayment of the Bonds. Fluctuations in the annual debt service on the Bonds, the assessed value of taxable property in ID 27, and the availability of such other funds in any year, may cause the annual property tax rate applicable to the Bonds to fluctuate. Issuance by ID 27 of additional authorized bonds payable from *ad valorem* property taxes may cause the overall property tax rate to increase. The District currently has no plans to issue additional general obligation debt payable from *ad valorem* property taxes in ID 27.

The principal factors that may affect the District's ability to levy and collect sufficient taxes to pay scheduled debt service on the Bonds each year are discussed in detail in "SECURITY FOR THE BONDS."

**Total Assessed Value of Taxable Property in the District:** The lower the assessed value of taxable property in ID 27, the greater the tax rate necessary to generate taxes sufficient to pay scheduled debt service on bonds. Total assessed valuation of taxable property in the District for fiscal year 2009/10 is approximately \$10.5 billion. See "SECURITY FOR THE BONDS – Taxable Property and Assessed Valuation" and accompanying discussion of assessed valuation.

Natural and economic forces can affect the assessed value of taxable property in ID 27. The District is located in a seismically active region, and damage from an earthquake in or near the District could cause moderate to extensive or total damage to taxable property. See "Earthquake, Fire and Other Risks" below. Other natural or manmade disasters, such as flood, fire, toxic dumping or acts of terrorism, could also cause a reduction in the assessed value of taxable property within ID 27.

Economic and market forces, such as the downturn in the national economy and the San Diego area economy generally, can also affect assessed values, particularly as these forces reverberate in the residential housing and commercial property markets, as has occurred in the San Diego area. San Diego and Chula Vista, like the rest of the State and nation, is in a severe economic recession, marked by falling home prices, growing job losses, reduced investment values, limited credit availability, and reduced consumer spending and business investment, among other factors. Between 2008/09 and 2009/10, the assessed valuation of property city-wide in the City of Chula Vista declined 10.4%, and declined by 15.6% in ID 27. The County Assessor reports that they reduced the value of 225,000 properties throughout the County in 2009, with an average reduction of \$112,000 for a single family home. The District cannot guarantee that market values of property in ID 27 will not decline further. For a discussion of the District's economy, see "APPENDIX D – ECONOMIC PROFILE FOR COUNTY OF SAN DIEGO AND CITY OF CHULA VISTA." In addition, the total assessed value can be reduced through the reclassification of taxable property to a class exempt from taxation, whether by ownership or use (such as exemptions for property owned by State and local agencies and property used for qualified educational, hospital, charitable or religious purposes).

**Concentration of Taxable Property Ownership:** The more property (by assessed value) owned by any single taxpayer, the more exposure of tax collections to weakness in that taxpayer's financial situation and ability or willingness to pay property taxes. For fiscal year 2009/10, no single taxpayer owns more than 1.92% of the total taxable property in ID 27. See "SECURITY FOR THE BONDS – Largest Taxpayers."

**Property Tax Rates:** One factor impacting the ability of taxpayers to pay additional taxes for general obligation bonds is the cumulative rate of tax. The total tax rate per \$100 of assessed value (including the basic countywide 1% rate required by statute) is shown for each of the last five years under "SECURITY FOR THE BONDS – Tax Rates."

**Debt Burden:** Another measure of the debt burden on local taxpayers is total debt as a percentage of taxable property value. Some of the property in ID 27 is also included within the boundaries of various assessment districts and community facilities districts established by either the City of Chula Vista, the Sweetwater Union High School District or the Chula Vista Elementary School District. The assessment districts and community facilities districts were primarily established to fund infrastructure and schools supporting development in the area. These special assessments can total over \$2,000 per year for a single family home and are added to the homeowner's property tax bill. When added to the *ad valorem* tax, the total effective property tax burden for some homes in ID 27, based on the 2008/09 assessed value, was approximately 1.6% of its total value. If such home values were reduced by the County Assessor in 2009/10 by an average of 15.6%, the effective tax rate on the same home in 2009/10 would be approximately 1.7% of its total value. Further, the Sweetwater Union High School District has authorized by unissued general obligation bonds, that, when issued in the future, will add to the *ad valorem* property tax rate. Other overlapping taxing agencies may also have authorized but unissued general obligation bonds, special tax bonds or assessment bonds, which if issued would also increase the effective overall tax rate for properties within ID 27.

**Earthquake, Fire and Other Risks:** Considerable damage may occur in ID 27 in the event of a significant earthquake or other calamity. Natural and man-made disasters and hazards, including, without limitation, earthquakes, fires, floods, mudslides and other calamities, may have the effect of reducing aggregate assessed valuations within the boundaries of the ID 27. ID 27 is located within the boundaries of the City of Chula Vista. According to the Public Safety Element of the City of Chula Vista's General Plan, the City is located in a seismically active region and could be impacted by a major earthquake originating from the numerous faults in the area. The City of Chula Vista is traversed by two potentially active faults, the Sweetwater Fault and La Nacion Fault and three inferred faults, the Otay River Fault, the Telegraph Canyon Fault and the San Diego Bay-Tijuana Fault. Seismic hazards encompass potential surface rupture, ground shaking, liquefaction and landslides.

A second hazard of primary concern is wildfire. A substantial portion of the residential area within the ID 27 is identified in the Public Safety Element of the City of Chula Vista's General Plan as being in an area where there is high or extreme danger of wildfire during dry months and periods of prolonged drought. Within the past 3 years, several residences were lost in an area adjacent to, but not in, ID 27 due to wildfires.

The City of Chula Vista has adopted a Natural Hazards Mitigation Plan. This plan includes a hazard analysis for earthquake, flood, landslide and fire risk and is required to comply with FEMA requirements for disaster relief funding.

### **Limitations on Remedies**

Remedies available to the owners of the Bonds may be limited by a variety of factors and may be inadequate to assure the timely payment of principal of and interest on the Bonds or to preserve the tax-exempt status of the Bonds. Additionally, there is no provision in the Resolution for acceleration of the Bonds in the event of default.

Bond Counsel has limited its opinion as to the enforceability of the Bonds and the Resolution, to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium, or other similar laws affecting generally the enforcement of creditors' rights, by equitable principles and by the exercise of judicial discretion. The lack of availability of certain remedies or the limitation of remedies may entail risks of delay, limitation or modification of the rights of the owners of the Bonds.

### **Limited Secondary Market**

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that such Bonds can be sold for any particular price. Although the District has committed to provide certain statutorily-required financial and operating information, there can be no assurance that such information will be available to Bond Owners on a timely basis. The failure to provide the required annual financial information does not give rise to monetary damages but merely an action for specific performance. Occasionally, because of general market conditions, lack of current information based on the relative nonparticipation of the property owners in the issuance of the Bonds or the provision of continuing disclosure or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Such prices could be substantially different from the original purchase price.

### **Loss of Tax Exemption**

As discussed in the section herein entitled "LEGAL MATTERS - Tax Matters," interest on the Bonds could become includable in gross income for purposes of federal income taxation, retroactive to the date of issuance, as a result of acts or omissions of the District subsequent to issuance in violation of the District's covenants applicable to the Bonds. Should interest become includable in gross income, the Bonds are not subject to redemption by reason thereof and may remain outstanding.

## CONSTITUTIONAL AND STATUTORY LIMITATION ON TAXES AND EXPENDITURES

*Principal and interest on the Bonds are payable from the proceeds of an ad valorem tax levied by the District for the payment thereof. See "SECURITY FOR THE BONDS" herein. Articles XIII A, XIII B, XIII C and XIII D of the Constitution, Proposition 218, and certain other provisions of law discussed below, are included in this section to describe the potential effect of these Constitutional and statutory measures on the ability of the District to levy taxes and to spend such tax proceeds for operating and other purposes, and it should not be inferred from the inclusion of such materials that these laws impose any limitation on the ability of the District to levy taxes for payment of the Bonds. The tax levied by the District for payment of the Bonds was approved by ID 27 voters in compliance with Article XIII A and all applicable laws.*

### Article XIII A

Article XIII A of the California Constitution limits the taxing powers of California public agencies. Article XIII A provides that the maximum *ad valorem* tax on real property cannot exceed 1% of the "full cash value" of the property, and effectively prohibits the levying of any other *ad valorem* property tax except for taxes above that level required to pay debt service on voter-approved general obligation bonds. "Full cash value" is defined as "the County assessor's valuation of real property as shown on the 1975/76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." The "full cash value" is subject to annual adjustment to reflect inflation at a rate not to exceed 2%. Article XIII A has subsequently been amended to permit reduction of the 'full cash value' base in the event of declining property values caused by substantial damage, destruction or other factors, and to provide that there would be no increase in the 'full cash value' base in the event of reconstruction of property damaged or destroyed in a disaster and in other special circumstances.

The foregoing limitation does not apply to *ad valorem* taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters before July 1, 1978 or any bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of votes cast by the voters voting on the proposition, such as the Bonds.

In the general election held November 4, 1986, voters of the State of California approved two measures, Propositions 58 and 60, which further amend the terms "purchase" and "change of ownership," for purposes of determining full cash value of property under Article XIII A, to not include the purchase or transfer of (1) real property between spouses and (2) the principal residence and the first \$1,000,000 of other property between parents and children. Proposition 60 amends Article XIII A to permit the Legislature to allow persons over age 55 who sell their residence and buy or build another of equal or lesser value within two years in the same County, to transfer the old residence's assessed value to the new residence. In the March 26, 1996 general election, voters approved Proposition 193, which extends the parents-children exception to the reappraisal of assessed value. Proposition 193 amended Article XIII A so that grandparents may transfer to their grandchildren whose parents are deceased, their principal residences, and the first \$1,000,000 of other property without a re-appraisal of assessed value.

County of Orange v. Orange County Assessment Appeals Board No. 3. In a ruling issued on December 27, 2001, in *County of Orange v. Orange County Assessment Appeals Board No. 3*, Case No. 00CC03385, the Orange County Superior Court held that the Orange County assessor violated the 2% annual inflation adjustment provision of Article XIII A when the assessor tried to "recapture" the taxable value of a single family residential property by increasing its assessed value by approximately 4% in a single year. The assessor had not increased the assessed value of the property during a year in which the market value of the property was determined by the assessor to have declined below its taxable value pursuant to Article XIII A. In the following year, the assessor established the taxable value of the property by determining

that its then-current market value was greater than if the 2% annual inflation adjustment had been applied in the previous year. The assessor enrolled the property at a taxable value that recaptured the foregone 2% inflation adjustment from the previous year, resulting in a one-year increase of approximately 4%. The State Board of Equalization has approved this methodology for increasing assessed value in similar circumstances.

The case had been certified as a class action with all affected Orange County residents as class members. In 2002, two local courts (Los Angeles and San Diego) ruled differently on the "recapture" issue. Therefore the issues of uniformity and equal protection for each taxpayer statewide must be addressed. When local courts differ, the subject matter is often subject to a uniformity review. On June 12, 2003, the Orange County Assessor and the Orange County Tax Collector, in conjunction with Orange County, filed a notice to appeal the Superior Court ruling to State Court of Appeal, Fourth District. The Appellate Court heard oral arguments in the case on January 7, 2004, and issued its opinion on March 26, 2004, reversing the holding of the Orange County Superior Court. The Plaintiffs filed an appeal with the California State Supreme Court and on July 21, 2004, the California State Supreme Court by a 5-2 vote decided not to hear an appeal, ending this litigation.

## **Article XIII B**

On October 6, 1979, California voters approved Proposition 4, or the Gann Initiative, which added Article XIII B to the California Constitution. The principal thrust of Article XIII B is to limit the annual appropriations of the State and any city, county, city and county, school district, authority or other political subdivision of the State. The "base year" for establishing such appropriations limit is the 1978/79 Fiscal Year, and the limit is to be adjusted annually to reflect changes in population, consumer prices and certain increases in the cost of services provided by public agencies.

Appropriations subject to Article XIII B include generally the proceeds of taxes levied by or for the entity and the proceeds of certain State subventions, refunds of taxes, benefit payments from retirement, unemployment insurance and disability insurance funds. "Proceeds of taxes" include, but are not limited to, all tax revenues, certain State subventions, and the proceeds to an entity, of government, from (1) regulatory licenses, user charges and user fees, to the extent that such charges and fees exceed the costs reasonably borne in providing the regulation, product or service, and (2) the investment of tax revenues. Article XIII B includes a requirement that if an entity's revenues in any year exceed the amounts permitted to be spent, the excess would have to be returned by revising tax rates or fee schedules over the subsequent two years.

In the June 1990 election, the voters approved Proposition 111 amending the method of calculation of State and local appropriations limits. Proposition 111 made several changes to Article XIII B. First, the term "change in the cost of living" was redefined as the change in the California per capita personal income ("CPCPI") for the preceding year. Previously, the lower of the CPCPI or the United States Consumer Price Index was used. Second, the appropriations limit for the Fiscal Year was recomputed by adjusting the 1986/87 limit by the CPCPI for the three subsequent years. Third and lastly, Proposition 111 excluded appropriations for "qualified capital outlay for fiscal 1990/91 as defined by the legislature" from proceeds of taxes.

## **Proposition 46 and Proposition 39**

On June 3, 1986, California voters approved Proposition 46, which added an additional exemption to the 1% tax limitation imposed by Article XIII A. Under this amendment to Article XIII A, local governments and school and community college districts may increase the property tax rate above 1% for the period necessary to retire new, general obligation bonds, if two-thirds of those voting in a local election approve the issuance of such bonds and the money raised through the sale of the bonds is used exclusively to purchase or improve real property. In 2000, Proposition 39 was approved for California voters, lowering

the threshold for passage of general obligation bonds for local education facilities from two-thirds to 55% subject to certain constitutional and statutory requirements.

## **Proposition 218**

On November 5, 1996, California voters approved Proposition 218 - Voter Approval for Local Government Taxes - Limitation on Fees, Assessments, and Charges - Initiative Constitutional Amendment. Proposition 218 added Articles XIIC and XIID to the California Constitution, imposing certain vote requirements and other limitations on the imposition of new or increased taxes, assessments and property-related fees and charges. Proposition 218 states that all taxes imposed by local governments shall be deemed to be either general taxes or special taxes. Special purpose districts, including water districts, have no power to levy general taxes. No local government may impose, extend or increase any general tax unless and until such tax is submitted to the electorate and approved by a majority vote. No local government may impose, extend or increase any special tax unless and until such tax is submitted to the electorate and approved by a two-thirds vote.

Article XIIC also provides that no tax, assessment, fee or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except: (i) the *ad valorem* property tax imposed pursuant to Article XIII and Article XIII A of the California Constitution, (ii) any special tax receiving a two-thirds vote pursuant to the California Constitution, and (iii) assessments, fees, and charges for property related services as provided in Article XIIC. Article XIIC then goes on to add voter requirements for assessments and fees and charges imposed as an incident of property ownership, other than fees and charges for sewer, water, and refuse collection services. In addition, all assessments and fees and charges imposed as an incident of property ownership, including sewer, water, and refuse collection services, are subjected to various additional procedures, such as hearings and stricter and more individualized benefit requirements and findings. The effect of such provisions is to increase the difficulty a local agency will have in imposing, increasing or extending such assessments, fees and charges.

Proposition 218 also extended the initiative power to reducing or repealing any local taxes, assessments, fees and charges. This extension of the initiative power is not limited to taxes imposed on or after November 6, 1996, the effective date of Proposition 218, and could result in retroactive repeal or reduction in any existing taxes, assessments, fees and charges, subject to overriding federal constitutional principles relating to the impairments of contracts.

