

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**  
**October 19, 2009**  
**4:00 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. 4150 APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH (CUDLIP/BEACHEM) [10 minutes]
4. ACCEPT THE DISTRICT'S AUDITED FINANCIAL STATEMENTS, INCLUDING THE INDEPENDENT AUDITORS' UNQUALIFIED OPINION, FOR FISCAL YEAR ENDED JUNE 30, 2009 (CUDLIP) [5 minutes]
5. REJECT GARY AND MARY TIMM CLAIM (SARNO) [5 minutes]
6. APPROVE AN AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY (NEW CINGULAR) FOR THE INSTALLATION OF A COMMUNICATIONS FACILITY AT THE 832-1&2 RESERVOIR SITE (CHARLES) [5 minutes]

7. APPROVE AN AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR THE INSTALLATION OF A COMMUNICATIONS FACILITY AT THE 1200-1 RESERVOIR SITE (CHARLES) [5 minutes]
8. UPDATE REPORT REGARDING RATE ADJUSTMENT FOR MEXICO AGREEMENT TO TRANSFER WATER (CUDLIP) [5 minutes]
9. UPDATE REPORT REGARDING THE ONGOING MONITORING OF THE WATER RATE FORECAST (BEACHEM) [10 minutes]
10. UPDATE REPORT ON CONTRACTING NON-CORE DISTRICT SERVICES (WILLIAMSON) [5 minutes]
11. UPDATE REPORT ON FISCAL YEAR 2009 STRATEGIC PLAN AND PERFORMANCE MEASURES REPORT AND REPORT ON AWWA SELF-ASSESSMENT SURVEY (STEVENS) [10 minutes]
12. 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 October 16, 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 October 16, 2009.

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



The legislature is currently reviewing a clean-up bill (Senate Bill 67, "SB-67"), which would provide for a few critical changes to the enacted legislation, including but not limited to providing for: financing to occur in November; county auditor certification of amount of Prop 1A receivable; tax exempt structure; California Communities as the only issuer; more flexibility on bond structure (interest payments, state payment date and redemption features); sales among local agencies; and revision to the hardship mechanism. If for any reason SB-67 is not enacted and the bonds cannot be sold by December 31, 2009, all approved documents placed in escrow with Transaction counsel will be of no force and effect and will be destroyed.

Proposition 1A Securitization Program: Authorized under ABX4-15 and ABX4-15, the Proposition 1A Securitization Program was instituted to enable local agencies to sell their respective Proposition 1A taxes receivable to the California Statewide Communities Development Authority (CSCDA) ("California Communities"). Under the Securitization Program, California Communities will simultaneously purchase the Proposition 1A receivables, issue bonds ("Prop 1A Bonds"), and provide each local agency with the cash proceeds in two equal installments, on January 15, 2010 and May 3, 2010 (to coincide with the dates that the State will be withholding property tax from local agencies). The purchase price paid to the local agencies will equal 100% of the amount of the property tax reduction. All transaction costs of issuance and interest will be paid by the State of California. Participating local agencies will have no obligation on the bonds and no credit exposure to the State.

If the District sells its Proposition 1A Receivable under the Proposition 1A Securitization Program, California Communities will pledge the District's Proposition 1A Receivable to secure the repayment of a corresponding amount of the Prop 1A Bonds. The District's sale of its Proposition 1A Receivable will be irrevocable. Bondholders will have no recourse to the District if the State does not make the Proposition 1A Repayment.

Proposition 1A Program Sponsor: California Communities is a joint powers authority sponsored by the California State Association of Counties and the League of California Cities. The member agencies of California Communities include approximately 230 cities and 54 counties throughout California. The District does not need to be a member of California Communities to participate in this program.

**ANALYSIS:**

The benefits to the District of participation in the Proposition 1A Securitization Program include:

- Immediate cash reimbursement - the sale of the District's taxes receivable will provide the District with 100% of it's property tax receivables on the dates that coincide with the dates that the State will be withholding the property taxes, on January 15, 2010 and May 3, 2010. These funds may be used for any lawful purpose of the District and are not restricted by the program.
- All costs of financing borne by the State of California - the District will not have to pay any interest cost or costs of issuance in connection with participation in this program.
- No obligation on the Bonds - the District has no obligation with respect to the payment of the bonds, nor any reporting, disclosure or other compliance obligations associated with the bonds.
- Opposition to Proposition 1A Suspension - participation in this bond program is one of the ways the District can show its disagreement with the State's action to withhold property tax revenues from local agencies.

The benefits to the District of not participating in the Program include:

- By not participating, the District funds withheld by the State would function like an investment. The interest rate the State has pledged to pay on the receivables, 2.0% for the projected 3-year duration of the program, is a favorable rate. At current investment rates, the District may not receive as high a return on investment as is being pledged by the State.
- The repayment is a priority payment behind General Fund obligations to schools and general obligation bonds.
- The State Constitution requires that the state provide repayment within a three-year period. It may make the repayment sooner, if funds are available.

- The estimated amount of taxes to be withheld by the State under the Proposition 1A suspension is \$275,000. Current budget projections are that this is not material enough to cause any reduction in services or to negatively affect the currently authorized customer rates.

**FISCAL IMPACT:**



The estimated amount of taxes to be withheld by the State under the Proposition 1A suspension is \$275,000. As described above, this is not considered material enough to cause any adverse actions on either rates or operations.

**STRATEGIC OUTLOOK:**

The District ensures its continued financial health through long-term financial planning, formalized financial policies, enhanced budget controls, fair pricing, debt planning, and improved financial reporting.

**LEGAL IMPACT:**

\_\_\_\_\_

None.



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

Attachments:

- A) Committee Action Form
- B) Resolution No. 4150
- C) Purchase and Sale Agreement
- D) Prop 1A Receivables Seller Certificate



## ATTACHMENT A

**SUBJECT/PROJECT:**

Resolution No. 4150 Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the Seller's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith

**COMMITTEE ACTION:**

The Finance, Administration, and Communications Committee recommend that the Board accept Staff's recommendation to approve Resolution No. 4150 and participate in the Proposition 1A Securitization Program.

**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.

RESOLUTION NO. 4150**BOARD OF DIRECTORS  
OF THE  
OTAY WATER DISTRICT**

A RESOLUTION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, pursuant to Section 25.5 of Article XIII of the California Constitution and Chapter 14XXXX of the California Statutes of 2009 (Assembly Bill No. 15), as amended (the "Act"), certain local agencies within the State of California (the "State") are entitled to receive certain payments to be made by the State on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year (the "Reimbursement Payments"), which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code;

WHEREAS, the Otay Water District, a local agency within the meaning of Section 6585(f) of the California Government Code (the "Seller"), is entitled to and has determined to sell all right, title and interest of the Seller in and to its "Proposition 1A receivable", as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund public capital improvements or working capital;

WHEREAS, the Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require;

WHEREAS, the California Statewide Communities Development Authority, a joint exercise of powers authority organized and existing under the laws of the State (the "Purchaser"), has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable;

WHEREAS, the Purchaser desires to purchase the Proposition 1A Receivable and the Seller desires to sell the Proposition 1A Receivable pursuant to a purchase and sale agreement by and between the Seller and the Purchaser in the form presented to this Board of Directors (the "Sale Agreement") for the purposes set forth herein;

WHEREAS, in order to finance the purchase price of the Proposition 1A Receivable from the Seller and the purchase price of other Proposition 1A Receivables from other local agencies, the Purchaser will issue its bonds (the "Bonds") pursuant to Section 6590 of the California Government Code and an Indenture (the "Indenture"), by and between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), which Bonds will be payable solely

from the proceeds of the Seller's Proposition 1A Receivable and other Proposition 1A Receivables sold to the Purchaser by local agencies in connection with the issuance of the Bonds;

WHEREAS, the Seller acknowledges that (i) any transfer of its Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement shall be treated as an absolute sale and transfer of the property so transferred and not as a pledge or grant of a security interest by Otay Water District to secure a borrowing, (ii) any such sale of its Proposition 1A Receivable to the Purchaser shall automatically be perfected without the need for physical delivery, recordation, filing or further act, (iii) the provisions of Division 9 (commencing with Section 9101) of the California Commercial Code and Sections 954.5 to 955.1 of the California Civil Code, inclusive, shall not apply to the sale of its Proposition 1A Receivable, and (iv) after such transfer, the Seller shall have no right, title, or interest in or to the Proposition 1A Receivable sold to the Purchaser and the Proposition 1A Receivable will thereafter be owned, received, held and disbursed only by the Purchaser or a trustee or agent appointed by the Purchaser;

WHEREAS, the Seller acknowledges that the Purchaser will grant a security interest in the Proposition 1A Receivable to the Trustee and any credit enhancer to secure payment of the Bonds;

WHEREAS, a portion of the proceeds of the Bonds will be used by the Purchaser to, among other things, pay the purchase price of the Proposition 1A Receivable;

WHEREAS, the Seller will use the proceeds received from the sale of the Proposition 1A Receivable for any lawful purpose as permitted under the applicable laws of the State;

NOW THEREFORE, the Board of Directors of the Otay Water District hereby resolves as follows:

Section 1. All of the recitals set forth above are true and correct, and this Board of Directors hereby so finds and determines.

Section 2. The Seller hereby authorizes the sale of the Proposition 1A Receivable to the Purchaser for a price equal to the amount certified as the Initial Amount (as defined in the Sale Agreement) by the County auditor pursuant to the Act. The form of Sale Agreement presented to the Board of Directors is hereby approved. An Authorized Officer (as set forth in Appendix A of this Resolution, attached hereto and by this reference incorporated herein) is hereby authorized and directed to execute and deliver the Sale Agreement on behalf of the Seller, which shall be in the form presented at this meeting.

Section 3. Any Authorized Officer is hereby authorized and directed to send, or to cause to be sent, an irrevocable written instruction to the State Controller (the "Irrevocable Written Instruction") notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement pursuant to Section 6588.6(c) of California Government Code of the Proposition 1A Receivable to the Trustee, on behalf of the Purchaser, which Irrevocable Written Instruction shall be in the form presented at this meeting.

Section 4. The Authorized Officers and such other Seller officers, as appropriate, are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents, including but not limited to, if required, appropriate escrow instructions relating to the delivery into escrow of executed documents prior to the closing of the Bonds, and such other documents mentioned in the Sale Agreement or the Indenture, which any of them may deem necessary or desirable in order to implement the Sale Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 5. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the sale of the Proposition 1A Receivable or the issuance of the Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents, may be given or taken by an Authorized Officer without further authorization by this Board of Directors, and each Authorized Officer is hereby authorized and directed to give any such consent, approval, notice, order or request, to execute any necessary or appropriate documents or amendments, and to take any such action that such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 6. The Board of Directors acknowledges that, upon execution and delivery of the Sale Agreement, the Seller is contractually obligated to sell the Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement and the Seller shall not have any option to revoke its approval of the Sale Agreement or to determine not to perform its obligations thereunder.

Section 7. This Resolution shall take effect from and after its adoption and approval.

PASSED AND ADOPTED by the Board of Directors of the Otay Water District, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

Approved as to form :

SELLER'S COUNSEL

By \_\_\_\_\_

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

**APPENDIX A**

OTAY WATER DISTRICT

**Authorized Officers:** Mark Watton, General Manager

Joseph Beachem, Chief Financial Officer

any designee of any of them, as appointed in a written certificate of such Authorized Officer delivered to the Trustee.

---

OTAY WATER DISTRICT, CALIFORNIA,  
as Seller

and

CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY,  
as Purchaser

---

PURCHASE AND SALE AGREEMENT

Dated as of November 1, 2009

---

## TABLE OF CONTENTS

	Page
1. DEFINITIONS AND INTERPRETATION.....	2
2. AGREEMENT TO SELL AND PURCHASE; CONDITIONS PRECEDENT.....	2
3. PURCHASE PRICE, CONVEYANCE OF PROPOSITION 1A RECEIVABLE AND PAYMENT OF PURCHASE PRICE.....	3
4. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.....	4
5. REPRESENTATIONS AND WARRANTIES OF THE SELLER.....	5
6. COVENANTS OF THE SELLER.....	7
7. THE PURCHASER'S ACKNOWLEDGMENT.....	9
8. NOTICES OF BREACH.....	9
9. LIABILITY OF SELLER; INDEMNIFICATION.....	9
10. LIMITATION ON LIABILITY.....	10
11. THE SELLER'S ACKNOWLEDGMENT.....	10
12. NOTICES.....	10
13. AMENDMENTS.....	10
14. SUCCESSORS AND ASSIGNS.....	10
15. THIRD PARTY RIGHTS.....	11
16. PARTIAL INVALIDITY.....	11
17. COUNTERPARTS.....	11
18. ENTIRE AGREEMENT.....	11
19. GOVERNING LAW.....	12
EXHIBIT A – DEFINITIONS.....	A-1
EXHIBIT B1 – OPINION OF SELLER'S COUNSEL.....	B1-1
EXHIBIT B2 – BRINGDOWN OPINION OF SELLER'S COUNSEL.....	B2-1
EXHIBIT C1 – CLERK'S CERTIFICATE.....	C1-1
EXHIBIT C2 – SELLER CERTIFICATE.....	C2-1
EXHIBIT C3 – BILL OF SALE AND BRINGDOWN CERTIFICATE.....	C3-1
EXHIBIT D – IRREVOCABLE INSTRUCTIONS TO CONTROLLER.....	D-1
EXHIBIT E – ESCROW INSTRUCTION LETTER.....	E-1

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, dated as of November 1, 2009 (this "Agreement"), is entered into by and between:

(1) OTAY WATER DISTRICT, a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code (the "Seller"); and

(2) CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Purchaser").

### RECITALS

A. Pursuant to Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, local agencies within the meaning of Section 6585(f) of the California Government Code are entitled to receive certain payments to be made by the State of California (the "State") on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year, which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code.

B. The Seller is the owner of the Proposition 1A Receivable (as defined below) and is entitled to and has determined to sell all right, title and interest in and to the Proposition 1A receivable, namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund any lawful purpose as permitted under the applicable laws of the State.

C. The Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require.

D. The Purchaser, a joint exercise of powers authority organized and existing under the laws of the State, has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable.

E. The Seller is willing to sell, and the Purchaser is willing to purchase, the Proposition 1A Receivable upon the terms specified in this Agreement.

F. Pursuant to its Proposition 1A Receivable Financing Program (the "Program"), the Purchaser will issue its bonds (the "Bonds") pursuant to an Indenture (the "Indenture"), between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and will use a portion of the proceeds thereof to purchase the Proposition 1A Receivable from the Seller.

G. The Purchaser will grant a security interest in such Proposition 1A Receivable to the Trustee and each Credit Enhancer to secure the Bonds.

## AGREEMENT

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

### 1. Definitions and Interpretation.

(a) For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in Exhibit A attached hereto and which is incorporated by reference herein.

(b) The words "hereof," "herein," "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; section and exhibits references contained in this Agreement are references to sections and exhibits in or to this Agreement unless otherwise specified; and the term "including" shall mean "including without limitation."

(c) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time may be amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments and exhibits thereto and instruments incorporated therein; and any references to a Person are also to its permitted successors and assigns.

### 2. Agreement to Sell and Purchase; Conditions Precedent.

(a) The Seller agrees to sell, and the Purchaser agrees to purchase, on the Closing Date, for an amount equal to the Purchase Price, all right, title and interest of the Seller in and to the "Proposition 1A receivable" as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code. The Purchase Price shall be paid by the Purchaser to the Seller in two equal cash installment payments, without interest (each, an "Installment Payment" and, collectively, the "Installment Payments"), on January 15, 2010, and May 3, 2010 (each a "Payment Date" and, collectively, the "Payment Dates"). The Purchaser shall pay the Purchase Price by wire transfer pursuant to wire instructions provided by the Seller to the Trustee by e-mail to john.delaray@wellsfargo.com or by facsimile to 213-614-3355, Attention: John Delaray. If wire instructions are not provided to the Trustee (or if such wire instructions are invalid) payment will be made by check mailed to the Seller's Principal Place of Business.

(b) The performance by the Purchaser of its obligations hereunder shall be conditioned upon:

- (i) Transaction Counsel receiving on or before the date the Bonds are sold (the "Pricing Date"), to be held in escrow until the Closing Date and then delivered to the Purchaser on the Closing Date, the following documents

duly executed by the Seller or its counsel, as applicable: (1) an opinion of counsel to the Seller dated the Pricing Date in substantially the form attached hereto as Exhibit B1, (2) certificates dated the Pricing Date in substantially the forms attached hereto as Exhibit C1 and Exhibit C2, (3) irrevocable instructions to the Controller dated as of the Closing Date in substantially the form attached hereto as Exhibit D, (4) this Agreement, (5) a certified copy of the resolution of the Seller's Board of Directors approving this Agreement, the transactions contemplated hereby and the documents attached hereto as exhibits, and (6) an escrow instruction letter in substantially the form attached hereto as Exhibit E;

- (ii) Transaction Counsel receiving on or before the Pricing Date, (1) a bringdown opinion of counsel to the Seller dated as of the Closing Date in substantially the form attached hereto as Exhibit B2, and (2) a bill of sale and bringdown certificate of the Seller (the "Bill of Sale") in substantially the form attached hereto as Exhibit C3; provided that the Purchaser may waive, in its sole discretion, the requirements of Section 2(b)(i)(1);
- (iii) the Purchaser issuing Bonds in an amount which will be sufficient to pay the Purchase Price; and
- (iv) the receipt by the Purchaser of a certification of the County Auditor confirming the Initial Amount of the Proposition 1A Receivable pursuant to the Act.

(c) The performance by the Seller of its obligations hereunder shall be conditioned solely upon the Purchaser's issuance of the Bonds its execution and delivery of this Agreement, pursuant to which it is legally obligated to pay the Installment Payments to the Seller on the Payment Dates as set forth in this Agreement, and no other act or omission on the part of the Purchaser or any other party shall excuse the Seller from performing its obligations hereunder. Seller specifically disclaims any right to rescind this Agreement, or to assert that title to the Proposition 1A Receivable has not passed to the Purchaser, should Purchaser fail to make Installment Payments in the requisite amounts on the Payment Dates.

3. Purchase Price, Conveyance of Proposition 1A Receivable and Payment of Purchase Price.

(a) Upon pricing of the Bonds by the Purchaser, the Purchaser will inform the Seller that it will pay the Purchase Price in Installment Payments on the Payment Dates.

(b) In consideration of the Purchaser's agreement to pay and deliver to the Seller the Installment Payments on the Payment Dates, the Seller agrees to (i) transfer, grant, bargain, sell, assign, convey, set over and deliver to the Purchaser, absolutely and not as collateral security, without recourse except as expressly provided herein, and the Purchaser agrees to purchase, accept and receive, the Proposition 1A Receivable, and (ii) assign to the Purchaser, to the extent permitted by law, all present or future rights, if any, of the Seller to enforce or cause the enforcement of payment of the Proposition 1A Receivable pursuant to the Act and other

applicable law. Such transfer, grant, bargain, sale, assignment, conveyance, set over and delivery is hereby expressly stated to be a sale and, pursuant to Section 6588.6(b) of the California Government Code, shall be treated as an absolute sale and transfer of the Proposition 1A Receivable, and not as a grant of a security interest by the Seller to secure a borrowing. This is the statement referred to in Sections 6588.6(b) and (c) of the California Government Code.

4. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Seller, as of the date hereof, as follows:

(a) The Purchaser is duly organized, validly existing and in good standing under the laws of the State of California.

(b) The Purchaser has full power and authority to enter into this Agreement and to perform its obligations hereunder and has duly authorized such purchase and assignment of the Proposition 1A Receivable by the Purchaser by all necessary action.

(c) Neither the execution and delivery by the Purchaser of this Agreement, nor the performance by the Purchaser of its obligations hereunder, shall conflict with or result in a breach or default under any of its organizational documents, any law, rule, regulation, judgment, order or decree to which it is subject or any agreement or instrument to which it is a party.

(d) To the best of the knowledge of the Purchaser, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Purchaser affecting the existence of the Purchaser or the titles of its commissioners or officers, or seeking to restrain or to enjoin the purchase of the Proposition 1A Receivable or to direct the application of the proceeds of the purchase thereof, or in any way contesting or affecting the validity or enforceability of any of the Transaction Documents or any other applicable agreements or any action of the Purchaser contemplated by any of said documents, or in any way contesting the powers of the Purchaser or its authority with respect to the Transaction Documents to which it is a party or any other applicable agreement, or any action on the part of the Purchaser contemplated by the Transaction Documents, or in any way seeking to enjoin or restrain the Purchaser from purchasing the Proposition 1A Receivable or which if determined adversely to the Purchaser would have an adverse effect upon the Purchaser's ability to purchase the Proposition 1A Receivable, nor to the knowledge of the Purchaser is there any basis therefor.

(e) This Agreement, and its execution, delivery and performance hereof have been duly authorized by it, and this Agreement has been duly executed and delivered by it and constitutes its valid and binding obligation enforceable against it in accordance with the terms hereof, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally or the application of equitable principles in any proceeding, whether at law or in equity.

(f) The Purchaser is a separate legal entity, acting solely through its authorized representatives, from the Seller, maintaining separate records, books of account, assets, bank accounts and funds, which are not and have not been commingled with those of the Seller.

(g) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would adversely affect, the purchase by the Purchaser of the Proposition 1A Receivable or the performance by the Purchaser of its obligations under the Transaction Documents to which it is a party and any other applicable agreements, have been obtained and are in full force and effect.

(h) Insofar as it would materially adversely affect the Purchaser's ability to enter into, carry out and perform its obligations under any or all of the Transaction Documents to which it is a party, or consummate the transactions contemplated by the same, the Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which it is a party or to which it or any of its property or assets is otherwise subject, and, to the best of the knowledge of the Purchaser, no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and the execution and delivery by the Purchaser of the Transaction Documents to which it is a party, and compliance by the Purchaser with the provisions thereof, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Purchaser a breach of or default under any agreement or other instrument to which the Purchaser is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Purchaser is subject.

5. Representations and Warranties of the Seller. The Seller hereby represents and warrants to the Purchaser, as of the date hereof, as follows:

(a) The Seller is a local agency within the meaning of Section 6585(f) of the California Government Code, with full power and authority to execute and deliver this Agreement and to carry out its terms.

(b) The Seller has full power, authority and legal right to sell and assign the Proposition 1A Receivable to the Purchaser and has duly authorized such sale and assignment to the Purchaser by all necessary action; and the execution, delivery and performance by the Seller of this Agreement has been duly authorized by the Seller by all necessary action.

(c) This Agreement has been, and as of the Closing Date the Bill of Sale will have been, duly executed and delivered by the Seller and, assuming the due authorization, execution and delivery of this Agreement by the Purchaser, each of this Agreement and the Bill of Sale constitutes a legal, valid and binding obligation of the Seller enforceable in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally or the application of equitable principles in any proceeding, whether at law or in equity.

(d) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would adversely affect, the sale by the Seller of the Proposition 1A Receivable or the performance by the Seller of its

obligations under the Resolution and the Transaction Documents to which it is a party and any other applicable agreements, have been obtained and are in full force and effect.

(e) Insofar as it would materially adversely affect the Seller's ability to enter into, carry out and perform its obligations under any or all of the Transaction Documents to which it is a party, or consummate the transactions contemplated by the same, the Seller is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which it is a party or to which it or any of its property or assets is otherwise subject, and, to the best of the knowledge of the Seller, no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and the adoption of the Resolution and the execution and delivery by the Seller of the Transaction Documents to which it is a party, and compliance by the Seller with the provisions thereof, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Seller a breach of or default under any agreement or other instrument to which the Seller is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Seller is subject.

(f) To the best of the knowledge of the Seller, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Seller affecting the existence of the Seller or the titles of its Board of Directors members or officers to their respective offices, or seeking to restrain or to enjoin the sale of the Proposition 1A Receivable or to direct the application of the proceeds of the sale thereof, or in any way contesting or affecting the validity or enforceability of any of the Transaction Documents or any other applicable agreements or any action of the Seller contemplated by any of said documents, or in any way contesting the powers of the Seller or its authority with respect to the Resolution or the Transaction Documents to which it is a party or any other applicable agreement, or any action on the part of the Seller contemplated by the Transaction Documents, or in any way seeking to enjoin or restrain the Seller from selling the Proposition 1A Receivable or which if determined adversely to the Seller would have an adverse effect upon the Seller's ability to sell the Proposition 1A Receivable, nor to the knowledge of the Seller is there any basis therefor.

(g) Prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller was the sole owner of the Proposition 1A Receivable, and has such right, title and interest to the Proposition 1A Receivable as provided in the Act. From and after the conveyance of the Proposition 1A Receivable by the Seller to Purchaser on the Closing Date, the Seller shall have no right, title or interest in or to the Proposition 1A Receivable. Except as provided in this Agreement, the Seller has not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the Proposition 1A Receivable, nor has the Seller created, or to the best knowledge of the Seller permitted the creation of, any lien, pledge, security interest or any other encumbrance (a "Lien") thereon. Prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller held title to the Proposition 1A Receivable free and clear of any Liens. As of the Closing Date, this Agreement, together with the Bill of Sale, constitutes a valid and absolute sale to the Buyer of all of the Seller's right, title and interest in and to the Proposition 1A Receivable.

(h) The Seller acts solely through its authorized officers or agents.

(i) The Seller maintains records and books of account separate from those of the Purchaser.

(j) The Seller maintains its respective assets separately from the assets of the Purchaser (including through the maintenance of separate bank accounts); the Seller's funds and assets, and records relating thereto, have not been and are not commingled with those of the Purchaser.

(k) The Seller's principal place of business and chief executive office is located at 2554 Sweetwater Springs Blvd, Spring Valley, CA 91978.

(l) The aggregate amount of the Installment Payments is reasonably equivalent value for the Proposition 1A Receivable. The Seller acknowledges that the amount payable to or on behalf of the Purchaser by the State with respect to the Proposition 1A Receivable will be in excess of the Purchase Price and the Initial Amount of the Proposition 1A Receivable and confirms that it has no claim to any such excess amount whatsoever.

(m) The Seller does not act as an agent of the Purchaser in any capacity, but instead presents itself to the public as an entity separate from the Purchaser.

(n) The Seller has not guaranteed and shall not guarantee the obligations of the Purchaser, nor shall it hold itself out or permit itself to be held out as having agreed to pay or as being liable for the debts of the Purchaser; and the Seller has not received nor shall the Seller accept any credit or financing from any Person who is relying upon the availability of the assets of the Purchaser in extending such credit or financing. The Seller has not purchased and shall not purchase any of the Bonds or any interest therein.

(o) All transactions between or among the Seller, on the one hand, and the Purchaser on the other hand (including, without limitation, transactions governed by contracts for services and facilities, such as payroll, purchasing, accounting, legal and personnel services and office space), whether existing on the date hereof or entered into after the date hereof, shall be on terms and conditions (including, without limitation, terms relating to amounts to be paid thereunder) which are believed by each such party thereto to be both fair and reasonable and comparable to those available on an arms-length basis from Persons who are not affiliates.

(p) The Seller has not, under the provisions of Section 100.06(b) of the California Revenue and Taxation Code, received a reduction for hardship or otherwise, nor has it requested, made arrangements for, or completed a reallocation or exchange with any other local agency, of the total amount of the ad valorem property tax revenue reduction allocated to the Seller pursuant to Section 100.06(a) of the California Revenue and Taxation Code.

#### 6. Covenants of the Seller.

(a) The Seller shall not take any action or omit to take any action which adversely affects the interests of the Purchaser in the Proposition 1A Receivable and in the proceeds thereof. The Seller shall not take any action or omit to take any action that shall adversely affect

the ability of the Purchaser, and any assignee of the Purchaser, to receive payments of the Proposition 1A Receivable.