Article XIID conditions the imposition or increase of any "fee" or "charge" upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIID defines "fee" or "charge" to mean levies (other than *ad valorem* or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a "property-related service." One of the requirements of Article XIID is that before a property related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and mailed notice sent to the record owner of each identified parcel of land upon which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

The District has complied with the provisions of Article XIID in setting its water and sewer rates and charges and does not currently anticipate that the provisions of Article XIID will have a material adverse impact on its financial condition.

## **Future Initiatives and Legislation**

Articles XIII A, XIII B and Proposition 218 were adopted as measures that qualified for the ballot pursuant to California's Constitutional initiative process and the State Legislature in the past has enacted legislation which has altered the spending limitations or established minimum funding provisions for particular activities. From time to time other initiative measures or legislative measures could be adopted, affecting the District's revenues and its ability to increase appropriations.

## **LEGAL MATTERS**

### **Approval of Legal Proceedings**

Garcia Calderón Ruíz, LLP, San Diego, California, as Bond Counsel, will render an opinion which states that the Bonds are valid and binding general obligations of District and are enforceable in accordance with their terms. The legal opinion of Bond Counsel will be subject to the effect of bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights and to the exercise of judicial discretion in accordance with general principles of equity.

Certain legal matters will be passed on for the District by its General Counsel, and by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, as Disclosure Counsel. Fees payable to Bond Counsel and Disclosure Counsel are contingent upon the sale and delivery of the Bonds.

The District has no knowledge of any fact or other information which would indicate that the Bonds are not so enforceable against the District or ID 27, except to the extent such enforcement is limited by principles of equity and by state and federal laws relating to bankruptcy, reorganization, moratorium or creditors' rights generally.

### **Tax Matters**

In the opinion of Garcia Calderón Ruíz, LLP, San Diego, California, Bond Counsel, based on an analysis of existing statutes, regulations, rulings and court decisions, and in reliance on certain certificates, opinions, and other things, interest on the Bonds is excludable from gross income for federal income tax purposes and is exempt from State of California personal income taxes. Bond Counsel is also of the opinion that interest on the Bonds is not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations, although Bond Counsel observes that such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. A copy of the proposed form of opinion of Bond Counsel is attached hereto as Appendix A.

To the extent the issue price of any maturity of the Bonds is less than the amount to be paid at the maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds), the difference constitutes "original issue discount." The accrual of original issue discount, to the extent properly allocable to a Beneficial Owner, is treated as interest on the Bonds that is excludable from gross income for federal income tax purposes and exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Bonds is the first price at which a substantial amount of that maturity is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers). The original issue discount with respect to any maturity of the Bonds accrues daily over the term to that maturity date on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of the Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment at maturity) of the Bonds. Beneficial Owners of Bonds sold with original issue discount should consult their own tax advisors with respect to the tax consequences of ownership of their

Bonds, including the treatment of purchasers who do not purchase such Bonds in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

The Bonds purchased, whether at original issuance or otherwise, for an amount greater than their principal amount payable at maturity (or, in some cases, at their earlier call date) ("Premium Bonds") will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium for Bonds, like the Premium Bonds, the interest on which is excludable from gross income for federal income tax purposes. However, a purchaser's basis in a Premium Bond and, under Treasury Regulations, the amount of tax-exempt interest received will be reduced by the amount of amortizable bond premium properly allocable to such purchaser. Beneficial Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Internal Revenue Code of 1986, as amended (the "Code") imposes various restrictions, conditions, and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Bonds. The District has covenanted to comply with certain restrictions designed to assure that interest on the Bonds will not be included in federal gross income. Failure to comply with these covenants may result in interest on the Bonds being included in federal gross income, possibly from the date of issuance of the Bonds. The opinion of Bond Counsel assumes compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Bonds may affect the tax status of interest on the Bonds.

Although Bond Counsel expects to render an opinion that interest on the Bonds is excludable from gross income for federal income tax purposes and exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may otherwise affect a Beneficial Owner's federal or state tax liability. The nature and extent of these other tax consequences will depend upon the particular tax status of the Beneficial Owner or the Beneficial Owner's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

In addition, no assurance can be given that any future legislation, including amendments to the Code, if enacted into law, or changes in interpretation of the Code, will not cause interest on the Bonds to be subject, directly or indirectly, to federal or state income taxation, or otherwise prevent Beneficial Owners of the Bonds from realizing the full current benefit of the tax status of such interest. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation. Further, no assurance can be given that the introduction or enactment of any such future legislation, or any action of the Internal Revenue Service ("IRS"), including but not limited to regulation, ruling, or selection of the Bonds for audit examination, or the course or result of any IRS examination of the Bonds, or obligations that present similar tax issues, will not affect the market price or liquidity of the Bonds.

**Qualified Tax Exempt Obligations.** The District has designated the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. In connection with such designation, the District has covenanted that (i) the Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and (ii) not more than \$30,000,000 aggregate principal amount of obligations, the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Bonds, have been or shall be issued by or on behalf of the District, including all subordinate entities of the District, during the calendar year 2009.

## **Absence of Litigation**

No litigation is pending or threatened concerning the validity of the Bonds, and a certificate to that effect will be furnished to purchasers at the time of the original delivery of the Bonds. The District is not aware of any litigation pending or threatened that (i) questions the existence of ID 27, (ii) contests the ability of ID 27 to receive *ad valorem* taxes or to collect other revenues or (iii) contests the ability of ID 27 to issue and retire the Bonds.

## **CONCLUDING INFORMATION**

### **Ratings on the Bonds**

Standard & Poor's and Moody's have assigned their ratings of "\_\_\_" and "\_\_\_," respectively, to the Bonds. Such rating reflects only the views of the rating agency and any desired explanation of the significance of such rating should be obtained from the rating agency. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. Some information provided to the rating agencies by the District may not appear in this Official Statement. There is no assurance such rating will continue for any given period of time or that such rating will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of such rating agency, circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

### **Underwriting**

\_\_\_\_\_ (the "Underwriter") is offering the Bonds at the yields set forth on the inside cover page hereof. The initial reoffering yields may be changed from time to time and concessions from the reoffering yields may be allowed to dealers, banks and others. The Underwriter has purchased the Bonds at a price equal to \$\_\_\_\_\_, which amount represents the principal amount of the Bonds (\$\_\_\_\_\_), less an original issue discount of \$\_\_\_\_\_ less an Underwriter's discount of \$\_\_\_\_\_. The Underwriter will pay certain of its expenses relating to the offering.

### **The Financial Advisor**

The material contained in this Official Statement was prepared by the District with the assistance of the Financial Advisor, who advised the District as to the financial structure and certain other financial matters relating to the Bonds. The information set forth herein has been obtained from sources which are believed to be reliable, but such information is not guaranteed by the Financial Advisor as to accuracy or completeness, nor has it been independently verified. Fees paid to the Financial Advisor are contingent upon the sale and delivery of the Bonds.

### **Continuing Disclosure**

The District will covenant to provide annually certain financial information and operating data relating to the District by not later than nine months after the end of the District's fiscal year, each year commencing March 31, 2010 and to provide the audited General Purpose Financial Statements of the District for the fiscal year ending June 30, 2009 and for each subsequent fiscal year when they are available (together, the "Annual Report"), and to provide notices of the occurrence of certain other enumerated events if deemed by the District to be material. The Annual Report due March 31, 2010 shall consist solely of the Official Statement and the June 30, 2009 audited General Purpose Financial Statements of the District. The Annual Report and notices of material events can be accessed from the Electronic Municipal Market Access Website ("EMMA") operated by the Municipal Securities Rulemaking Board ([www.emma.msrb.org](http://www.emma.msrb.org)). These covenants have been made in order to assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). The specific nature of the information to

be contained in the Annual Report or the notices of material events and certain other terms of the continuing disclosure obligation are summarized in "APPENDIX E – FORM OF CONTINUING DISCLOSURE CERTIFICATE." Failure of the District to provide the required ongoing information may have a negative impact on the value of the Bonds in the secondary market.

The District has entered into three previous continuing disclosure undertakings with respect to the (i) 1998 Bonds, (ii) 2004 Certificates of Participation and (iii) 2007 Certificates of Participation to provide continuing disclosure pursuant to Rule 15c2-12. With respect to the undertaking for the 1998 Bonds, since 2004, the District filed its Comprehensive Annual Financial Report on a timely basis. However, the supplemental information required by the undertaking regarding the tax base for ID 27 was not timely filed. As of September 14, 2009 the District is current with all filing requirements.

### **Additional Information**

The summaries and references contained herein with respect to the Resolution, the Continuing Disclosure Certificate, the Bonds, statutes and other documents, do not purport to be comprehensive or definitive and are qualified by reference to each such document or statute. Copies of these documents are available for inspection during the period of initial offering on the Bonds at the offices of the Financial Advisor and may be obtained after delivery of the Bonds from the District through the Chief Financial Officer, Otay Water District, 2554 Sweetwater Springs Blvd., Spring Valley, California 91978.

### **References**

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the District and the purchasers or Owners of any of the Bonds.

### **Execution**

The execution of this Official Statement has been duly authorized by the Otay Water District.

## **OTAY WATER DISTRICT**

By: \_\_\_\_\_

Chief Financial Officer

**APPENDIX A**  
**PROPOSED FORM OF OPINION OF BOND COUNSEL**

[to be provided by Bond Counsel]

## APPENDIX B

### OTAY WATER DISTRICT

*The information in this section concerning the operations of the District and the District's finances are provided as supplementary information only, and it should not be inferred from the inclusion of this information in this Official Statement that the principal of or interest on the Bonds is payable from the General Fund of the District. The Bonds are payable only from the revenues generated by an ad valorem tax levied by the County on behalf of the District on properties within ID 27 for the payment thereof. See "SECURITY FOR THE BONDS."*

#### **Organization, Purpose and Powers**

The District was established in January 1956 and is a municipal water district organized and existing under and in accordance with the Municipal Water District Law of 1911, being Division 20 of the Water Code of the State of California, commencing with Section 71000, as amended (the "Law").

Most potable water delivered by the District is purchased from the San Diego County Water Authority ("SDCWA") who in turn purchases water from the region's water importer, the Metropolitan Water District of Southern California. A smaller amount of potable water is also purchased from the City of San Diego. In Fiscal Year 2007, the District began purchasing raw water from the SDCWA and entered into an agreement with the City of San Diego to treat the water to potable level before being introduced to the District's Water System. By taking raw water through SDCWA's system at a different connection, there is increased reliability of water supplied to the District. A 6-mile, 36" pipeline project currently under construction will, when complete, add another connection to the Helix Water District's system, where the District expects to establish an additional delivery point for treated water.

The District owns and operates a recycled water distribution network. Recycled water from the District's Ralph W. Chapman Water Recycling Facility ("RWCWRF") is used to irrigate golf courses, landscaping at schools, public parks, roadway landscapes, and various other approved uses in eastern Chula Vista. The RWCWRF is cable of reclaiming wastewater at a rate of approximately 1.2 million gallons per day. The District is also in a partnership with the City of San Diego to beneficially reuse an additional six million gallons per day of recycled water from the City of San Diego's South Bay Reclamation Plant beginning in the spring of 2007, which required the District to construct over six miles of connecting pipeline, a pump station and a 12 million gallon reservoir. Using this new resource to meet recycled water demands on the Water System will result in the District being able to allocate approximately 3,000 acre-feet per year of potable water to other uses.

The District also owns and operates a wastewater collection and reclamation system, providing public sewer service to approximately 5,000 homes and businesses within the Jamacha drainage basin. This wastewater system is not a part of the Water System.

The Law authorizes the District to exercise the power of eminent domain, to levy and collect taxes, to fix, revise and collect rates or other charges for the delivery of water, use of facilities or property or provisions for service, to fix in each fiscal year a water standby or availability charge within the boundaries of the District to which water service is made available by the District. The District may also issue bonds, borrow money and incur indebtedness. For a discussion of current and potential limitations on the District's ability to maintain or increase taxes, fees and other charges, including such fees and other charges as may be limited by the terms of Proposition 218, see "CONSTITUTIONAL AND STATUTORY LIMITATION ON TAXES AND EXPENDITURES."

As authorized by Law, the District has established a number of special improvement districts within its service area for the purpose of providing certain water improvements for each such special improvement district and charging the costs of such improvements to each such special improvement district through certain fees, and in the case of ID 27, through *ad valorem* tax assessments, levied and collected on property located within the boundaries of each such special improvement district. The *ad valorem* taxes levied and collected with respect to ID 27 do not constitute revenues of either the District's water system or the District's wastewater system, and the general obligation bonds issued by the District on behalf of ID 27 constitute obligations of ID 27, not obligations of the District. In addition, the District provides water and sewer services to retail customers located within these special improvement districts and the charges for such services constitute revenues of the District's water and wastewater systems, respectively.

The District does not presently levy any taxes other than the taxes in respect of ID 27 for payment of the 1998 Bonds. However, as provided by California law, the District does receive its share of the county-wide one percent tax levied and collected by San Diego County, and the proceeds of such share are available, but not required to be used, to pay maintenance and operating costs of the District.

## **Board of Directors, Management and Employee Relations**

The District is administered by a Board of Directors consisting of five members who are elected to four-year alternating terms by the voters residing within the District's boundaries. The District is divided into five divisions, with each Director representing a specific division within which he or she must reside. The current members of the Board and key administrative personnel are:

### **DIRECTORS**

Gary D. Croucher, *President - Division 3*  
José Lopez, *Vice President - Division 4*  
Jaime Bonilla, *Treasurer - Division 2*  
Larry Breitfelder, *Division 1*  
Mark Robak, *Division 5*

### **MANAGEMENT TEAM**

Mark Watton, *General Manager*  
German Alvarez, *Assistant General Manager Finance & Administration*  
Manny Magaña, *Assistant General Manager Engineering & Operations*  
Joseph R. Beachem, *Chief Financial Officer*  
Rom Sarno, Jr., *Chief of Administrative Services*  
Geoff Stevens, *Chief Information Officer*  
Rod Posada, *Chief of Engineering*  
Pedro Porras, *Chief of Water Operations*

Under direction of the General Manager, the District has 166 full time equivalent budgeted positions.

**Employee Relations.** The District currently has 166 full time equivalent positions. The OWD Employee Association (the "Union") represents 109 full-time and 1 part-time employees as a collective bargaining unit. The District has not experienced any strike or other labor actions. The current Memorandum of Understanding between the District and the Union covers a \_\_\_-year period, and expires June 30, \_\_\_\_.

**Defined Benefit Pension Plan.** The District provides retirement benefits for its employees through a contractual agreement with the California Public Employees' Retirement System ("CalPERS"). Active members in the District's benefit pension plan are required to contribute 8% of their annual covered salary. The District has elected to contribute 7% on behalf of its employees. The District is required to contribute the actuarially determined remaining amounts necessary to fund the benefits for its members. The actuarial methods and assumptions used are those adopted by the CalPERS Board of Administration.

The required employer contribution rate for the fiscal year ended June 30, 2009 was \_\_\_%, and a rate of \_\_\_% is projected by CalPERS for the current fiscal year 2009/10. The required contribution for Fiscal Year 2008/09 was determined as part of the June 30, 200[6] actuarial valuation, pursuant to which the District had an unfunded actuarial accrued liability of approximately \$11.4 million as of June 30, 2008. Due to significant investment losses, CalPERS will be significantly increasing contribution rates over the next several years. For the fiscal year ended June 30, 2009, the District's annual pension costs and actual contribution was \$\_\_\_\_\_, and, for fiscal year ending June 30, 2010, the District's annual pension cost and actual contribution is expected to be \$\_\_\_\_\_, a \_\_\_% increase. An increase of \_\_\_% is expected for 2010/11 and another \_\_\_% increase is expected for 2011/12.

**Other Benefits.** In addition to the pension benefits described above, it is the District's practice and policy to provide certain life insurance and health care benefits ("post-retirement benefits") for eligible retired employees, directors and eligible dependents. These benefits vary based on the hire date of the employee. The District's Board has designated approximately \$\_\_\_ million of its reserves to fully fund its estimated liabilities with respect to post-retirement benefits as of the last actuarial projection dated June 30, 200[7.]

## **Insurance Programs**

### General Liability and Property Damage

The District is exposed to various risks of loss related to torts, theft, damage and destruction of assets, errors and omissions and natural disasters. Beginning in July 2003, the District began participation in an insurance pool through Special Districts Risk Management Authority (SDRMA). Coverages through SDRMA are as follows: property coverage - \$350 million/occurrence with replacement cost for scheduled property; \$100 million for boiler and machinery; \$200 million for workers' comp.; \$500,000 for personal liability coverage for board members; \$400,000 for employee dishonesty coverage; \$750,000 for uninsured/underinsured motorists; and \$10 million per occurrence for each of the following types of coverage, auto liability, public officials and employees errors, employment practices liability, employee benefits liability, and general liability.

Separate financial statements for SDRMA may be obtained at: Special District Risk Management Authority, 1112 I Street, Suite 300, Sacramento, California 95814.

### Workers' Compensation

Through SDRMA, the District is insured up to \$200 million Statutory Workers' Compensation and \$5 million in Employer's Liability with a Zero Member Deductible. SDRMA currently has a pool of 328 agencies in the Workers Compensation Program.

### Health insurance

The District maintains a self-insurance program covering all its employees, retirees, and other dependents. Health claims are processed and administered through a health insurance administrator and paid by the District upon presentation. The District has obtained a stop-loss insurance policy to cover individuals with claims exceeding \$45,000. The District has estimated accrued claims to be \$447,413 and \$137,029 at June 30, 2007 and 2008, respectively.

## **Investment Policy**

In accordance with State of California law, the District Board of Directors has approved an investment policy (the "Investment Policy") which complies with Sections 53601 and 53630 of the Government Code of the State of California providing legal authorization for the investment or deposit of funds of local agencies. All investments of the District conform to the restrictions of those laws. For additional information relating to the District's investments, see "APPENDIX C - DISTRICT AUDITED FINANCIAL STATEMENTS," Note 2.

## **DISTRICT SERVICE AREA**

The District's boundaries currently encompass an area of approximately 125 square miles in San Diego County, lying immediately east of the San Diego metropolitan area and running from the City of El Cajon south to the Mexican border, abutting the cities of El Cajon and La Mesa and encompassing most of the City of Chula Vista and a small portion of the City of San Diego. The District currently serves a population of approximately 195,000.

While the District is currently providing water service to about 40 percent of its geographic service area, this percentage will continue to increase as the District's service area continues to develop and grow. Ultimately, the District is projected to serve 277,000 people, creating an average daily demand of 56.3 million gallons per day (mgd).

For additional demographic and economic information relating to San Diego County, see "APPENDIX D ECONOMIC PROFILE FOR COUNTY OF SAN DIEGO AND CITY OF CHULA VISTA."

## **Water Supply**

**Service Area Water Supply - Potable.** The District does not have a local source of ground or surface water, but purchases substantially all of its potable water from the SDCWA. Under a contractual arrangement with the SDCWA, the District also receives potable water from the Helix Water District's Levy Water Treatment Plant and, beginning in Fiscal Year 2007, from the City of San Diego.

**Service Area Water Supply - Recycled.** The District produces approximately 1.2 million gallons a day of reclaimed water at the RWCWRF. The District has contracted with the City of San Diego to purchase at least six million gallons per day (mgd) of reclaimed water produced by the City of San Diego's South Bay Water Reclamation Plant and an additional 3.5 mgd if available. This contract with the City of San Diego will result in the District reducing its potable water use by approximately 3,000 acre-feet per year thereby increasing the availability of potable water for higher quality purposes.

**SDCWA Water Supply.** Currently, approximately 85% of the SDCWA's water supply is purchased from the Metropolitan Water District of Southern California ("MWD"). For the fiscal year ended June 30, 2009, the SDCWA supplied the District \_\_\_\_ acre-feet of water (quantities of water are expressed in terms of acre-feet which is the amount of water which will cover one acre to a depth of one foot and is equivalent to approximately 326,000 gallons and approximately the average annual water usage of two households).

**MWD Water Supply.** The SDCWA currently purchases all of its imported water from MWD and IID. SDCWA is MWD's largest member agency, purchasing up to 30 percent of MWD's supplies annually. MWD's principal sources of water consist of Colorado River water delivery contracts and deliveries from the State Water Project.

## **HISTORICAL FINANCIAL OPERATIONS**

### **Operating Revenues**

**(TO BE COMPLETED)**

### **Non-Operating Revenues**

**(TO BE COMPLETED)**

### **Historical Operating Results**

**(TO BE COMPLETED)**

**APPENDIX C**  
**DISTRICT AUDITED FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDING JUNE 30, 2008**

## APPENDIX D

# ECONOMIC PROFILE FOR COUNTY OF SAN DIEGO AND CITY OF CHULA VISTA

### **Introduction**

*Discrete demographic and economic data are not available for ID 27. However, ID 27 lies totally within the City of Chula Vista and as such, the information provided herein for the City of Chula Vista and the San Diego region will serve as a useful representation of the area.*

The County of San Diego is the southernmost major metropolitan area in the State of California. The County covers 4,255 square miles, extending 70 miles along the Pacific Coast from the Mexican border to Orange County, and inland 75 miles to Imperial County. Riverside and Orange Counties form the northern boundary. The County is approximately the size of the State of Connecticut.

The County possesses a diverse economic base consisting of a significant manufacturing presence in the fields of electronics and shipbuilding, a large tourist industry attracted by the favorable climate of the region, and a considerable defense-related presence which contributes approximately \$10 billion into the retail and service businesses of the area.

The County is also growing as a major center for culture and education. Over 30 recognized art organizations including the San Diego Opera, the Old Globe Theater productions, the La Jolla Chamber Orchestra, as well as museums and art galleries, are located in the County. Higher education is provided through five two-year colleges and six four-year colleges and universities.

The San Diego Convention Center contains 361,000 square feet of exhibit space and over 100,000 square feet of meeting/banquet rooms. The Convention Center can accommodate events for 30,000-40,000 people.

Chula Vista is located 8 miles south of the City of San Diego and 7 miles north of the Mexico border, in an area generally known as "South Bay." Chula Vista's city limits cover approximately 50 square miles. With a January 2009 estimated population of 233,100, Chula Vista is the second largest city in the County.

## Population

The City of Chula Vista and County of San Diego have experienced rapid growth and development in the past decade. The County has become the nineteenth most populous metropolitan area in the United States. The City of San Diego is the sixth most populous city in the United States. Total population for the County is expected to be over 3.63 million by the year 2015.

The following table shows the January 1 State of California Department of Finance estimates of total population in the City of Chula Vista, the County of San Diego and the State of California for each year since 2000, and the increase from the previous year.

**TABLE NO. D-1  
CITY OF CHULA VISTA, COUNTY OF SAN DIEGO AND STATE OF CALIFORNIA  
POPULATION**

Year	CITY OF CHULA VISTA		COUNTY OF SAN DIEGO		STATE OF CALIFORNIA	
	Population	Percentage Change	Population	Percentage Change	Population	Percentage Change
2000	173,543		2,813,833		33,873,086	
2001	181,619	4.7%	2,864,539	1.8%	34,430,970	1.6%
2002	191,236	5.3%	2,920,806	2.0%	35,063,959	1.8%
2003	200,757	5.0%	2,970,899	1.7%	35,652,700	1.7%
2004	208,802	4.0%	3,007,285	1.2%	36,199,342	1.5%
2005	217,143	4.0%	3,034,388	0.9%	36,676,931	1.3%
2006	223,490	2.9%	3,058,413	0.8%	37,086,191	1.1%
2007	227,242	1.7%	3,088,891	1.0%	37,472,074	1.0%
2008	230,397	1.4%	3,131,552	1.4%	37,883,992	1.1%
2009	233,108	1.2%	3,173,407	1.3%	38,292,687	1.1%
% Increase Between						
2000 - 2009		34.3%		12.8%		13.0%

Source: State of California, Department of Finance, "E-4 Population Estimates for Cities, Counties and the State, 2001-2009, with 2000 Benchmark."

## Per Capita Income

Per capita income information for Chula Vista, San Diego County, the State of California and the United States are summarized in the following table.

**TABLE NO. D-2  
PER CAPITA INCOME  
CHULA VISTA, SAN DIEGO COUNTY,  
STATE OF CALIFORNIA AND UNITED STATES  
2003 – 2007**

<b>Year</b>	<b>Chula Vista</b>	<b>San Diego County</b>	<b>State of California</b>	<b>United States</b>
2003	\$35,180	\$35,810	\$33,469	\$31,466
2004	36,190	38,536	35,313	33,072
2005	36,360	40,383	37,183	34,685
2006	37,020	42,801	39,358	36,629
2007	37,360	44,832	41,571	38,615

Source: County of San Diego, Comprehensive Annual Financial Report for the Year Ended June 30, 2008 and State of California Department of Finance; State of California Employment Development Department.

The City of Chula Vista is located in the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area (MSA). Six major job categories constitute 78.9% of the work force. They are government (18.0%), professional and business services (16.3%), service producing (13.9%), leisure and hospitality (12.6%), educational and health services (10.7%), and manufacturing (7.4%). The June 2009 unemployment rate in the San Diego-Carlsbad-San Marcos MSA was 10.1%. The State of California June 2009 unemployment rate (unadjusted) was 11.6%.

**TABLE NO. D-3**  
**SAN DIEGO-CARLSBAD-SAN MARCOS MSA**  
**WAGE AND SALARY WORKERS BY INDUSTRY <sup>(1)</sup>**  
**(in thousands)**

Industry	2005	2006	2007	2008	2009
Government	219.1	221.2	225.7	230.1	228.7
Other Services	49.4	49.4	49.2	49.9	48.0
Leisure and Hospitality	152.2	159.4	165.7	168.1	159.8
Educational and Health Services	122.8	125.0	128.8	134.9	136.0
Professional and Business Services	212.1	215.3	217.7	216.9	206.2
Financial Activities	83.2	84.5	81.6	76.5	74.6
Information	37.5	37.2	37.4	38.8	38.0
Transportation, Warehousing and Utilities	28.2	28.7	28.7	29.2	28.3
Service Producing					
Retail Trade	144.8	146.0	146.4	141.6	134.3
Wholesale Trade	43.7	45.3	45.7	44.7	41.5
Manufacturing					
Nondurable Goods	25.7	26.0	25.2	24.9	22.1
Durable Goods	79.1	78.7	76.6	78.1	72.7
Goods Producing					
Construction	92.7	95.1	90.9	77.9	66.7
Mining and Logging	0.4	0.5	0.4	0.3	0.3
Total Nonfarm	1,290.9	1,312.3	1,320.0	1,311.9	1,257.2
Farm	11.3	11.3	11.1	11.2	11.3
Total (all industries)	<u>1,302.2</u>	<u>1,323.6</u>	<u>1,331.1</u>	<u>1,323.1</u>	<u>1,268.5</u>

<sup>(1)</sup> Annually, as of June 2009.

State of California Employment Development Department, Labor Market Information Division, "Industry Employment & Labor Force - by month, March 2008 Benchmark."

## Major Employers

The major employers operating within the City of Chula Vista as of June 30, 2008 are shown in Table No. D-4. Since that time, several employers have reduced their work forces, but specific information on reductions as of June 30, 2009 is not currently available.

**TABLE NO. D-4  
CITY OF CHULA VISTA  
MAJOR EMPLOYERS**

<b>Employer</b>	<b>Number of Employees</b>	<b>Percent of Total Employment</b>
Sweetwater Union High School District	4,598	9.17%
Chula Vista Elementary School District	2,669	5.32%
Southwestern Community College	2,100	4.19%
Rohr Inc./Goodrich Aerospace	1,903	3.79%
City of Chula Vista	1,481	2.95%
Sharp Chula Vista Medical Center	1,410	2.81%
Scripps Mercy Hospital Chula Vista	1,032	2.06%
Wal-Mart	950	1.89%
United Parcel Service	656	1.31%
CostCo Wholesale Corp.	623	1.24%

“Total Employment” as used above represents the total employment of all employers located within the City of Chula Vista city limits.

Source: State Employment Development Department, City of Chula Vista Finance Department, Sweetwater Union High School District Human Resources Department, Chula Vista Elementary School District Human Resources Department and Southwestern Community College Human Resources Department.

## **Transportation**

Excellent surface, sea and air transportation facilities service San Diego County residents and businesses. Interstate 5 parallels the coast from Mexico to the Los Angeles area and points north. Interstate 15 runs inland, leading to Riverside-San Bernardino, Las Vegas and Salt Lake City. Interstate 8 runs eastward through the southern United States.

San Diego's International Airport (Lindbergh Field) is located approximately one mile west of the downtown San Diego at the edge of the San Diego Bay. The facilities are owned and maintained by the San Diego Unified Port District and are leased to commercial airlines and other tenants. The airport is the third most active commercial airport in California, served by 18 major airlines. In addition to San Diego International Airport, there are two naval air stations and seven general aviation airports located in the county.

San Diego is the terminus of the Santa Fe Railway's main line from Los Angeles. Amtrak passenger service is available at San Diego with stops at Del Mar and Oceanside in the north county. San Diego's harbor is one of the world's largest natural harbors. The harbor, a busy commercial port, has also become an extremely popular destination for cruise ships. The Port of San Diego is administered by the San Diego Unified Port District, which includes the cities of San Diego, National City, Chula Vista, Imperial Beach and Coronado.

## **Research and Development**

Research and development activity plays an important role in the area's economy. The County is a leading health sciences and biomedical center. Approximately 35,000 persons are engaged in life sciences-related activities in the metropolitan area, with over 28,000 employed directly in health services. In addition to the University of California San Diego, other established research institutions include the Salk Institute for Biological Studies, the Scripps Clinic and Research Foundation, and the Scripps Institution of Oceanography.

## **Visitor and Convention Activity**

An excellent climate, proximity to Mexico, extensive maritime facilities, and such attractions as the San Diego Zoo and Wild Animal Park, Sea World, Cabrillo National Monument, and Palomar Observatory allow San Diego to attract visitor and convention business each year. The development of the 4,600-acre Mission Bay Park at San Diego and the construction of meeting and convention facilities at the San Diego community concourse have contributed to the growth in tourism. The visitor and convention business is expected to continue to increase steadily.