(b) The Seller shall not take any action or omit to take any action that would impair the validity or effectiveness of the Act, nor, without the prior written consent of the Purchaser or its assignees, agree to any amendment, modification, termination, waiver or surrender of, the terms of the Act, or waive timely performance or observance under the Act. Nothing in this agreement shall impose a duty on the Seller to seek to enforce the Act or to seek enforcement thereof by others, or to prevent others from modifying, terminating, discharging or impairing the validity or effectiveness of the Act.

(c) Upon request of the Purchaser or its assignee, (i) the Seller shall execute and deliver such further instruments and do such further acts (including being named as a plaintiff in an appropriate proceeding) as may be reasonably necessary or proper to carry out more effectively the purposes and intent of this Agreement and the Act, and (ii) the Seller shall take all actions necessary to preserve, maintain and protect the title of the Purchaser to the Proposition 1A Receivable.

(d) On or before the Closing Date, the Seller shall send (or cause to be sent) an irrevocable instruction to the Controller pursuant to Section 6588.6(c) of California Government Code to cause the Controller to disburse all payments of the Proposition 1A Receivable to the Trustee, together with notice of the sale of the Proposition 1A Receivable to the Purchaser and the assignment of all or a portion of such assets by the Purchaser to the Trustee. Such notice and instructions shall be in the form of Exhibit D hereto. The Seller shall not take any action to revoke or which would have the effect of revoking, in whole or in part, such instructions to the Controller. Upon sending such irrevocable instruction, the Seller shall have relinquished and waived any control over the Proposition 1A Receivable, any authority to collect the Proposition 1A Receivable, and any power to revoke or amend the instructions to the Controller contemplated by this paragraph. Except as provided in Section 2(c) of this Agreement, the Seller shall not rescind, amend or modify the instruction described in the first sentence of this paragraph. The Seller shall cooperate with the Purchaser or its assignee in giving instructions to the Controller if the Purchaser or its assignee transfers the Proposition 1A Receivable. In the event that the Seller receives any proceeds of the Proposition 1A Receivable, the Seller shall hold the same in trust for the benefit of the Purchaser and the Trustee and each Credit Enhancer, as assignees of the Purchaser, and shall promptly remit the same to the Trustee.

(e) The Seller hereby covenants and agrees that it will not at any time institute against the Purchaser, or join in instituting against the Purchaser, any bankruptcy, reorganization, arrangement, insolvency, liquidation, or similar proceeding under any United States or state bankruptcy or similar law.

(f) The financial statements and books and records of the Seller prepared after the Closing Date shall reflect the separate existence of the Purchaser and the sale to the Purchaser of the Proposition 1A Receivable.

(g) The Seller shall treat the sale of the Proposition 1A Receivable as a sale for regulatory and accounting purposes.

(h) From and after the date of this Agreement, the Seller shall not sell, transfer, assign, set over or otherwise convey any right, title or interest of any kind whatsoever in all or any portion of the Proposition 1A Receivable, nor shall the Seller create, or to the knowledge of the Seller permit the creation of, any Lien thereon.

7. The Purchaser's Acknowledgment. The Purchaser acknowledges that the Proposition 1A Receivable is not a debt or liability of the Seller, and that the Proposition 1A Receivable is payable solely by the State from the funds of the State provided therefor. Consequently, neither the taxing power of the Seller, nor the full faith and credit thereof is pledged to the payment of the Proposition 1A Receivable. No representation is made by the Seller concerning the obligation or ability of the State to make any payment of the Proposition 1A Receivable pursuant to Section 100.06 of the Revenue and Taxation Code and Section 25.5 of Article XIII of the California Constitution, nor is any representation made with respect to the ability of the State to enact any change in the law applicable to the Transaction Documents (including without limitation Section 100.06 of the Revenue and Taxation Code or Section 6588.6 of the Government Code). The Purchaser acknowledges that the Seller has no obligation with respect to any offering document or disclosure related to the Bonds.

8. Notices of Breach.

(a) Upon discovery by the Seller or the Purchaser that the Seller or Purchaser has breached any of its covenants or that any of the representations or warranties of the Seller or the Purchaser are materially false or misleading, in a manner that materially and adversely affects the value of the Proposition 1A Receivable or the Purchase Price thereof, the discovering party shall give prompt written notice thereof to the other party and to the Trustee, as assignee of the Purchaser, who shall, pursuant to the Indenture, promptly thereafter notify each Credit Enhancer and the Rating Agencies.

(b) The Seller shall not be liable to the Purchaser, the Trustee, the holders of the Bonds, or any Credit Enhancer for any loss, cost or expense resulting from the failure of the Trustee, any Credit Enhancer or the Purchaser to promptly notify the Seller upon the discovery by an authorized officer of the Trustee, any Credit Enhancer or the Purchaser of a breach of any covenant or any materially false or misleading representation or warranty contained herein.

9. Liability of Seller; Indemnification. The Seller shall be liable in accordance herewith only to the extent of the obligations specifically undertaken by the Seller under this Agreement. The Seller shall indemnify, defend and hold harmless the Purchaser, the Trustee and each Credit Enhancer, as assignees of the Purchaser, and their respective officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities to the extent that such cost, expense, loss, claim, damage or liability arose out of, or was imposed upon any such Person by the Seller's breach of any of its covenants contained herein or any materially false or misleading representation or warranty of the Seller contained herein. Notwithstanding anything to the contrary herein, the Seller shall have no liability for the payment of the principal of or interest on the Bonds issued by the Purchaser.

10. Limitation on Liability.

(a) The Seller and any officer or employee or agent of the Seller may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Seller shall not be under any obligation to appear in, prosecute or defend any legal action regarding the Act that is unrelated to its specific obligations under this Agreement.

(b) No officer or employee of the Seller shall have any liability for the representations, warranties, covenants, agreements or other obligations of the Seller hereunder or in any of the certificates, notices or agreements delivered pursuant hereto, as to all of which recourse shall be had solely to the assets of the Seller.

11. The Seller's Acknowledgment. The Seller hereby agrees and acknowledges that the Purchaser intends to assign and grant a security interest in all or a portion of (a) its rights hereunder and (b) the Proposition 1A Receivable, to the Trustee and each Credit Enhancer pursuant to the Indenture. The Seller further agrees and acknowledges that the Trustee, the holders of the Bonds, and each Credit Enhancer have relied and shall continue to rely upon each of the foregoing representations, warranties and covenants, and further agrees that such Persons are entitled so to rely thereon. Each of the above representations, warranties and covenants shall survive any assignment and grant of a security interest in all or a portion of this Agreement or the Proposition 1A Receivable to the Trustee and each Credit Enhancer and shall continue in full force and effect, notwithstanding any subsequent termination of this Agreement and the other Transaction Documents. The above representations, warranties and covenants shall inure to the benefit of the Trustee and each Credit Enhancer.

12. Notices. All demands upon or, notices and communications to, the Seller, the Purchaser, the Trustee or the Rating Agencies under this Agreement shall be in writing, personally delivered or mailed by certified mail, return receipt requested, to such party at the appropriate notice address, and shall be deemed to have been duly given upon receipt.

13. Amendments. This Agreement may be amended by the Seller and the Purchaser, with (a) the consent of the Trustee, (b) the consent of each Credit Enhancer, and (c) a Rating Agency Confirmation, but without the consent of any of the holders of the Bonds, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement.

Promptly after the execution of any such amendment, the Purchaser shall furnish written notification of the substance of such amendment to the Trustee and to the Rating Agencies.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Seller, the Purchaser and their respective successors and permitted assigns. The Seller may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Purchaser. Except as specified herein, the Purchaser may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Seller.

15. Third Party Rights. The Trustee and each Credit Enhancer are express and intended third party beneficiaries under this Agreement. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the parties hereto, the Trustee, and each Credit Enhancer, and their permitted successors and assigns hereunder, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein.

16. Partial Invalidity. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

17. Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

18. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter hereof.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Seller and the Purchaser have caused this Agreement to be duly executed as of the date first written above.

OTAY WATER DISTRICT, as Seller

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

CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY, as Purchaser

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

## EXHIBIT A DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meanings set forth below.

“Act” means Chapter 14XXXX of the California Statutes of 2009 (Assembly Bill No. 15), as amended.

“Bill of Sale” has the meaning given to that term in Section 2(b)(ii) hereof.

“Closing Date” means the date on which the Bonds are issued. The Closing Date is expected to be November 19, 2009, but the Purchaser may change the Closing Date by providing e-mail notification to [jbeachem@otaywater.gov](mailto:jbeachem@otaywater.gov) not later than one day prior to the Closing Date.

“Controller” means the Controller of the State.

“County Auditor” means the auditor or auditor-controller of the county within which the Seller is located.

“Credit Enhancer” means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any Credit Support Instrument for some or all of the Bonds.

“Credit Support Instrument” means a policy of insurance, a letter of credit, a stand-by purchase agreement, a revolving credit agreement or other credit arrangement pursuant to which a Credit Enhancer provides credit or liquidity support with respect to the payment of interest, principal or purchase price of the Bonds.

“Initial Amount” means, with respect to the Proposition 1A Receivable, the amount of property tax revenue reallocated away from the Seller pursuant to the provisions of Section 100.06 of the Revenue and Taxation Code, as certified by the County Auditor pursuant to the Act.

“Installment Payments” have the meaning set forth in Section 2(a).

“Payment Dates” have the meaning set forth in Section 2(a).

“Pricing Date” means the date on which the Bonds are sold. The Pricing Date is expected to be November 10, 2009, but the Purchaser may change the Pricing Date by providing e-mail notification to [jbeachem@otaywater.gov](mailto:jbeachem@otaywater.gov) not later than one day prior to the Pricing Date.

“Principal Place of Business” means, with respect to the Seller, the location of the Seller’s principal place of business and chief executive office located at 2554 Sweetwater Springs Blvd, Spring Valley, CA 91978.

“Proposition 1A Receivable” has the meaning set forth in Section 2(a).

“Purchase Price” means an amount equal to the Initial Amount.

“Rating Agency” means any nationally recognized rating agency then providing or maintaining a rating on the Bonds at the request of the Purchaser.

“Rating Agency Confirmation” means written confirmation from each Rating Agency that any proposed action will not, in and of itself, cause the Rating Agency to lower, suspend or withdraw the rating then assigned by such Rating Agency to any Bonds.

“Resolution” means the resolution adopted by the Board of Directors approving the sale of the Proposition 1A Receivable.

“State” means the State of California.

“Transaction Counsel” means Orrick, Herrington & Sutcliffe LLP.

“Transaction Documents” mean this Agreement, the Bill of Sale, the Indenture, the Bonds and the Irrevocable Instructions For Disbursement of Proposition 1A Receivable of Otay Water District, dated as of the Closing Date.

**OPINION OF COUNSEL  
to  
OTAY WATER DISTRICT**

Dated: Pricing Date

California Statewide Communities Development Authority  
Sacramento, California

Wells Fargo Bank, National Association  
Los Angeles, California

Re: Sale of Proposition 1A Receivable

Ladies & Gentlemen:

[I have/This Office has] acted as counsel for the Otay Water District (the "Seller") in connection with the adoption of that certain resolution (the "Resolution") of the Board of Directors of the Seller (the "Governing Body") pursuant to which the Seller authorized the sale to the California Statewide Communities Development Authority (the "Purchaser") of the Seller's "Proposition 1A Receivable", as defined in and pursuant to the Purchase and Sale Agreement dated as of November 1, 2009 (the "Sale Agreement") between the Seller and the Purchaser. In connection with these transactions, the Seller has issued certain Irrevocable Instructions For Disbursement of the Seller's Proposition 1A Receivable to the Controller of the State of California (the "Disbursement Instructions") and a Bill of Sale and Bringdown Certificate of the Seller (the "Bill of Sale" and, collectively with the Sale Agreement and the Disbursement Instructions, the "Seller Documents").

Unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Sale Agreement. [I/We] have examined and are familiar with the Seller Documents and with those documents relating to the existence, organization, and operation of the Seller, the adoption of the Resolution, and the execution of the Seller Documents, and have satisfied ourselves as to such other matters as [I/we] deem necessary in order to render the following opinions. As to paragraphs numbered 3 and 4 below, [I/we] have relied as to factual matters on the representations and warranties of the Seller contained in the Sale Agreement.

Based upon the foregoing, and subject to the limitations and qualifications set forth herein, [I/we] are of the opinion that:

1. The Seller is a local agency, within the meaning of Section 6585(f) of the California Government Code. The Governing Body is the governing body of the Seller.

2. The Resolution was duly adopted at a meeting of the Governing Body, which was called and held pursuant to law and with all public notice required by law, and at which a quorum was present and acting throughout, and the Resolution is in full force and effect and has not been modified, amended or rescinded since the date of its adoption.

3. To the best of [my/our] knowledge, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Seller (i) affecting the existence of the Seller or the titles of its Governing Body members or officers to their respective offices; (ii) seeking to restrain or to enjoin the sale of the Proposition 1A Receivable or to direct the application of the proceeds of the sale thereof, or materially adversely affecting the sale of the Proposition 1A Receivable; (iii) in any way contesting or affecting the validity or enforceability of the Resolution, Seller Documents or any other applicable agreements or any action of the Seller contemplated by any of said documents; or (iv) in any way contesting the powers of the Seller or its authority with respect to the Resolution or the Seller Documents or any other applicable agreement, or any action on the part of the Seller contemplated by any of said documents.

4. To the best of [my/our] knowledge, prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller had not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the Seller's Proposition 1A Receivable, nor had the Seller created, or permitted the creation of, any Lien thereon.

5. The Seller has duly authorized and executed the Seller Documents and, assuming the due authorization execution and delivery of the Sale Agreement by the Purchaser, each Seller Document will be legal, valid and binding against the Seller and enforceable against the Seller in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or laws relating to or affecting creditors' rights, and the application of equitable principles and the exercise of judicial discretion in appropriate areas.

No opinion is expressed concerning the obligation or ability of the State of California to make any payment of the Proposition 1A Receivable pursuant to Section 100.06 of the Revenue and Taxation Code and Section 25.5 of Article XIII of the California Constitution, nor is any opinion expressed with respect to the ability of the State to enact any change in the law applicable to the Seller Documents (including, without limitation, Section 100.06 of the Revenue and Taxation Code or Section 6588.6 of the Government Code). Furthermore, [I/we] express no opinion as to the value of the Proposition 1A Receivable or as to any legal or equitable remedies that may be available to any person should the Proposition 1A Receivable have little or no value. No opinion is expressed with respect to the sale of Bonds by the Purchaser.

The legal opinion set forth herein is intended for the information solely of the addressees hereof and for the purposes contemplated by the Sale Agreement. The addressees may not rely on it in connection with any transactions other than those described herein, and it is not to be relied upon by any other person or entity, or for any other purpose, or quoted as a whole or in part, or otherwise referred to, in any document, or to be filed with any governmental or administrative agency other than the Purchaser or with any other person or entity for any purpose without [my/our] prior written consent. In addition to the addressees hereof, each Credit Enhancer and the underwriters of the Bonds may rely upon this legal opinion as if it were addressed to them. [I/We] do not undertake to advise you of matters that may come to [my/our] attention subsequent to the date hereof that may affect the opinions expressed herein.

Very truly yours,

By: \_\_\_\_\_  
Seller's Counsel

**OPINION OF COUNSEL  
to  
OTAY WATER DISTRICT**

Dated: Closing Date

California Statewide Communities Development Authority  
Sacramento, California

Wells Fargo Bank, National Association  
Los Angeles, California

Re: Sale of Proposition 1A Receivable (Bringdown Opinion)

Ladies & Gentlemen:

Pursuant to that certain Purchase and Sale Agreement dated as of November 1, 2009 (the "Sale Agreement") between the Otay Water District (the "Seller") and the California Statewide Communities Development Authority (the "Purchaser"), this Office delivered an opinion (the "Opinion") dated the Pricing Date as counsel for the Seller in connection with the sale of the Seller's Proposition 1A Receivable (as defined in the Sale Agreement), the execution of documents related thereto and certain other related matters.

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Sale Agreement.

I confirm that you may continue to rely upon the Opinion as if it were dated as of the date hereof. Each Credit Enhancer and the underwriters of the Bonds may rely upon this legal opinion as if it were addressed to them. This letter is delivered to you pursuant to Section 2(b)(ii)(1) of the Sale Agreement.

Very truly yours,

By: \_\_\_\_\_  
Seller's Counsel

**EXHIBIT C1  
CLERK'S CERTIFICATE**

**CERTIFICATE OF THE  
SECRETARY OF  
OTAY WATER DISTRICT, CALIFORNIA**

Dated: Pricing Date

The undersigned Secretary of the Otay Water District (the "Seller"), a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code, does hereby certify that the foregoing is a full, true and correct copy of Resolution No. \_\_\_\_\_ duly adopted at a regular meeting of the Board of Directors of said Seller duly and legally held at the regular meeting place thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, of which meeting all of the members of said Board of Directors had due notice and at which a quorum was present and acting throughout, and that at said meeting said resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I do hereby further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office and that said resolution is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes and that said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

I do hereby further certify that an agenda of said meeting was posted at least 72 hours before said meeting at a location in the [ City / Town / County ] of Spring Valley, California freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase and Sale Agreement, dated as of November 1, 2009, between the Seller and the California Statewide Communities Development Authority.

WITNESS by my hand as of the Pricing Date.

By: \_\_\_\_\_  
Secretary of the Otay Water District,  
California

**EXHIBIT C2  
SELLER CERTIFICATE**

**SELLER CERTIFICATE**

Dated: Pricing Date

We, the undersigned officers of the Otay Water District (the "Seller"), a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code, holding the respective offices herein below set opposite our signatures, do hereby certify that on the date hereof the following documents (the "Seller Transaction Documents") were officially executed and delivered by the Authorized Officer or Officers whose names appear on the executed copies thereof, to wit:

Document

1. Purchase and Sale Agreement, dated as of November 1, 2009 (the "Sale Agreement"), between the Seller and the California Statewide Communities Development Authority (the "Purchaser").
2. Irrevocable Instructions For Disbursement of Seller's Proposition 1A Receivable to the Controller of the State of California, dated the Closing Date.
3. Bill of Sale, dated the Closing Date.

Capitalized terms used herein and not defined herein shall have the meaning given such terms in the Sale Agreement.

We further certify as follows:

1. At the time of signing the Seller Transaction Documents and the other documents and opinions related thereto, we held said offices, respectively, and we now hold the same.
2. The representations and warranties of the Seller contained in the Seller Transaction Documents are true and correct as of the date hereof in all material respects.
3. The Board of Directors duly adopted its resolution (the "Resolution") approving the sale of the Seller's Proposition 1A Receivable at a meeting of the Board of Directors which was duly called and held pursuant to law with all public notice required by law and at which a quorum was present and acting when the Resolution was adopted, and such Resolution is in full force and effect and has not been amended, modified, supplemented or rescinded.

Name, Official Title \_\_\_\_\_

Signature

Mark Watton, General Manager

\_\_\_\_\_

Joseph Beachem, Chief Financial Officer

\_\_\_\_\_

I HEREBY CERTIFY that the signatures of the officers named above are genuine.

Dated: Pricing Date

By: \_\_\_\_\_  
Secretary of the Otay Water District,  
California

**EXHIBIT C3**  
**BILL OF SALE AND BRINGDOWN CERTIFICATE**

BILL OF SALE AND BRINGDOWN CERTIFICATE

Pursuant to terms and conditions of the Purchase and Sale Agreement (the "Sale Agreement"), dated as of November 1, 2009, between the undersigned (the "Seller") and the California Statewide Communities Development Authority (the "Purchaser"), and in consideration of the obligation of the Purchaser to pay and deliver to the Seller the Purchase Price (as defined in the Sale Agreement), in two equal installment payments to be made on January 15, 2010, and May 3, 2010 (collectively, the "Payment Dates"), the Seller does hereby (a) transfer, grant, bargain, sell, assign, convey, set over and deliver to the Purchaser, absolutely and not as collateral security, without recourse except as expressly provided in the Sale Agreement, the Proposition 1A Receivable as defined in the Sale Agreement (the "Proposition 1A Receivable"), and (b) assign to the Purchaser, to the extent permitted by law (as to which no representation is made), all present or future rights, if any, of the Seller to enforce or cause the enforcement of payment of the Proposition 1A Receivable pursuant to the Act and other applicable law. Such transfer, grant, bargain, sale, assignment, conveyance, set over and delivery is hereby expressly stated to be a sale and, pursuant to Section 6588.6(b) of the California Government Code, shall be treated as an absolute sale and transfer of the Proposition 1A Receivable, and not as a grant of a security interest by the Seller to secure a borrowing. Seller specifically disclaims any right to rescind the Agreement, or to assert that title to the Proposition 1A Receivable has not passed to the Purchaser, should Purchaser fail to make the installment payments in the requisite amounts on the Payment Dates.

The Seller hereby certifies that the representations and warranties of the Seller set forth in the Certificate of the Secretary dated the Pricing Date, the Seller Certificate dated the Pricing Date and in the Transaction Documents to which the Seller is a party are true and correct in all material respects as of the date hereof (except for such representations and warranties made as of a specified date, which are true and correct as of such date). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Sale Agreement.

Dated: Closing Date

OTAY WATER DISTRICT

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

**EXHIBIT D**  
**IRREVOCABLE INSTRUCTIONS TO CONTROLLER**

IRREVOCABLE INSTRUCTIONS FOR DISBURSEMENT  
OF PROPOSITION 1A RECEIVABLE OF  
OTAY WATER DISTRICT

Dated: Closing Date

Office of the Controller  
State of California  
P.O. Box 942850  
Sacramento, California 94250-5872

Re: Notice of Sale of Proposition 1A Receivable by the Otay Water District  
and Wiring Instructions Information Form

---

Dear Sir or Madam:

Pursuant to Section 6588.6(c) of the California Government Code, Otay Water District (the "Seller") hereby notifies you of the sale by Seller, effective as of the date of these instructions written above, of all right, title and interest of the Seller in and to the "Proposition 1A Receivable" as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code.

By resolution, the Seller's Board of Directors authorized the sale of the Proposition 1A Receivable to the California Statewide Communities Development Authority (the "Purchaser") pursuant to a Purchase and Sale Agreement, dated as of November 1, 2009 (the "Purchase and Sale Agreement") and a Bill of Sale, dated the Closing Date (as defined in the Purchase and Sale Agreement). The Proposition 1A Receivable has been pledged and assigned by the Purchaser pursuant to an Indenture, dated as of November 1, 2009 (the "Indenture") between the Purchaser and Wells Fargo Bank, National Association, as Trustee (the "Trustee").

The Seller hereby irrevocably requests and directs that, commencing as of the date of these instructions written above, all payments of the Proposition 1A Receivable (and documentation related thereto) be made directly to Wells Fargo Bank, National Association, as Trustee, in accordance with the wire instructions and bank routing information set forth below.

*Please note that the sale of the Proposition 1A Receivable by the Seller is irrevocable and that: (i) the Seller has no power to revoke or amend these instructions at any time; (ii) the Purchaser shall have the power to revoke or amend these instructions only if there are no notes of the Purchaser outstanding under the Indenture and the Indenture has been discharged; and (iii) so long as the Indenture has not been discharged, these instructions cannot be revoked or amended by the Purchaser without the consent of the Trustee. Should*

*the Purchaser, however, deliver a written notice to the Office of the Controller stating that: (a) the Seller failed to meet the requirements set forth in the Purchase and Sale Agreement; (b) the Purchaser has not waived such requirements; and (c) the Purchaser has not purchased the Proposition 1A Receivable as a result of the circumstances described in (a) and (b) above, then these instructions shall be automatically rescinded and the Seller shall again be entitled to receive all payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code.*

Bank Name: Wells Fargo Bank, N.A.  
Bank ABA Routing #: 121000248  
Bank Account #: 0001038377  
Bank Account Name: Corporate Trust Clearing  
Further Credit To: CSCDA Proposition 1A Bonds  
Bank Address: 707 Wilshire Blvd., 17th Floor  
MAC E2818-176  
Los Angeles, CA 90017  
Bank Telephone #: (213) 614-3353  
Bank Contact Person: Robert Schneider

Please do not hesitate to call the undersigned if you have any questions regarding this transaction. Thank you for your assistance in this matter.

Very truly yours,

OTAY WATER DISTRICT

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

**EXHIBIT E**  
**ESCROW INSTRUCTION LETTER**

ESCROW INSTRUCTION LETTER

\_\_\_\_\_, 2009

California Statewide Communities Development Authority  
1100 K Street  
Sacramento, CA 95814

Re: Proposition 1A Receivable Financing

Dear Sir or Madam:

The Otay Water District (the "Seller") hereby notifies you of its agreement to participate in the California Statewide Communities Development Authority Proposition 1A Receivable Financing. By adoption of a resolution (the "Resolution") authorizing the sale of its Proposition 1A Receivable, the Seller's Board of Directors has agreed to sell to the California Statewide Communities Development Authority (the "Purchaser"), for a purchase price that meets the conditions set forth in the Resolution, all of its right, title and interest in the Proposition 1A Receivable.

Enclosed herewith are the following documents which have been duly approved and executed by the Seller and which are to be held in escrow by Orrick, Herrington & Sutcliffe LLP, as transaction counsel ("Transaction Counsel"), as instructed below:

1. certified copy of the Resolution, together with a certificate of the Secretary, dated the Pricing Date;
2. the Seller Certificate, dated the Pricing Date;
3. the Opinion of Seller's Counsel, dated the Pricing Date;
4. the Opinion of Seller's Counsel (bringdown opinion), dated the Closing Date;
5. the Purchase and Sale Agreement, dated as of November 1, 2009;
6. the Bill of Sale and Bringdown Certificate, dated the Closing Date; and
7. the Irrevocable Instructions to Controller, dated the Closing Date.

The foregoing documents are to be held in escrow by Transaction Counsel and shall be delivered on the Closing Date (as defined in the Purchase and Sale Agreement), provided that such Closing Date occurs on or before December 31, 2009.

Should (i) the Closing Date not occur on or before December 31, 2009, or (ii) Transaction Counsel receive prior to the Closing Date written notification from Seller or Seller's Counsel stating, respectively and in good faith, that the representations made in the Seller's Certificate are not true and accurate, or the opinions set forth in the Opinion of Seller's Counsel are not valid, in each case as of the Closing Date and provided that the Purchaser may, in its sole discretion, choose to waive receipt of such representations or opinions, then this agreement shall terminate and Transaction Counsel shall destroy all of the enclosed documents.

Very truly yours,

**OTAY WATER DISTRICT**

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

Enclosures

cc: Orrick, Herrington & Sutcliffe LLP

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY  
REVENUE BONDS  
(STATE OF CALIFORNIA PROPOSITION 1A RECEIVABLES PROGRAM)  
SERIES 2009

CERTIFICATE OF THE SELLER RE:  
COMPONENTS OF PROPOSITION 1A RECEIVABLES

The undersigned, an Authorized Officer of the Otay Water District (the "Seller") hereby certifies as follows with respect to that certain Purchase and Sale Agreement, dated as of November 1, 2009 (the "Agreement"), by and between the Seller and the California Statewide Communities Development Authority (the "Purchaser") as follows (all capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement):

1. The components (the "Components") of the Proposition 1A Receivable listed in Schedule I, attached hereto and incorporated herein by reference, belong to the Seller;
2. The Components are listed as they appear on the certification of the County Auditor pursuant to Section 100.06 of the Revenue and Taxation Code;
3. By entering into the Agreement, the Seller is selling the Proposition 1A Receivable, including all Components thereof listed in Schedule I;
4. The Seller acknowledges that the Purchase Price of the Proposition 1A Receivable will be equal to aggregate the Initial Amounts of each Component as each such Component is separately certified by the County Auditor; and
5. The funds or other entities listed as Components in Schedule I (other than the Seller itself) are not independent legal entities with the power to enter into contracts.

Dated: Pricing Date

**OTAY WATER DISTRICT**

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

ACKNOWLEDGEMENT OF SELLER'S COUNSEL

The undersigned, counsel to the Seller hereby acknowledges and confirms that the statements in paragraphs 1 and 5 of this certificate are legally correct.

By: \_\_\_\_\_  
Seller's Counsel

SCHEDULE I

COMPONENTS OF PROPOSITION 1A RECEIVABLE

Names of Components
Otay Water District



**Total Liabilities & Net Assets:**

Total liabilities decreased by approximately \$5.6 million or 5.80% from the previous fiscal year. Underlying this change were the following:

- A decrease in accounts payable and related liabilities of approximately \$3.3 million. Fluctuations of this magnitude are expected given the nature of accounts payable, and result from the timing of large payments to vendors and other third parties.
- A reduction in long-term debt outstanding of \$2.5 million as a result of scheduled debt payments.

The increase in total assets, along with the decrease in total liabilities, yielded an increase in net assets (equity) of approximately \$3.5 million or 0.77%.

**Capital Contributions:**

Capital contributions totaled \$7.0 million during Fiscal Year 2009, a decrease of \$8.0 million or 53.22% over Fiscal Year 2008 contributions. This decrease is mainly due to the overall slowdown/reduction of development projects, and the resulting delays in completion and acceptance of projects because of the current broad financial downturn in the economy.

**Results of Operations:**

Operating revenues increased \$1.4 million or 2.49%, mainly as a result of an increase in water sales of \$1.7 million from the prior fiscal year, due to the reduced rainfall during the current year as well as an increase on overall water rates.

While cost of water sales increased \$2.0 million or 4.5% due to the increase in water rates, cost savings achieved in other areas were sufficient to keep total operating expenses essentially the same as in the prior fiscal year.

**Non-Operating Revenues & Expenses:**

Non-operating revenues and non-operating expenses each increased slightly, creating an off-set that kept the total for this area constant.

**Additional Audit Correspondence:**

As a part of completing the audit engagement, the audit firm also provides the following letters summarizing their observations and conclusions concerning the District's overall financial processes:

- Management Letter: No matters were noted involving the internal controls and their operations that were considered to be internal weaknesses. See Attachment C.
- Finance Committee Report: There were no noted transactions entered into by the District during the year that were both significant and unusual, or transactions for which there was a lack of authoritative guidance or consensus. There were no disagreements with management concerning financial accounting, reporting, or auditing matters, and there were no significant difficulties in dealing with management in performing the audit. See Attachment D.
- Report on Applying Agreed-Upon Procedures: A review of the District's investment portfolio at year end, and a sample of specific investment transactions completed throughout the fiscal year, disclosed no exceptions to compliance with the District's Investment Policy. See Attachment E.

**FISCAL IMPACT:**



None.

**STRATEGIC OUTLOOK:**

The District ensures its continued financial health through long-term financial planning, formalized financial policies, enhanced budget controls, fair pricing, debt planning, and improved financial reporting.

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

None.



**General Manager**

Attachments:

- A) Committee Action Form
- B) Audited Annual Financial Statements
- C) Management Letter
- D) Audit Committee Report
- E) Report on Applying Agreed-Upon Procedures



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Accept the District's Audited Financial Statements for the Fiscal Year Ended June 30, 2009
-------------------------	--

### COMMITTEE ACTION:

The Finance, Administration, and Communications Committee recommend that the Board accept the District's audited financial statements, including the Independent Auditor's unqualified opinion, for the Fiscal Year Ended June 30, 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.

**OTAY WATER DISTRICT**  
**FINANCIAL STATEMENTS**  
**WITH REPORT ON AUDIT BY INDEPENDENT**  
**CERTIFIED PUBLIC ACCOUNTANTS**  
**JUNE 30, 2009 AND 2008**



**DIEHL, EVANS & COMPANY, LLP**  
CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

A PARTNERSHIP INCLUDING ACCOUNTANCY CORPORATIONS

2965 ROOSEVELT STREET  
CARLSBAD, CALIFORNIA 92008-2389  
(760) 729-2343 • FAX (760) 729-2234  
www.diehlevents.com

\*PHILIP H. HOLTkamp, CPA  
\*THOMAS M. PERLOWSKI, CPA  
\*HARVEY J. SCHROEDER, CPA  
KENNETH R. AMES, CPA  
WILLIAM C. PENTZ, CPA  
MICHAEL R. LUDIN, CPA  
CRAIG W. SPRAKER, CPA  
NITIN P. PATEL, CPA  
ROBERT J. CALLANAN, CPA

October 10, 2009

\* A PROFESSIONAL CORPORATION

**INDEPENDENT AUDITORS' REPORT**

Board of Directors  
Otay Water District  
Spring Valley, California

We have audited the accompanying basic financial statements of Otay Water District as of and for the year ended June 30, 2009, as listed in the table of contents. These basic financial statements are the responsibility of the Otay Water District's management. Our responsibility is to express an opinion on these financial statements based on our audit. The basic financial statements of Otay Water District as of June 30, 2008, were audited by other auditors whose report dated October 24, 2008, expressed an unqualified opinion on those statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the State Controller's Minimum Audit Requirements for California Special Districts. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the basic financial statements as of and for the year ended June 30, 2009, referred to above present fairly, in all material respects, the financial position of the Otay Water District as of June 30, 2009, and the results of its operations and cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America as well as the accounting systems prescribed by the California State Controller's Office and state regulations governing special districts.

The Management's Discussion and Analysis and the other required supplementary information identified in the accompanying table of contents are not a required part of the basic financial statements but are supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

*Diehl, Evans and Company, LLP*

1

OTHER OFFICES AT:

613 W. VALLEY PARKWAY, SUITE 330  
ESCONDIDO, CALIFORNIA 92025-2598  
(760) 741-3141 • FAX (760) 741-9890

5 CORPORATE PARK, SUITE 100  
IRVINE, CALIFORNIA 92606-5165  
(949)-399-0600 • FAX (949) 399-0610



# TABLE OF CONTENTS

JUNE 30, 2009 and 2008

	<u>Page Number</u>
Independent Auditors' Report	1
Management's Discussion and Analysis	2 - 6
Basic Financial Statements:	
Statements of Net Assets	7 - 8
Statements of Revenues, Expenses, and Changes in Net Assets	9
Statements of Cash Flows	10 - 11
Notes to Financial Statements	12 - 28
Required Supplementary Information:	
Schedule of Funding Progress for PERS	29
Schedule of Funding Progress for DPHP	29



## MANAGEMENT'S DISCUSSION AND ANALYSIS

As management of the Otay Water District (the "District"), we offer readers of the District's financial statements this narrative overview and analysis of the District's financial performance during the fiscal year ending June 30, 2009. Please read it in conjunction with the District's financial statements that follow Management's Discussion and Analysis. All amounts, unless otherwise indicated, are expressed in millions of dollars.

### **Financial Highlights**

- The assets of the District exceeded its liabilities at the close of the most recent fiscal year by \$460.3 million (*net assets*). Of this amount, \$69.9 million (*unrestricted net assets*) may be used to meet the District's ongoing obligations to citizens and creditors.
- The District's total net assets increased by \$3.5 million. This is primarily attributable to capital contributions of \$7.0 million during the fiscal year.

### **Overview of the Financial Statements**

This discussion and analysis is intended to serve as an introduction to the District's basic financial statements, which are comprised of the following: 1) Statement of Net Assets, 2) Statement of Revenues, Expenses and Changes in Net Assets, 3) Statement of Cash Flows, and 4) Notes to the financial Statements. This report also contains other supplementary information in addition to the basic financial statements.

The *Statement of Net Assets* presents information on all of the District's assets and liabilities, with the difference between the two reported as *net assets*. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the District is improving or weakening.

The *Statement of Revenues, Expenses and Changes in Net Assets* presents information showing how the District's net assets changed during the most recent fiscal year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, *regardless of the timing of related cash flows*. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g., uncollected taxes and earned but unused vacation leave).

The *Statement of Cash Flows* presents information on cash receipts and payments for the fiscal year.

The *Notes to the Financial Statements* provide additional information that is essential to a full understanding of the data supplied in each of the specific financial statements listed above.

In addition to the basic financial statements and accompanying notes, this report also presents certain *required supplementary information* concerning the District's progress in funding its obligation to provide pension benefits to its employees.

### **Financial Analysis**

As noted earlier, net assets may serve over time as a useful indicator of an entity's financial position. In the case of the District, assets exceeded liabilities by \$460.3 million at the close of the most recent fiscal year.

By far the largest portion of the District's net assets, \$382.4 million (83%), reflects its investment in capital assets, less any related debt used to acquire those assets that is still outstanding. The District uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Although the District's investment in its capital assets is reported net of related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities.



## MANAGEMENT'S DISCUSSION AND ANALYSIS

### Statements of Net Assets (In Millions of Dollars)

	<u>2009</u>	<u>2008</u>	<u>2007</u>
<b>Assets</b>			
Current and Other Assets	\$ 96.8	\$ 106.2	\$ 122.1
Capital Assets	<u>454.1</u>	<u>446.7</u>	<u>424.3</u>
Total Assets	<u>550.9</u>	<u>552.9</u>	<u>546.4</u>
<b>Liabilities</b>			
Long-term Debt Outstanding	69.1	71.6	74.2
Other Liabilities	<u>21.5</u>	<u>24.5</u>	<u>25.2</u>
Total Liabilities	<u>90.6</u>	<u>96.1</u>	<u>99.4</u>
<b>Net Assets</b>			
Invested in Capital Assets			
Net of Related Debt	382.4	372.7	374.6
Restricted for OPEB	6.2	5.6	0.0
Restricted for Debt Service	1.8	3.8	2.1
Unrestricted	<u>69.9</u>	<u>74.7</u>	<u>70.3</u>
Total Net Assets	<u>\$ 460.3</u>	<u>\$ 456.8</u>	<u>\$ 447.0</u>

At the end of FY-2009 the District is able to report positive balances in all categories of net assets. This situation also held true for the prior two fiscal years. In FY-2009 total Net Assets increased approximately \$3.5 million, to \$460.3 million, as compared to FY-2008 when Net Assets increased by over \$9.8 million. While the District's operations and population continue to grow, albeit at slower rates than in prior years, the pattern of reduced growth of the District's Net Assets is indicative of the reduction in new development projects within the District. This reduction is a result of the ongoing national housing slump and financial crisis.

The decrease in Current and Other Assets of \$15.9 million in FY-2008 corresponds with the increase in Capital Assets of \$22.4 million (net of accumulated depreciation), due to the District's substantial Capital Improvement Plan (CIP), which was financed in part by the issuance of \$42 million in Certificates of Participation (COPS-2007). (See Note 5 in the Notes to Financial Statements). In FY-2009 use of the COPS-2007 funds to finance the CIP program continued, contributing to the increase in Capital Assets of \$7.4 million. The use of the COPS-2007 funds is also reflected in the decrease of Current and Other Assets of \$9.4 million. (See Note 3 in the Notes to Financial Statements).



## MANAGEMENT'S DISCUSSION AND ANALYSIS

### Statements of Revenues, Expenses, and Changes in Net Assets (In Millions of Dollars)

	2009	2008	2007
Water Sales	\$ 52.4	\$ 50.8	\$ 48.6
Wastewater Revenue	2.2	2.4	2.6
Connection and Other Fees	2.5	2.5	2.1
Non-operating Revenues	<u>14.0</u>	<u>13.6</u>	<u>11.1</u>
Total Revenues	<u>71.1</u>	<u>69.3</u>	<u>64.4</u>
Depreciation Expense	12.5	13.0	10.8
Other Operating Expense	59.0	58.5	53.9
Non-operating Expense	<u>3.1</u>	<u>2.9</u>	<u>1.3</u>
Total Expenses	<u>74.6</u>	<u>74.4</u>	<u>66.0</u>
Loss Before Capital Contributions	(3.5)	(5.1)	(1.6)
Capital Contributions	<u>7.0</u>	<u>14.9</u>	<u>26.5</u>
Change in Net Assets	3.5	9.8	24.9
Beginning Net Assets	<u>456.8</u>	<u>447.0</u>	<u>422.1</u>
Ending Net Assets	<u>\$ 460.3</u>	<u>\$ 456.8</u>	<u>\$ 447.0</u>

Water Sales increased by \$2.2 million in FY-2008 and \$1.6 million in FY-2009, mainly due to reduced rainfall during both years as well as rate increases in both years. Growth also had a partial impact, with new water meter sales of 220 and 158 meters respectively. Despite a prolonged reduction in market rates of return, Non-operating Revenues increased by \$2.5 million in FY-2008 and an additional \$0.4 million in FY-2009, due to the increased level of investments from the COPS-2007, increased property tax revenues, and healthcare reimbursements from CalPERS for other post employment benefits (OPEB). (See Note 8 in the Notes to Financial Statements).

Depreciation Expense increased by \$2.2 million in FY-2008, due to a comprehensive review and write-off of long-term fixed assets that were obsolete and/or no longer serviceable. Other Operating Expense increased by approximately \$4.6 million in FY-2008 and another \$0.5 million in FY-2009 as a result of the cost of the additional water sold each year, as well as increases in outside services and higher pension costs. Non-operating Expense increased \$1.6 million in FY-2008 and an additional \$0.2 million in FY-2009 due to increased interest expense from the COPS-2007.

Capital Contributions were \$26.5 million in FY-2007 due to the completion of several developer construction projects. However, because of the nationwide housing mortgage crisis throughout the last 2 years, developers have either slowed-down or totally stopped work on as many projects as possible until economic conditions improve and the demand for growth returns, resulting in a decrease in Capital Contributions of \$11.6 million in FY-2008 and \$7.9 million in FY-2009.



# MANAGEMENT'S DISCUSSION AND ANALYSIS

## Capital Assets and Debt Administration

*Capital Assets.* The District's capital assets as of June 30, 2009, totaled \$454.1 million (net of accumulated depreciation). Included in this amount is land. The total increase in the District's capital assets was 5.3% for FY-2008 and 1.7% in FY-2009.

### Capital Assets (In Millions of Dollars)

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Land	\$ 13.4	\$ 13.0	\$ 13.0
Construction in Progress	18.3	42.3	40.3
Water System	403.1	365.6	356.6
Recycled Water System	96.8	93.0	73.5
Sewer System	37.2	36.7	37.7
Buildings	18.2	17.6	17.6
Field Equipment	9.5	9.5	9.3
Transportation Equipment	3.3	3.1	3.1
Communication Equipment	0.8	0.7	0.6
Office Equipment	<u>17.4</u>	<u>16.8</u>	<u>15.8</u>
	618.0	598.3	567.5
Less Accumulated Depreciation	<u>(163.9)</u>	<u>(151.6)</u>	<u>(143.2)</u>
Net Capital Assets	<u>\$ 454.1</u>	<u>\$ 446.7</u>	<u>\$ 424.3</u>

As indicated by figures in the table above, the majority of capital assets added during both fiscal years were related to the potable and recycled water systems. In addition, the majority of the cost of construction in progress is also related to these water systems.

Additional information on the District's capital assets can be found in Note 3 of the Notes to Financial Statements.

*Long-term Debt.* At June 30, 2009, the District had \$71.6 million in outstanding debt which consisted of the following:

General Obligation Bonds	\$ 7.7
Certificates of Participation	63.2
Notes Payable	<u>0.7</u>
Total Long-term Debt	<u>\$ 71.6</u>

Additional information on the District's long-term debt can be found in Note 5 of the Notes to Financial Statements.



## MANAGEMENT'S DISCUSSION AND ANALYSIS

### **Fiscal Year 2009-2010 Budget**

#### **Economic Factors**

Growth in the San Diego area has slowed over the last 2 years, and demand for housing is reflected in a similarly reduced pace. Water sales volumes are expected to decrease as a result of the slowing economy and expanded efforts to promote water conservation, however, rate increases are essential to offset the higher cost of water. Ultimately, the District is projected to serve approximately 277,000 people, with an average daily demand of 56 million gallons per day (MGD). The District currently provides water service to about 70% of its total projected population, serving approximately 195,000 people. Long-term, this percentage should continue to increase as the District's service area continues to develop and grow.

The District is projected to deliver approximately 33,300 acre-feet of water to 47,125 potable customer accounts during Fiscal Year 2009-2010. Management feels that these projections are very realistic after accounting for low growth, supply changes, and a focus on conservation. Current economic conditions throughout America have created an unprecedented uncertainty for business and economic projections in the current fiscal year. The nationwide housing mortgage crisis has resulted in hundreds of foreclosures throughout the District. Additionally, the crisis in the banking and financial industry has begun to have a ripple effect of employee layoffs across a wide swath of the business community. One of the subsequent results of these two broad events is the relocation of many homeowners and renters into new housing arrangements throughout San Diego County. However, as housing patterns change throughout the District, people's need for water remains an underlying constant.

#### **Financial**

The coming years will continue to be challenging times for those in California's water community. After years of record low precipitation that dramatically curtailed snow runoff from the Sierra Nevada Mountains, California's governor declared an official statewide drought. Following the governor's action, Southern California's largest water wholesaler announced a water supply alert across its six-county service area. It also urged all local jurisdictions to implement water conservation ordinances and to "significantly increase efforts" to conserve water. In addition to the drought, federal court orders have curtailed water deliveries from Northern California due to environmental factors in the Sacramento-San Joaquin Bay Delta. Worsening environmental conditions in the Bay Delta now challenge Southern California's ability to receive water from the State Water Project. A political stalemate in the state capital has also made finding compromise or addressing the environmental issues in the Bay Delta more difficult. These factors combined are driving higher costs for water across the state.

Through foresight and its investments in drought-proof recycled water, conservation, and a water rate structure that rewards conservation, the Otay Water District has thus far avoided having to require mandatory water conservation. Rather, the District has achieved its water conservation goals using voluntary measures. As you would expect, the planned water sales reductions have impacted price and will continue to affect the District's finances. Staff continues working diligently on developing new water supplies as it addresses the financial impacts of conservation, preparing for the possibility of a severe water shortage and prolonged sales reductions.

Management is unaware of any other conditions that could have a significant past, present, or future impact on the District's current financial position, net assets or operating results.

#### **Contacting the District's Financial Management**

This financial report is designed to provide a general overview of the Otay Water District's finances for the Board of Directors, taxpayers, creditors, and other interested parties. Questions concerning any of the information provided in the report or requests for additional information should be addressed to the District's Finance Department, 2554 Sweetwater Springs Blvd., Spring Valley, CA 91978-2004.



## STATEMENTS OF NET ASSETS

### JUNE 30, 2009 AND 2008

ASSETS	<u>2009</u>	<u>2008</u>
Current Assets:		
Cash and cash equivalents (Notes 1 and 2)	\$ 50,823,237	\$ 23,351,911
Restricted cash and cash equivalents (Notes 1 and 2)	1,760,631	3,753,983
Investments (Note 2)	26,169,080	60,682,507
Accounts receivable, net	8,029,609	7,689,720
Accrued interest receivable	319,186	715,900
Taxes and availability charges receivable, net	413,000	362,976
Restricted taxes and availability charges receivable, net	190,151	174,219
Inventories	816,865	711,240
Prepaid expenses and other current assets	976,045	1,908,028
	<u>89,497,804</u>	<u>99,350,484</u>
Total Current Assets		
Noncurrent Assets:		
Restricted Assets:		
Net OPEB asset (Note 8)	<u>6,204,876</u>	<u>5,649,008</u>
Total Restricted Assets	<u>6,204,876</u>	<u>5,649,008</u>
Deferred bond issuance costs (Note 4)	<u>1,142,762</u>	<u>1,240,166</u>
Capital Assets (Note 3):		
Land	13,402,840	13,025,364
Construction in progress	18,280,278	42,338,220
Capital assets, net of depreciation	<u>422,369,157</u>	<u>391,350,813</u>
Total capital assets, net of depreciaton	<u>454,052,275</u>	<u>446,714,397</u>
Total Noncurrent Assets	<u>461,399,913</u>	<u>453,603,571</u>
Total Assets	<u>550,897,717</u>	<u>552,954,055</u>

See accompanying independent auditors' report and notes to financial statements.

(Continued)



STATEMENTS OF NET ASSETS (CONTINUED)  
JUNE 30, 2009 AND 2008

	<u>2009</u>	<u>2008</u>
<b>LIABILITIES</b>		
Current Liabilities:		
Current maturities of long-term debt (Note 5)	2,521,772	2,445,214
Accounts payable	11,565,953	13,705,566
Accrued payroll liabilities	2,548,731	2,491,182
Other accrued liabilities	444,875	1,615,403
Customer deposits	2,806,990	2,719,331
Accrued interest	706,934	720,545
Liabilities Payable From Restricted Assets:		
Restricted Accrued interest	<u>153,270</u>	<u>166,096</u>
Total Current Liabilities	<u>20,748,525</u>	<u>23,863,337</u>
Noncurrent Liabilities:		
Long-term debt (Note 5):		
General obligation bonds	7,291,575	7,678,302
Certificates of participation	61,468,693	63,192,774
Notes payable	359,744	701,516
Other noncurrent liabilities	<u>684,309</u>	<u>690,709</u>
Total Noncurrent Liabilities	<u>69,804,321</u>	<u>72,263,301</u>
Total Liabilities	<u>90,552,846</u>	<u>96,126,638</u>
<b>NET ASSETS</b>		
Invested in capital assets, net of related debt	382,410,491	372,696,591
Restricted for net OPEB asset	6,204,876	5,649,008
Restricted for debt service	1,797,512	3,762,106
Unrestricted	<u>69,931,992</u>	<u>74,719,712</u>
Total Net Assets	<u>\$ 460,344,871</u>	<u>\$ 456,827,417</u>



**STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS**  
**FOR THE YEARS ENDED JUNE 30, 2009 AND 2008**

	<u>2009</u>	<u>2008</u>
<b>OPERATING REVENUES</b>		
Water sales	\$ 52,428,648	\$ 50,808,825
Wastewater revenue	2,182,429	2,386,285
Connection and other fees	2,492,234	2,519,735
	<hr/>	<hr/>
Total Operating Revenues	57,103,311	55,714,845
	<hr/>	<hr/>
<b>OPERATING EXPENSES</b>		
Cost of water sales	37,252,482	35,296,002
Wastewater	1,890,804	2,009,876
Administrative and general	19,888,161	21,127,922
Depreciation	12,475,714	13,040,572
	<hr/>	<hr/>
Total Operating Expenses	71,507,161	71,474,372
	<hr/>	<hr/>
Operating Income (Loss)	(14,403,850)	(15,759,527)
	<hr/>	<hr/>
<b>NONOPERATING REVENUES (EXPENSES)</b>		
Investment income	2,252,335	4,538,791
Taxes and assessments	4,586,823	4,591,023
Availability charges	625,065	744,722
Gain on sale of capital assets	5,206	15,243
Miscellaneous revenues	6,569,644	3,676,963
Donations	(95,270)	(80,541)
Interest expense	(1,340,110)	(2,601,252)
Miscellaneous expenses	(1,671,597)	(261,492)
	<hr/>	<hr/>
Total Nonoperating Revenues (Expenses)	10,932,096	10,623,457
	<hr/>	<hr/>
Income (Loss) Before Capital Contributions	(3,471,754)	(5,136,070)
	<hr/>	<hr/>
Capital Contributions	6,989,208	14,941,962
	<hr/>	<hr/>
Changes in Net Assets	3,517,454	9,805,892
	<hr/>	<hr/>
Total Net Assets, Beginning	456,827,417	447,021,525
	<hr/>	<hr/>
Total Net Assets, Ending	\$ 460,344,871	\$ 456,827,417
	<hr/>	<hr/>

See accompanying independent auditors' report and notes to financial statements.



## STATEMENTS OF CASH FLOWS

### FOR THE YEARS ENDED JUNE 30, 2009 AND 2008

	<u>2009</u>	<u>2008</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Receipts from customers	\$ 54,358,847	\$ 54,276,851
Receipts from connections and other fees	2,492,234	2,520,417
Other receipts	5,538,973	1,797,869
Payments to suppliers	(43,072,805)	(41,996,845)
Payments to employees	(18,947,144)	(23,670,840)
Other payments	(1,545,211)	(135,104)
Net Cash Provided (Used) by Operating Activities	<u>(1,175,106)</u>	<u>(7,207,652)</u>
<b>CASH FLOWS FROM NONCAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Receipts from taxes and assessments	4,520,867	4,497,682
Receipts from property rents and leases	1,070,881	977,313
Net amounts paid for acquisition and maintenance of demonstration garden	(95,270)	(80,541)
Net Cash Provided (Used) by Noncapital and Related Financing Activities	<u>5,496,478</u>	<u>5,394,454</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Proceeds from capital contributions	4,014,110	6,807,761
Proceeds from sale of capital assets	5,206	15,243
Proceeds from debt related taxes and assessments	625,065	744,722
Principal payments on long-term debt	(2,445,214)	(1,519,048)
Interest payments and fees	(1,366,547)	(2,597,498)
Acquisition and construction of capital assets	(16,838,494)	(27,359,800)
Net Cash Provided (Used) by Capital and Related Financing Activities	<u>(16,005,874)</u>	<u>(23,908,620)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Interest received on investments	2,494,196	5,381,971
Proceeds from sale and maturities of investments	70,703,937	88,909,995
Purchase of investments	(36,035,657)	(60,704,100)
Net Cash Provided (Used) by Investing Activities	<u>37,162,476</u>	<u>33,587,866</u>
Net Increase (Decrease) in Cash and cash equivalents	25,477,974	7,866,048
Cash and cash equivalents, Beginning	<u>27,105,894</u>	<u>19,239,846</u>
Cash and cash equivalents, Ending	<u>\$ 52,583,868</u>	<u>\$ 27,105,894</u>

(Continued)

See accompanying independent auditors' report and notes to financial statements.



## STATEMENTS OF CASH FLOWS (CONTINUED)

FOR THE YEARS ENDED JUNE 30, 2009 AND 2008

	<u>2009</u>	<u>2008</u>
<b>Reconciliation of operating income (loss) to net cash flows provided (used) by operating activities:</b>		
Operating income (loss)	\$ (14,403,850)	\$ (15,759,527)
Adjustments to reconcile operating income to net cash provided (used) by operating activities:		
Depreciation	12,475,714	13,040,572
Miscellaneous revenues	5,538,973	2,712,869
Miscellaneous expenses	(1,545,211)	(135,104)
(Increase) decrease in accounts receivable	(339,889)	985,738
(Increase) decrease in inventory	(105,625)	(77,543)
(Increase) decrease in net OPEB asset	(555,868)	(5,649,008)
(Increase) decrease in prepaid expenses and other current assets	931,983	(743,728)
Increase (decrease) in accounts payable	(2,139,613)	(1,717,456)
Increase (decrease) in accrued payroll and related expenses	57,549	220,224
Increase (decrease) in other accrued liabilities	(1,170,528)	18,390
Increase (decrease) in customer deposits	87,659	96,685
Increase (decrease) in prepaid capacity fees	(6,400)	(199,764)
	<u>\$ (1,175,106)</u>	<u>\$ (7,207,652)</u>
<b>Schedule of Cash and Cash Equivalents:</b>		
Current assets:		
Cash and cash equivalents	\$ 50,823,237	\$ 23,351,911
Restricted cash and cash equivalents	1,760,631	3,753,983
	<u>\$ 52,583,868</u>	<u>\$ 27,105,894</u>
<b>Supplemental Disclosures:</b>		
Non-cash Investing and Financing Activities Consisted of the Following:		
Contributed Capital for Water and Sewer System	\$ 2,975,098	\$ 8,134,201
Change in Fair Value of Investments and Recognized Gains/Losses	21,613	109,847
Amortization Related to Long-Term Debt	126,387	126,387



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

<b><u>NOTE</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGE</u></b>
1	Reporting Entity and Summary of Significant Accounting Policies.....	12 – 14
2	Cash and Investments.....	15 – 18
3	Capital Assets.....	18
4	Other Noncurrent Assets.....	19
5	Long-Term Debt.....	19 – 21
6	Net Assets.....	22
7	Defined Benefit Pension Plan.....	22 – 23
8	Other Post Employment Benefits.....	24 – 26
9	Water Conservation Authority.....	26
10	Commitments and Contingencies.....	27
11	Risk Management.....	27 – 28
12	Interest Expense.....	28
	 <u>Required Supplementary Information:</u>	
1	Schedule of Funding Progress for PERS.....	29
2	Schedule of Funding Progress for DPHP.....	29



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 1) REPORTING ENTITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### A) Reporting Entity

Otay Water District (the "District") is a public entity established in 1956 pursuant to the Municipal Water District Law of 1911 (Section 711 et. Seq. of the California Water Code) for the purpose of providing water and sewer services to the properties in the District. The District is governed by a Board of Directors consisting of five directors elected by geographical divisions based on District population for a four-year alternating term.