**APPENDIX E**  
**FORM OF CONTINUING DISCLOSURE CERTIFICATE**

[to be provided by Disclosure Counsel]

## APPENDIX F

### DTC AND THE BOOK-ENTRY-ONLY SYSTEM

*The following description of the Depository Trust Company ("DTC"), the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.*

*Neither the issuer of the Bonds (the "Issuer") nor the trustee, fiscal agent or paying agent appointed with respect to the Bonds (the "Agent") take any responsibility for the information contained in this Appendix.*

*No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC Participants are on file with DTC.*

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its

Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org). *The information contained on these Internet sites is not incorporated herein by reference.*

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of

DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

**SUMMARY NOTICE OF SALE**

**\$8,200,000 (approximate)  
OTAY WATER DISTRICT  
IMPROVEMENT DISTRICT NO. 27  
2009 GENERAL OBLIGATION REFUNDING BONDS  
(San Diego County, California)**

**NOTICE IS HEREBY GIVEN**, pursuant to California Government Code Section 53692, that the Otay Water District, intends to sell \$8,200,000 approximate principal amount of its Improvement District No. 27 2009 General Obligation Refunding Bonds (the "Bonds"), at public sale. All-or-none bids for the Bonds, dated November 4, 2009 and maturing in annual installments on the 1<sup>st</sup> day of September in each of the years 2010 to 2022, inclusive, are to be submitted electronically via **PARITY**<sup>®</sup> until 9:30 a.m. Pacific Time on:

**Wednesday, October 21, 2009**

Each bid must be submitted electronically via **PARITY**<sup>®</sup>, in the manner described in the Official Notice of Sale and conform to the terms and conditions set forth therein. For information about **PARITY**<sup>®</sup>, potential bidders may contact **PARITY**<sup>®</sup> at (212) 849-5021.

The Bonds will be issued by means of a book-entry system with no physical distribution of certificates made to the public. The Bonds will be delivered on or about November 4, 2009 in New York, New York against the payment of the purchase price therefore in cash or Federal Reserve funds.

The approving opinion of Garcia Calderón Ruiz, LLP, San Diego, California, in substantially the form appearing in the Preliminary Official Statement, will be furnished without cost to the successful bidder.

When available, the Preliminary Official Statement and the Official Notice of Sale may be obtained from the County's Financial Advisor, Harrell & Company Advisors, LLC, Orange, California, (714) 939-1464 or by contacting **PARITY**<sup>®</sup> at (212) 849-5021; i-dealprospectus.com.

**OFFICIAL NOTICE OF SALE**

**\$8,200,000\***  
**OTAY WATER DISTRICT**  
**IMPROVEMENT DISTRICT NO. 27**  
**2009 GENERAL OBLIGATION REFUNDING BONDS**  
**(San Diego County, California)**  
**(BANK QUALIFIED)**

**NOTICE IS HEREBY GIVEN** by the Otay Water District (the "District") that all-or-none bids will be received by the District for the purchase of \$8,200,000\* par value 2009 General Obligation Refunding Bonds, via electronic bid. All electronic bids must be submitted via *PARITY*<sup>®</sup>, the electronic bidding system, up to the time specified as follows:

**Wednesday, October 21, 2009**  
**9:30 a.m.**  
**Pacific Time**

(or at the election of the District, at such time on any Wednesday thereafter, specified by notification through Thomson Municipal News at least 24 hours prior to the scheduled date and time of sale) for the purchase of \$8,200,000\* principal amount of bonds of the District designated the Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds (the "Bonds"). The Bonds will be issued under the provisions of a Resolution adopted by the District on \_\_\_\_\_, 2009 (the "Resolution"), and pursuant to the laws of the State of California. The Bonds are more particularly described in the proposed form of the Resolution on file with the Secretary of the District (which is incorporated herein by reference) and copies thereof will be furnished to the bidder upon request.

No bid check is required to be submitted with the bid.

*Bidders should be aware that the purpose of the Bonds is to provide debt service savings to the District by refunding outstanding obligations, therefor, all bids will be rejected by the District in the event no bid provides a level of debt service savings which is acceptable to the District. See "RIGHT TO REJECT ANY BID" below.*

**DESCRIPTION OF THE BONDS**

**FORM OF BONDS:** The Bonds will be issued in fully registered form in denominations of \$5,000 or authorized integral multiples thereof, to be dated initially as of the date of delivery to the successful bidder.

**MATURITIES\*:** The Bonds will mature serially on September 1 in each of the years and in the amounts as set forth in the following table. The final principal amount of the Bonds, and the final amount of each maturity of the Bonds, shall be subject to increase or reduction as described below under the heading "**ADJUSTMENT OF PRINCIPAL AMOUNTS.**" *Each bidder may specify in its bid whether, for any particular year, the Bonds will be term Bonds subject to mandatory sinking account redemption in the applicable principal amount set forth below.*

\* Preliminary, subject to change. See also, "ADJUSTMENT OF PRINCIPAL AMOUNTS" herein.

<u>Maturity Date</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>
2010	
2011	
2012	
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	

**PAYMENT PROVISIONS:** Interest on the Bonds will be payable on March 1, 2010, and on September 1 and March 1 in each year thereafter (the "Interest Payment Dates"), to the registered owners by check of Union Bank, N.A. ("Paying Agent") or, in the case of the owner of Bonds in an aggregate principal amount of at least \$1,000,000, at the written request of such owner by wire transfer to an account in the United States of America. Principal of any Bond will be paid upon presentation and surrender thereof at the corporate trust office of the Paying Agent in Los Angeles, California, or such other office as may be designated by the Paying Agent. Both the principal of and interest on the Bonds are payable in lawful money of the United States of America.

**BOOK-ENTRY-ONLY:** The Bonds are being delivered in fully registered form, and when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Bonds. Individual purchases of the Bonds may be made in book-entry form only, in denominations of \$5,000 or any integral multiple thereof. Purchasers of the Bonds will not receive physical certificates from the District or the Paying Agent representing their interest in the Bonds purchased. Payments of principal and interest on the Bonds will be payable by the Paying Agent, to DTC which is obligated in turn to remit such principal and interest to the DTC participants for subsequent disbursement to the beneficial owners of the Bonds, as provided in the Resolution.

**NO OPTIONAL REDEMPTION:** The Bonds shall be subject to optional redemption prior to maturity.

**SINKING FUND REDEMPTION:** *Any bidder may, at its option, specify that one or more maturities of the Bonds will consist of term Bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder.* In the event that the bid of the successful bidder specifies that any maturity of Bonds will be a term Bond, such term Bond will be subject to mandatory sinking fund redemption on September 1 in each applicable year in the principal amount for such year as set forth above under the heading "MATURITIES," at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

**PURPOSE:** The Bonds have been issued by the District for the purpose of providing funds to refinance the District's outstanding Improvement District No. 27 General Obligation Refunding Bonds, Series 1998.

**SECURITY:** The Bonds are general obligations of Improvement District No. 27 of the Otay Water District ("ID 27"), and the Board of Directors of the District is empowered and obligated to levy *ad valorem* taxes, without limitation of rate or amount, upon all property within ID 27 subject to taxation (except for certain classes of personal property which is taxable at a limited rate), for the payment of interest on and principal of the Bonds when due as more fully described in the Resolution and the Official Statement. The Bonds are not general obligations of the Otay Water District. Bidders should be aware of certain factors affecting the availability of the *ad valorem* taxes in amounts and at times sufficient to pay the Bonds, and the bidder is referred to the Official Statement for further information.

**TAX-EXEMPT STATUS:** In the opinion of Garcia Calderón Ruíz, LLP, San Diego, California ("Bond Counsel"), based upon an analysis of existing statutes, regulations, rulings, and court decisions and assuming, among other things, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excludable from gross income for federal income tax purposes and is exempt from State of California personal income taxes. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See "LEGAL MATTERS - Tax Matters" in the Preliminary Official Statement.

A complete copy of the proposed form of opinion of Bond Counsel is set forth in Appendix A to the Preliminary Official Statement. The approving legal opinion of Bond Counsel with respect to the Bonds will be furnished to the purchaser upon delivery of the Bonds. Copies of said opinion will be filed with The Depository Trust Company ("DTC") and with the District.

**CONTINUING DISCLOSURE:** In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5) (the "Rule"), the District will undertake, pursuant to the Resolution and a Continuing Disclosure Certificate, to provide certain annual financial information and notices of the occurrence of certain events, if material, to the Electronic Municipal Market Access ("EMMA") system implemented by the Municipal Securities Rulemaking Board. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the final Official Statement. An executed Continuing Disclosure Certificate will be furnished to the purchaser of the Bonds. The bidder is referred to the Official Statement caption "Continuing Disclosure" for information concerning the District's prior filings under the Rule.

**LEGAL OPINION:** The legal opinion of Garcia Calderón Ruíz, LLP, San Diego, California, approving the validity of the Bonds and the Resolution, will be furnished to the purchaser of the Bonds without cost. A copy of the legal opinion will accompany the Bonds at the expense of the District.

**FURTHER INFORMATION:** A copy of the Preliminary Official Statement describing the Bonds, and any other information concerning the proposed financing, will be furnished upon request to the Financial Advisor to the District: Harrell & Company Advisors, LLC, The City Tower, 333 City Boulevard West, Suite 1430, (714) 939-1464, [s.harrell@harrellco.com](mailto:s.harrell@harrellco.com).

#### **TERMS OF SALE**

**FORM OF BID; MAXIMUM DISCOUNT:** Each bid must be for not less than all of the Bonds hereby offered for sale. The purchase price to be paid for the Bonds may not be less than ninety-eight and one-half percent (98.5%) of the par value thereof, including any original issue discount. Each bid must be delivered electronically to the District via *PARITY*<sup>®</sup>, to be received not later than the date and time of sale set forth above.

**ELECTRONIC BIDS:** Electronic Bids via **PARITY**<sup>®</sup> will be accepted in accordance with this Official Notice of Sale until 9:30 a.m. Pacific Time, October 21, 2009, but no bid will be received after this time. To the extent any instructions or directions set forth in **PARITY**<sup>®</sup> conflict with this Official Notice of Sale, the terms of this Official Notice of Sale shall control. For further information about **PARITY**<sup>®</sup>, potential bidders may contact **PARITY**<sup>®</sup> at (212) 849-5021.

**DESIGNATION OF INTEREST RATES:** Each bidder must specify the rate or rates of interest which the Bonds shall bear. The maximum rate bid on any Bonds may not exceed six percent (6%) per annum. A bidder will be permitted to bid different rates of interest for each maturity of Bonds; but (i) each interest rate specified must be in a multiple of one-twentieth or one-eighth of one percent; (ii) no Bond shall bear more than one rate of interest; (iii) interest on each Bond shall be computed from the date of original delivery thereof to its stated maturity (or, in the case of term Bonds, to the respective dates of mandatory sinking fund redemption thereof as designated in the bid) at the interest rate specified in the proposal, payable on the Interest Payment Dates as set forth above; (iv) the rate of interest to be borne by each maturity of Bonds shall be equal to or greater than the rate of interest borne by the preceding maturity of Bonds; (v) all Bonds maturing at any one time shall bear the same rate of interest; and (v) any premium must be paid as part of the purchase price, and no proposal will be accepted which contemplates the waiver of any interest or other concession by the bidder as a substitute for payment in full of the purchase price.

**DETERMINATION OF BEST BID:** The Bonds will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Bonds. The true interest cost specified in any bid will be that rate which, when used in computing the present worth of all payments of principal and interest to be paid on all Bonds from the date of delivery of the Bonds to the successful bidder to their respective maturity dates produces an amount equal to the purchase price specified in such bid. For purposes of computing the true interest cost represented by any proposal, the purchase price specified in such proposal shall be equal to the par amount of the Bonds less any discount specified in such proposal or plus any premium specified in such proposal, and the true interest cost shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Bonds.

**ADJUSTMENT OF PRINCIPAL AMOUNTS:** The District reserves the right to increase or to decrease the principal amount of any maturity of the Bonds in \$5,000 increments as the District deems advisable, based on the actual rates of interest to be borne by the Bonds. Any such increase or decrease shall be allocated among the various maturities of the Bonds on such basis as the District deems advisable, and shall result in a proportionate increase or decrease (as the case may be) in the amount of any premium or discount bid. Notice of such increase or decrease shall be given to the successful bidder as soon as practicable following the notification of award, as described below. No such adjustment will have the effect of altering the basis upon which the best bid is determined.

**RIGHT TO REJECT ANY BID:** The District reserves the right, in its discretion, to reject any and all proposals and to waive any irregularity or informality in any proposal. **Bidders should be aware that the purpose of the Bonds is to provide debt service savings by refunding outstanding obligations of the District, therefor all bids will be rejected by the District in the event no bid provides a level of debt service savings which is acceptable to the District.**

**TIME OF AWARD:** The District has authorized its General Manager or its Chief Financial Officer to award the sale of the Bonds to the bidder whose proposal is the best responsible proposal determined in accordance herewith. The District will take action awarding the Bonds or rejecting all bids not later than 2:00 p.m. (Pacific Time) on October 21, 2009, provided that the award may be made after the expiration of the specified time if the winning bidder shall not have given to the District a notice in writing of the withdrawal of such bid.

**DELIVERY AND PAYMENT:** Delivery of the definitive Bonds will be made to The Depository Trust Company to the account of the purchaser upon the issuance thereof, which is expected to occur on or about November 4, 2009. Payment for the Bonds must be made by wire transfer of Federal Reserve Bank funds, or Federal Reserve Bank funds check, which is immediately available to the Paying Agent on the date of delivery. Any expense in providing immediately available funds shall be borne by the purchaser.

**RIGHT OF CANCELLATION:** The purchaser shall have the right, at its option, to cancel this contract of purchase if the District fails to execute the Bonds and tender the same for delivery within 60 days from the date of award thereof.

**STATEMENT OF TRUE INTEREST COST:** Each bidder is requested, but not required, to state in its proposal the percentage true interest cost represented by its proposal, determined as described above, which shall be considered as informative only and not binding on either the bidder or the District.

**CERTIFICATION OF REOFFERING PRICE:** The successful bidder will be required, as a condition to the delivery of the Bonds, to deliver to the District a certificate, in form and substance satisfactory to the District and Bond Counsel, upon which Bond Counsel will rely in making certain calculations and rendering certain opinions under federal tax law, which (i) states that, as of the date of award, the Bonds were actually reoffered in a bona fide public offering for prices which are identified to the District by the bidder, and (ii) identifies those maturities of the Bonds (if any) no more than 10% of which have been sold.

**NO LITIGATION:** There is no litigation pending concerning the validity of the Bonds, the existence of the District or the entitlement of the officers thereof to their respective offices, and the purchaser will be furnished a no-litigation certificate certifying to the foregoing as of and at the time of delivery of the Bonds.

**CUSIP NUMBERS:** It is anticipated that CUSIP numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto will constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the Bonds in accordance with the terms hereof. All expenses in relation to the printing of CUSIP numbers on the Bonds will be paid for by the District; *provided, however*, that the CUSIP Service Bureau charge for the assignment of said numbers to the Bonds will be the responsibility of and shall be paid for by the purchaser.

**CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION FEES:** All fees payable to the California Debt and Investment Advisory Commission in connection with the issuance of the Bonds shall be the responsibility of the purchaser of the Bonds and paid within 60 days from the sale date of the purchased Bonds.

**OFFICIAL STATEMENT:** The District has approved a preliminary Official Statement relating to the Bonds. Copies of such preliminary Official Statement will be distributed to any bidder, upon request, prior to the sale in a form "deemed final" by the District for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"). Within seven (7) business days from the sale date, the District will deliver to the purchaser a reasonable number of copies of the final Official Statement, executed by an authorized representative of the District and dated the date of delivery thereof to the purchaser, in sufficient number to allow the purchaser to comply with paragraph (b)(4) of the Rule and to satisfy the Municipal Securities Rulemaking Board (the "MSRB") Rule G-32 or any other rules adopted by the MSRB, which shall include information permitted to be omitted by paragraph (b)(1) of the Rule and such other amendments or supplements as shall have been approved by the District (the "Final Official Statement"). The purchaser agrees that it will not confirm the sale of any Bonds unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement.