#### B) Measurement Focus, Basis of Accounting and Financial Statement Presentation

The basic financial statements of the Otay Water District have been prepared in conformity with accounting principles generally accepted in the United States of America. The Governmental Accounting Standards Board (GASB) is the accepted standard setting body for governmental accounting financial reporting purposes.

The District reports its activities as an enterprise fund, which is used to account for operations that are financed and operated in a manner similar to a private business enterprise, where the intent of the District is that the costs (including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. Revenues and expenses are recognized on the accrual basis. Revenues are recognized in the accounting period in which they are earned and expenses are recognized in the period incurred, regardless of when the related cash flow takes place.

Net assets of the District are classified into three components: (1) invested in capital assets, net of related debt, (2) restricted net assets, and (3) unrestricted net assets. These classifications are defined as follows:

##### Invested in Capital Assets, Net of Related Debt

This component of net assets consists of capital assets, net of accumulated depreciation and reduced by the outstanding balances of notes or borrowing that are attributable to the acquisition of the asset, construction, or improvement of those assets. If there are significant unspent related debt proceeds at year-end, the portion of the debt attributable to the unspent proceeds are not included in the calculation of invested in capital assets, net or related debt.

##### Restricted Net Assets

This component of net assets consists of constraints placed on net asset use through external constraints imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

##### Unrestricted Net Assets

This component of net asset consists of net assets that do not meet the definition of "invested in capital assets, net of related debt" or "restricted net assets".

The District distinguishes operating revenues and expenses from those revenues and expenses that are nonoperating. Operating revenues are those revenues that are generated by water sales and wastewater services while operating expenses pertain directly to the furnishing of those services. Nonoperating revenues and expenses are those revenues and expenses generated that are not directly associated with the normal business of supplying water and wastewater treatment services.

The District recognizes revenues from water sales, wastewater revenues, and meter fees as they are earned. Taxes and assessments are recognized as revenues based upon amounts reported to the District by the County of San Diego, net of allowance for delinquencies of \$67,017 and \$59,688 at June 30, 2009 and 2008, respectively.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 1) REPORTING ENTITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued

#### B) Measurement Focus, Basis of Accounting and Financial Statement Presentation - Continued

Additionally, capacity fee contributions received which are related to specific operating expenses are offset against those expenses and included in Cost of Water Sales in the Statement of Revenues and Expenses and Changes in Net Assets.

When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first, then unrestricted resources as they are needed.

The District has elected under GASB Statement No. 20, Accounting and Financial Reporting for Proprietary Funds and Other Governmental Activities That Use Proprietary Fund Accounting, to apply all GASB pronouncements as well as any applicable pronouncements of the Financial Accounting Standards Board (FASB), the Accounting Principles Board (APB), or any Accounting Research Bulletins (ARB) issued on or before November 30, 1989, unless they contradict or conflict with GASB pronouncements.

#### C) Statement of Cash Flows

For purposes of the Statement of Cash Flows, the District considers all highly liquid investments (including restricted assets) with a maturity period, at purchase, of three months or less to be cash equivalents.

#### D) Investments

The District's investments are stated at fair value, except for short-term investments, which are reported at cost, which approximates fair value. Investments in governmental investment pools are reported on the fair value per share, of the pool's underlying portfolio.

#### E) Inventory and Prepaids

Inventory consists primarily of materials used in the construction and maintenance of the water and sewer system and is valued at weighted average cost. Both inventory and prepaids use the consumption method whereby they are reported as an asset and expensed as they are consumed.

#### F) Capital Assets

Capital assets are recorded at cost, where historical records are available, and at an estimated historical cost where no historical records exist. Infrastructure assets in excess of \$20,000 and other capital assets in excess of \$10,000 are capitalized if they have an expected useful life of two years or more. The District will also capitalize individual purchases under the capitalization threshold if they are part of a new capital program. The cost of purchased and self-constructed additions to utility plant and major replacements of property are capitalized. Costs include materials, direct labor, transportation, and such indirect items as engineering, supervision, employee fringe benefits, and interest incurred during the construction period. Repairs, maintenance, and minor replacements of property are charged to expense. Donated assets are capitalized at their approximate fair market value on the date contributed.

The District capitalizes interest on construction projects up to the point in time that the project is substantially completed. Capitalized interest is included in the cost of water system assets and is depreciated on the straight-line basis over the estimated useful lives of such assets.



**NOTES TO FINANCIAL STATEMENTS**  
**YEARS ENDED JUNE 30, 2009 AND 2008**

**1) REPORTING ENTITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**

**F) Capital Assets - Continued**

Depreciation is calculated using the straight-line method over the following estimated useful lives:

Water System	15-70 Years
Field Equipment	2-50 Years
Buildings	30-50 Years
Communication Equipment	2-10 Years
Transportation Equipment	2-4 Years
Office Equipment	2-10 Years
Recycled Water System	50-75 Years
Sewer System	25-50 Years

**G) Compensated Absences**

In accordance with GASB Statement No. 16, a liability is recorded for unused vacation and sick leave balances since the employees' entitlement to these balances are attributable to services already rendered and it is probable that virtually all of these balances will be liquidated by either paid time-off or payment upon termination or retirement.

**H) Restricted Assets and Liabilities**

Certain current liabilities have been classified as current liabilities payable from restricted assets as they will be funded from restricted assets.

**I) Allowance for Doubtful Accounts**

The District charges doubtful accounts arising from water sales receivable to bad debt expense when it is probable that the accounts will be uncollectible. Uncollectible accounts are determined by the allowance method based upon prior experience and management's assessment of the collectability of existing specific accounts. The allowance for doubtful accounts were \$17,531 and \$9,253 for 2009 and 2008 respectively.

**J) Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**K) Property Taxes**

Tax levies are limited to 1% of full market value (at time of purchase) which results in a tax rate of \$1.00 per \$100 assessed valuation, under the provisions of Proposition 13. Tax rates for voter-approved indebtedness are excluded from this limitation.

The County of San Diego (the "County") bills and collects property taxes on behalf of the District. The County's tax calendar year is July 1 to June 30. Property taxes attach as a lien on property on January 1. Taxes are levied on July 1 and are payable in two equal installments on November 1 and February 1, and become delinquent after December 10 and April 10, respectively.

**L) Reclassifications**

Certain reclassifications have been made to prior year amounts to conform to the current year presentation.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 2) CASH AND INVESTMENTS

The primary goals of the District's Investment Policy are to assure compliance with all Federal, State, and Local laws governing the investment of funds under the control of the organization, protect the principal of investments entrusted, and generate income under the parameters of such policies.

Cash and Investments are classified in the accompanying financial statements as follows:

Statement of Net Assets:	
Current Assets	
Cash and cash equivalents	\$ 50,823,237
Investments	26,169,080
Noncurrent restricted:	
Restricted Cash and cash equivalents	1,760,631
Total Cash and Investments	\$ 78,752,948

Cash and Investments consist of the following:

Cash on hand	\$ 2,800
Deposits with financial institutions	5,701,125
Investments	73,049,023
Total Cash and Investments	\$ 78,752,948

### Investments Authorized by the California Government Code and the District's Investment Policy

The table below identifies the investment types that are authorized for the District by the California Government Code (or the District's Investment Policy, where more restrictive). The table also identifies certain provisions of the California Government Code (or the District's Investment Policy, where more restrictive) that address interest rate risk, credit risk, and concentration of credit risk. This table does not address investments of debt proceeds held by bond trustee that are governed by the provisions of debt agreements of the District, rather than the general provisions of the California Government Code or the District's Investment Policy.

Authorized Investment Type	Maximum Maturity	Maximum Percentage Of Portfolio <sup>(1)</sup>	Maximum Investment In One Issuer
U.S. Treasury Obligations	5 years	None	None
U.S. Government Sponsored Entities	5 years	None	None
Certificates of Deposit	5 years	15%	None
Corporate Medium-Term Notes	5 years	15%	None
Commercial Paper	270 days	15%	10%
Money Market Mutual Funds	N/A	15%	None
County Pooled Investment Funds	N/A	None	None
Local Agency Investment Fund (LAIF)	N/A	None	None

<sup>(1)</sup> Excluding amounts held by bond trustee that are not subject to California Government Code restrictions.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 2) CASH AND INVESTMENTS - Continued

#### Investments Authorized by Debt Agreements

Investments of debt proceeds held by the bond trustee are governed by provisions of the debt agreements, rather than the general provisions of the California Government Code or the District's Investment Policy.

#### Disclosures Relating to Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. One of the ways that the District manages its exposure to interest rate risk is by purchasing a combination of shorter term and longer term investments and by timing cash flows from maturities so that a portion of the portfolio is maturing or coming close to maturity evenly over time as necessary to provide the cash flow and liquidity needed for operations.

Information about the sensitivity of the fair values of the District's investments to market interest rate fluctuations is provided by the following table that shows the distribution of the District's investments by maturity:

Investment Type		Remaining Maturity (in Months)			
		12 Months Or Less	13 to 24 Months	25 to 60 Months	More Than 60 Months
U.S. Government Sponsored Entities	\$22,048,400	\$ -	\$22,048,400	\$ -	\$ -
Local Agency Investment Fund (LAIF)	7,489,943	7,489,943	-	-	-
Corporate Medium-Term Notes	4,120,680	-	4,120,680	-	-
San Diego County Pool	39,390,000	39,390,000	-	-	-
<b>Total</b>	<b>\$73,049,023</b>	<b>\$46,879,943</b>	<b>\$26,169,080</b>	<b>\$ -</b>	<b>\$ -</b>

#### Disclosures Relating to Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. Presented below is the minimum rating required by (where applicable) the California Government Code or the District's Investment Policy, or debt agreements, and the actual rating as of year end for each investment type.

Investment Type		Minimum Legal Rating	Rating as of Year End		
			AAA	AA	Not Rated
U.S. Government Sponsored Entities	\$22,048,400	N/A	\$22,048,400	\$ -	\$ -
Local Agency Investment Fund (LAIF)	7,489,943	N/A	-	-	7,489,943
Corporate Medium-Term Notes	4,120,680	A	2,061,960	2,058,720	-
San Diego County Pool	39,390,000	N/A	-	-	39,390,000
<b>Total</b>	<b>\$73,049,023</b>		<b>\$24,110,360</b>	<b>\$ 2,058,720</b>	<b>\$46,879,943</b>



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 2) CASH AND INVESTMENTS - Continued

#### Concentration of Credit Risk

The investment policy of the District contains various limitations on the amounts that can be invested in any one type or group on investments and in any issuer, beyond that stipulated by the California Government Code, Sections 53600 through 53692. Investments in any one issuer (other than U.S. Treasury securities, mutual funds, and external investment pools) that represent 5% or more of total District investments are as follows:

<u>Issuer</u>	<u>Investment Type</u>	<u>Reported Amount</u>
Federal Home Loan Bank	U.S. Government Sponsored Entities	\$ 5,996,260
Federal Home Loan Mortgage Corp	U.S. Government Sponsored Entities	\$ 4,022,100
Federal National Mortgage Association	U.S. Government Sponsored Entities	\$ 10,033,780

#### Custodial Credit Risk

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The custodial credit risk for investments is the risk that, in the event of the failure of the counterparty (e.g., broker-dealer) to a transaction, a government will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California Government Code and the Entity's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits or investments, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local government units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

As of June 30, 2009, \$2,454,830 of the District's deposits with financial institutions in excess of federal depository insurance limits were held in collateralized accounts.

#### Local Agency Investment Fund (LAIF)

The District is a voluntary participant in the Local Agency Investment Fund (LAIF) that is regulated by California Government Code Section 16429 under the oversight of the Treasurer of the State of California. The fair value of the District's investment in this pool is reported in the accompanying financial statements at amounts based upon District's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by LAIF, which are recorded on an amortized cost-basis.

#### San Diego County Pooled Fund

As permitted by its Investment Policy, the District has placed funds with the San Diego County Pooled Fund. The pool may invest some of their portfolios in derivatives. Detailed information on derivative investments held by this pool is not readily available.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 2) CASH AND INVESTMENTS - Continued

#### Collateral for Deposits

All cash and Certificates of Deposit are entirely insured or collateralized.

Under the provisions of the California Government Code, California banks and savings and loan associations are required to secure the District's deposits by pledging government securities as collateral. The market value of the pledged securities must equal at least 110% of the District's deposits. California law also allows financial institutions to secure District deposits by pledging first trust deed mortgage notes having a value of 150% of the District's total deposits.

The District may waive the 110% collateral requirement for deposits which are insured up to \$250,000 by the FDIC.

### 3) CAPITAL ASSETS

The following is a summary of changes in Capital Assets for the year ended June 30, 2009:

	Beginning Balance	Additions	Deletions	Ending Balance
Capital Assets, Not Depreciated:				
Land	\$ 13,025,364	\$ 377,476	\$ -	\$ 13,402,840
Construction in Progress	42,338,220	19,496,000	(43,553,942)	18,280,278
Total Capital Assets Not Depreciated	55,363,584	19,873,476	(43,553,942)	31,683,118
Capital Assets, Being Depreciated:				
Infrastructure	495,249,373	42,051,766	(112,745)	537,188,394
Field Equipment	9,430,276	43,295	-	9,473,571
Buildings	17,636,124	529,403	-	18,165,527
Transportation Equipment	3,102,661	194,636	(12,658)	3,284,639
Communication Equipment	689,954	97,404	-	787,358
Office Equipment	16,825,593	577,554	-	17,403,147
Total Capital Assets Being Depreciated	542,933,981	43,494,058	(125,403)	586,302,636
Less Accumulated Depreciation:				
Infrastructure	125,132,713	10,562,504	(112,745)	135,582,472
Field Equipment	8,714,039	249,920	-	8,963,959
Buildings	5,637,685	453,236	-	6,090,921
Transportation Equipment	2,559,141	109,383	(12,658)	2,655,866
Communication Equipment	369,564	40,641	-	410,205
Office Equipment	9,170,026	1,060,030	-	10,230,056
Total Accumulated Depreciation	151,583,168	12,475,714	(125,403)	163,933,479
Total Capital Assets Being Depreciated, Net	391,350,813	31,018,344	-	422,369,157
Total Capital Assets, Net	<u>\$ 446,714,397</u>	<u>\$ 50,891,820</u>	<u>\$ (43,553,942)</u>	<u>\$ 454,052,275</u>

Depreciation expense for the years ended June 30, 2009 and 2008 was \$12,475,714 and \$13,040,572, respectively.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 4) OTHER NONCURRENT ASSETS

Deferred bond issue costs totaled \$1,142,762 and \$1,198,791, net of accumulated amortization of \$296,309 and \$240,279 as of June 30, 2009 and 2008, respectively. The costs are amortized on the straight-line method based on the estimated term of the related bond debt. Amortization expense of \$56,030 for the years ended June 30, 2009 and 2008 is included in miscellaneous non-operating expenses.

### 5) LONG-TERM DEBT

Long-term liabilities for the year ended June 30, 2009 are as follows:

	Beginning Balance	Additions	Deletions	Ending Balance	Due Within One Year
<b>General Obligation Bonds:</b>					
Improvement District No. 27	\$ 8,810,000	\$ -	\$ 415,000	\$ 8,395,000	\$ 435,000
Unamortized Bond Discount	(103,556)	-	(7,397)	(96,159)	-
Deferred Amount on Refunding	(613,142)	-	(40,876)	(572,266)	-
<b>Net General Obligation Bonds</b>	<b>8,093,302</b>	<b>-</b>	<b>366,727</b>	<b>7,726,575</b>	<b>435,000</b>
<b>Certificates of Participation:</b>					
1996 Certificates of Participation	12,500,000	-	400,000	12,100,000	400,000
2004 Certificates of Participation	10,835,000	-	515,000	10,320,000	530,000
2007 Certificates of Participation	42,000,000	-	785,000	41,215,000	815,000
1996 COPS Unamortized Discount	(14,158)	-	(745)	(13,413)	-
2007 COPS Unamortized Discount	(259,263)	-	(9,044)	(250,219)	-
2004 COPS Unamortized Premium	17,665	-	1,165	16,500	-
2004 COPS Deferred Amount on Refunding	(186,470)	-	(12,295)	(174,175)	-
<b>Net Certificates of Participation</b>	<b>64,892,774</b>	<b>-</b>	<b>1,679,081</b>	<b>63,213,693</b>	<b>1,745,000</b>
<b>Notes Payable:</b>					
State Water Resource Control Board	1,031,730	-	330,214	701,516	341,772
<b>Total Long-Term Liabilities</b>	<b>\$ 74,017,806</b>	<b>\$ -</b>	<b>\$2,376,022</b>	<b>\$ 71,641,784</b>	<b>\$2,521,772</b>

#### General Obligation Bonds

In June 1998, the District issued \$11,835,000 of General Obligation Refunding Bonds. The proceeds of this issue, together with other lawfully available monies, were to be used to establish an irrevocable escrow to advance refund and defease in their entirety the District's previous outstanding General Obligation Bond issue. These bonds are general obligations of Improvement District No. 27 (ID 27) of the District. The Board of Directors has the power and is obligated to levy annual ad valorem taxes without limitation, as to rate or amount for payment of the bonds and the interest upon all property which is within ID 27 and subject to taxation. The General Obligation Bonds are payable from District-wide tax revenues. The Board may utilize other sources for servicing the bond debt and interest.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 5) LONG-TERM DEBT - Continued

The refunding resulted in a deferred amount of \$1,021,903, which is being amortized over the remaining life of the refunded debt. Amortization for the years ended June 30, 2009 and 2008 was \$40,876 for each year and is included in miscellaneous non-operating expenses. As of June 30, 2009 and 2008, the amortized deferred amount of refunding is \$572,266, and \$613,142, respectively.

The 1998 General Obligation Bonds have interest rates from 4.5% to 5% with maturities through Fiscal Year 2023.

Future debt service requirements for the bonds are as follows:

For the Year Ended June 30,	Principal	Interest
2010	\$ 435,000	\$ 402,705
2011	455,000	382,235
2012	475,000	360,608
2013	495,000	337,565
2014	520,000	312,945
2015-2019	3,015,000	1,141,353
2020-2023	3,000,000	309,250
	<u>\$ 8,395,000</u>	<u>\$ 3,246,661</u>

### Certificates of Participation (COPS)

In June 1996, COPS with face value of \$15,400,000 were sold by the Otay Service Corporation to finance the cost of design, acquisition, and construction of certain capital improvements. An installment purchase agreement between the District, as Buyer, and the Corporation, as Seller, was executed for the scheduled payment of principal and interest associated with the COPS. The installment payments are to be paid from taxes and "net revenues," as described in the installment agreement. The certificates bear interest at a variable weekly rate not to exceed 12%. The interest rate at June 30, 2009 was 0.25%. The installment payments are to be paid annually at \$350,000 to \$900,000 from September 1, 1996 through September 1, 2026.

In July 2004, Refunding Certificates of Participation (COPS) with a face value of \$12,270,000 were sold by the Otay Service Corporation to advance refund \$11,680,000 of outstanding 1993 COPS. An installment agreement between the District, as Buyer, and the Corporation, as Seller, was executed for the scheduled payment of principal and interest associated with the COPS. The installment payments are to be paid from taxes and "net revenues," as described in the installment agreement. The certificates are due in annual installments of \$445,000 to \$895,000 from September 1, 2005 through September 1, 2023; bearing interest at 3% to 4.625%.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 5) LONG-TERM DEBT - Continued

#### Certificates of Participation (COPS) - Continued

In March 2007, Revenue Certificates of participation (COPS) with face value of \$42,000,000 were sold by the Otay Service Corporation to improve the District's water storage system and distribution facilities. An installment purchase agreement between the District, as a Buyer, and the Corporation, as Seller, was executed for the scheduled payment of principal and interest associated with the COPS. The installment payments are to be paid from taxes and "net revenues," as described in the installment agreement. The certificates are due in annual installments of \$785,000 to \$2,445,000 from September 1, 2007 through September 1, 2036; bearing interest at 3.7% to 4.47%.

There is no aggregate reserve requirement for the COPS. Future debt service requirements for the certificates are as follows:

For the Year Ended June 30,	1996 COPS		2004 COPS		2007 COPS	
	Principal	Interest*	Principal	Interest	Principal	Interest
2010	\$ 400,000	\$ 29,417	\$ 530,000	\$ 402,634	\$ 815,000	\$ 1,686,410
2011	400,000	28,417	545,000	386,236	850,000	1,655,395
2012	400,000	27,417	565,000	368,607	885,000	1,622,864
2013	500,000	26,208	580,000	349,566	920,000	1,589,020
2014	500,000	24,958	600,000	328,906	955,000	1,553,864
2015-2019	3,000,000	103,500	3,375,000	1,271,613	5,375,000	7,187,979
2020-2024	3,900,000	59,875	4,125,000	482,422	6,515,000	6,031,444
2025-2029	3,000,000	9,250	-	-	7,995,000	4,538,196
2030-2034	-	-	-	-	9,875,000	2,644,028
2035-2037	-	-	-	-	7,030,000	470,094
	<u>\$ 12,100,000</u>	<u>\$ 309,042</u>	<u>\$ 10,320,000</u>	<u>\$ 3,589,984</u>	<u>\$ 41,215,000</u>	<u>\$ 28,979,294</u>

\* Variable Rate - Interest reflected at June 30, 2009 at a rate of 0.25%.

The three COP debt issues contain various covenants and restrictions, principally that the District fix, prescribe, revise and collect rates, fees and charges for the Water System which will be at least sufficient to yield, during each fiscal year, taxes and net revenues equal to one hundred twenty-five percent (125%) of the debt service for such fiscal year.

#### Note Payable

In December 1990, the District entered into a 3.5% note payable to the State Water Resources Control Board. This note is unsecured and payable in annual installments of \$366,325 including principal and interest from 1992 through 2010. The total amount outstanding at June 30, 2009 and aggregate maturities of the note for the fiscal years subsequent to June 30, 2009, are as follows:

For the Year Ended June 30,	Principal	Interest
2010	\$ 341,772	\$ 24,553
2011	353,734	12,591
2012	6,010	1
	<u>\$ 701,516</u>	<u>\$ 37,145</u>



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 6) NET ASSETS

#### Designated Net Assets

In addition to the restricted net assets, a portion of the unrestricted net assets have been designated by the Board of Directors for the following purposes as of June 30, 2009 and 2008:

	2009	2008
Designated Betterment	\$ 2,969,722	\$ 804,769
Expansion Reserve	18,569,610	11,966,501
Replacement Reserve	26,388,812	31,785,910
Insurance Reserve	8,436,721	10,458,191
Total	\$ 56,364,865	\$ 55,015,371

### 7) DEFINED BENEFIT PENSION PLAN

#### Plan Description

The District's defined plan, (the "Plan"), provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. The Plan is part of the Public Agency portion of the California Public Employees' Retirement System (CalPERS), an agent multiple-employer plan administered by CalPERS, which acts as a common investment and administrative agent for participating public employers within the State of California. A menu of benefit provisions as well as other requirements is established by State statute within the Public Employees' Retirement Law. The Plan selects optional benefit provisions from the benefit menu by contract with CalPERS and adopts those benefits through District resolution. CalPERS issues a separate Comprehensive Annual Financial Report. Copies of the CalPERS' annual financial report may be obtained from the CalPERS Executive Office, 400 P Street, Sacramento, California 95814.

#### Funding Policy

Active members in the 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 19.369%. The contribution requirements of the Plan members are established by State statute and the employer contribution rate is established and may be amended by the CalPERS.



# NOTES TO FINANCIAL STATEMENTS

## YEARS ENDED JUNE 30, 2009 AND 2008

### 7) DEFINED BENEFIT PENSION PLAN - Continued

#### Annual Pension Costs

For the fiscal year ended June 30, 2009, the District's annual pension cost and actual contribution was \$2,150,579. The required contribution for the fiscal year ended June 30, 2009 was determined as part of the June 30, 2006 actuarial valuation.

The following is a summary of the actuarial assumptions and methods:

Valuation Date	June 30, 2006
Actuarial Cost Method	Entry Age Actuarial Cost Method
Amortization Method	Level Percent of Payroll
Average Remaining Period	21 Years as of the Valuation Date
Asset Valuation Method	15 Year Smoothed Market
<b>Actuarial Assumptions:</b>	
Investment Rate of Return	7.75% (Net of Administrative Expenses)
Projected Salary Increase	3.25% to 14.45% Depending on Age, Service, and Type of Employment
Inflation	3.00%
Payroll Growth	3.25%
Individual Salary Growth	A merit scale varying by duration of employment coupled with an assumed annual inflation component of 3.00% and an annual production growth of 0.25%.

Initial unfunded liabilities are amortized over a closed period that depends on the Plan's date of entry into CalPERS. Subsequent Plan amendments are amortized as a level percentage of pay over a closed 20-year period. Gains and losses that occur in the operation of the plan are amortized over a rolling period, which results in an amortization of 6% of unamortized gains and losses each year. If the plan's accrued liability exceeds the actuarial value of the plan assets, then the amortization payment of the total unfunded liability may be lower than the payment calculated over a 30-year amortization period.

#### THREE-YEAR TREND INFORMATION FOR PERS

Fiscal Year	Annual Pension Cost (APC)	Percentage of APC Contributed	Net Pension Obligation
6/30/09	\$ 2,150,579	100%	\$ 0
6/30/08	\$ 2,252,601	100%	\$ 0
6/30/07	\$ 1,925,758	100%	\$ 0

#### Funded Status and Funding Progress

As of June 30, 2007, the most recent actuarial valuation date, the plan was 75.6% funded. The actuarial accrued liability (AAL) for benefits was \$59,412,116, and the actuarial value of assets was \$44,910,326, resulting in an unfunded actuarial accrued liability (UAAL) of \$14,501,790. The covered payroll (annual payroll of active employees covered by the plan) was \$10,663,440, and the ratio of the UAAL to the covered payroll was 136.0%.

The schedule of funding progress, presented as *required supplementary information* following the notes to the financial statements, presents multiyear trend information about whether the actuarial value of plan assets is increasing or decreasing over the time relative to the actuarial accrued liability for benefits.



# NOTES TO FINANCIAL STATEMENTS

## YEARS ENDED JUNE 30, 2009 AND 2008

### 8) OTHER POST EMPLOYMENT BENEFITS

#### Plan Description

The District's defined benefit postemployment healthcare plan, (DHP), provides medical benefits to eligible retired District employees and beneficiaries. DHP is part of the Public Agency portion of the California Employers' Retiree Benefit Trust Fund (CERBT), an agent multiple-employer plan administered by California Public Employees' Retirement System (CalPERS), which acts as a common investment and administrative agent for participating public employers within the State of California. A menu of benefit provisions as well as other requirements is established by State statute within the Public Employees' Retirement Law. DHP selects optional benefit provisions from the benefit menu by contract with CalPERS and adopts those benefits through District resolution. CalPERS issues a separate Comprehensive Annual Financial Report. Copies of the CalPERS' annual financial report may be obtained from the CalPERS Executive Office, 400 P Street, Sacramento, California 95814.