**UNDERWRITING GROUP:** Each bidder is requested to furnish the names of all joint managers or syndicate members participating in the bid to the District's Financial Advisor not later than 24 hours after receiving a verbal award.

\* \* \* \* \*

Dated: October 7, 2009

OTAY WATER DISTRICT

By: /s/ General Manager

## CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the Otay Water District (the "District") in connection with the issuance of \$ \_\_\_\_\_ Otay Water District Improvement District No. 27 General Obligation Refunding Bonds (the "Bonds"). The Bonds are being issued pursuant to a Resolution adopted by the District on October \_\_, 2009 (the "Resolution"). The District covenants and agrees as follows:

**SECTION 1. Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the District for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

**SECTION 2. Definitions.** In addition to the definitions set forth in the Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Beneficial Owner" shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

"Dissemination Agent" shall mean initially Union Bank, N.A., or any successor Dissemination Agent designated in writing by the District (which may be the District) and which has filed with the District a written acceptance of such designation.

"Holders" shall mean registered owners of the Bonds.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"Participating Underwriter" shall mean any underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Repository" shall mean the Municipal Securities Rulemaking Board, which can be found at <http://emma.msrb.org/>, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State" shall mean the State of California.

**SECTION 3. Provision of Annual Reports.**

(a) The District shall, or if a Dissemination Agent other than the District has been appointed shall cause the Dissemination Agent to, not later the April 1 following the end of the District's fiscal year (presently ending June 30), commencing with the report for the 2008-09 Fiscal Year, provide to the Participating Underwriter and the Repository an Annual Report which is consistent with the requirements

of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; *provided* that the audited financial statements of the District may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the District's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) Not later than 30 days (nor more than 60 days) prior to said date any successor Dissemination Agent appointed by the District shall give notice to the District that the Annual Report shall be required to be filed in accordance with the terms of this Disclosure Certificate. Not later than 15 Business Days prior to said date, the District shall provide the Annual Report in a format suitable for reporting to the Repository to the Dissemination Agent (if other than the District). If the District is unable to provide to the Repository an Annual Report by the date required in subsection (a), the District shall send a notice to the Repository in substantially the form attached as Exhibit A with a copy to the Dissemination Agent. The Dissemination Agent (if other than the District) shall not be required to file a Notice to Repository of Failure to File an Annual Report.

(c) The Dissemination Agent shall file a report with the District stating it has filed the Annual Report in accordance with its obligations hereunder, stating the date it was provided and listing the Repository to which it was provided.

#### SECTION 4. Form and Content and Form of Annual Reports.

(a) The District's Annual Report shall contain or include by reference the following:

1. The audited financial statements of the District for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

2. Material financial information and operating data with respect to the District of the type included in the Official Statement in the following categories (to the extent not included in the District's audited financial statements):

(A) A five-year summary of assessed valuations in Improvement District No. 27 in a format similar to the summary contained in Table 1 in the final Official Statement, covering the then current fiscal year and the four fiscal years next preceding and setting forth for each such fiscal year Local Secured, Utility and Unsecured valuations, together with Homeowner Exemption and total Assessed Valuation.

(B) A five-year summary of property tax levies and collections of Improvement District No. 27 in a format similar to the summary contained in Table 3 in the final Official Statement, covering the five fiscal years next preceding the filing of the Annual Report and setting forth for each such fiscal year the Secured, State Secured Unitary, Unsecured, Delinquent Tax, Total Tax Collections and Percent of Total Taxes delinquent.

- (C) A list of the ten largest local secured property taxpayers within Improvement District No. 27 for the then current fiscal year in a format similar to the list contained in Table 4 in the final Official Statement, setting forth the name of each property owner, its assessed valuation and the percentage which such assessed valuation constitutes of the total local secured assessed valuation for such fiscal year.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to the Repository or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The District shall clearly identify each such other document so included by reference.

(b) The Annual Report shall be filed in an electronic format accompanied by identifying information prescribed by the Municipal Securities Rulemaking Board.

**SECTION 5. Reporting of Significant Events.**

(a) Pursuant to the provisions of this Section 5, the District shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. principal and interest payment delinquencies.
2. non-payment related defaults.
3. modifications to rights of Bondholders.
4. optional, contingent or unscheduled bond calls.
5. defeasances.
6. rating changes.
7. adverse tax opinions or events affecting the tax-exempt status of the Bonds.
8. unscheduled draws on the debt service reserves reflecting financial difficulties.
9. unscheduled draws on credit enhancement reflecting financial difficulties.
10. substitution of the credit or liquidity providers or their failure to perform.
11. release, substitution or sale of property securing repayment of the Bonds.

(b) Whenever the District obtains knowledge of the occurrence of a Listed Event, the District shall as soon as possible determine if such event would be material under applicable federal securities laws.

(c) If the District determines that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the District shall promptly file a notice of such occurrence with the Repository or provide notice of such reportable event to the Dissemination Agent (if other than the District) in format suitable for filing with the Repository.

Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(4) and (5) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Holders of affected Bonds pursuant to the Resolution. The Dissemination Agent (if other than the District) shall have no duty to independently prepare or file any report of Listed Events. The Dissemination Agent (if other than the District) may conclusively rely on the District's determination of materiality pursuant to Section 5(b).

SECTION 6. Termination of Reporting Obligation. The District's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the District shall give notice of such termination in the same manner as for a Listed Event under Section 5(a).

SECTION 7. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent (or substitute Dissemination Agent) to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign upon 15 days written notice to the District. Upon such resignation, the District shall act as its own Dissemination Agent until it appoints a successor. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this Disclosure Certificate and shall not be responsible to verify the accuracy, completeness or materiality of any continuing disclosure information provided by the District. The District shall compensate the Dissemination Agent for its fees and expenses hereunder as agreed by the parties.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the District may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances;

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds; and

(d) No duties of the Dissemination Agent hereunder shall be amended without its written consent thereto.

In the event of any amendment or waiver of a provision of this Disclosure Certificate, the District shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(a), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the

financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the District shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the District to comply with any provision of this Disclosure Certificate any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Resolution, and the sole remedy under this Disclosure Certificate in the event of any failure of the District to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate. The Dissemination Agent acts hereunder solely for the benefit of the District; this Disclosure Certificate shall confer no duties on the Dissemination Agent to the Participating Underwriter, the Holders and the Beneficial Owners. The District agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. The obligations of the District under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The Dissemination Agent shall have no liability for the failure to report any event or any financial information as to which the District has not provided an information report in format suitable for filing with the Repository. The Dissemination Agent shall not be required to monitor or enforce the District's duty to comply with its continuing disclosure requirements hereunder.

SECTION 12. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the District, the Dissemination Agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Dated: \_\_\_\_\_, 2009

OTAY WATER DISTRICT

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORY OF FAILURE TO FILE ANNUAL REPORT**

Name of District: OTAY WATER DISTRICT  
Name of Bond Issue: Improvement District No. 27 General Obligation Refunding Bonds  
Date of Issuance: \_\_\_\_\_, 2009

NOTICE IS HEREBY GIVEN that the District has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Certificate relating to the Bonds. The District anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

OTAY WATER DISTRICT

By \_\_\_\_\_ [form only; no signature required]

**PAYING AGENT AGREEMENT**

This PAYING AGENT AGREEMENT is made and entered into as of November 4, 2009 ("Agreement"), by and between UNION BANK, N.A., a national banking association ("Paying Agent"), and OTAY WATER DISTRICT, a municipal water district organized and existing under the laws of the State of California (the "District"),

**WITNESSETH:**

WHEREAS, the District, simultaneously with the execution and delivery of this Paying Agent Agreement, has issued its Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds, in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), which Bonds were issued under Resolution No. 4148 of the Board of Directors (the "Board") of the District, adopted October 7, 2009 (the "Resolution"); and

WHEREAS, pursuant to the Resolution the District has designated the Paying Agent to act as the initial Paying Agent with respect to the Bonds in accordance with the terms of the Resolution; and

WHEREAS, in consideration of the terms and conditions of this Agreement, the Paying Agent has agreed to authenticate and deliver the Bonds and to otherwise act as Paying Agent in accordance with the terms of the Resolution and subject to the terms, conditions and covenants hereinafter contained.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

**ARTICLE I  
CONCERNING THE PAYING AGENT**

Section 1.1 Employment and Duties of the Paying Agent. The District hereby appoints and employs the Paying Agent to perform the obligations of paying agent, authentication agent, transfer agent and bond registrar as set forth in the Resolution; all in the manner provided in the Resolution and herein and subject to the conditions and terms thereof and hereof. The Paying Agent hereby accepts such appointment and undertakes to perform such duties and only such duties as are specifically set forth in the Resolution and in this Agreement. In the event of a conflict, the terms of the Resolution shall prevail over the provisions of this Agreement.

Section 1.2 Compensation and Indemnification of the Paying Agent. The District shall, from time to time, subject to the fee proposal provided to the District by the Paying Agent, pay the Paying Agent compensation for its services and reimburse the Paying Agent for all its advances and expenditures hereunder including, but not limited to, advances to and fees and expenses of accountants, agents, appraisers, consultants, counsel, or other experts employed by it in the observance and performance of its rights and obligations hereunder. Any provision hereof to the contrary notwithstanding, if the District fails to make any payment properly due the Paying Agent hereunder, the Paying Agent may, following provision of prior written notice of such action to the District, reimburse itself from any surplus moneys on hand, if any, in any fund or account which are not otherwise pledged or required for any debt service payments on the Bonds.

To the extent it may lawfully do so, the District agrees to indemnify the Paying Agent for, and to hold it harmless against, any loss, liability, or expense incurred without negligence or willful misconduct on the part of the Paying Agent, arising out of or in connection with the Paying Agent's exercise or performance of its rights or duties under the Resolution or hereunder, as well as the costs and expenses of defending itself against any claim, action, suit, or liability in accordance with the exercise or performance of any of its powers or duties under the Resolution or hereunder.

Section 1.3 Protection of the Paying Agent

(a) The Paying Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon any affidavit, bond, certificate, consent, notice, request, requisition, resolution, statement, telegram, voucher, waiver, or other paper or document which it shall in good faith believe to be genuine and to have been adopted, executed, or delivered by the proper party or pursuant to any of the provisions of the Resolution or hereof, and the Paying Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Paying Agent may consult with counsel, who may be counsel to the District, with regard to legal questions arising hereunder, and the opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by it hereunder in good faith in accordance therewith.

(b) Whenever in the observance or performance of its rights and obligations under the Resolution or hereunder the Paying Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of the District, and such certificate shall be full warrant to the Paying Agent for any action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable, and the Paying Agent shall not be responsible for any loss or damage resulting from any action or inaction taken or not taken, as the case may be, in good faith in reliance upon such certificate or other evidence.

(c) To the extent it is legally able to do so, the Paying Agent may buy, sell, own, hold, and deal in any of the Bonds and may join in any action which any Owner may be entitled to take with like effect as if it were not a party hereto. The Paying Agent, either as principal or agent, may also engage in or be interested in any financial or other transaction with the District, and may act as agent, depository, or Paying Agent for any committee or body of Owners or of owners of obligations of the District as freely as if it were not the Paying Agent hereunder.

(d) The Paying Agent shall not be answerable for the exercise of any of its rights under the Resolution or hereunder or for the performance of any of its obligations under the Resolution or hereunder or for anything whatsoever in connection with the funds established under the Resolution, except only for its own willful misconduct or negligence.

(e) The Paying Agent shall not be responsible for any recital herein or in the Resolution or in the Bonds (except with respect to the certificate of authentication endorsed on the Bonds), or for the validity of the adoption of the Resolution or of the execution by the District of this Agreement or of any supplements thereto or hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby. The Paying Agent shall have no obligation to perform any of the duties of the District under the Resolution or hereunder.

(f) The permissive right of the Paying Agent to do things enumerated in the Resolution and this Agreement shall not be construed as a duty, and the Paying Agent shall not be answerable for other than its negligence or willful default.

(g) The Paying Agent shall not be required to give any bond or surety in respect of the execution of this Agreement or otherwise in respect of the premises.

(h) No provision of the Resolution or this Agreement shall require the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

Section 1.4. Removal and Resignation of the Paying Agent. For cause, the District may remove the Paying Agent and any successor thereto by giving 60 days prior written notice of such removal to the Paying Agent. The Paying Agent and any successor thereto may at any time resign by giving 90 days prior written notice of such resignation to the District. Upon the giving of any such notice of removal or upon receiving any such notice of resignation, the District, at any time there are Outstanding Bonds, shall promptly appoint a successor Paying Agent by an instrument in writing; provided that in the event the District does not appoint a successor Paying Agent within 60 days following the giving of any such notice of removal or the receipt of any such notice of resignation, the removed or resigning Paying Agent may petition any appropriate court having jurisdiction to appoint a successor Paying Agent. Any successor Paying Agent so appointed shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by state or national authorities. If such bank or trust company publishes a report of condition at least annually, pursuant

to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

Any removal or resignation of a Paying Agent and appointment of a successor Paying Agent shall become effective only upon the acceptance of the appointment by the successor Paying Agent, provided that the District shall be permitted, at its sole discretion, to assume the duties and responsibilities of Paying Agent for the Bonds should a successor Paying Agent meeting the requirements of this Section 1.4 not be appointed within the sixty (60) day period described in the foregoing paragraph. If the District should assume the responsibilities of Paying Agent, it will continue to use its best efforts to appoint a successor Paying Agent meeting the requirements of this Section 1.4 as soon as reasonably practical following the date the District assumes the duties and responsibilities of the Paying Agent as permitted by this paragraph.

## ARTICLE II MISCELLANEOUS

Section 2.1 Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections," and other subsections or paragraphs are to the corresponding articles, sections, subsections, or paragraphs hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subsection, or paragraph hereof.

Section 2.2 Partial Invalidity. If any one or more of the conditions, covenants, or terms contained herein or required herein to be observed or performed by or on the part of the District or the Paying Agent shall be contrary to law, then such condition or conditions, such covenant or covenants, or such term or terms shall be null and void and shall be deemed separable from the remaining conditions, covenants, and terms hereof.

Section 2.3 Amendments. This Agreement may be amended by a writing executed by both the District and the Paying Agent.

Section 2.4 California Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 2.5 Notices. All notices to be given hereunder shall be in writing and given by U.S. Mail, courier providing receipt of delivery or by facsimile transmission to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties hereinafter listed in writing from time to time, namely:

If to the Paying Agent:

Union Bank, N.A.  
120 S. San Pedro Street, 4th Floor  
Los Angeles, California 90012  
Attention: Corporate Trust Division  
Telephone Number: (213) 972-5674  
Fax: (213) 972-5695

If to the District:

Otay Water District  
2554 Sweetwater Springs Blvd.  
Spring Valley, California 91978-2096  
Attn: Chief Financial Officer  
Telephone Number: (619) 670-2212  
Fax: (619) 670-3658

Section 2.6 Effective Date; Term. This Agreement shall become effective upon the date first above written. This Agreement shall be effective from and after the date hereof until the Paying Agent resigns or is removed in accordance with the provisions of the Resolution.

Section 2.7 Execution in Counterparts. The Agreement may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and entered into the Agreement by their officers thereunto duly authorized as of the day and year first above written.

OTAY WATER DISTRICT

By: \_\_\_\_\_  
Authorized Officer

UNION BANK, N.A.,  
as Paying Agent

By: \_\_\_\_\_  
Authorized Signatory

Attachment J

GCR Draft # 2  
9/10/09

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**ESCROW AGREEMENT**

by and between

**OTAY WATER DISTRICT**

and

**UNION BANK, N.A.**  
as Escrow Agent

Relating to

Otay Water District  
Improvement District No. 27  
2009 General Obligation Refunding Bonds

Dated as of November 1, 2009

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SCHEDULE A. Prior Bonds – Redemption Date and Redemption Price

EXHIBIT A. Notice of Defeasance

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of November 1, 2009 (the "Escrow Agreement"), by and between the Otay Water District, a municipal water district organized and existing under the laws of the State of California (the "District"), and Union Bank, N.A. (formerly known as Union Bank of California, N.A.), a national banking association organized and existing under the laws of the United States, as escrow agent (the "Escrow Agent") and as paying agent (the "Paying Agent") under the 1998 Resolution as hereafter defined.

### WITNESSETH:

WHEREAS, the District, simultaneously with the execution and delivery of this Escrow Agreement, has issued its Otay Water District Improvement District No. 27, 2009 General Obligation Refunding Bonds, in the aggregate principal amount of \$ \_\_\_\_\_ (the "Bonds"), which Bonds were issued under Resolution No. 4147 of the Board of Directors (the "Board") of the District, adopted October 7, 2009 (the "Resolution"); and

WHEREAS, the District issued the Bonds for the purpose of providing moneys to refund, defease and redeem on December 15, 2009 its Otay Water District Improvement District No. 27, General Obligation Refunding Bonds, Series 1998 maturing on, of the interest rates, and bearing the CUSIP numbers indicated on Schedule A hereto (the "Prior Bonds"), which Schedule A is hereby incorporated herein by reference, and which Prior Bonds were issued under Resolution No. 3744 of the Board (the "1998 Resolution");

WHEREAS, the Escrow Agent is the Paying Agent under the Resolution; and

WHEREAS, in order to accomplish the refunding and defeasance of the Prior Bonds, in accordance with Section 23 of the 1998 Resolution, the District desires to deposit, or cause to be deposited, certain moneys with the Escrow Agent in accordance with this Escrow Agreement and the 1998 Resolution;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**SECTION 1. Creation of Escrow Fund.** There is hereby created and established with the Escrow Agent a special and irrevocable escrow fund (the "Escrow Fund") to be held in the custody of the Escrow Agent in trust under this Escrow Agreement for the benefit of the owners of the Prior Bonds. Except to the extent of any excess that is to be released as provided in Section 10 hereof, the District shall have no interest in the funds held in the Escrow Fund. The moneys and securities held hereunder shall be irrevocably set aside and pledged for the payment of principal of, premium, if any, and interest on, the Prior Bonds, as provided in Section 5 hereof.

**SECTION 2. Deposits to the Escrow Fund.** Concurrently with the issuance of the Bonds, the following deposits in the aggregate sum of \$ \_\_\_\_\_ shall be deposited to the Escrow Fund on November 4, 2009:

(a) The District shall transfer, or cause to be transferred to the Escrow Agent the aggregate sum of \$ \_\_\_\_\_ from the sale proceeds of the Bonds, and the Escrow Agent shall deposit said sum in the Escrow Fund, and

(b) The District shall transfer to the Escrow Agent for deposit in the Escrow Fund the aggregate sum of \$ \_\_\_\_\_ derived from the Debt Service Fund established under the 1998 Resolution.

**SECTION 3. Investment of Escrow Fund.** The District hereby instructs the Escrow Agent to hold the aggregate amount in the Escrow Fund of \$ \_\_\_\_\_, in cash, uninvested, and to use the moneys pursuant to Section 5 of this Escrow Agreement.

**SECTION 4. Creation of Lien on Escrow Fund.** The Escrow Fund created hereby shall be irrevocable, and the Escrow Agent is hereby appointed to act for the benefit of the holders of the Prior Bonds, which holders are hereby granted an exclusive lien on the Escrow Fund and all moneys from time to time held therein for the payment of amounts described in the first paragraph of Section 5 hereinafter. The Escrow Agent shall hold such moneys separate and apart from, and not commingled with, any other moneys or investments.

**SECTION 5. Use of Escrow Fund.** On the call date indicated on Schedule A, the Escrow Agent shall transfer the amount of \$ \_\_\_\_\_ in the Escrow Fund to the Paying Agent for deposit in the Redemption Fund established under the 1998 Resolution to redeem on the date indicated in Schedule A, all of the Prior Bonds scheduled to be redeemed on such date, together with accrued interest of \$ \_\_\_\_\_.

All amounts, if any, remaining in the Escrow Fund after the transfer described in the preceding paragraph shall be transferred to the District.

**SECTION 6. Interest Income and Other Amounts.** There will be no interest paid on funds held hereunder.

**SECTION 7. Proceedings for Redemption of Prior Bonds.** The District hereby irrevocably elects to redeem the Prior Bonds in full on December 15, 2009, pursuant to the provisions of Section 9 of the 1998 Resolution. The District hereby irrevocably instructs the Escrow Agent, in its capacity as Paying Agent under the Resolution, to provide notice of such redemption of the Prior Bonds in accordance with the Section 9 of the 1998 Resolution, at the expense of the District. Additionally, the Escrow Agent shall give or cause to be given notice of the defeasance of the Prior Bonds, a form of such notice being attached hereto as Exhibit A upon receipt of a current list of holders of the Prior Bonds from the Paying Agent.

**SECTION 8. Liabilities and Obligations of Escrow Agent.** The Escrow Agent shall have no obligation to make any payments or disbursement of any type or incur any financial liability in the performance of its duties under this Agreement unless the District shall have deposited sufficient funds therefor with the Escrow Agent. The Escrow Agent shall have only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent may rely and shall be protected in acting upon the written instructions which the Escrow Agent believes in good faith to be executed by the District or its authorized agents relating to any matter or action as Escrow Agent under this Agreement. The Escrow Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence or willful misconduct. The recitals of facts, agreements and covenants herein shall be taken as recitals of facts, agreements and covenants of the District, and the Escrow Agent assumes no responsibility for the correctness of the same and makes no representation as to the sufficiency or validity of this Agreement or of the funds deposited in

the Escrow Fund. The Escrow Agent may consult with counsel with regard to legal questions and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

**SECTION 9. Termination.** This Escrow Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions of Section 5 hereof shall have been made and any moneys remaining in the Escrow Fund at the time of such termination shall have been distributed to the District and the Escrow Agent has provided a final statement to the District.

**SECTION 10. Records and Reports.** The Escrow Agent shall keep books of record and account in which complete and correct entries shall be made of all transactions made by it relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Fund and all proceeds thereof. Such books shall be available for inspection upon reasonable notice at reasonable hours and under reasonable conditions by the District and the holders of the Prior Bonds.

**SECTION 11. Amendment.** The parties hereto may, without the consent of or notice to the holders of the Prior Bonds, enter into such amendments to this Escrow Agreement that shall not materially adversely affect the rights of such holders hereunder for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Escrow Agreement;
- (b) to grant to, or confer upon the Escrow Agent, for the benefit of the holders of the Prior Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, the Escrow Agent;
- (c) to subject to the lien of this Escrow Agreement additional funds, revenues, securities or properties;
- (d) to conform this Escrow Agreement to the provisions of any law or regulation governing the tax-exempt status of the Prior Bonds or the Bonds in order to maintain their tax-exempt status; and
- (e) to make any other change determined by the District to be not materially adverse to the holders of the Prior Bonds. In making such determination, the District and the Escrow Agent may rely on the opinion of legal counsel.

Copies of any amendments or supplements to this Escrow Agreement shall be sent to the rating agencies that have assigned a rating to the Bonds.

**SECTION 12. Severability.** If any one or more of the covenants and agreements provided in this Escrow Agreement on the part of the District or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

**SECTION 13. Successors and Assigns.** All of the covenants and agreements in this Escrow Agreement contained by or on behalf of the District or the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

**SECTION 14. Compensation and Indemnification of Escrow Agent.** For acting under this Escrow Agreement, the Escrow Agent shall be entitled to payment by the District of fees for its services and reimbursement of advances, counsel fees and expenses and other expenses reasonably and necessarily made or incurred by the Escrow Agent in connection with its services under this Escrow Agreement; however, such amount shall never be payable from or become a lien upon the Escrow Fund, which fund shall be held solely for the purposes and subject to the lien set forth in Section 4 of this Escrow Agreement. To the extent permitted by law, the District agrees to indemnify and hold Escrow Agent, its officers, directors, employees and agents (collectively "Indemnified Parties") harmless from all loss, cost, damages, expenses, liabilities, judgments and attorneys' fees (including without limitation, allocated costs of in-house counsel) suffered or incurred by the Indemnified Parties or any of them arising out of or in connection with this Agreement, except that this indemnity obligation shall not apply in the event of the negligence or willful misconduct of the Indemnified Parties or any of them. This indemnity obligation shall survive termination of this Agreement and resignation or removal of the Escrow Agent and termination of this Agreement.

**SECTION 15. Governing Law.** This Escrow Agreement shall be governed by the applicable laws of the State of California.

**SECTION 16. Headings.** Any headings preceding the text of the several Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Escrow Agreement, nor shall they affect its meaning construction or effect.

**SECTION 17. Counterparts.** This Escrow Agreement may be signed in several counterparts, each of which will constitute an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Otay Water District and Union Bank, N.A., as Escrow Agent, have each caused this Escrow Agreement to be executed by their duly authorized officer as of the date first above written.

OTAY WATER DISTRICT

By: \_\_\_\_\_  
Joseph Beachem  
Chief Financial Officer

UNION BANK, N.A., as Escrow Agent

By: \_\_\_\_\_  
Authorized Signatory

SCHEDULE A

PRIOR BONDS -REDEMPTION DATE AND  
REDEMPTION PRICE

Otay Water District  
Improvement District No. 27  
General Obligation Refunding Bonds,  
Series 1998

<u>Maturity Date</u>	<u>Interest Rate</u> _____ %	Par Amount to <u>be Redeemed</u> \$ _____	Redemption <u>Date</u> 12/15/09	Redemption <u>Price</u> 100%	<u>CUSIP</u>
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EXHIBIT A  
NOTICE OF DEFEASANCE

RELATING TO

\$ \_\_\_\_\_ Outstanding Principal Amount of

Otay Water District  
Improvement District No. 27  
General Obligation Refunding Bonds,  
Series 1998

(CUSIP No. \_\_\_\_\_)

NOTICE IS HEREBY GIVEN TO THE OWNERS OF THE ABOVE-REFERENCED BONDS (the "1998 Bonds") by Union Bank, N.A., as escrow agent (the "Escrow Agent"), pursuant to Resolution No. 3744, adopted by the Board of Directors of Otay Water District on May 13, 1998 (the "1998 Resolution") that the deposit required by Section 23 of the 1998 Resolution for the purpose of paying the principal of, redemption premium, if any, and interest on December 15, 2009 of the 1998 Bonds, having been made, the 1998 Bonds shall no longer be deemed to be Outstanding under the 1998 Resolution. The obligation of the Otay Water District to pay the principal of, redemption premium, if any, and interest of the 1998 Bonds shall nevertheless continue but the owners thereof shall be entitled to payment only from the moneys deposited with the Escrow Agent to provide for such payment. Capitalized terms used herein but not otherwise defined have the meanings ascribed thereto in the 1998 Resolution.

Date: November 4, 2009

By: Union Bank, N.A.,  
as Escrow Agent

\* The Escrow Agent will not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in this Notice. It is included solely as a convenience.



# AGENDA ITEM 4

## 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 met on September 14, 2009 and the Committee support's Staff's recommendations 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).

### NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.

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> 07/09

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> 1 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.

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
TOBACCO FREE CAMPUS	19	3/6/89	5/26/09

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> 5/26/09

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>5/26/09</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.

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary



# AGENDA ITEM 5

## 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 (A Premium HMO and a Standard HMO).

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 Premium HMO 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 Premium HMO Plan). Although the Premium HMO Plan and Standard HMO Plan are exactly the same with respect to the yearly deductibles and maximum co-insurance amounts, the Premium HMO 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:**

PCB

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 Premium HMO 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 Premium HMO 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 met on September 14, 2009 and the Committee supports Staff's recommendations to:

- 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.

### NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.



## 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

DELTA   
HEALTH SYSTEMS

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: Wesley M. Allen

Its Duly Authorized Human Resources Manager

Tax ID Number: 95-2049267

DATE:

12/11/07

DELTA HEALTH SYSTEMS  
ADMINISTRATIVE CORPORATION

By: David H. Woodford

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 YMW 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 Ymw 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 Ymw 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 Ymw 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.

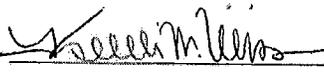
**Late Fee.** There will be a 1.5% late fee imposed on any invoice and/or billing statement if payment is not received within 15-days from the date of the invoice and/or billing statement.

**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 6

### 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.

### NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.



In 2009, the District has revised and updated the Safety Manual and training programs, increased safety awareness, and reduced injuries by 30% from the previous year.

**FISCAL IMPACT:**



None.

**STRATEGIC GOAL:**

Evaluate and make recommendations regarding Environmental Health, Emergency Preparedness and Safety Management System.

**LEGAL IMPACT:**

\_\_\_\_\_

None.



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

- Attachments:
- Attachment "A" - Committee Action
  - Attachment "B" - Letter dated August 28, 2009, announcing award to the Otay Water District
  - Attachment "C" - Application for Larry C. Larson Award

## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	LARRY C. LARSON SAFETY AWARD FOR 2009
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### COMMITTEE ACTION:

The Finance, Administration and Communications Committee met on September 14, 2009 to review this item. The Committee supports presentation to the full Board for their consideration.

### NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

August 28, 2009

Mr. Mark Watton  
General Manager  
Otay Water District  
2445 Sweetwater Springs Blvd  
Spring Valley, CA 91978

Dear Mr Watton:

On behalf of the California-Nevada Section, American Water Works Association, it is my pleasure to inform you that Otay Water District been selected to receive the Larry C. Larson Safety Award for 2009. Congratulations! This award recognizes a utility with the commitment to make their employee's health and safety a main priority. The criteria for this award are stringent, so very few utilities are so honored.

Please join us at the awards ceremony at our 2009 Fall Conference on Tuesday, October 6th, 2009, at the Riviera Hotel and Casino, Las Vegas. The Riviera is located at 2901 Las Vegas Blvd, South. The ceremony will be held during the opening awards program, which begins at 10am.

If you are not otherwise planning on attending the conference, we would appreciate you informing us, so we can have a luncheon ticket for you. If you are planning on attending the conference, and haven't already registered, a registration form has been included for your convenience. You may send your registration form to:

**California Nevada Section, AWWA**  
**10574 Acacia Street, Suite D6**  
**Rancho Cucamonga, CA 91730**

We would also appreciate it if you could send us a suitable photo representative of the water district by September 21st, 2009. We'll use it in the presentation and in the exhibit hall. You can e-mail your photo to me at [macler.bruce@epa.gov](mailto:macler.bruce@epa.gov). If you have any questions, please do not hesitate to contact me. Again, congratulations!

Sincerely,

A handwritten signature in cursive script that reads "Bruce Macler".