#### Funding Policy

The contribution requirements of plan members and the District are established and may be amended by the Board of Directors. DHP members receiving benefits contribute based on their selected plan options of EPO, Silver or Gold and if they are located outside the State of California. Contributions by plan members range from \$0 to \$95 per month for coverage to age 65, and from \$0 to \$62 per month, respectively, thereafter.

#### Annual OPEB Cost and Net OPEB Obligation/Asset

The District's annual OPEB cost (expense) is calculated based on the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement 45. The ARC represents a level of funding that, if paid on an ongoing basis is projected to cover the normal annual cost. Any unfunded actuarial liability (or funding excess) is amortized over a period not to exceed thirty years. The current ARC rate is 7.7% of the annual covered payroll.

The following table shows the components of the District's annual OPEB cost for the year, the amount actually contributed to the plan, and changes in the District's net OPEB obligation/asset:

	<u>2009</u>	<u>2008</u>
Annual Required Contribution (ARC)	\$ 873,000	\$ 846,000
Interest on net OPEB asset	(437,798)	-
Adjustment to Annual Required Contribution (ARC)	489,999	-
Annual OPEB cost (expense)	<u>925,201</u>	<u>846,000</u>
Contributions made	<u>1,481,069</u>	<u>6,495,008</u>
Increase in net OPEB asset	(555,868)	(5,649,008)
Net OPEB asset - beginning of year	<u>(5,649,008)</u>	-
Net OPEB asset - end of year	<u>\$ (6,204,876)</u>	<u>\$ (5,649,008)</u>

For 2009, in addition to the ARC, the District contributed an implied subsidy (healthcare premium payments for retirees to Special District Risk Management Authority (SDRMA) ) in the amount of \$608,069, which is included in the \$1,481,069 of contributions shown above. For 2008 this amount was \$649,008, which is included in the \$6,495,008 of contributions shown above.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 8) OTHER POST EMPLOYMENT BENEFITS - Continued

The District's annual OPEB cost, the percentage of annual OPEB cost contributed to the plan, and the net OPEB obligation/asset for the fiscal years 2009, 2008 and 2007 were as follows:

THREE-YEAR TREND INFORMATION FOR CERBT				
Fiscal Year	Annual OPEB Cost (AOC)	Percentage of OPEB Cost Contributed	Net OPEB Asset	
6/30/09	\$ 925,201	100%	\$	(6,204,876)
6/30/08	\$ 846,000	100%	\$	(5,649,008)
6/30/07	*	*		*

\*The information for 6/30/2007 is unavailable. GASB 45 was implemented in fiscal year 2008.

### Funded Status and Funding Progress

The funded status of the plan as of June 30, 2007, the most recent actuarial valuation date, was as follows:

Actuarial Accrued Liability (AAL)	\$	11,408,000
Actuarial Value of Plan Assets	\$	0
Unfunded Actuarial Accrued Liability (UAAL)	\$	11,408,000
Funded Ratio (Actuarial Value of Plan Assets/AAL)		0%
Covered Payroll (Active Plan Members)	\$	10,951,000
UAAL as a Percentage of Covered Payroll		104.2%

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress, presented as required supplementary information following the notes to the financial statements, presents multi-year trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for the benefits.



# NOTES TO FINANCIAL STATEMENTS

## YEARS ENDED JUNE 30, 2009 AND 2008

### 8) OTHER POST EMPLOYMENT BENEFITS - Continued

#### Actuarial Methods and Assumptions

Projections of benefits for financial reporting purposes are based on the substantive plan (the plan as understood by the employer and the plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between employer and plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial assets, consistent with the long-term perspective of the calculations.

The following is a summary of the actuarial assumptions and methods:

Valuation Date	June 30, 2007
Actuarial Cost Method	Entry Age Normal Cost Method
Amortization Method	Level Percent of Payroll
Remaining Amortization Period	30 Years as of the Valuation Date
Asset Valuation Method	15 Year Smoothed Market
Actuarial Assumptions:	
Investment Rate of Return	7.75% (Net of Administrative Expenses)
Projected Salary Increase	3.25%
Inflation	3.00%
Individual Salary Growth	CalPERS 1997-2002 Experience Study

### 9) WATER CONSERVATION AUTHORITY

In 1999 the District formed the Water Conservation Authority (the "Authority"), a Joint Powers Authority, with other local entities to construct, maintain and operate a xeriscape demonstration garden in the furtherance of water conservation. The authority is a non-profit public charity organization and is exempt from income taxes. During the years ended June 30, 2009 and 2008, the District contributed \$95,270 and \$80,541, respectively, for the development, construction and operation costs of the xeriscape demonstration garden.

A summary of the Authority's June 30, 2008 audited financial statement is as follows (latest report available):

Assets	\$ 2,513,701
Liabilities	77,469
Revenues, Gains and Other Support	782,019
Changes in Net Assets	(23,115)



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 10) COMMITMENTS AND CONTINGENCIES

#### **Construction Commitments**

The District had committed to capital projects under construction with an estimated cost to complete of \$1,088,300 at June 30, 2009.

#### **Litigation**

Certain claims, suits and complaints arising in the ordinary course of operation have been filed or are pending against the District. In the opinion of the staff and counsel, all such matters are adequately covered by insurance, or if not so covered, are without merit or are of such kind, or involved such amounts, as would not have significant effect on the financial position or results of operations of the District if disposed of unfavorably.

#### **Refundable Terminal Storage Fees**

The District has entered into an agreement with several developers whereby the developers prepaid the terminal storage fee in order to provide the District with the funds necessary to build additional storage capacity. The agreement further allows the developers to relinquish all or a portion of such water storage capacity. If the District grants to another property owner the relinquished storage capacity, the District shall refund to the applicable developer \$746 per equivalent dwelling unit (EDU). There were 17,867 EDUs that were subject to this agreement. At June 30, 2008, 1,750 EDUs had been relinquished and refunded, 14,622 EDUs had been connected, and 1,495 EDUs have neither been relinquished nor connected. At June 30, 2009, 1,750 EDUs had been relinquished and refunded, 14,662 EDUs had been connected, and 1,455 EDUs have neither been relinquished nor connected.

#### **Developer Agreements**

The District has entered into various Developer Agreements with developers towards the expansion of District facilities. The developers agree to make certain improvements and after the completion of the projects the District agrees to reimburse such improvements with a maximum reimbursement amount for each developer. Contractually, the District does not incur a liability for the work until the work is accepted by the District. As of June 30, 2009, none of the 3 outstanding developer agreements had been accepted, however it is anticipated that the District will be liable for an amount not to exceed \$20,300 at the point of acceptance. Accordingly, the District did not accrue a liability as of year end.

### 11) RISK MANAGEMENT

#### **General Liability**

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 the Special District Risk Management Authority (SDRMA). SDRMA is a not-for-profit public agency formed under California Government Code Sections 6500 et. Seq. SDRMA is governed by a board composed of members from participating agencies. The mission of SDRMA is to provide renewable, efficiently priced risk financing and risk management services through a financially sound pool. The District pays an annual premium for commercial insurance covering general liability, excess liability, property, automobile, public employee dishonesty, and various other claims. Coverage limits range up to \$1 billion. Accordingly, the District retains no risk of loss. Separate financial statements of SDRMA may be obtained at Special District Risk Management Authority, 1112 "I" Street, Suite 300, Sacramento, CA 95814.

#### **Workers' Compensation**

Through SDRMA, the District is insured up to \$200,000,000 for Statutory Workers' Compensation and \$5,000,000 for Employers' Liability coverage with no deductible. SDRMA currently has a pool of 336 agencies in the Workers' Compensation Program.



## NOTES TO FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2009 AND 2008

### 11) RISK MANAGEMENT - Continued

#### Health Insurance

Previously the District maintained a self-insurance program for health claims. Beginning in January 2008, the District began providing health insurance through SDRMA covering all of its employees, retirees, and other dependents. Prior estimated accrued claims outstanding at June 30, 2008 amounted to \$137,029, and all remaining claims were paid as of December 31, 2008. SDRMA is a self-funded pooled medical program administered in conjunction with the California State Association of Counties (CSAC).

#### Adequacy of Protection

During the past three fiscal (claims) years none of the above programs of protection have had settlements or judgments that exceeded pooled or insured coverage. There have been no significant reductions in pooled or insured liability coverage from coverage in the prior year.

### 12) INTEREST EXPENSE

Interest expense for the years ended June 30, 2009 and 2008, is as follows:

	<u>2009</u>	<u>2008</u>
Amount Expensed	\$ 1,340,110	\$ 2,601,252
Amount Capitalized as a Cost of Construction Projects	<u>1,353,153</u>	<u>373,282</u>
Total Interest	<u>\$ 2,693,263</u>	<u>\$ 2,974,534</u>

**REQUIRED SUPPLEMENTARY INFORMATION**  
**YEARS ENDED JUNE 30, 2009 AND 2008**



## REQUIRED SUPPLEMENTARY INFORMATION

### YEARS ENDED JUNE 30, 2009 AND 2008

#### Schedule of Funding Progress for PERS

Actuarial Valuation Date	Actuarial Value of Assets (A)	Actuarial Accrued Liability (AAL) Entry Age (B)	Unfunded AAL (UAAL) (B - A)	Funded Ratio (A/B)	Covered Payroll (C)	UAAL as a Percentage of Covered Payroll [(B-A)/C]
6/30/07						
Miscellaneous	\$ 44,910,326	\$ 59,412,116	\$ 14,501,790	75.6%	\$ 10,663,440	136.0%
6/30/06						
Miscellaneous	\$ 40,321,483	\$ 54,228,041	\$ 13,906,558	74.4%	\$ 10,470,766	132.8%
6/30/05						
Miscellaneous	\$ 36,029,595	\$ 50,249,943	\$ 14,220,348	71.7%	\$ 10,005,158	142.1%

#### Schedule of Funding Progress for DPHP

Actuarial Valuation Date	Actuarial Value of Assets (A)	Actuarial Accrued Liability (AAL) Entry Age (B)	Unfunded AAL (UAAL) (B - A)	Funded Ratio (A/B)	Covered Payroll (C)	UAAL as a Percentage of Covered Payroll [(B-A)/C]
6/30/07						
Miscellaneous	\$ 0	\$ 11,408,000	\$ 11,408,000	0%	\$ 10,951,000	104.2%
6/30/06						
Miscellaneous	*	*	*	*	*	*

\*GASB 45 was implemented in fiscal year 2008. The information for the 2006 year is unavailable.



**DIEHL, EVANS & COMPANY, LLP**  
 CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

A PARTNERSHIP INCLUDING ACCOUNTANCY CORPORATIONS

2965 ROOSEVELT STREET  
 CARLSBAD, CALIFORNIA 92008-2389  
 (760) 729-2343 • FAX (760) 729-2234  
[www.diehlevans.com](http://www.diehlevans.com)

\*PHILIP H. HOLTkamp, CPA  
 \*THOMAS M. PERLOWSKI, CPA  
 \*HARVEY J. SCHROEDER, CPA  
 KENNETH R. AMES, CPA  
 WILLIAM C. PENTZ, CPA  
 MICHAEL R. LUDIN, CPA  
 CRAIG W. SPRAKER, CPA  
 NITIN P. PATEL, CPA  
 ROBERT J. CALLANAN, CPA

\* A PROFESSIONAL CORPORATION

October 10, 2009

Board of Directors  
 Otay Water District  
 Spring Valley, California

In planning and performing our audit of the financial statements of the Otay Water District (the District) as of and for the year ended June 30, 2009, in accordance with auditing standards of generally accepted in the United States of America, we considered the District's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or a combination of control deficiencies, that adversely affect the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or a combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described in the first paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above.

This communication is intended solely for the information and use of management, the Board of Directors, and others within the District and is not intended to be and should not be used by anyone other than these specified parties.

*Diehl, Evans and Company, LLP*

OTHER OFFICES AT:

613 W. VALLEY PARKWAY, SUITE 330  
 ESCONDIDO, CALIFORNIA 92025-2598  
 (760) 741-3141 • FAX (760) 741-9890

2121 ALTON PARKWAY, SUITE 100  
 IRVINE, CALIFORNIA 92606-4906  
 (949) 757-7700 • FAX (949) 757-2707



**DIEHL, EVANS & COMPANY, LLP**  
 CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

A PARTNERSHIP INCLUDING ACCOUNTANCY CORPORATIONS

2965 ROOSEVELT STREET  
 CARLSBAD, CALIFORNIA 92008-2389  
 (760) 729-2343 • FAX (760) 729-2234  
[www.diehlevans.com](http://www.diehlevans.com)

\*PHILIP H. HOLTkamp, CPA  
 \*THOMAS M. PERLOWSKI, CPA  
 \*HARVEY J. SCHROEDER, CPA  
 KENNETH R. AMES, CPA  
 WILLIAM C. PENTZ, CPA  
 MICHAEL R. LUDIN, CPA  
 CRAIG W. SPRAKER, CPA  
 NITIN P. PATEL, CPA  
 ROBERT J. CALLANAN, CPA

\* A PROFESSIONAL CORPORATION

October 10, 2009

Board of Directors  
 Audit Committee  
 Otay Water District  
 Spring Valley, California

We have audited the financial statements of the Otay Water District for the year ended June 30, 2009, and have issued our report thereon dated October 10, 2009. Professional standards require that we provide you with the following information related to our audit.

**Our Responsibility Under Auditing Standards Generally Accepted in the United States of America:**

As stated in our engagement letter dated April 13, 2009, our responsibility, as described by professional standards, is to express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your responsibilities. Our responsibility is to plan and perform the audit to obtain reasonable, but not absolute, assurance that the financial statements are free of material misstatement. As part of our audit, we considered the internal control of the Otay Water District. Such considerations were solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control. We are responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures specifically to identify such matters.

**Planned Scope and Timing of the Audit:**

We performed the audit according to the planned scope and timing previously communicated to you in our meeting about planning matters on August 5, 2009.

## **Significant Audit Findings:**

### Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Otay Water District are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year ended June 30, 2009. We noted no transactions entered into by the Otay Water District during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- a. Management's estimate of the fair market value of investments which is based on market values by outside sources.
- b. The estimated useful lives for capital assets which are based on industry standards.

We evaluated the key factors and assumptions used to develop these estimates in determining that they were reasonable in relation to the financial statements taken as a whole.

### Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

### Audit Adjustments

Professional standards require us to accumulate all known and likely adjustments identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has made all such adjustments. The following adjustment detected as a result of audit procedures was corrected by management:

- a. Capitalized interest on infrastructure capital assets was increased by \$556,357 due to the adjustment. We determined the proper amount to be capitalized through calculations of capital assets constructed.

**Significant Audit Findings (Continued):**

Disagreements with Management

For the purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements of the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated October 10, 2009.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involved application of an accounting principle to the Otay Water District's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management prior to retention as the Otay Water District's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

\*\*\*\*

This information is intended solely for the use of the Board of Directors, Audit Committee and management of the Otay Water District and is not intended to be and should not be used by anyone other than these specified parties.

*Dick, Evans and Company, LLP*



**DIEHL, EVANS & COMPANY, LLP**  
 CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

A PARTNERSHIP INCLUDING ACCOUNTANCY CORPORATIONS

2965 ROOSEVELT STREET  
 CARLSBAD, CALIFORNIA 92008-2389  
 (760) 729-2343 • FAX (760) 729-2234  
 www.diehlevents.com

\*PHILIP H. HOLTkamp, CPA  
 \*THOMAS M. PERLOWSKI, CPA  
 \*HARVEY J. SCHROEDER, CPA  
 KENNETH R. AMES, CPA  
 WILLIAM C. PENTZ, CPA  
 MICHAEL R. LUDIN, CPA  
 CRAIG W. SPRAKER, CPA  
 NITIN P. PATEL, CPA  
 ROBERT J. CALLANAN, CPA

**INDEPENDENT ACCOUNTANTS' REPORT  
 ON APPLYING AGREED-UPON PROCEDURES**

August 18, 2009

Mr. Joseph Beachem  
 Chief Financial Officer  
 Otay Water District  
 Spring Valley, CA

We have performed the procedures enumerated below, which were agreed to by the Otay Water District (the "District") solely to assist the District's senior management in evaluating the investments of the District for the fiscal year ended June 30, 2009. The District's management is responsible for the evaluation of the investments of the District.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are as follows:

1. Obtain a copy of the District's investment policy and determine that it is in effect for the time period under review.
  - a. Findings: At June 30, 2009, the current investment policy (Policy #27) is dated September 6, 2006. This policy was reviewed and approved for the 2008/2009 Fiscal year as part of the consent calendar at the September 3, 2008 Regular Board Meeting. Therefore the investment policy is in effect for the time period under review.
2. Select 4 investments held at year end and determine if they are allowable investments under the District's Investment Policy.
  - a. Findings: Four investments chosen were FNMA – Maturity 7/2/2010; FHLB – Maturity 5/18/2011; FCCB – Maturity 2/28/2011 and GE Electric Corporate Bond – Maturity 12/1/2010. All four investments are allowable and within maturity limits as stated in the District's Investment Policy at June 30, 2009.

OTHER OFFICES AT:

613 W. VALLEY PARKWAY, SUITE 330  
 ESCONDIDO, CALIFORNIA 92025-2598  
 (760) 741-3141 • FAX (760) 741-9890

5 CORPORATE PARK, SUITE 100  
 IRVINE, CALIFORNIA 92606-5165  
 (949)-399-0600 • FAX (949) 399-0610

3. For the four investments selected in #2 above, determine if they are held by a third party custodian designated by the District and evidenced by safekeeping receipts as required by the District's Policy.
  - a. Findings: Per discussion with District management and evidenced by Union Bank of California monthly statements, the four investments examined are held by a third party custodian designated by the District in compliance with District Policy.
4. Confirm the par or original investment amount and market value for the four investments selected above with the custodian or issuer of the investments.
  - a. Findings: Investment values confirmed with Union Bank of California at June 30, 2009 with no exceptions.
5. Select two investment earnings transactions that took place during the year and recompute the earnings to determine if the proper amount was received.
  - a. Findings: Investment earnings recalculated with no exceptions for two transactions selected.
6. Trace amounts received for transactions selected at #5 above into the District's bank accounts.
  - a. Transactions traced into District's Union Bank of California Money Market account with no exceptions for the two transactions selected.
7. Select five investment transactions (buy, sell, trade or maturity) occurring during the year under review and determine that the transactions are permissible under the District's investment policy.
  - a. Findings: Reviewed five investment transactions. All transactions were permissible under the District's Investment Policy.
8. Review the supporting documents for the five investments selected at #7 above to determine if the transactions were appropriately recorded in the District's general ledger.
  - a. Findings: Five investments selected at #7 above are appropriately recorded in the District's General Ledger without exception.

We were not engaged to, and did not, perform an audit, the objective of which would have been the expression of an opinion on the investments of the District for the fiscal year ending June 30, 2009. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is limited solely for the information and use of the senior management of the Otay Water District and is not intended to be and should not be used by anyone other than those specified parties.

*Diehl, Evans and Company, LLP*



# AGENDA ITEM 5

## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	November 4, 2009
SUBMITTED BY:	Rom Sarno, Chief, Administrative Services	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)			
APPROVED BY: (Asst. GM):	German Alvarez, Assistant General Manager, Finance and Administration		
SUBJECT:	REJECTION OF THE GARY L. TIMM AND MARY A. TIMM CLAIM		

### GENERAL MANAGER'S RECOMMENDATION:

That the Board reject the claim submitted September 24, 2009, by Gary Timm and Mary Timm for damage to their property related to a severed fire hydrant caused by a vehicle driven by Neiman Somo on August 17, 2009.

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

Please see Attachment "A".

### PURPOSE:

To recommend to the Board to reject a claim by Gary Timm and Mary Timm related to expenses for water damages caused when a vehicle driven by Mr. Neiman Somo hit and severed a fire hydrant causing a flood on August 17, 2009.

### ANALYSIS:

On August 17, 2009, Neiman Salem Somo was driving his vehicle westbound on SR-94, when he lost control and hit a fire hydrant, causing water to flow down Rancho Oaks Lane. Gary Timm and Mary Timm have filed a claim for \$15,000.00 for damage to their property caused by the water. The claimants allege the District was negligent when the District failed to immediately turn the water valve off.

The District responded and had the valve closed within forty (40) minutes from having received the call. The San Miguel Fire Department (SMFD) was first to respond to the scene of the accident. The SMFD attempted to turn the water off, but was not able to find the correct valve. The District Operator found the

appropriate valve shortly upon arriving at the scene of the accident. The response time and the time to turn the valve off of 40 minutes is considered timely given the factors related to this accident.

Karen Lafferty, Senior Claims Examiner for the Special District Risk Management Authority, the District's insurance carrier, is recommending the District reject the claim from Gary and Mary Timm. The District was timely in responding to this incident and was not negligent. The owner of the vehicle that hit and severed the fire hydrant is responsible for any damage caused by the flood.

Total damages to District property of \$5,419 will be submitted to the vehicle owner's insurance carrier for reimbursement.

**FISCAL IMPACT:**

    ZZ    

None at this time.

**STRATEGIC GOAL:**

"Ensure full cost recovery."

**LEGAL IMPACT:**

\_\_\_\_\_

None.

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

**Attachments:**

- (A) Committee Action Report
- (B) Claim against Otay Water District
- (C) Police Report #09-08-0156 dated 8/17/09

## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	REJECTION OF THE GARY L. TIMM AND MARY A. TIMM CLAIM
-------------------------	--

### COMMITTEE ACTION:

The Finance, Administration and Communications Committee met on October 19, 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.

**Gary L. Timm**  
**Mary A. Timm**  
**3133 Rancho Oaks Lane**  
**Spring Valley, CA 91978**  
**Cell Gary- 619-990-6085**  
**Work Mary- 619-260-7537**  
**Home 619 -660-1763**

September 21, 2009

Mr. Rom Sarno  
Chief of Administrative Services  
Otay Water District  
2554 Sweetwater Springs Blvd.  
Spring Valley, CA 91977

Re: Fire Hydrant Break –Rancho Oaks Lane

Dear Mr. Sarno:

On August 17, 2009 an accident, involving an Otay Water District's fire hydrant becoming severed, resulted in damage to our property in the amount of \$15,000. San Miguel Fire Department made several unsuccessful attempts to locate the shut-off valve of the fire hydrant. Our sons and neighbors tried to divert the water from flowing onto our road and bridge by using large construction scaffolding boards; but this proved futile. When the Otay Water District employee arrived, he also was unable to locate the shut-off valve and the water flowed for 35 minutes until the valve was located. Due to the failure of Otay Water in locating the valve in a timely manner, lead to increased damage to our property, which was a foreseeable consequence, of continuous flooding, due to the hydrant flooding our road.

Otay Water has a duty to identify the valve and turn off the water within a reasonable length of time. Since this did not occur, we feel it is the responsibility of Otay Water to cover the damage to our property as described in the attached estimate.

We await a quick resolution to this claim. Thank you.

Sincerely,

  
Gary L. Timm  
Mary A. Timm

Attachment

Cc: Marinell McCormick, Otay Water District

**AMERICAN ASPHALT AND CONCRETE, INC.**

9011 MEMORY LANE  
 SPRING VALLEY, CA 91977-2152  
 Ph. (619) 589-8112 \* Fax. (619) 589-8113  
 CA License No. 688323

**PROPOSAL / CONTRACT**

DATE	ESTIMATE No.
9/21/2008	9474

NAME/ADDRESS	
GARY TIMM 3133 RANCHO OAKS LANE SPRING VALLEY, CA. 91977	
TERMS	REP.
NET (30) DAYS	PC



PROJECT
OTAY WATER DISTRICT
PHONE NUMBERS
PH / 619-990-6085

DESCRIPTION	TOTAL
<p>ON 09-18-09 AN INSPECTION WAS REQUESTED TO ADDRESS THE ROAD REPAIRS - APPARENTLY CAUSED BY A BROKEN WATER / FIRE HYDRANT BELONGING TO THE OTAY WATER DISTRICT. DAMAGE WAS DUE TO AN OUT-OF-CONTROL AUTO. THE FLOOD CONDITIONS REPORTEDLY LASTED FOR APPROX. 35 MINUTES. THIS SERIOUSLY UNDERMINED SEVERAL AREAS OF THE ROAD NEAR A CONCRETE BRIDGE THAT CROSSES A STREAM ON THE PROPERTY. AFTER CAREFULLY CONSIDERING THE REPAIR WORK NEEDED AS A RESULT OF THE FLOOD;</p> <p>I PRESENT THE FOLLOWING RECOMMENDATIONS:</p> <ol style="list-style-type: none"> <li>1. SAW CUT ASPHALT ALONG THE NORTH EAST EDGE OF THE BRIDGE - FOR A DISTANCE OF APPROX. 30 FT. - ALSO ACROSS THE ENTIRE WIDTH OUT 8' FROM THE NORTH END OF THE BRIDGE.</li> <li>2. SAW CUT ANOTHER SECTION PROCEEDING FROM THE SOUTH / WEST SIDE 50' X 4' WIDE.</li> <li>3. EXCAVATE BOTH THESE AREAS TO A DEPTH OF APPROX. 4', DISPOSE OF EXCESS EARTH ON SITE.</li> <li>4. FILL THESE AREAS BY IMPORTING C/2 BASE MATERIAL COMPACTING IN LAYERS TO A 95% RELATIVE DENSITY.</li> <li>5. PULL ERODED EARTH UP FROM THE SIDES OF THE EMBANKMENTS TO ESTABLISH AND REPAIR SLOPES. ( READY FOR SLOPE STABILIZATION FABRIC AND HYDRO SEEDING )</li> <li>6. PAVE THE REPAIRED AREAS ON THE ROAD BED TO A DEPTH OF 4" AFTER SPRAYING WITH HERBICIDE.</li> </ol>	
THANK YOU FOR THIS OPPORTUNITY TO BID YOUR PROJECT.	<b>TOTAL</b>

TO BE MEASURED ON COMPLETION AND INVOICED AT UNIT PRICES

- Not responsible for reflective cracking thru overlays & skin patching
- Not responsible for weed growth from adjacent property
- Crack filling does not imply crack repair.
- Not responsible for pre-existing subgrade.

- Not responsible for pre-existing engineering with respect to drainage.
- Not responsible for back-fill and compaction or back-fill installed by others.
- Engineering, testing, inspection and permit fees not included.
- Not responsible for underground utilities in areas to be removed.

**AMERICAN ASPHALT AND CONCRETE, INC.**

By: \_\_\_\_\_  
 PETE CALLAWAY

**CUSTOMER ACCEPTANCE**

I/We accept the within proposal and agree to pay the said amount in accordance with the terms set forth. All of the terms and definitions on the reverse side are incorporated herein and made a part hereof.

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

Customer Signature: \_\_\_\_\_ Page 1 Customer P.O. # \_\_\_\_\_

White: Contractor's Copy \* Yellow: Customer's Copy \* Pink: Office Copy \* Blue: Log Copy

**AMERICAN ASPHALT AND CONCRETE, INC.**

9011 MEMORY LANE  
 SPRING VALLEY, CA 91977-2152  
 Ph. (619) 589-8112 \* Fax. (619) 589-8113  
 CA License No. 688323

**PROPOSAL / CONTRACT**

DATE	ESTIMATE No.
9/21/2009	9474

NAME/ADDRESS	
GARY TIMM 3133 RANCHO OAKS LANE SPRING VALLEY, CA 91977	
TERMS	REP.
NET (30) DAYS	PC



PROJECT
OTAY WATER DISTRICT
PHONE NUMBERS
PH / 619-990-6085

DESCRIPTION	TOTAL
7. REPLACE THE A.C. BERM ALONG THE EDGE OF THE ROAD THAT WAS DESTROYED BY THE FLOOD, APPROX. 80 LN. FT.	15,000.00
THANK YOU FOR THIS OPPORTUNITY TO BID YOUR PROJECT.	<b>TOTAL \$15,000.00</b>

TO BE MEASURED ON COMPLETION AND INVOICED AT UNIT PRICES

- Not responsible for reflective cracking thru overlays & skin patching
- Not responsible for weed growth from adjacent property
- Crack filling does not imply crack repair.
- Not responsible for pre-existing subgrade.
- Not responsible for pre-existing engineering with respect to drainage.
- Not responsible for back-fill and compaction or back-fill installed by others.
- Engineering, testing, inspection and permit fees not included.
- Not responsible for underground utilities in areas to be removed.

**AMERICAN ASPHALT AND CONCRETE, INC.**

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

PETE CALLAWAY

**CUSTOMER ACCEPTANCE**

I/We accept the within proposal and agree to pay the said amount in accordance with the terms set forth. All of the terms and definitions on the reverse side are incorporated herein and made a part hereof.

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

Customer Signature: \_\_\_\_\_ Page 2 Customer P.O. # \_\_\_\_\_

White: Contractor's Copy \* Yellow: Customer's Copy \* Pink: Office Copy \* Blue: Log Copy

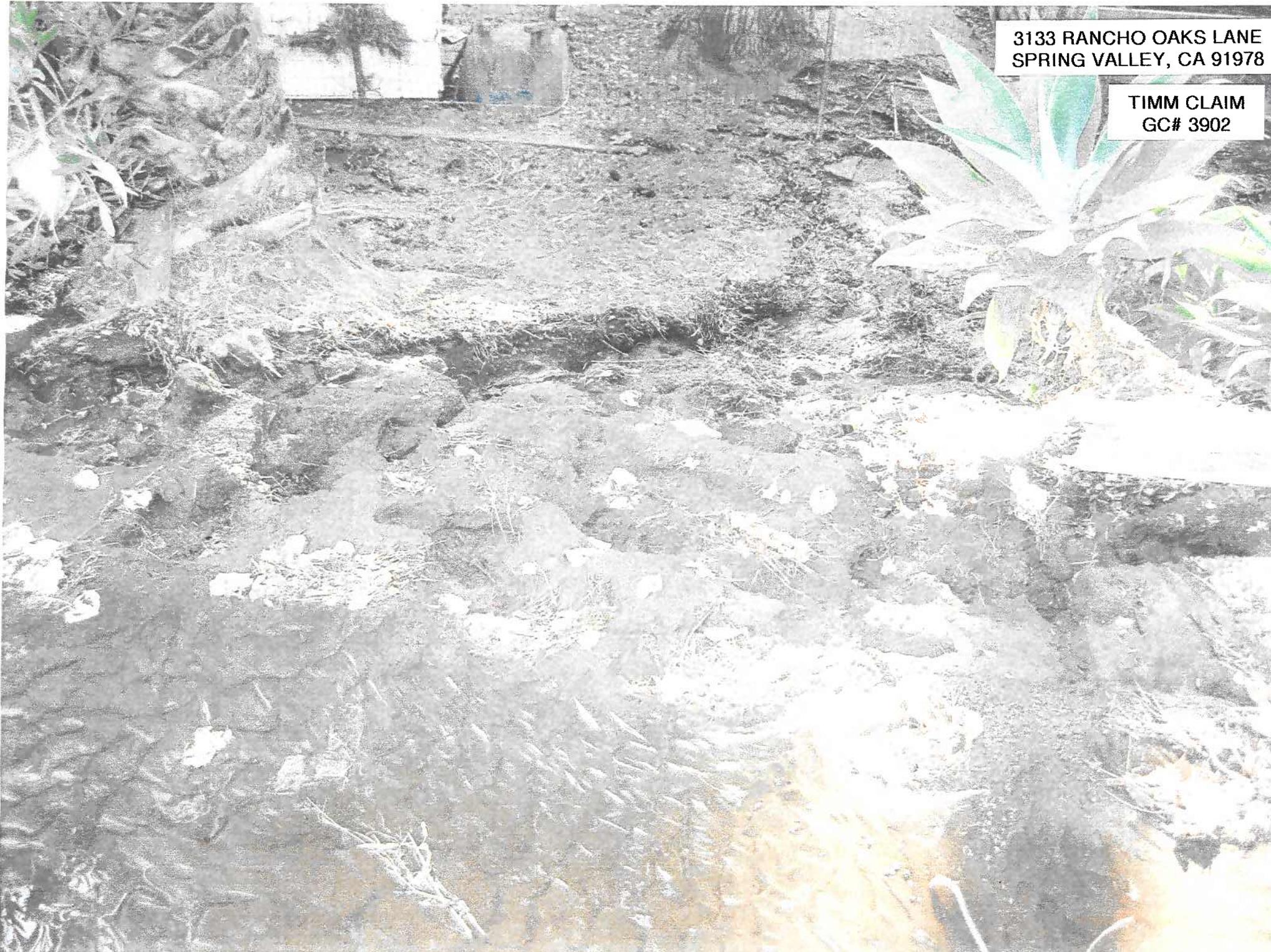
3133 RANCHO OAKS LANE  
SPRING VALLEY, CA 91978

TIMM CLAIM  
GC# 3902



3133 RANCHO OAKS LANE  
SPRING VALLEY, CA 91978

TIMM CLAIM  
GC# 3902



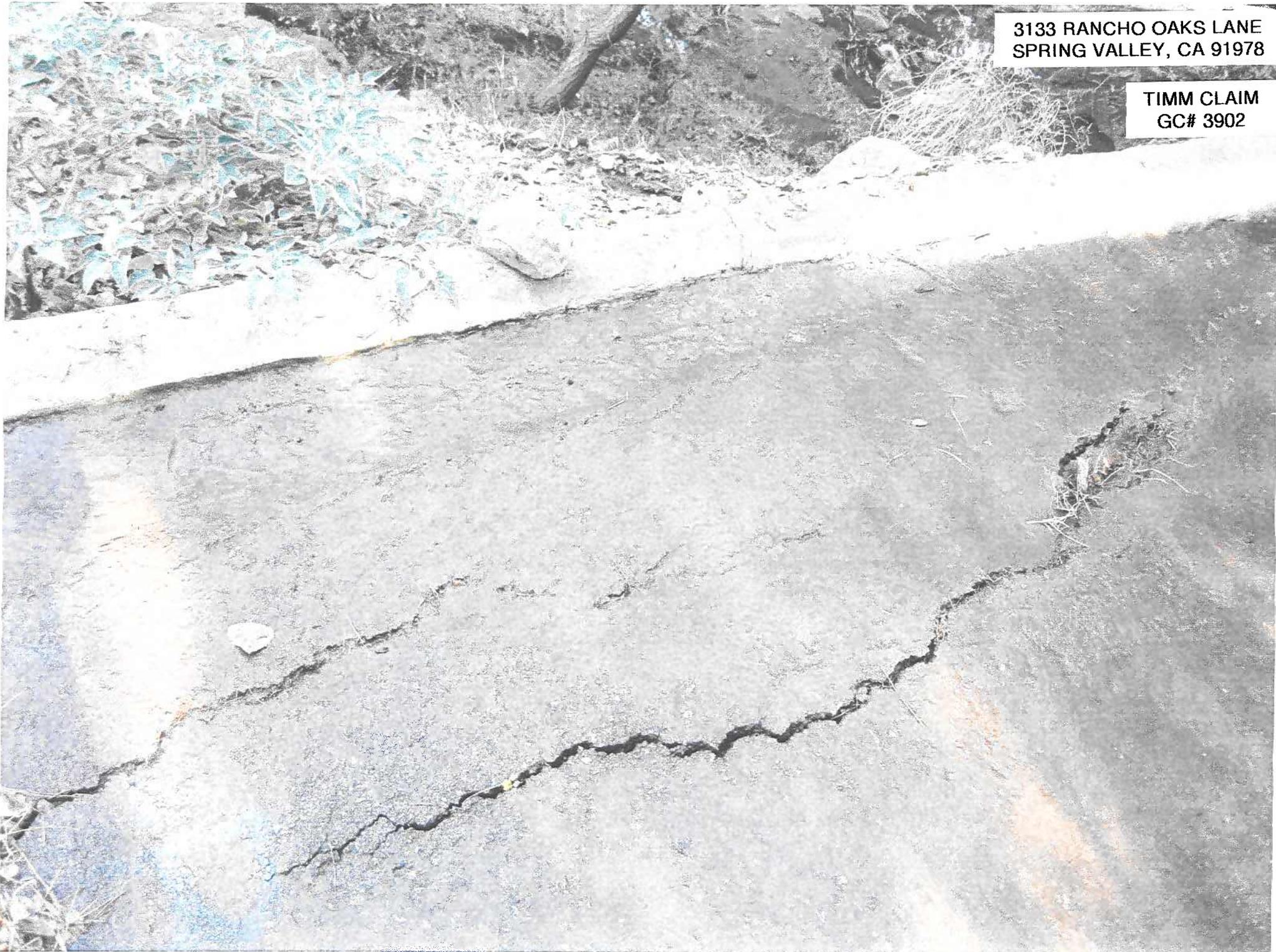
3133 RANCHO OAKS LANE  
SPRING VALLEY, CA 91978

TIMM CLAIM  
GC# 3902



3133 RANCHO OAKS LANE  
SPRING VALLEY, CA 91978

TIMM CLAIM  
GC# 3902



STATE OF CALIFORNIA  
TRAFFIC COLLISION REPORT  
CHP 565 CARS PAGE 1 (REV 11-06) OPI 085

SPECIAL CONDITIONS		NUMBER INJURED 1	INT & RUN FELLOW <input type="checkbox"/>	CITY UNINC	JUDICIAL DISTRICT EL CAJON SUPERIOR	LOCAL REPORT NUMBER 09-08-0156	
		NUMBER KILLED 0	INT & RUN INDEMEANOR <input checked="" type="checkbox"/>	COUNTY SAN DIEGO	REPORTING DISTRICT	BEAT 2	DAY OF WEEK MONDAY
						TOW AWAY <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
LOCATION	COLLISION OCCURRED ON: SR-94 (12700 BLOCK)			MO 08	DAY 17	YEAR 2009	TIME (2400) 1644
	MILEPOST INFORMATION:			GPS COORDINATES		NCIC # 9680	OFFICER I.D. 017621
	AT INTERSECTION WITH: <input checked="" type="checkbox"/> OR: .3 MILE(S) WEST OF STEELE CANYON RD			LATITUDE		LONGITUDE	
				STATE HWY REL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		PHOTOGRAPHS BY: <input checked="" type="checkbox"/> NONE	
PARTY 1	DRIVER'S LICENSE NUMBER E1752391	STATE CA	CLASS C	AIR BAG M	SAFETY EQUIP. G	VEH. YEAR 02	MAKE / MODEL / COLOR TOYT CELICA SIL
DRIVER	NAME(FIRST, MIDDLE, LAST) <input checked="" type="checkbox"/> NEIMAN SALEM SOMO			OWNER'S NAME <input type="checkbox"/> SAME AS DRIVER			
PEDESTRIAN	STREET ADDRESS 13952 OLIVE VISTA DR.			OWNER'S ADDRESS <input checked="" type="checkbox"/> SAME AS DRIVER			
PARKED VEHICLE	CITY / STATE / ZIP JAMUL CA 91935			DISPOSITION OF VEHICLE ON ORDERS OF: <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> DRIVER <input type="checkbox"/> OTHER			
BICYCLIST	SEX M	HAIR BRN	EYES BLU	HEIGHT 5-10	WEIGHT 145	MO 03/19/1992	YEAR 1992
OTHER	HOME PHONE (619)825-9320			BUSINESS PHONE (619)957-7403			
		INSURANCE CARRIER NONE		POLICY NUMBER CITE #14028KK			
		DIR OF TRAVEL ON STREET OR HIGHWAY W SR-94		SPEED LIMIT 55			
PARTY 2	DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP.	VEH. YEAR	MAKE / MODEL / COLOR
DRIVER	NAME(FIRST, MIDDLE, LAST)			OWNER'S NAME <input type="checkbox"/> SAME AS DRIVER			
PEDESTRIAN	STREET ADDRESS			OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER			
PARKED VEHICLE	CITY / STATE / ZIP			DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input type="checkbox"/> DRIVER <input type="checkbox"/> OTHER			
BICYCLIST	SEX	HAIR	EYES	HEIGHT	WEIGHT	MO	BIRTHDATE DAY YEAR
OTHER	HOME PHONE			BUSINESS PHONE			
		INSURANCE CARRIER		POLICY NUMBER			
		DIR OF TRAVEL ON STREET OR HIGHWAY		SPEED LIMIT			
PARTY 3	DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP.	VEH. YEAR	MAKE / MODEL / COLOR
DRIVER	NAME(FIRST, MIDDLE, LAST)			OWNER'S NAME <input type="checkbox"/> SAME AS DRIVER			
PEDESTRIAN	STREET ADDRESS			OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER			
PARKED VEHICLE	CITY / STATE / ZIP			DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input type="checkbox"/> DRIVER <input type="checkbox"/> OTHER			
BICYCLIST	SEX	HAIR	EYES	HEIGHT	WEIGHT	MO	BIRTHDATE DAY YEAR
OTHER	HOME PHONE			BUSINESS PHONE			
		INSURANCE CARRIER		POLICY NUMBER			
		DIR OF TRAVEL ON STREET OR HIGHWAY		SPEED LIMIT			
PREPARER'S NAME JONATHAN M PECK 017621		DISPATCH NOTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A		REVIEWER'S NAME <i>[Signature]</i>		DATE REVIEWED 9-3-09	

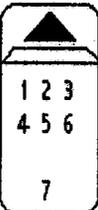
ADG  
 DIV. HWY.  
 CO RD. DEP.  
 D.A.  
 CORONER  
 JUV.  
 P.D.  
 CALTRANS

09-09-09

*[Signature]* 9-3-09

STATE OF CALIFORNIA  
**TRAFFIC COLLISION CODING**  
 CHP 555 CARS PAGE2 (REV. 11-06) OPI 065

DATE OF COLLISION (MO. DAY YEAR) 08/17/2009	TIME(24HR) 1644	NCIC # 9680	OFFICER I.D. 017621	NUMBER <b>09-08-0156</b>
OWNER <b>JEFF GOIN (OTAY WATER DISTRICT)</b>		OWNER ADDRESS <b>2554 SWEETWATER SPRINGS BLVD. SPRING VALLEY, CA 91977</b>		NOTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
PROPERTY DAMAGE DESCRIPTION OF DAMAGE <b>DAMAGED PROTECTION POLE AND FIRE HYDRANT</b>				

<b>SEATING POSITION</b>  <p>1 - DRIVER                  2 TO 6 - PASSENGERS                  7 - STA. WGN REAR                  8 - RR. OCC TRK. OR VAN                  9 - POSITION UNKNOWN                  0 - OTHER</p>	<b>SAFETY EQUIPMENT</b> <b>OCCUPANTS</b> A - NONE IN VEHICLE B - UNKNOWN C - LAP BELT USED D - LAP BELT NOT USED E - SHOULDER HARNESS USED F - SHOULDER HARNESS NOT USED G - LAP/SHOULDER HARNESS USED H - LAP/SHOULDER HARNESS NOT USED J - PASSIVE RESTRAINT USED K - PASSIVE RESTRAINT NOT USED <b>CHILD RESTRAINT</b> Q - IN VEHICLE USED R - IN VEHICLE NOT USED S - IN VEHICLE USE UNKNOWN T - IN VEHICLE IMPROPER USE U - NONE IN VEHICLE <b>L - AIR BAG DEPLOYED</b> M - AIR BAG NOT DEPLOYED N - OTHER P - NOT REQUIRED <b>M/C BICYCLE - HELMET</b> DRIVER PASSENGER V - NO X - NO W - YES Y - YES <b>EJECTED FROM VEHICLE</b> 0 - NOT EJECTED 1 - FULLY EJECTED 2 - PARTIALLY EJECTED 3 - UNKNOWN	<b>INATTENTION CODES</b> A - CELL PHONE HANDHELD B - CELL PHONE HANDSFREE C - ELECTRONIC EQUIPMENT D - RADIO / CD E - SMOKING F - EATING G - CHILDREN H - ANIMALS I - PERSONAL HYGIENE J - READING K - OTHER
---	---	---

ITEMS MARKED BELOW FOLLOWED BY AN ASTERISK (\*) SHOULD BE EXPLAINED IN THE NARRATIVE.

PRIMARY COLLISION FACTOR LIST NUMBER (#) OF PARTY AT FAULT	TRAFFIC CONTROL DEVICES	1	2	3	SPECIAL INFORMATION	1	2	3	MOVEMENT PRECEDING COLLISION
1 A VC SECTION VIOLATED: CITED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 22107	A CONTROLS FUNCTIONING				A HAZARDOUS MATERIAL				A STOPPED
B OTHER IMPROPER DRIVING*	B CONTROLS NOT FUNCTIONING*				B CELL PHONE HANDHELD IN USE				B PROCEEDING STRAIGHT
C OTHER THAN DRIVER*	C CONTROLS OBSCURED				C CELL PHONE HANDSFREE IN USE				C RAN OFF ROAD
D UNKNOWN*	D NO CONTROLS PRESENT / FACTOR*			X	D CELL PHONE NOT IN USE				D MAKING RIGHT TURN
	TYPE OF COLLISION				E SCHOOL BUS RELATED				E MAKING LEFT TURN
	A HEAD-ON				F 75 FT MOTORTRUCK COMBO				F MAKING U TURN
	B SIDE SWIPE				G 32 FT TRAILER COMBO				G BACKING
	C REAR END				H				H SLOWING / STOPPING
WEATHER (MARK 1 TO 2 ITEMS)	D BROADSIDE				I				I PASSING OTHER VEHICLE
X A CLEAR	E HIT OBJECT				J				J CHANGING LANES
B CLOUDY	F OVERTURNED				K				K PARKING MANUEVER
C RAINING	G VEHICLE / PEDESTRIAN				L				L ENTERING TRAFFIC
D SNOWING	H OTHER*				M			X	M OTHER UNSAFE TURNING
E FOG / VISIBILITY FT.					N				N XING INTO OPPOSING LANE
F OTHER*	MOTOR VEHICLE INVOLVED WITH				O				O PARKED
G WIND	A NON - COLLISION				P				P MERGING
	B PEDESTRIAN				Q				Q TRAVELING WRONG WAY
	C OTHER MOTOR VEHICLE				OTHER ASSOCIATED FACTORS (MARK 1 TO 2 ITEMS)				R OTHER*
X A DAYLIGHT	D MOTOR VEHICLE ON OTHER ROADWAY		1	2	A VC SECTION VIOLATED: CITED <input type="checkbox"/> YES <input type="checkbox"/> NO				
B DUSK - DAWN	E PARKED MOTOR VEHICLE				B VC SECTION VIOLATED: CITED <input type="checkbox"/> YES <input type="checkbox"/> NO				
C DARK - STREET LIGHTS	F TRAIN				C VC SECTION VIOLATED: CITED <input type="checkbox"/> YES <input type="checkbox"/> NO				
D DARK - NO STREET LIGHTS	G BICYCLE								
E DARK - STREET LIGHTS NOT FUNCTIONING*	H ANIMAL:								
	ROADWAY SURFACE								
X A DRY	X I FIXED OBJECT: PROTECTION POLE								
B WET	J OTHER OBJECT:				D			X	A HAD NOT BEEN DRINKING
C SNOWY - ICY					E VISION OBSCUREMENT:				B HBD - UNDER INFLUENCE
D SLIPPERY (MUDDY, OILY, ETC.)					F INATTENTION*				C HBD - NOT UNDER INFLUENCE*
	ROADWAY CONDITION(S) (MARK 1 TO 2 ITEMS)				G STOP & GO TRAFFIC				D HBD - IMPAIRMENT UNKNOWN*
A HOLES, DEEP RUT*	PEDESTRIAN'S ACTIONS				H ENTERING / LEAVING RAMP				E UNDER DRUG INFLUENCE*
B LOOSE MATERIAL ON ROADWAY*	X A NO PEDESTRIANS INVOLVED				I PREVIOUS COLLISION				F IMPAIRMENT - PHYSICAL*
C OBSTRUCTION ON ROADWAY*	B CROSSING IN CROSSWALK AT INTERSECTION				J UNFAMILIAR WITH ROAD				G IMPAIRMENT NOT KNOWN
D CONSTRUCTION - REPAIR ZONE	C CROSSING IN CROSSWALK - NOT AT INTERSECTION				K DEFECTIVE VEH. EQUIP.: CITED <input type="checkbox"/> YES <input type="checkbox"/> NO				H NOT APPLICABLE
E REDUCED ROADWAY WIDTH									I SLEEPY / FATIGUED
F FLOODED*	D CROSSING - NOT IN CROSSWALK				L UNINVOLVED VEHICLE				
G OTHER*	E IN ROAD - INCLUDES SHOULDER				M OTHER*: <b>D - "CD"</b>				
X H NO UNUSUAL CONDITIONS	F NOT IN ROAD				N NONE APPARENT				
	G APPROACHING / LEAVING SCHOOL BUS				O RUNAWAY VEHICLE				

SKETCH

  
 INDICATE NORTH

SEE PAGE #4

MISCELLANEOUS

STATE OF CALIFORNIA  
**INJURED / WITNESSES / PASSENGERS**  
 CHP 555 CARS PAGE 3 (REV 11-06) OPI 065

DATE OF COLLISION (MO. DAY YEAR) 08/17/2009				TIME(2400) 1644		NCIC # 9680		OFFICER I.D. 017621			NUMBER <b>09-08-0156</b>													
WITNESS ONLY	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	AIR BAG	SAFETY EQUIP.	EJECTED							
				FATAL INJURY	SEVERE INJURY	OTHER VISIBLE INJURY	COMPLAINT OF PAIN	DRIVER	PASS.	PED.	BICYCLIST	OTHER												
<input type="checkbox"/>	<input type="checkbox"/>	17	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1	01	M	G	0							
NAME / D.O.B. / ADDRESS PARTY #1 13952 OLIVE VISTA DR. JAMUL CA 91935													TELEPHONE (619)825-9320											
(INJURED ONLY) TRANSPORTED BY: AMR 412								TAKEN TO: SHARP MEMORIAL HOSPITAL, SAN DIEGO																
DESCRIBE INJURIES: COMPLAINT OF BACK AND LEFT SIDE PAIN TREATED ON SCENE BY SAN MIGUEL FIRE UNITS #15 AND #22																								
																	<input type="checkbox"/>	VICTIM OF VIOLENT CRIME NOTIFIED						
<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS													TELEPHONE											
(INJURED ONLY) TRANSPORTED BY:								TAKEN TO:																
DESCRIBE INJURIES:																								
																	<input type="checkbox"/>	VICTIM OF VIOLENT CRIME NOTIFIED						
<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS													TELEPHONE											
(INJURED ONLY) TRANSPORTED BY:								TAKEN TO:																
DESCRIBE INJURIES:																								
																	<input type="checkbox"/>	VICTIM OF VIOLENT CRIME NOTIFIED						
<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS													TELEPHONE											
(INJURED ONLY) TRANSPORTED BY:								TAKEN TO:																
DESCRIBE INJURIES:																								
																	<input type="checkbox"/>	VICTIM OF VIOLENT CRIME NOTIFIED						
<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS													TELEPHONE											
(INJURED ONLY) TRANSPORTED BY:								TAKEN TO:																
DESCRIBE INJURIES:																								
																	<input type="checkbox"/>	VICTIM OF VIOLENT CRIME NOTIFIED						
<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS													TELEPHONE											
(INJURED ONLY) TRANSPORTED BY:								TAKEN TO:																
DESCRIBE INJURIES:																								
																	<input type="checkbox"/>	VICTIM OF VIOLENT CRIME NOTIFIED						
PREPARER'S NAME JONATHAN M PECK													LD. NUMBER 017621		MO. DAY YEAR 08/17/2009			REVIEWER'S NAME				MO. DAY YEAR		

**NARRATIVE/SUPPLEMENTAL**

DATE OF INCIDENT/OCCURRENCE <b>08-17-09</b>		TIME (2400) <b>1644</b>	NCIC NUMBER <b>9680</b>	OFFICER I.D. <b>17621</b>	NUMBER <b>09-08-0156</b>
*X ONE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Supplemental	*X ONE <input checked="" type="checkbox"/> Collision Report <input type="checkbox"/> Other:	TYPE SUPPLEMENTAL (*X APPLICABLE) <input type="checkbox"/> BA update <input type="checkbox"/> Fatal <input type="checkbox"/> Hit and run update <input type="checkbox"/> Hazardous material <input type="checkbox"/> School Bus <input type="checkbox"/> Other:			
CITY/COUNTY/JUDICIAL DISTRICT				REPORTING DISTRICT/BEAT	CITATION NUMBER
LOCATION/SUBJECT <b>SR-94 e/b, west of Steele Canyon Dr.</b>				STATE HIGHWAY RELATED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

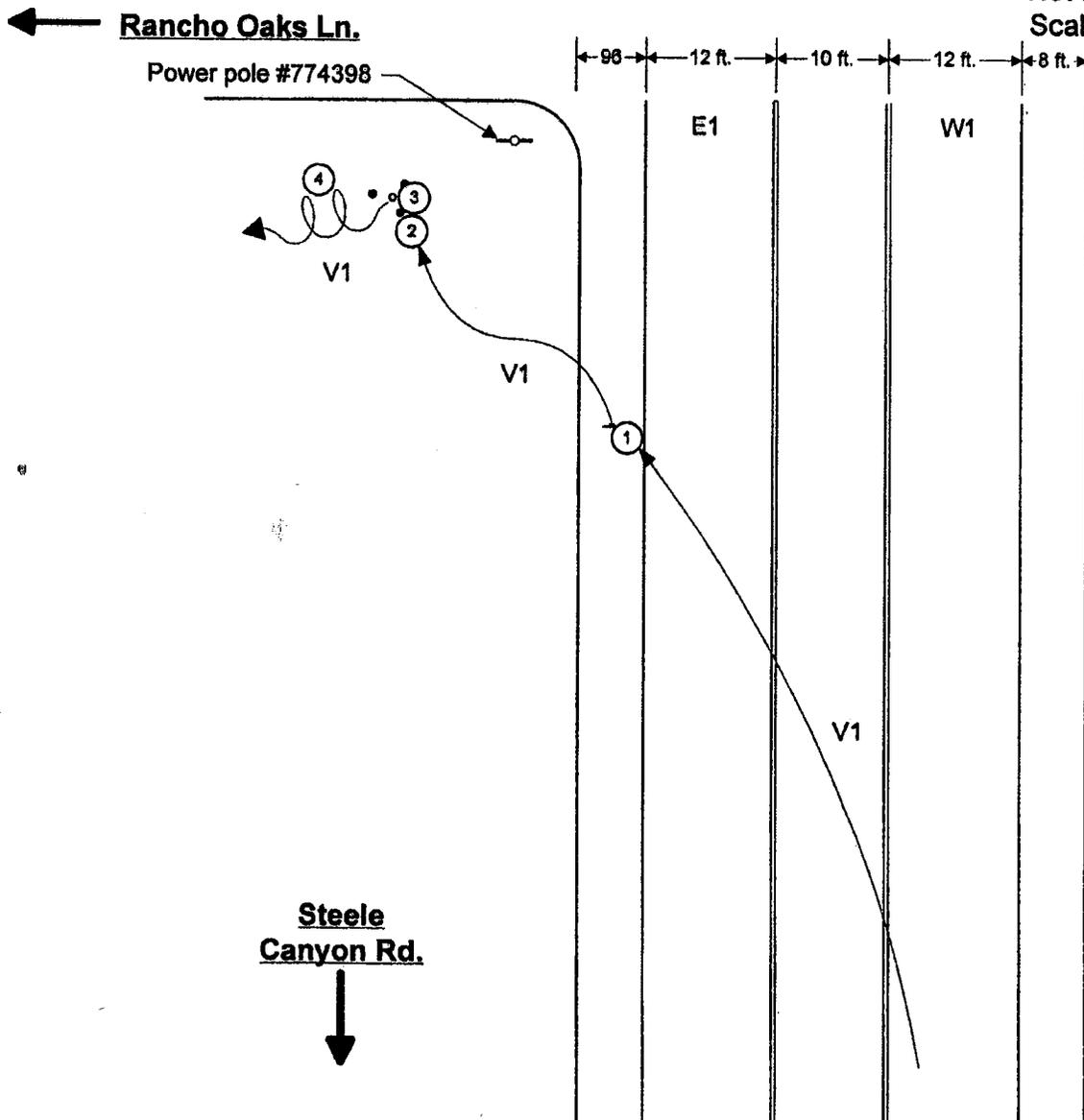
1

Sketch

**SR-94**



Not to Scale



2  
3

PREPARER'S NAME AND I.D. NUMBER <b>M. MATEO, 17916</b>	DATE <b>08-17-09</b>	REVIEWER'S NAME	DATE
---	-------------------------	-----------------	------