Bruce Macler  
Section Awards Chair  
415 972-3569

## CALIFORNIA-NEVADA SECTION, AWWA LARRY C. LARSON SAFETY AWARD

Utility Name Otay Water District

Utility Address 2445 Sweetwater Springs Blvd, Spring Valley CA 91978

Utility Phone (619) 670-2222

General Manager Mark Watton

Submitted by: Ted Cudal, CSP, CHMM

Number of Employees ( 2008) 168

Number of Employee Hours (2008) 300,209

### **SAFETY RECORD**

<b><u>Year</u></b>	<b>Number of Disabling Injuries</b>	<b>Employee days charged to injuries</b>
2003	<u>15</u>	<u>245</u>
2004	<u>14</u>	<u>76</u>
2005	<u>10</u>	<u>24</u>
2006	<u>16</u>	<u>276</u>
2007	<u>8</u>	<u>183</u>
2008	<u>5</u>	<u>144</u>
2009 (Mid-year)	<u>3</u>	<u>44</u>

### **Reason why applicant is nominated for this award:**

(Please complete the attached supplemental data sheet)

The Otay Water District has a very pro-active Safety Program, centered on the premise that all injuries and incidents are preventable. The District has continually improved it's safety performance, and strives to reduce all injuries and illnesses. In July, 2008, the District hired a new Safety and Security Administrator, conducted a thorough review of the safety programs, and completed a review of the Safety Training requirements and Return to Work programs. The Safety Program information is posted internally on the intranet (Sharepoint). Currently, we have 3 reportable injuries and a 14.67 Severity Rate. The continual improvement and reductions are noteworthy.

California-Nevada Section, AWWA

Supplemental Data Sheet for the Larry C. Larson Safety Award

The following information will be used by the CA/NV Section Safety Committee to evaluate water utilities and individuals nominated for the Larry C. Larson Safety Award. The complete form should be attached to the nominated form and submitted to the Section's Safety Sub-Committee Chair.

Utility Name Otay Water District

I. Type of Work ( Estimate the number of employees or percent of work force in the following classifications

- a) Administrative & Office 48%
- b) Construction 11%
- c) Distribution 22%
- d) Treatment 5%
- e) Other (specify) 14%  
(Fleet, Field Eng, Facilities)

II. Safety Program

- a) Does the utility have a formal safety program?  Y  N
- b) If yes, how long has it been in effect? Since Est. 1980's
- c) Is the Utility's Safety Officer full-time?  Y  N
- d) If part-time, what other function does he/she have? NA

e) Which of the following items are part of the safety activity?

Is there a safety committee?  Y  N

If yes, how often are meetings held? \_\_\_\_\_

Safety Manual?  Y  N

Safety Posters?  Y  N

**Supplemental data continued:**

Weekly Safety Talks?	<input checked="" type="radio"/>	N
Employee Safety Award?	<input checked="" type="radio"/>	N
Safety Suggestion Program?	<input checked="" type="radio"/>	N
Accident Review Board?	<input checked="" type="radio"/>	N

List any other item used: (See attached documentation)

III Describe your Injury and Illness Prevention Program (IIPP) The Otay Water District's IIPP covers: 1) Management commitment and assignment of responsibilities; 2) Safety communications; 3) System for assuring employee compliance with safe work practices; 4) Scheduled inspections; 5) Accident investigation; 6) Procedures for correcting unsafe/ unhealthy conditions; 6) Safety and health training and recordkeeping.

IV Safety Training (check programs provided)

Defensive Driving  First Aid  CPR

Other (list) (See attached documentation)

V General Remarks (Describe outstanding achievements in areas of safety above and beyond what is required by Cal-OSHA & Fed OSHA)

The District has continually improved in trying to limit risk to injury and in reviewing it's Safety Programs.

VI Please include the name of your company's insurance handler, contact person and telephone number

Insurance: SDRMA

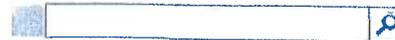
Contact: Ted Cudal, CSP, CHMM, Safety and Security Administrator  
(619) 670-2295

**Upon review, sub-committee may contact applicant for additional information**

**Return application to:**

**Mr. Tim Tillery  
Suburban Water Systems  
1211 E. Center Court Drive  
Covina, CA 91724-3603**

**OTHER SUPPORTING DOCUMENTATION**



OTAY > Administrative Services > Safety and Security > Shared Documents > 1) Safety Manual

# Shared Documents

Share a document with the team by adding it to this document library.

New ▾
Upload ▾
Actions ▾
View: **All Documents**

Type	Name	Modified	Modified By
Folder	101.01 Injury Illness and Prevention Program	5/5/2009 8:52 AM	Ted Cudal
Folder	101.01a Fleet Incident Reporting Procedure	5/5/2009 8:54 AM	Ted Cudal
Folder	101.01a Incident Report Forms	5/5/2009 8:58 AM	Ted Cudal
Folder	101.01c Injury and Illness Reporting Procedures	5/5/2009 12:29 PM	Ted Cudal
Folder	101.01d Return to Work Program	5/5/2009 9:02 AM	Ted Cudal
Folder	101.02 Safety Committee Procedure	5/5/2009 9:03 AM	Ted Cudal
Folder	101.02a District General Recognition Program	5/5/2009 9:06 AM	Ted Cudal
Folder	101.03 Safety Inspection Procedure	5/5/2009 9:08 AM	Ted Cudal
Folder	101.03a Safety Inspection Checklists	5/5/2009 9:09 AM	Ted Cudal
Folder	101.04 Ergonomics Program	5/5/2009 9:11 AM	Ted Cudal
Folder	101.05 Fire Prevention Plan	5/5/2009 9:13 AM	Ted Cudal
Folder	101.06 Emergency Action Plan	5/5/2009 9:14 AM	Ted Cudal
Folder	101.06a NIMS Manual	5/5/2009 9:16 AM	Ted Cudal
Folder	101.07 Hazard Communications Program	5/5/2009 9:17 AM	Ted Cudal
Folder	101.08 Material Safety Data Sheets and Labeling Hazardous Substances	5/5/2009 9:19 AM	Ted Cudal
Folder	101.09 Personal Protective Equipment Procedure	5/5/2009 9:20 AM	Ted Cudal
Folder	101.09a Respiratory Protection Program	5/5/2009 9:22 AM	Ted Cudal
Folder	101.09b Respiratory Selection and Use Procedure	5/5/2009 9:22 AM	Ted Cudal
Folder	101.10 Laboratory Safety Procedure	5/5/2009 9:24 AM	Ted Cudal
Folder	101.11 Lockout Tagout Procedure	5/5/2009 9:25 AM	Ted Cudal
Folder	101.11a Lockout Tagout Inspection Form	5/5/2009 9:25 AM	Ted Cudal
Folder	101.12 Welding and Cutting Hot Work Safety Procedure	5/5/2009 9:28 AM	Ted Cudal
Folder	101.12a Hot Work Permit	5/5/2009 9:28 AM	Ted Cudal
Folder	101.13 Metal Working Equipment Machine Guarding Procedure	5/5/2009 9:30 AM	Ted Cudal
Folder	101.14 Abrasive Wheels and Grinding Equipment	5/5/2009 9:31 AM	Ted Cudal
Folder	101.15 Confined Space Procedure	5/5/2009 9:32 AM	Ted Cudal
Folder	101.15a Confined Space Permit Form	5/5/2009 9:32 AM	Ted Cudal
Folder	101.16 Trenching and Shoring Procedure	5/5/2009 9:33 AM	Ted Cudal
Folder	101.16a Trench Inspection Form	5/5/2009 9:35 AM	Ted Cudal
Folder	101.16b CalOSHA Construction Guide	5/5/2009 9:35 AM	Ted Cudal
Folder	101.17 Powered Industrial Truck Forklift Safety Procedure	5/5/2009 9:37 AM	Ted Cudal
Folder	101.17a Cal-OSHA Powered Industrial Truck Operating Rules	5/5/2009 9:37 AM	Ted Cudal
Folder	101.18 Asbestos Cement Pipe Safety and Minimizing Silica Exposure	5/5/2009 9:38 AM	Ted Cudal
Folder	101.18a CalOSHA Silica Alert	5/5/2009 9:39 AM	Ted Cudal

 101.19 Chlorine Safety Procedure	5/5/2009 10:08 AM	Ted Cudal
 101.20 Aqua Ammonia Safety Procedure	5/5/2009 10:08 AM	Ted Cudal
 101.21 Sodium and Calcium Hypochlorite Safety Procedure	5/5/2009 10:09 AM	Ted Cudal
 101.22 Bloodborne Pathogens Exposure Control Program	5/5/2009 10:10 AM	Ted Cudal
 101.23 Rim and Wheel Servicing Procedure	5/5/2009 10:13 AM	Ted Cudal
 101.24 Gun Range	5/5/2009 10:16 AM	Ted Cudal
 101.24a Off Road Vehicle Safety	5/5/2009 10:17 AM	Ted Cudal
 101.25 Construction Safety Procedure	5/5/2009 10:18 AM	Ted Cudal
 101.26 Hearing Conservation Program	5/5/2009 10:18 AM	Ted Cudal
 101.27 Fall Protection	5/5/2009 10:18 AM	Ted Cudal
 101.27a Appendix A. Formal Inspection Procedure	5/5/2009 10:20 AM	Ted Cudal
 101.27b Appendix B. Formal Harness Inspection Log	5/5/2009 10:20 AM	Ted Cudal
 101.27c Appendix C. Harness Before Use Inspection Form	5/5/2009 10:22 AM	Ted Cudal
 101.28 Dump Truck Safety	5/5/2009 10:14 AM	Ted Cudal
 101.28a Truck Inspection Form	5/5/2009 10:14 AM	Ted Cudal
 101.29 Hoist and Davit Safety	5/5/2009 10:23 AM	Ted Cudal
 101.30 Traffic Control and Flagging Procedure	5/5/2009 10:23 AM	Ted Cudal
 101.30a County of San Diego Traffic Guidelines	5/5/2009 10:25 AM	Ted Cudal
 101.31 Heat Related Illness Prevention	5/5/2009 10:26 AM	Ted Cudal
 101.32 Low Voltage Electrical Safety Program	5/5/2009 10:26 AM	Ted Cudal
 101.33 High Voltage Electrical Safety Program	5/5/2009 10:27 AM	Ted Cudal

## OTAY WATER DISTRICT CAL-OSHA Regulations Minimum Training Requirements

Training Topic	CCR Title 8 Section	Frequency of Training	Typical Job Classification	Otay Water District Program	Program Manager / Date Reviewed
Accident Investigation	<a href="#">3203(a)(7)(F)</a>	Initial	Supervisors/Accident Investigators	HS 101.01 IIPP HS 101.02 Safety Committee	Safety & Security / 08-27-08
Accident Prevention Signs & Tags	<a href="#">3341(d)(5)</a>	Initial	Impacted Employees	HS 101.11 Lockout / Tagout	Safety & Security / 01-21-09
Asbestos Consultant Site Surveillance Technician	<a href="#">341.15</a>	Initial	Certified Persons	HS 101.18 Asbestos and Silica	Safety & Security / 01-22-09
Asbestos/Asbestos Awareness	<a href="#">1529(k)(9)(B)</a> <a href="#">5208(j)(7)(B)</a> <a href="#">1529</a>	Initial Annual	Employees likely exposed =>PEL & those who perform Class I-IV operations		
Battery Handling/ Changing/Charging	<a href="#">5185(a)</a>	Initial	Assigned Employees	OJT - Fleet	Fleet - DOT Proficiency records - 4-12-09
Bloodborne Pathogens	<a href="#">5193(g)(2)</a>	Initial / Annual	Potentially Exposed Employees	HS 101.22 Bloodborne Pathogens Exposure Control	Safety & Security / 1-22-09
Carcinogens As Listed	<a href="#">5209(e)(5)</a>	Initial	Exposed Employees	New Employee Orientation	Orientation - Safety completed 10-10-08
Chemical Hygiene for Laboratories	<a href="#">5191(f)(2)</a>	Initial New Hazards Refresher	Laboratory Employees	HS 101.10 Laboratory Safety Procedures	Safety & Security and Reclamation Plant Supervisor / 12-18-08
Compaction Equipment	<a href="#">4355(a)(2)</a>	Before Use	Users	OJT - Construction Maintenance	Construction - Fleet - 4-12-09
Confined Spaces	<a href="#">5157(g)</a> <a href="#">5158(c)(2)</a>	Initial Program Update Changes	Affected Employees Exposed Employees	HS 101.15 Confined Space	Safety & Security / 08-19-08
Electrical Safety	Electrical Safety Orders 2320.1- 2320.9	Initial	Qualified Person	HS 101.32 High Voltage and HS 101.33 Low Voltage	Pump and Electric / 12-31-08
Elevating Work Platforms & Aerial Devices	<a href="#">3648(l)(7)</a> <a href="#">3648(c)</a> <a href="#">3646(c)</a> <a href="#">3638(d)</a>	Before Use	Users Authorized Personnel	OJT - Warehouse Operations	Warehouse Operations / Document initial training 1-31-09
Emergency Action Plan	<a href="#">3220(e)</a>	Initial Plan Update	Impacted Employees	HS 101.06 Emergency Action Plan	Safety & Security / 09-10-08
Emergency Procedures (Construction)	<a href="#">1512(d)</a>	Initial	Assigned Employees	HS 101.06 Emergency Action Plan, Employee Emergency Manual	Safety & Security / 09-10-08
Equipment & Machinery (Construction)	<a href="#">1510(b)</a>	Initial	Qualified Person	OJT - Construction Maintenance	Construction/Fleet -DOT Proficiency 09-10-08
Ergonomics	<a href="#">5110(b)(3)</a>	Initial - When Standard is Triggered	Employees in affected job classifications, when standard is triggered	HS 101-04 Ergonomics	Safety & Security / 8-20-08
Excavation/ Trenching/ Shoring	<a href="#">1541</a>		Competent Person	HS 101.16 Trench Safety	Safety & Security / 12/17/08
Fall Protection / Personal Fall Arrest/Restraint Sys.	<a href="#">1671.1</a> <a href="#">1670(b)(19)</a>	Initial	Affected Employees Competent Person Qualified Person	HS-101.27 Fall Prevention, HS 101.29 Hoist and Davit Safety	Safety & Security / Completed Harness Inspection Logs - 2 employees trained.12-18-08