**NARRATIVE/SUPPLEMENTAL**

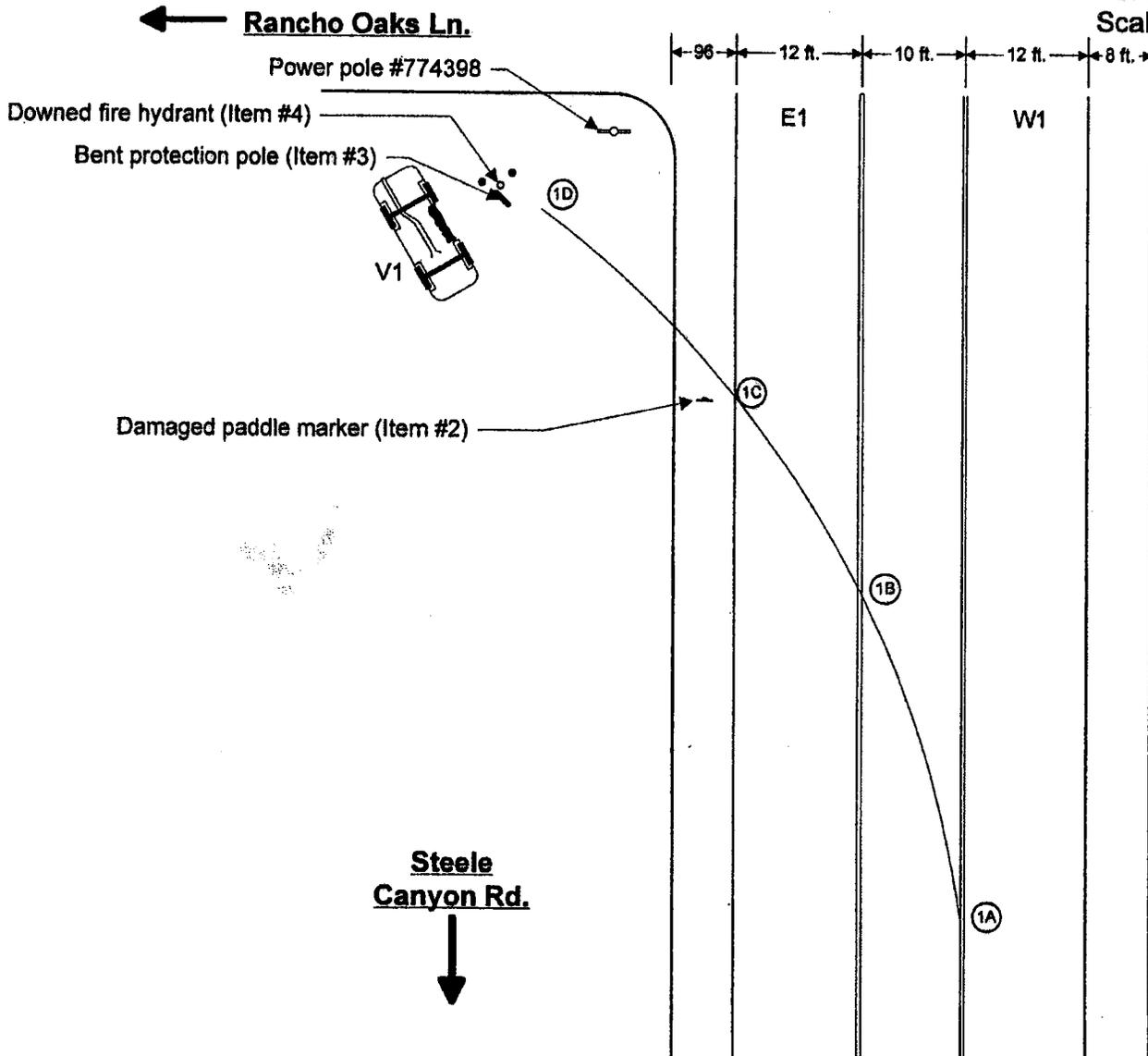
DATE OF INCIDENT/OCCURRENCE <b>08-17-09</b>		TIME (2400) <b>1644</b>	NCIC NUMBER <b>9680</b>	OFFICER I.D. <b>17621</b>	NUMBER <b>09-08-0158</b>
*X ONE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Supplemental	*X ONE <input checked="" type="checkbox"/> Collision Report <input type="checkbox"/> Other:	TYPE SUPPLEMENTAL (*X APPLICABLE) <input type="checkbox"/> BA update <input type="checkbox"/> Fatal <input type="checkbox"/> Hit and run update <input type="checkbox"/> Hazardous material <input type="checkbox"/> School Bus <input type="checkbox"/> Other:			
CITY/COUNTY/JUDICIAL DISTRICT			REPORTING DISTRICT/BEAT	CITATION NUMBER	
LOCATION/SUBJECT <b>SR-94 e/b, west of Steele Canyon Dr.</b>			STATE HIGHWAY RELATED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

Factual  
Diagram

**SR-94**



Not to  
Scale



1

PREPARER'S NAME AND I.D. NUMBER <b>M. MATEO, 17916</b>	DATE <b>08-17-09</b>	REVIEWER'S NAME	DATE
---	-------------------------	-----------------	------

**NARRATIVE/SUPPLEMENTAL**

DATE OF INCIDENT/OCCURRENCE <b>08-17-09</b>		TIME (2400) <b>1644</b>	NCIC NUMBER <b>9680</b>	OFFICER I.D. <b>17621</b>	NUMBER <b>09-08-0156</b>
*X* ONE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Supplemental		*X* ONE <input checked="" type="checkbox"/> Collision Report <input type="checkbox"/> Other:		TYPE SUPPLEMENTAL (*X* APPLICABLE) <input type="checkbox"/> BA update <input type="checkbox"/> Fatal <input type="checkbox"/> Hit and run update <input type="checkbox"/> Hazardous material <input type="checkbox"/> School Bus <input type="checkbox"/> Other:	
CITY/COUNTY/JUDICIAL DISTRICT				REPORTING DISTRICT/BEAT	CITATION NUMBER
LOCATION/SUBJECT <b>SR-94 e/b, west of Steele Canyon Dr.</b>				STATE HIGHWAY RELATED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

1 **PHYSICAL EVIDENCE LEGEND:**

2 Measurements were obtained by roll-meter and vehicle odometer using power pole #774398 as a  
 3 reference. The telephone pole is located south of the roadway and approximately 0.3 miles west  
 4 of the west roadway edge prolongation of Steele Canyon Dr.  
 5

6 **VEHICLE POINTS OF REST**

	0.3 Miles + (Feet)	Dir.	Reference	Feet	Dir.	Reference
V-1 RF	-23	W	West roadway edge of Steele Canyon Dr.	52	S	South roadway edge of SR-94
V-1 RR	-17	W	West roadway edge of Steele Canyon Dr.	57	S	East Roadway Edge of Greenfield Dr.

8  
 9 **PHYSICAL EVIDENCE DESCRIPTION**

Item	Description
1	Tire friction mark
2	Damaged paddle marker
3	Protection pole (for fire hydrant)
4	Fire hydrant

11  
 12

PREPARER'S NAME AND I.D NUMBER <b>M. MATEO, 17916</b>	DATE <b>08-17-09</b>	REVIEWER'S NAME	DATE
--	-------------------------	-----------------	------

**NARRATIVE/SUPPLEMENTAL**

DATE OF INCIDENT/OCCURRENCE <b>08-17-09</b>		TIME (2400) <b>1644</b>	NCIC NUMBER <b>9680</b>	OFFICER I.D. <b>17621</b>	NUMBER <b>09-08-0156</b>
"X" ONE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Supplemental		"X" ONE <input checked="" type="checkbox"/> Collision Report <input type="checkbox"/> Other:		TYPE SUPPLEMENTAL ("X" APPLICABLE) <input type="checkbox"/> BA update <input type="checkbox"/> Hazardous material <input type="checkbox"/> Fatal <input type="checkbox"/> School Bus <input type="checkbox"/> Hit and run update <input type="checkbox"/> Other:	
CITY/COUNTY/JUDICIAL DISTRICT				REPORTING DISTRICT/BEAT	CITATION NUMBER
LOCATION/SUBJECT <b>SR-94 e/b, west of Steele Canyon Dr.</b>				STATE HIGHWAY RELATED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

1 **PHYSICAL EVIDENCE LOCATION**  
2

	0.3 Miles + (Feet)	Dir.	Reference	Feet	Dir.	Reference
1A	-160	W	West roadway edge of Steele Canyon Dr.	22	N	South roadway edge of SR-94
1B	-112	W	West roadway edge of Steele Canyon Dr.	12	N	South roadway edge of SR-94
1C	-55	W	West roadway edge of Steele Canyon Dr.	8	S	South roadway edge of SR-94
1D	-10	W	West roadway edge of Steele Canyon Dr.	39	S	South roadway edge of SR-94
2	-68	W	West roadway edge of Steele Canyon Dr.	11	S	South roadway edge of SR-94
3	-23	W	West roadway edge of Steele Canyon Dr.	44	S	South roadway edge of SR-94
4	-21	W	West roadway edge of Steele Canyon Dr.	46	S	South roadway edge of SR-94

3  
4  
5

PREPARER'S NAME AND I.D. NUMBER <b>M. MATEO, 17916</b>	DATE <b>08-17-09</b>	REVIEWER'S NAME	DATE
---	-------------------------	-----------------	------

**NARRATIVE/SUPPLEMENTAL**

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D. NUMBER
08/17/2009	1644	9680	017621 09-08-0156

**1 FACTS:**

**2 NOTIFICATION:** I was dispatched to a call of a traffic collision with emergency personnel  
**3** responding at 1645 hours. I responded from SR-125 and Jamacha Rd. and arrived on scene at  
**4** 1655 hours. All times, speeds and measurements in this investigation are approximate.  
**5** Measurements were taken by roll meter and odometer pace except where otherwise indicated.

6

**7 SCENE:**

**8** This collision occurred on SR-94 within an unincorporated portion of San Diego County. At this  
**9** location SR-94 is composed of one westbound and one eastbound lane. The lanes are separated  
**10** by a two way left turn lane that is delineated by painted yellow lines. The roadway is bordered on  
**11** the north by a dirt shoulder and on the south by a dirt shoulder. To the south of the roadway there  
**12** is a fire hydrant which is surrounded by four protection poles. The roadway is controlled by a 55  
**13** MPH posted speed limit. There were no visual obstructions claimed or noted.

14

**15 PARTIES:**

**16 Party #1 (Somo)** was located at the collision scene. He was identified by his valid CA Driver  
**17** License and determined to be the driver of Vehicle #1 (Toyota) by his statement, the statement of  
**18** Deputy R. Gomez #2326 (Witness #1), his injuries, and vehicle damage.

**19 Vehicle #1 (Toyota)** was located on its roof facing in a northeasterly direction on the dirt shoulder  
**20** to the south of SR-94, west of Steele Canyon Rd. V-1 sustained total rollover damage.

21

**22 STATEMENTS:**

**23 Party #1 (Somo)** was interviewed at Sharp Memorial Hospital in San Diego. He related he was  
**24** driving V-1 westbound SR-94, west of Steele Canyon Rd. in the westbound lane at 55 MPH. He  
**25** was attempting to put a compact disk in his compact disk player. He accidentally dropped the  
**26** compact disk on the floor of his vehicle. He decided that in order to safely retrieve the compact  
**27** disk and place it into the compact disk player he would need to stop his vehicle on a side street.  
**28** He decided to make a left turn and pull into the next side street. He pulled into the center two way

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
JONATHAN M PECK	017621	08/17/2009		

**NARRATIVE/SUPPLEMENTAL**

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
08/17/2009	1644	9680	017621	09-08-0156

1 left turn lane at approximately 55 MPH and may have pulled alongside or slightly passed the  
 2 vehicle that had been in front of him. He was about to make a left turn when he was surprised by  
 3 a vehicle coming toward him in the eastbound lane that he had previously not noticed. He applied  
 4 his vehicles emergency brake to avoid a collision with the vehicle in the eastbound lane and lost  
 5 control of the vehicle. The vehicle slid off the south side of the roadway and rolled over in the dirt  
 6 area.

7

8 Witness #1 (Deputy Gomez) was interviewed at the collision scene. He related he was driving his  
 9 fully marked black and white San Diego County Sheriff's Patrol Vehicle eastbound SR-94, west of  
 10 Steele Canyon Rd. in the eastbound lane. He observed V-1 driving in the center two way left turn  
 11 lane at approximately 55 MPH. He observed V-1 pass one or two vehicles that were traveling at a  
 12 slower speed. Deputy Gomez activated his patrol vehicle's lights and siren and made a u-turn in  
 13 order to make an enforcement stop on V-1 for the unsafe driving he observed. Just as he had  
 14 completed his u-turn he observed V-1 making what appeared to be a left turn onto a side street.  
 15 As Deputy Gomez approached the location where he had seen V-1 leave the roadway he saw  
 16 water shooting into the sky and saw that V-1 had collided with a fire hydrant. He arrived on scene  
 17 and detained the driver.

18

19 **OPINIONS AND CONCLUSIONS:**

20 **SUMMARY:** The summary was based on statements and vehicle damage.

21 P-1 was driving V-1 westbound SR-94, west of Steele Canyon Rd. in the westbound lane at  
 22 approximately 55 MPH. P-1 then entered the center two way left turn lane and passed slower  
 23 moving traffic. P-1 then applied V-1's emergency brake while turning slightly to the left and lost  
 24 control of V-1. V-1 rotated in a counter clockwise direction across the eastbound lane and onto  
 25 the dirt shoulder. The right side of V-1 struck the protection pole to the south of the roadway. V-1  
 26 then overturned and struck the fire hydrant to the south of the roadway. Following the impact V-1  
 27 came to rest on its roof facing in a northeasterly direction to the south of SR-94, west of Steele  
 28 Canyon Rd.

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
JONATHAN M PECK	017621	08/17/2009		

**NARRATIVE/SUPPLEMENTAL**

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D. NUMBER
08/17/2009	1644	9680	017621

**09-08-0156**

1 **AREA OF IMPACT:** The areas of impact were based on statements, and vehicle damage.  
 2 AOI #1 (V-1 vs. Pole) was located 0.3 miles west of the west roadway edge prolongation of Steele  
 3 Canyon Rd., and 44 feet south of the south roadway edge of SR-94.

4  
 5 AOI #2 (V-1 vs. Fire Hydrant) was located 0.3 miles minus 21 feet west of the west roadway edge  
 6 prolongation of Steele Canyon Rd., and 46 feet south of the south roadway edge of SR-94.

7  
 8 AOI #3 (V-1 vs. Ground) was located 0.3 miles minus 20 feet west of the west roadway edge  
 9 prolongation of Steele Canyon Rd., and 55 feet south of the south roadway edge of SR-94.

10  
 11 **CAUSE:** The cause was based on statements and vehicle damage.  
 12 P-1 was driving V-1 and caused this collision by violating section 22107VC-no person shall turn a  
 13 vehicle from a direct course or move right or left upon a roadway until such movement can be  
 14 made with reasonable safety and then only after the giving of an appropriate signal in the manner  
 15 provided in this chapter in the event any other vehicle may be affected by the movement.

16  
17 **RECOMMENDATIONS:**

18 None

19  
20  
21  
22  
23

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
JONATHAN M PECK	017621	08/17/2009		



*...Dedicated to Community Service*

2554 SWEETWATER SPRINGS BOULEVARD, SPRING VALLEY, CALIFORNIA 91978-2098  
TELEPHONE: 670-2222, AREA CODE 619

September 03, 2009

**Attention Traffic Department  
California Highway Patrol  
1722 East Main Street  
El Cajon, CA 92021**

**Subject: Obtain a copy of the below Police Report**

I would like to obtain one copy of the below described police report. Following is the information you require to obtain this report:

**POLICE REPORT # : 09-08-156  
DATE OF INCIDENT: Monday, August 17, 2009  
TIME OF INCIDENT: 5:00 pm  
LOCATION OF INCIDENT: CAMPO RD**

Please mail this report to the below address:

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

If you have any questions please call me directly at (619) 670-2231. Thank you.

Sincerely,

Mike Phillips  
Water Systems Operator, Crew Leader  
Work Order #: 09-02893



*...Dedicated to Community Service*

2554 SWEETWATER SPRINGS BOULEVARD, SPRING VALLEY, CALIFORNIA 91978-2096  
TELEPHONE: 670-2222, AREA CODE 619

August 20, 2009

**Attention Traffic Department**  
California Highway Patrol  
1722 East Main Street  
El Cajon, CA 92021

Subject: Obtain a copy of the below Police Report

I would like to obtain one copy of the below described police report. Following is the information you require to obtain this report:

**POLICE REPORT # :** 9680  
**DATE OF INCIDENT:** Monday, August 17, 2009  
**TIME OF INCIDENT:** 5:00 pm  
**LOCATION OF INCIDENT:** CAMPO RD

Please mail this report to the below address:

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

If you have any questions please call me directly at (619) 670-2784. Thank you.

Sincerely,

Greg Coss  
Water Systems Operator, Crew Leader  
Work Order #: 09-02893

# AGENDA ITEM 6



## STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	November 4, 2009
SUBMITTED BY:	David Charles <i>DC</i> Public Services Manager	W.O./G.F. NO:	aa000- DIV. NO. 5 1d1000
APPROVED BY: (Chief)	Rod Posada <i>Rod Posada</i> Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña <i>m magana</i> Assistant General Manager, Engineering and Operations		
SUBJECT:	Request to Approve Agreement with New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company for the installation of a Communications Facility at the 832-1&2 Reservoir Site		

### GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorizes the General Manager to execute an agreement with New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company (New Cingular) for the installation of a communications facility at the 832-1&2 Reservoir Site (see Exhibit A for project location).

### COMMITTEE ACTION:

See Attachment A.

### PURPOSE:

To obtain Board approval authorizing the General Manager to execute an agreement (see Attachment B) with New Cingular that allows the installation of a communications facility at the 832-1&2 Reservoir Site. The agreement will grant New Cingular the right to use approximately 214 square feet of leased area and trench easements of right-of-way for access and power for the communications facility.

### ANALYSIS:

New Cingular will be the fifth cellular provider locating its facilities on the 832-1&2 Reservoir Site. Currently, Verizon,

Sprint Nextel, Cricket, and T-Mobile are the other cellular providers at this location. New Cingular is proposing to construct, operate, and maintain an unmanned wireless communications facility consisting of eleven (11) panel antennas façade mounted to the side of the existing 36-inch high steel water tank and one microwave dish (for telephone connection) façade mounted to the side of the existing concrete water tank. Four (4) ground-mounted BTS radio equipment cabinets shall be enclosed in a 23'-8" (L) x 8'-8" (W) x 8' (H) tan concrete block enclosure to screen the equipment. The overall lease area shall comprise approximately 214 square feet. The facility shall have its own SDG&E electrical service/meter.

The District will receive copies of construction drawings, all permits, and approvals by local regulatory agencies prior to granting permission to start construction. Staff agrees with the design concept for the proposed facility construction.

**FISCAL IMPACT:**

The District will receive \$3,175 per month in rent effective upon execution of the lease agreement for a period of five years, subject to an annual inflation adjustment of 4 percent. The tenant will have the option to extend the term for three additional five-year periods. Two additional five-year extensions may be granted at the District's discretion. At the beginning of each extension term, the District may choose to adjust the annual rent, effective the first year of each extension term by 4 percent or the preceding five year average of the San Diego Metropolitan CPI, whichever is higher.

An initial \$7,000 payment toward the District's non-refundable administrative fee has been paid to reimburse the District for staff time to supervise and assist in conducting an investigation of the proposed premises, site selection, planning, and design, including legal expenses; this fee is separate from rent. The remaining balance of \$2,500 will be due and payable upon execution of this agreement by both parties to reimburse the District for administrative expenses and costs related to District's supervision and assistance with construction phases of the project.

**LEGAL IMPACT:**

The form of agreement has been reviewed by District counsel.

**STRATEGIC GOAL:**

This item is in line with the District's strategic focus areas:  
Community, Governance, and Financial Health.



**General Manager**

P:\WORKING\CELLULAR LEASE FILE\Staff Reports\BD 11-04-09, Staff Report, New Cingular @ 832-12 Res, (DC-RP).doc

DTC/RP:jf

Attachments: Exhibit A  
Attachment A  
Attachment B

QA/QC Approved:

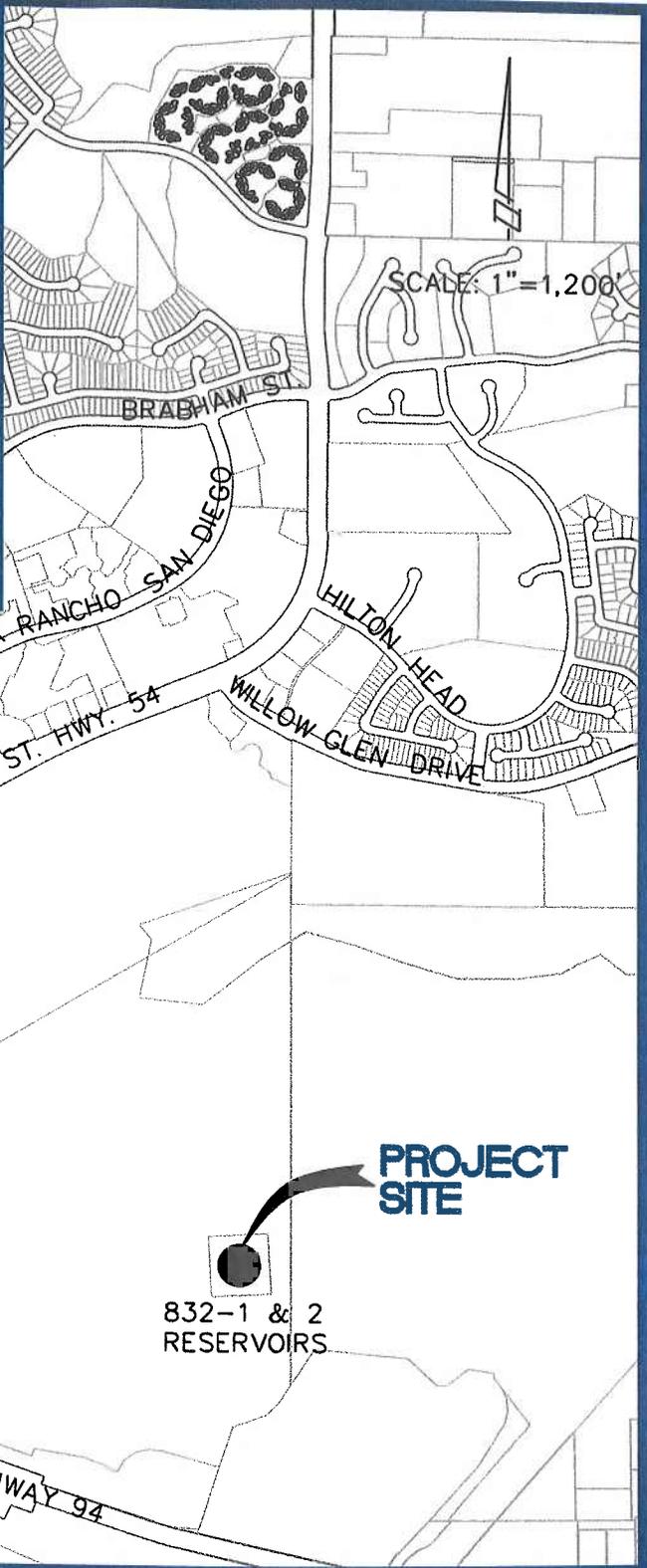
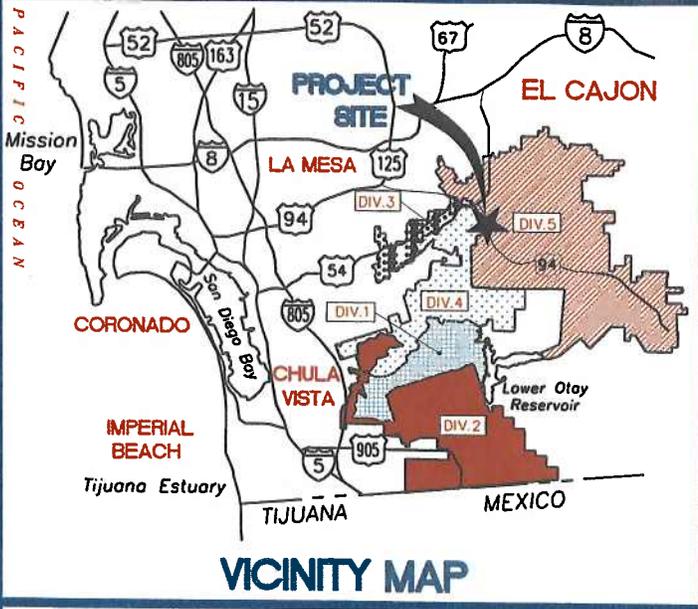
Name:



Date:

10-15-09

PA\WORKING\CELLULAR LEASE FILE\AT&T (CINGULAR)\932-182\staff report\Exhibit A, New Cingular Wireless 10-5-09.dwg 10/12/2009 10:28:01 AM PDT



**OTAY WATER DISTRICT**  
NEW CINGULAR WIRELESS PCS, LLC COMMUNICATIONS SITE  
832-1 & 2 RESERVOIRS

LOCATION MAP

**EXHIBIT A**



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b> aa000- 1d1000	Request to Approve Agreement with New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company for the installation of a Communications Facility at the 832-1&2 Reservoir Site
---	--

### COMMITTEE ACTION:

The Finance, Administration, and Communications Committee reviewed this item at a meeting held on October 19, 2009. The Committee supported Staff's recommendation.

### 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.



## ATTACHMENT B

<b>SUBJECT/PROJECT:</b> aa000- 1d1000	Request to Approve Agreement with New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company for the installation of a Communications Facility at the 832-1&2 Reservoir Site
---	--

See attached lease agreement.

AGREEMENT BETWEEN NEW CINGULAR  
WIRELESS PCS, LLC, A DELAWARE LIMITED  
LIABILITY COMPANY AND OTAY WATER  
DISTRICT TO LOCATE A COMMUNICATIONS  
FACILITY AT OTAY'S 832-1&2 RESERVOIR SITE

This Agreement ("Lease") is entered into and effective on the date specified in the signature page (the "Commencement Date"), by and between the Otay Water District, a municipal water district organized and operated pursuant to the Water Code Section 71000, et seq. ("Otay"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Tenant"). Any special terms or conditions agreed to by Otay and Tenant will be set forth on Exhibit A.

RECITALS

A. Otay owns a site on which it has constructed water facilities known as the "832-1&2 Reservoir Site," as depicted on Attachment A to Exhibit B (the "Reservoir Site").