Training Topic	CCR Title 8 Section	Frequency of Training	Typical Job Classification	Otay Water District Program	Program Manager / Date Reviewed
Fire Extinguisher & Fire Fighting Equip.	<a href="#">6151(g)(1)-(2)</a>	Initial Annual	Assigned Employees	HS 101.06 Fire Prevention Plan	Safety & Security / 8-29-08
Fire Extinguisher & Fire Fighting Equipment	<a href="#">6151(g)(1)-(2)</a>	Initial Annual	Assigned Employees	HS 101.06 Fire Prevention Plan	Safety & Security / 8-29-08
Fire Prevention Plan	<a href="#">3221(d)(1)-(2)</a>	Initial New Hazards	Exposed Employees	HS 101.06 Fire Prevention Plan	Safety & Security / 8-29-08
Fire Protection – Fixed Extinguishing Systems	<a href="#">6175(b)(10)</a> <a href="#">6181(b)(2)</a>	Initial Annual	Employees Assigned Maintenance/Operation Exposed Employees	HS 101.06 Fire Prevention Plan	Safety & Security / 8-29-08
Fire Protection – Standpipe & Hose System Inspection	<a href="#">6165(f)(2)(F)</a>	Initial	Assigned Employees	HS 101.06 Fire Prevention Plan	Safety & Security / 8-29-08
First Aid First Aid & CPR	<a href="#">3439(b)</a> <a href="#">6251(d)(2)</a> <a href="#">3400(b)</a> <a href="#">5157</a> , <a href="#">5158</a> , <a href="#">5193</a> <a href="#">3421</a> , <a href="#">6052</a>	Initial Changes Every 2 years (or as specified by cert. organization)	Assigned Employees Supervisors	Revised EAP. Reassigned Emergency Response Team. Addressed First Aid/CPR/AED	Safety & Security / 9-11-09
First Aid (Construction)	<a href="#">1512(b) &amp; (d)</a>	Initial Updated	Assigned Employees	Read comments above	Safety & Security / 9-11-09
Flaggers (Traffic)	<a href="#">1599(f) &amp; (g)</a>	Initial	Assigned Employees	HSM 101.30 Traffic Control	Safety & Security / 1-21-09
Hazard Communication	<a href="#">5194(b)(1)</a>	Initial New chemicals or processes	Exposed Employees	HS 101.07 Hazard Communications HS 101.08 MSDS, Labeling	Safety & Security / 09-09-08 / 09-15-08
Hazardous Waste Operations & Emergency Resp.	<a href="#">5192 (e) &amp; (g)(6)</a>	Initial Annual Refresher	Assigned Employees <b>Qualified Person</b>	Training ongoing	Safety & Security & HAZWOPER Team Leader / 12-22-08
Hearing (Noise) Protectors Conservation	<a href="#">5098(a)(4)</a> <a href="#">5097(d)(5)(A) &amp; (B)</a> <a href="#">5099(a)</a>	Initial Retraining Initial Annual	Employees Provided Protectors. All Employees Exposed to =>85 dBA TWA	HS 101.09 Hearing Conservation	Safety & Security / 9-19-08
Heat Stress	<a href="#">3395</a>	Initial	Exposed Employees	Heat Related Illness Prevention 101.31	Safety & Security / 12-16-08
Industrial/Lift Trucks (Forklifts) & Tractors	<a href="#">3657(i)</a> <a href="#">3664(b)</a> <a href="#">3668</a>	Initial, Annual, Observed Unsafe Operation, Post Accident Equipment Change Workplace Change (Operator eval @ 3 years)	Operators	HS 101 17 Powered Industrial Truck (Forklift) Safety Procedure	Safety & Security / 11/03/08
Injury & Illness Prevention Program	<a href="#">3203(a)(7)</a> <a href="#">1509(e)</a>	Initial Updated	All Employees Supervisor Tailgates	HS 101.01 IIPP HS 101.03 Safety Inspections	Safety & Security / 08-27-08
Job Hazard(s)	<a href="#">3203(a)(7)</a> <a href="#">1510(a)</a>	Before Job Assignment New Hazards	All Employees	HS 101.01 IIPP HS 101.03 Safety Inspections HS 101.19 Chlorine Safety Procedure HS.101.20 Aqua Ammonia Safety Procedure HS 101.21 Sodium Hypochlorite Safety HS 101.28 Dump	Safety & Security / 08-27-08  <b>Completed 4.12.09</b>  HS 101.21 reviewed 1-22-09 HS 101.28 reviewed 1-22-09

Training Topic	CCR Title 8 Section	Frequency of Training	Typical Job Classification	Truck Safety Otay Water District Program	Program Manager / Date Reviewed
Lockout/Blockout	<a href="#">3314</a> <a href="#">3314(i)</a>	Initial When Updated	Affected Employees Qualified Person	HS 101.11 Lockout / Tagout	Safety & Security / 01-21-09
Machinery & Equipment	<a href="#">1510(b)</a>	Before Use	Qualified Person	HS 101.13 Metalworking Equipment - Machine Safeguarding HS 101.14 Abrasive Wheels and Grinding Equipment Dump Truck Safety HS 101.28	Safety & Security / 01-22-09 / 01-22-09 / 01-22-09
Medical & Exposure Records - Access	<a href="#">3204(q)(1)</a>	Initial Annual	Affected Employees	Access to Medical and Exposure Records (poster) HS 101.07 Hazard Communications	Human Resources / Safety & Security 09-11-08
Noise Exposure	<a href="#">5099(a)</a>	Initial Annual	Employees Exposed => 85dBA TWA	HS 101.09 Hearing Conservation	Safety & Security / 9-19-08
Openings/Holes – Floors & Roofs	<a href="#">3212(b)</a>		Qualified Person	HS 101.09 Personal Protective Equipment, HS-101.27 Fall Prevention	Safety & Security / Reviewed in 10-13-08 and 12-18-08
Personal Protective Equipment	<a href="#">3380(c)</a>	Initial	PPE Users	HS 101.09 Personal Protective Equipment	Safety & Security / Reviewed in 10-13-08
Calif. Posting Requirements	<a href="#">340</a>	Initial	All Employees	Posted on Bulletin boards	Human Resources Completed annually
Process Safety Management / Risk Management Program	<a href="#">5189(g)</a> Cal/ARP regulations	Initial Refresher & Supplemental Certification	Involved Employees	RMP / PSM / CalARP Program	Safety & Security / Review in Progress due 6/09
Respiratory Protection	<a href="#">5144(c) &amp; (k)</a> <a href="#">5144 App A</a> <a href="#">5144 App C</a>	Initial Annual	Users	HS 101.09 Respiratory Protection	Safety & Security Reviewed 10-22-08
Supervisory Safety Training	<a href="#">3203(a)(7)(F)</a>	Initial Change	Supervisors	<b>Training Matrix</b>	Mangers and Supervisors track
Welding & Cutting Safety – Hot Work	<a href="#">4799</a> <a href="#">4848(a)</a> <a href="#">1537(a)</a>	Initial	Welders Fire Watchers Qualified Person	HS 101.12 Welding and Cutting Safety HS 101.12a Hot Work Permit System	Safety & Security / Reviewed 1-15-09 and 1-21-09
Wheels or Rims – Servicing	<a href="#">3326(c)</a>	Initial	Service Personnel	HS 101.23 Rim and Wheel Servicing	Safety & Security / 1-22-09

**Qualified Person** A qualified person is a person **designated** by the employer; and by reason of **training**, experience, or instruction has demonstrated the ability to perform safely all assigned duties; &, when required is properly licensed in accordance with federal, state, or local laws and regulations.

Examples: **Scaffold** Erection & Dismantling Supervisors 1637(k)(1) or **Personal Fall Arrest** System supervisors 1670(b)

#### **Competent Person**

A competent person is a person who is **capable** of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees. The competent person has the **authority** to impose prompt corrective measures to eliminate these hazards.

Examples: **Excavation** - Inspectors 1541 or **Fall Protection** Plan implementers & supervisors 1671.1 \

#### **Other Compliance Programs**

Risk Management Program / Process Safety Management: Reclamation Plant/Aqueous Ammonia sites (County DEH/Cal-OSHA/ EPA)

Hazardous Materials Business Plans: Primarily sites w/ over 55 gallons of diesel & hazardous materials (San Diego County DEH)

Pressure Vessel Permits (Cal-OSHA)

Fire Inspections: Admin/Warehouse/Operations Buildings (San Miguel Fire Department)

DOT Inspections: Fleet Maintenance (California Highway Patrol)

### TRAINING MATRIX

Minimum Required Safety Training Topics (Can be taken Online or In Class)	Regulatory Requirement	TRAINING HOURS:			General Manager / Assist GM / Chiefs	Managers and Supervisors (Primary Office)	Managers - Operations	Supervisors - Operations	Field Engineering (Inspection, Survey)	Water System Operators	Recycle Water Systems	Pump and Electric / SCADA	Utilities Maintenance	Meter Maintenance	Meter Readers	Reclamation Plant	Fleet Maintenance	Facility Maintenance / Warehouse	All Office Personnel (Clerical, Engineering, Finance, Administrative Services, Operations, IT and Strategic Planning)
		<b>Bold = Regulated</b> Non bold = Industry practice	<b>Re-Training Frequency</b> <b>Bold = Regulated</b> Non bold = Industry practice	<b>Refresher Training Hours:</b> <b>Bold = Regulated</b> Non bold = Industry practice															
Incident Investigation (General)	8 CCR – 3203 (a)(5)(F)	2	4	1		X		X											
Asbestos - Cement Pipe	8 CCR 1529 (341.17)	4	1	2				X					X			X			
Commercial Utility (Driver Responsibilities) Class A/B Drivers	DOT 49 CFR part 385 & 40	2	3	1			Employees - As Assigned						X	X			X		
Commercial Utility Drivers - Reasonable Suspicion Drug & Alcohol	DOT 49 CFR part 385 & 40	2	3	2			Employees - As Assigned						X						
Chemical Hygiene for Laboratories	8 CCR 4355(e)(2)	4	2	1			Laboratory Techs - As Assigned										X		
Chlorine Safety / Aqueous Ammonia / Sodium Hydrochloride (Water Chemical Treatment Safety)	CCR 19 CalARP	4	2	1			Disinfection - As Assigned										X		
Confined Space Entry	8 CCR 5157(g)	8	2	2				X	X	X	X	X	X	X		X	X		
Confined Space Drill	8 CCR 5157(k)	8	3	8			HAZMAT TEAM - As Assigned												
Construction Safety, Power tools, Personal Protective Equipment, Lead Awareness	8 CCR 1510, 1531.1 CCR 3380-3385	8	4	4				X	X	X	X	X	X	X		X	X		
Control of Hazardous Energy (Lockout/Tagout)	8 CCR 2320.1 - 2320.5, 8CCR 3314(j), 3341(d)5	4	2	2				X	X	X	X	X	X	X		X	X	X	
CPR /1 <sup>st</sup> Aid /AED/Bloodborne Pathogens	8 CCR 3400(b), 8 CCR 8421; 8 CCR 5193(5)c	8	2	5				X	X	X	X	X	X	X		X	X		
Crane Certification, Mobile	8 CCR 5006, 5006.1	24/40	5	16				Users								X	X		
Crane (Stationary) Inspection & Handling Loads	8 CCR 4994, 5000, 5031	4	3	3				Users								X	X		
Crane - Below the Hook Rigging	8 CCR 5004, 5031, 5043, 5044	4	3	4				Users								X	X		
Electrical Safety/ High-Low voltage	8 CCR 2320.1; 2320.2, 2714, 8 CCR 2940, NFPA 70E	8/16	2	4/8				Techs / SCADA					X						
Elevated Work Platforms (Scissor Lifts)	8 CCR 3638, 3646, 3648	4	3	2				Users						X		X	X	X	
Emergency Action Plan (Can Cover during Fire Prevention training)	8 CCR 3220(e)	2	2	1		X		X	X	X	X	X	X	X		X	X	X	X
Emergency Action - HazMat Business Plan	County Hazard Materials Division	1	2	1					X	X	X	X	X	X		X	X	X	
Ergonomics Office and Field/Back Safety	8 CCR 5110(b)(3)	2	3	1				X	X	X	X	X	X	X		X	X	X	
Excavation/Trench/Shore/Soil Anlys/Rescue	8 CCR 1540,1541	8	3	2				X	X				X	X	X	X	X	X	
Fall Protection / Personal Fall Arrest/Restraint Sys	8 CCR 1671.1; 1670(b)(19)	4	3	1				Users		X	X	X	X	X		X	X	X	
Fire Prevention: Plan, Drill, and (Extinguisher - as assigned)	8 CCR 3221(d); 8 CCR 6151(g)(1)	2	1	1		X	X	X	X	X			X	X		X	X	X	X

**TRAINING MATRIX**

Minimum Required Safety Training Topics (Can be taken Online or In Class)	Regulatory Requirement	TRAINING HOURS: Bold = Regulated Non bold = Industry practice			General Manager / Assist GM / Chiefs	Managers and Supervisors (Primary Office)	Managers - Operations	Supervisors - Operations	Field Engineering (Inspection, Survey)	Water System Operators	Recycle Water Systems	Pump and Electric / SCADA	Utilities Maintenance	Meter Maintenance	Meter Readers	Reclamation Plant	Fleet Maintenance	Facility Maintenance / Warehouse	All Office Personnel (Clerical, Engineering, Finance, Administrative Services, Operations, IT and Strategic Planning)
		Re-Training Frequency Bold = Regulated Non bold = Industry practice	Refresher Training Hours: Bold = Regulated Non bold = Industry practice																
Forklift Operations	8 CCR 3668	4/8	3	2/4			Users		X		X	X	X		X	X	X		
<b>General Safety:</b> Poison Oak, Venomous Creatures, Job Hazard Identification	8 CCR 3395, 3203; 8CCR 1510	4	3	4		X	X	X	X			X	X	X	X	X	X		
Hazard Communication	8 CCR 5194(h)(1)	4	3	4			X	X	X			X	X		X	X	X		
HAZWOPER, Response Team - Team members designated by supervisors	8 CCR 5192(e) & (q)(6)	40	1	8															
Hearing Conservation / Noise Exposure	8 CCR 5098(a)(4), 5099	2	1	1			X	X				X	X		X	X			
Hearing (Audiometric Testing)	8 CCR 5099	2	1	1			X	X				X	X		X	X			
Heat Stress	8 CCR 3395	2	1	1			X	X	X	X	X	X	X	X	X	X	X	Water Conservation	
Heavy Equipment Operation	8 CCR 3664	8	1	4			Users					X				X			
<b>Industrial Safety:</b> Machine Guarding, Ladder Safety, Battery Handling & Storage	8 CCR 1670, 1671.1 8CCR 5185	5	3	5			X	X	X	X	X	X	X		X	X	X		
Line Locator	8 CCR 1541(b)(1), (C),(D)	4	3					Locators											
New Hire Orientation - Injury Illness Prevention Program (General Office Safety)	8 CCR 3203	3	0	0		X	X	X	X	X	X	X	X	X	X	X	X	X	
Personal Protective Equipment (Eye Safety, Laser Safety)	8 CCR 3380(c)	4	1	1				X	X	X	X	X	X		X	X	X		
Respiratory Protection Medicals & Fit Testing	8 CCR 5144(k), (e)	5	1	5			Users		X	X	X	X	X		X	X	X		
Scaffolding	1637(k)(1).	5	2	5							X	X	X		X				
Substance Free Workplace - Reasonable Suspicion	DOT 49 CFR part 385	2	4	2		X	X	X											
Traffic Control / Flagger Safety	8 CCR 1599	8	3	4				X	X	X	X	X	X	X	X	X			
Welding and Cutting (Fire watch and hot work)	8 CCR 4799, 4848 8CCR 1740(k)(1)	4	1	1			Users		X	X	X	X	X		X	X	X		
Commercial Utility Driver	DOT 49 CFR part 385 & 40	4	4	4			X								X	X			
Dog Bite Safety / Snakes and Insect Safety	Best Business Practice	4	4	4			X	X	X	X	X	X	X	X	X	X	X	Water Conservation	
Driving Safety (Cuyamaca or Online) Required if driving District Vehicle	Best Business Practice	4	4	2		X	X	X	X	X	X	X	X	X	X	X	X	X	
<b>Office Safety:</b> Slips, Trips& Falls; Hazard Communication; Electrical Safety, General Office Safety, Ergonomics	8CCR 3207,6249, 6363, 6364; 8 CCR 5194(b)(1); 8 CCR 1910.323	0	0		X	X	X	X	X	X	X	X	X	X	X	X	X	X	

NOTE: Hazardous Waste Operations and Emergency Response (HAZWOPER) Team have additional training requirements (40 Hour Initial and 8 Hour Refreshers). Rims and Wheels (Currently outsourced)