B. Tenant has requested Otay to allow it to locate a communications facility and transmitting and receiving antennas at the Reservoir Site.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Otay and Tenant agree as follows:

1. Premises. Otay owns the real property described in Attachment B to Exhibit B (the "Property"). Otay agrees to lease to Tenant, for the installation of an antenna and related telecommunications equipment, approximately 214 square feet of real property within the Property, as more particularly described on Attachment C to Exhibit B (the "Premises"). A depiction of the Property and the Premises is attached hereto as Attachment D to Exhibit B.

2. Grant of Non-Exclusive Trench Easement(s). Otay has also agreed to grant a temporary non-exclusive easement to Tenant for certain portions of the Property, as legally described in Exhibit C to this Lease (the "Easement"), for the purpose of trenching and installation of the necessary utilities to operate Tenant's equipment. It is expressly agreed that any such Easement shall run concurrent with this Lease. Tenant agrees and understands that if the Lease is terminated or ceases to exist for any reason, the Easement shall not have any force or effect. Tenant agrees to return and maintain all portions of land subject to the Easement that are disturbed in connection with the installation, connection, maintenance, repair, access or any other Tenant activity, to their original condition at Tenant's sole cost and expense.

This easement shall be non-exclusive. Otay, or any other tenant of Otay may utilize the easement area for similar purposes or for any other purpose which does not interfere with Tenant's uses. Otay shall provide Tenant with advance notice of any intention to use the temporary easement area by Otay or any current or future tenant of Otay.

3. Use of the Premises. The Premises may be used by Tenant only for the purpose of installing, constructing, housing, operating, maintaining and repairing telecommunication equipment, including appurtenant antennae and electronic equipment, as further described and conditioned in this Agreement (collectively, the "Facilities"), for the lawful provision of communication services. Tenant may not sublease or sublicense any use or space of the Premises or the Facilities thereon except as otherwise provided in Paragraph 12, below.

4. Access. Otay shall provide access to Tenant, Tenant's employees, agents, contractors and subcontractors to the Premises 24 hours a day, seven days a week, at no charge to Tenant. Otay hereby grants to Tenant such rights of ingress and egress over the Property as may be necessary and consistent with the authorized use of the Premises as outlined by Otay Operations. Subject to Otay's reasonable rules, Otay shall permit Tenant's employees, agents,

contractors, subcontractors and invitees to park vehicles on the Property as necessary and consistent with the authorized use of the Premises. Otay shall, at its expense, maintain all access roadways or driveways from the nearest public roadway to the Premises in a manner reasonably sufficient to allow access. In addition, Tenant shall obtain such permits, licenses or easements, from the owners of property adjoining the leased premises, as may be necessary for Tenant to have access to and from the leased Premises and also for access to utilities. Tenant shall provide copies of these documents to Otay prior to the start of construction.

5. Term. The term of this Lease shall be five (5) years (the "Initial Term"), commencing on the Commencement Date. Tenant shall have the right to extend the term of the Lease for three (3) additional terms of five (5) years each by giving Otay written notice of its intention to do so at least 120 days prior to the date that the then current term would otherwise end (each, an "Extension Term"). In addition, Tenant may request, in writing, two additional extensions of five (5) years each, which Otay may grant or deny at its sole discretion (each, an "Additional Term" and together with the Initial Term and Extension Term, or individually, as the context requires, the "Term"). Each such request shall be made in writing no less than 120 days prior to the expiration of the then current Extension Term or Additional Term, as applicable.

6. Administrative Fee. Tenant, prior to entering on Otay Property to conduct its investigation of the Premises, shall provide Otay with a non-refundable administrative fee in the amount of SEVEN THOUSAND DOLLARS AND NO CENTS (\$7,000.00). This fee will defray Otay's administrative expenses and costs related to the supervision and assistance for entering on Otay Property to conduct investigation of the proposed Premises, site selection, planning, and design, including legal expenses.

Additionally, upon final execution of the Agreement by both parties, Tenant shall provide Otay with a non-refundable administrative fee in the amount of TWO THOUSAND FIVE

HUNDRED DOLLARS AND NO CENTS (\$2,500.00). This second administrative fee shall be used to defray Otay's administrative expenses and costs related to Otay's supervision and assistance with construction phases of the project. These administrative fees shall not be considered rent or part of the rental installment.

7. Rent. Beginning on the Commencement Date, Tenant shall pay Otay as rent the sum of \$3,175 per month payable on the first day of each month in advance. If the Commencement Date is other than the first day of the calendar month, the rate shall be prorated for the first month of the Initial Term.

The rent shall be increased on each calendar anniversary of the Commencement Date at a rate of fourpercent (4%) per annum. However, at the beginning of each Extension Term or Additional Term, if any, Otay may, at its sole and absolute discretion, choose to adjust the annual rent, effective on the first year of said Extension Term or Additional Term, by an amount equal to the greater of: (i) four percent (4%); or (ii) the amount necessary to ensure that the rent equals the amount it would have been if each annual increase during the previous Term had been calculated based on the average percentage increases in the consumer price index published by the United States Department of Labor, Bureau of Labor Statistics (1982-1984 = 100) (the "CPI") for "All Items - All Urban Consumers" for the San Diego Metropolitan Statistical Area for the immediately preceding 5 year period. If the publication of the Consumer Price Index is discontinued, or if the Consumer Price Index is altered in some material manner, including changing the name of the index, the geographic area covered, the consumers or workers so included, or the base year, the Parties must use their reasonable best efforts to agree on a substitute index or procedure that reasonably reflects and monitors consumer prices. After such an adjustment, the rent shall increase at a rate of four percent (4%) per annum for the rest of the applicable Extension Term or Additional Term, if any. Otay shall also have the discretion to

adjust the base rent to then current market rent in the Additional Term if said market rent is greater than the CPI increase provided for in the above formula. The "then current market rent" shall be defined as the most recent rent transaction entered into by Otay with other similar tenants for the same or similar purposes.

8. Environmental. Otay represents that to the best of its knowledge the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials other than those materials normally used by Otay for the treatment of water and that there is no hazardous waste on the Premises. Notwithstanding any other provision of this Lease, Tenant relies upon the representations stated herein as a material inducement for entering into this Lease. Tenant shall not bring any hazardous materials onto the Premises except for those contained in its back-up power facilities (e.g. lead-acid batteries and diesel fuel) and properly stored, reasonable quantities of common materials used in telecommunications operations (e.g. cleaning solvents). Tenant shall handle, store and dispose of all hazardous materials it brings onto the Premises in accordance with all federal, state and local laws and regulations ("Laws"). "Hazardous materials" means any substance, chemical, pollutant or waste that is presently identified as hazardous, toxic or dangerous under any applicable federal, state or local law or regulation and specifically includes, but is not limited to asbestos and asbestos containing materials, polychlorinated biphenyl's (PCBs) and petroleum or other fuels (including crude oil or any fraction or derivative thereof).

9. Installation and Maintenance of Facilities. Tenant is authorized to install, maintain and operate on the Premises only the Facilities described and depicted on Attachment A to Exhibit D; provided that all permits and zoning approvals shall have been obtained by Tenant.

a. *Installation of the Facilities.* Tenant's design and installation of all portions of the Facilities shall be done according to plans approved by Otay, and such approval

shall not be unreasonably withheld. The Tenant shall be responsible for painting its antennae and/or equipment to match Otay's facility. Otay will provide Tenant with specifications regarding paint type, color and application method to accomplish this requirement. Painting/coating submittals shall be provided to Otay by the Tenant prior to receiving permission to begin painting. Otay may specify a camouflage design if appropriate. These camouflage designs may include but are not limited to palm trees, pine trees and flag poles.

b. *Record Drawings.* Within thirty (30) days after completion of the Facilities, Tenant shall provide Otay with "record" drawings of Facilities showing and identifying all the equipment and improvements installed on the Premises. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property and antennae located on the Premises and any such property of Tenant located in the Easement. No property of Tenant other than such identified property shall be located on the Premises or the Property at any time.

c. *Alterations.* Tenant shall not alter or change its facilities in a material manner without the prior approval of Otay, such approval not to be unreasonably withheld. "Material" refers to any physical change that could affect the building or its appearance or any change that could disrupt Otay's workplace or communications. All of Tenant's construction and installation work shall be performed at Tenant's sole cost and expense in a good and workmanlike manner. Tenant shall have the right to remove all facilities it installs at its sole expense on or before the expiration or termination of this Lease.

d. *Improvements to Facilities / Additional Space.* If, at any time during the Term, Tenant requests permission from Otay to add improvements requiring construction to its then existing Facilities, the then current Administrative Fees shall be payable to Otay for reimbursement for staff time to process the new request, construction inspection and monitoring

during construction. If the requested Tenant improvements include additional lease space, a new lease agreement for the additional lease space must be executed prior to start of construction and Tenant shall pay the Administrative Fees then in effect, and shall comply with Otay's requirements then in effect. The administrative fees for the additional lease space shall be in addition to, and shall not replace the administrative fees for improvements requiring construction to the Facilities.

e. *Permits and Compliance with Applicable Laws.* Prior to commencing any construction or improvements, and from time to time, as applicable, Tenant agrees to obtain all necessary approvals for its communications operations and for the Facilities and to operate and maintain the same, at all times in accordance with all applicable laws, rules and regulations.

i. Prior to commencing construction, Tenant shall deliver to Otay copies of all executed licenses, approvals and permits required by local, state or federal agency in connection with the Facilities, which permits shall be attached hereto as Attachment B to Exhibit D.

ii. From time to time, as required by law or regulation in connection with the normal operation of the Facilities or as needed due to improvements or alterations to the same, Tenant shall provide Otay with copies of updated permits, licenses and/or approvals. Tenant shall provide written evidence, satisfactory to Otay of all FCC approvals and other governmental permits and approvals, including but not limited to compliance with FCC Electromagnetic Radiation Guidelines.

iii. Otay agrees, at no expense to Otay, to cooperate with Tenant in making application for and obtaining all licenses, permits and any and all

necessary approvals that may be required for Tenant's intended use of the Premises.

f. *Utilities.* Tenant shall be authorized to install utilities for the Premises and the Facilities at Tenant's expense and to improve the present utilities on or near the Premises (including, but not limited to the installation of an emergency back-up power) subject to Otay's approval of the location, which approval shall not be unreasonably withheld. Tenant shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Tenant's facilities.

g. *Repair of Otay's Improvements.* Any damage done to Otay's improvement on the property during installation and/or during operations caused by Tenant or in connection with installation operation shall be repaired or replaced immediately at Tenant's expense and to Otay's reasonable satisfaction. In connection with the installation and operation of the antennae facilities, Tenant shall not locate or attach any antennae or other equipment to Otay's facilities without the prior written approval of Otay. Tenant shall pay all costs and expenses in relation to maintaining the integrity of Otay's facilities in connection with Tenant's installation and operation of the antennae facilities.

h. *Maintenance and Repair.* At all time during the Term, Tenant shall maintain the Premises and the Facilities in a manner acceptable to Otay. Tenants use of its facilities shall not interfere with Otay's operation of its improvements.

i. *Liens.* Tenant shall not encumber or allow the Premises or the Property to be encumbered in any manner other than as expressly authorized herein.

j. *Security.* Tenant recognizes and agrees that the Premises and the Reservoir Site are a sensitive area. Tenant agrees to provide for the proper supervision of all Tenant personnel assigned to enter and do work at the Premises. Tenant also agrees to, at its

own cost and expense, comply with any and all security measures instituted by Otay from time to time.

10. Maintenance and Repair of Otay's Improvements. At any time during the Term, or while this Lease remains in effect, Otay may, at its option and upon written notice to Tenant, remove or cause Tenant to remove all or any portion of its Facilities at Tenant's expense, in order for Otay to paint, repair, or make replacements to its improvements on the Premises (the "Maintenance Work"), as deemed necessary by Otay in its sole discretion. Tenant agrees to fully cooperate with Otay's efforts in connection with any Maintenance Work, including removing and re-installing any portion of the Facilities identified by Otay to be removed.

a. *Temporary Facilities.* During the course of the Maintenance Work, Tenant may install temporary antennae, at Tenant's expense, on the leased Premises subject to Otay's approval of the location. Once the Maintenance Work is completed by Otay, Tenant agrees to promptly dismantle any temporary facilities and to relocate the facilities to their original location or to any other location approved by Otay, as appropriate. All work related to the removal of any portion of the Facilities, installation of temporary facilities, dismantling, relocation to their original location and any related work, shall be done at Tenant's sole cost and expense and in good and workmanlike manner.

b. *Repair of damage.* Tenant shall repair any damage caused by Tenant in connection with the installation, maintenance, operation or removal of any temporary facilities or the Facilities.

c. *Otay's option to remove temporary facilities.* If any temporary antennae is not removed within thirty (30) days from the date the Maintenance Work is completed, Otay will have the right to remove the temporary antennae and charge Tenant for such costs.

d. *Painting of the Facilities.* If the Maintenance Work includes the painting of Otay's improvements, the Tenant shall be responsible for repainting its antennas and/or equipment to match Otay's facility. Otay will provide specifications regarding paint type, color and application method to the Tenant to accomplish this requirement. The Tenant will be required to provide painting/coating submittals to Otay prior to receiving permission to begin painting.

11. Co-Location. Tenant agrees that Otay may enter into leases with other communication carriers, wireless communications carriers and other utilities for use of any portion of the "Reservoir Site" as long as said leases do not result in unreasonable interference with Tenant's use of the Premises. Tenant will reasonably cooperate with Otay's efforts in this regard including, at Otay's request, the relocation of, or changes to, the Facilities; provided that any alterations or relocation needed, at Otay's sole discretion, to accommodate the new lessee shall be performed at the expense of Otay or the new lessee.

12. Subleasing/Encumbrance. Tenant may not sub-lease or sub-license or otherwise encumber the Premises or any portion of the Facilities without Otay's prior written consent, which may be granted or denied at Otay's sole discretion. Any sub-lease or other encumbrance will require an amendment to this Lease and shall specify the terms and conditions for the sub-lease or other encumbrance.

13. Condition of the Property at Expiration or Termination. Upon the expiration or termination of this Lease as herein provided, Tenant shall surrender the Premises, and any Easements granted by Otay in connection with this Lease, to Otay in good and broom-clean condition, with all portions of the Facilities, including but not limited to equipment, supplies, buried conduits, and structures removed along with subterranean foundations to a depth of three feet below grade; or as otherwise agreed to by Otay in writing.

14. Interference. Tenant shall not use, nor shall Tenant permit its agents or invitees to use any portion of the Premises in a manner which interferes with Otay's use of the Reservoir Site for its intended purpose including communications facilities relating to Otay's operation such as telemetry/radio communications or any other pre-existing communications facilities. This would not apply to interference with a tenant of Otay whose use did not "pre-exist" this lease; except as agreed to by Tenant in connection with the co-location of any subsequent tenant's facilities. If Tenant's operation in any way interferes with Otay's telemetry/radio facilities, Tenant will have five (5) business days to correct the problem after notice from Otay. Tenant acknowledges that continuing interference will cause irreparable injury to Otay and, therefore, Otay will have the right to terminate the Lease immediately upon notice to Tenant.

15. Taxes. During the term of this Lease, Tenant shall pay before delinquency all taxes, assessments, license fees, and any other charge of any type whatsoever that are levied, assessed, charged, or imposed on or against Tenant's personal property installed or located in or on the leased premises and that become payable during the term of this Lease.

16. Termination.

(a) This Lease may be terminated by Tenant without further liability if:

(i) Tenant delivers to Otay 30-day written notice at any time prior to the Commencement Date, for any reason or no reason;

(ii) Tenant gives Otay six months notice when Tenant determines at any time after the Commencement Date that any governmental or non-governmental license, permit, consent, approval, easement or restriction waiver that is necessary to enable Tenant to install or operate Tenant's facility cannot be obtained or renewed at reasonable expense or in reasonable time period.

(iii) Tenant determines at any time after the Commencement Date that the Premises are not appropriate or suitable for its operations for economic, environmental or technological reasons, including without limitation, any ruling or directive of the FCC or other governmental or regulatory agency, or problems with signal strength or interference not encompassed by subsection (iv) below; provided that the right to terminate under this subsection (iii) is exercisable only if Tenant pays Otay, as a termination fee, the lesser of twelve monthly installments of annual rent or the balance of the rent due for the remaining term of this Lease;

(iv) Otay commits a default under this Lease and fails to cure such default within a 30-day notice period, provided that if the period to diligently cure takes longer than 30 days and Otay commences to cure the default within the 30-day notice period, then Otay shall have such additional time as shall be reasonably necessary to diligently effect a complete cure;

(v) The Premises are totally or partially destroyed by fire or other casualty so as to hinder Tenant's normal operations and Otay does not provide to Tenant within ten (10) days after the casualty occurs a suitable temporary relocation site for Tenant's facility pending repair and restoration of the Premises.

(b) This Lease may be terminated by Otay without further liability if:

(i) Tenant commits a default under this Lease and fails to cure such default as provided under paragraph 17, below.

17. Default.

a. *Event of Default.* The parties covenant and agree that a default or breach of this Lease (an "Event of Default") shall occur and be deemed to exist if, after notice and opportunity to cure as provided below:

(i) Tenant shall default in the payment of rent or other payments hereunder and said default shall continue for ten (10) days after Otay provides written notice of the same; or

(ii) Either party shall default in the performance or observance of any other covenant or condition of this Lease to be performed or observed if such failure persists for a period of thirty (30) days after the non-defaulting party provides written notice of the default to the defaulting party.

b. *Rights upon Default.* Upon the occurrence of an Event of Default, in addition to any other rights or remedies available to the non-defaulting party under any law, the non-defaulting party shall have the right to terminate the Lease.

c. *Cure Rights.* An Event of Default shall not exist unless written notice has been given in accordance with this Lease, and the defaulting party has had the opportunity to cure as provided herein. The defaulting party shall cure the alleged default within the manner provided herein; provided however, that if the nature of an alleged default is such that it can not reasonably be cured within such thirty (30) day period, the defaulting party shall not be in breach of this Lease if it commences a cure within such period, and thereafter diligently proceeds with the actions necessary to complete such cure.

18. Destruction of Premises. If the Premises or the Facilities are destroyed or damaged, Tenant may elect to terminate this Lease as of the date of the damage or destruction by so notifying Otay no more than thirty (30) days following the date of damage or destruction, provided Otay does not provide to Tenant, within ten (10) days after the casualty occurs, a suitable temporary relocation site for Tenant's facility pending repair and restoration of the Premises.

19. Condemnation. If the condemning authority takes all the Property or a portion which in Tenant's opinion is sufficient to render the Premises unsuitable for Tenant's use, then this Lease shall terminate as of the date when possession is delivered to the condemning authority. In the event of any taking under the power of eminent domain, Tenant shall not be

entitled to any portion of the award paid for the taking and Otay shall receive the full amount of such award except as provided herein. Tenant hereby expressly waives any right or claim to any portion of a condemnation award, except for relocation benefits and goodwill. All other damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, shall belong to Otay.

20. Insurance. Tenant shall maintain the following insurance:

- a. Commercial general liability with limits of \$5,000,000 per occurrence;
- b. Automobile liability with the combined single limit of \$1,000,000 per accident;
- c. Worker's compensation, as required by law;
- d. Employer's liability with limits of \$1,000,000 per occurrence.

Tenant shall name Otay as an additional insured on each of the aforementioned insurance policies and the policies shall state that they are primary and that any policies Otay maintains shall be noncontributory. Tenant shall provide Otay with written certificates of insurance evidencing such coverage. Said policies shall expressly provide that the policies shall not be canceled or altered without at least thirty (30) days prior written notice to Otay. Said policies shall be with insurance companies with an A.M. Best rating of AVII or better.

Otay takes no responsibility for the protection of Tenant's property from acts of vandalism by third parties. The insurance requirements may be changed by Otay upon giving of notice to Tenant; provided that the requirements set forth above shall be the minimum insurance requirements during the Term.

21. Indemnity. Tenant shall hold harmless, indemnify and defend Otay and each of Otay's directors, officers, managers, employees, agents and successors and assigns, from any and all claims, suits or actions of any kind and description brought forth on account of injuries to or

death to any person or damage to any property, including damage to the Premises arising out of or related to its use of the Premises, except to the extent that such claims, suits or actions arise out of the sole negligence or willful misconduct of Otay.

22. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than thirty (30) days prior request by Otay, deliver to Otay a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modifications; (b) the dates to which rent and other charges have been paid; (c) as far as the person making the certificate knows, Otay is or is not in default under any provisions of the Lease; and (d) such other matters as Otay may reasonably request.

23. Assignment. Tenant shall not assign this Lease except to an affiliated parent entity, subsidiary, purchaser of assets, or holder of its FCC license, without Otay's prior written consent. If, during the term of this Lease, Tenant requests the written consent of Otay to any assignment, Otay's consent thereto shall not unreasonably be withheld. Consent to one assignment shall not be deemed to be a consent to any subsequent assignment, and any subsequent assignment without Otay's consent shall be void and shall, at Otay's option, terminate this Lease.

24. Memorandum of Lease. If requested by Tenant, Otay agrees to promptly execute and deliver to Tenant a recordable Memorandum of Lease substantially in the form of Exhibit E.

25. Resolution of Disputes. All controversies or claims arising out of or relating to this Lease shall be resolved by submission to final and binding arbitration at the offices of the American Arbitration Association ("AAA") located in San Diego, California. Such arbitration shall be conducted in accordance with the most recent version of the AAA commercial arbitration rules.

26. Choice of Law and Venue. This Lease shall be interpreted in accordance with the laws of the State of California, and any disputes shall be heard in a court of competent jurisdiction in the State of California.

27. Attorney's Fees. In the event that either party commences any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant, or condition of this Lease, the party prevailing in said action or proceeding shall be entitled to recover, in addition to court costs, reasonable attorneys' fees to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal.

28. Entire Agreement. This Lease contains all agreements, promises and understandings between Otay and Tenant and no verbal or oral agreements, promises or understandings shall or will be binding upon either Otay or Tenant and any addition, variation or modification to this Lease shall be in effect unless made in writing and signed by the parties hereto.

29. Incorporation of Exhibits and Recitals. All exhibits and attachments attached to this Lease and all Recitals above are incorporated and made a part hereof as if fully set forth herein.

30. Severability. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto.

31. Waiver. Waiver of any provision or term of this Agreement, or of any breach or default hereunder, shall not constitute a waiver of any other term, condition, breach or default, or

of a subsequent applicability of a term or condition, or a waiver of a subsequent breach or default, nor shall it constitute an amendment to the term, condition or provision that is waived.

32. Notice. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices may be given by facsimile if proof of transmission is retained. Notices shall be sent to the addresses sent forth below:

OTAY:                   Otay Water District  
                              Attn: General Manager  
                              2554 Sweetwater Springs Boulevard  
                              Spring Valley, CA 91978-2096  
                              Phone: (619) 670-2210  
                              Fax : (619) 660-0829

TENANT:                New Cingular Wireless PCS, LLC  
                              Attn : Network Real Estate Administration  
                              Re: Cell Site #: SS0625  
                              Cell Site Name: Otay Campo Water  
                              Fixed Asset No: 10068657  
                              12555 Cingular Way, Suite 1300  
                              Alpharetta, Georgia 30004

With a copy sent concurrently to Tenant's Legal Department:

If sent via certified or registered mail to:

New Cingular Wireless PCS, LLC  
Attn.: Legal Department  
Re: Cell Site #: SS0625  
Cell Site Name: Otay Campo Water  
Fixed Asset No: 10068662  
P.O. Box 97061  
Redmond, WA 98073-9761

If sent via nationally recognized overnight courier to:

New Cingular Wireless PCS, LLC  
Attn.: Legal Department  
Re: Cell Site #: SS0625  
Cell Site Name: Otay Campo Water  
Fixed Asset No: 10068662  
16331 NE 72<sup>nd</sup> Way  
Redmond, WA 98052-7827

33. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed this Lease as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. This date is referred to as the Commencement Date in the Lease.

NEW CINGULAR WIRELESS PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation,  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

OTAY WATER DISTRICT  
2554 Sweetwater Springs Blvd.  
Spring Valley, CA 91979

By: \_\_\_\_\_  
Name: Mark Watton  
Its: General Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Yuri Calderon, General Counsel

\_\_\_\_\_  
Date

**EXHIBIT A**  
**SPECIAL TERMS AND CONDITIONS ADDED TO**  
**AGREEMENT BETWEEN NEW CINGULAR WIRELESS**  
**PCS, LLC AND OTAY TO LOCATE COMMUNICATION**  
**FACILITIES AT OTAY'S 832-1&2 RESERVOIR SITE,**  
**DATED \_\_\_\_\_, \_\_\_\_\_ (THE "LEASE")**

If any terms or conditions set forth herein contradict terms or conditions of the Lease to which this Exhibit is attached, as described above, the terms and conditions of this Exhibit shall control.

**SPECIAL TERMS AND CONDITIONS**

1. **Landscaping and Maintenance.** The installation, permitting, maintenance and upkeep, and all expenses or other obligations related thereto, in connection with any and all landscaping and irrigation systems mandated by the permitting agencies will be the sole responsibility of the Tenant. Otay Water District makes no commitment for delivery of water for said landscaping, except if Tenant obtains a water meter for the site and pays for water use.

2. **Rent.** At Tenant's election, subject to prior written notice as set forth in the Lease, Tenant may pay rent annually, in advance during each of the five-years of the Initial Term or during each of the five years in any Extension Term. Once the Initial Term or Extension Term, as applicable, has commenced, Tenant may not alter its election to pay monthly or annually.

3. **Tenant's Financing.** Notwithstanding anything to the contrary contained in this Lease, Tenant may assign, mortgage, pledge, hypothecate or otherwise transfer without prior notice or consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof; provided that no such assignment shall become binding on Otay until written notification is given by Tenant to Otay as provided in the Lease. A "financing entity" as used herein, does not include any entity which primary business is not that of banking, finance, lending or investing funds and does not include any entity whose primary business is telecommunications.

- a. **Waiver of Otay's Lien.** With respect to any such financing entity, Otay waives any lien rights it may have concerning the Facilities, which is deemed Tenant's personal property and not fixtures attached to the Property and Tenant or, if appropriate, the financing entity has the right to remove the same at any time without Otay's consent. The financing entity shall not have the right to operate the Facilities without Otay's prior written consent, which may be denied if the financing entity does not meet the definition of financing entity above.

- b. **Collateral.** Tenant may enter into a financing arrangement including promissory notes and financial and security agreements for the financing of the Facilities ("Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Otay (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.
- c. **Disposition of Collateral.** Notwithstanding paragraphs a. and b., above, if Tenant fails to remove the Collateral, or any component thereof, within five (5) days of the termination of this Lease, said failure shall constitute an abandonment. If thereafter, Tenant or any holder of Collateral, lender or assignee, whether or not notification was provided to Otay, fails to claim and remove the same, within thirty (30) calendar days of the date of termination of this Lease, Otay is hereby specifically authorized to remove and dispose of the Collateral, or any component thereof, so abandoned at Tenant's sole cost and expense and without incurring any liability to Tenant, or any lender with any interest in all or any part of the Collateral, or any assignee of this Lease.
- d. **No privity or obligation.** Otay does not have privity with any financing entity and specifically disclaims any obligation to any such entity, including any obligation to provide copies of any notices of default or right to cure under the Lease.

**EXHIBIT B**

**TO AGREEMENT BETWEEN NEW CINGULAR  
WIRELESS PCS, LLC AND OTAY TO LOCATE  
COMMUNICATION FACILITIES AT OTAY'S 832-1&2  
RESERVOIR SITE, DATED \_\_\_\_\_, \_\_\_\_\_ (THE  
"LEASE")**

**List of Attachments to Exhibit B:**

ATTACHMENT A. DEPICTION OF RESERVOIR FACILITIES

ATTACHMENT B. LEGAL DESCRIPTION OF THE PROPERTY

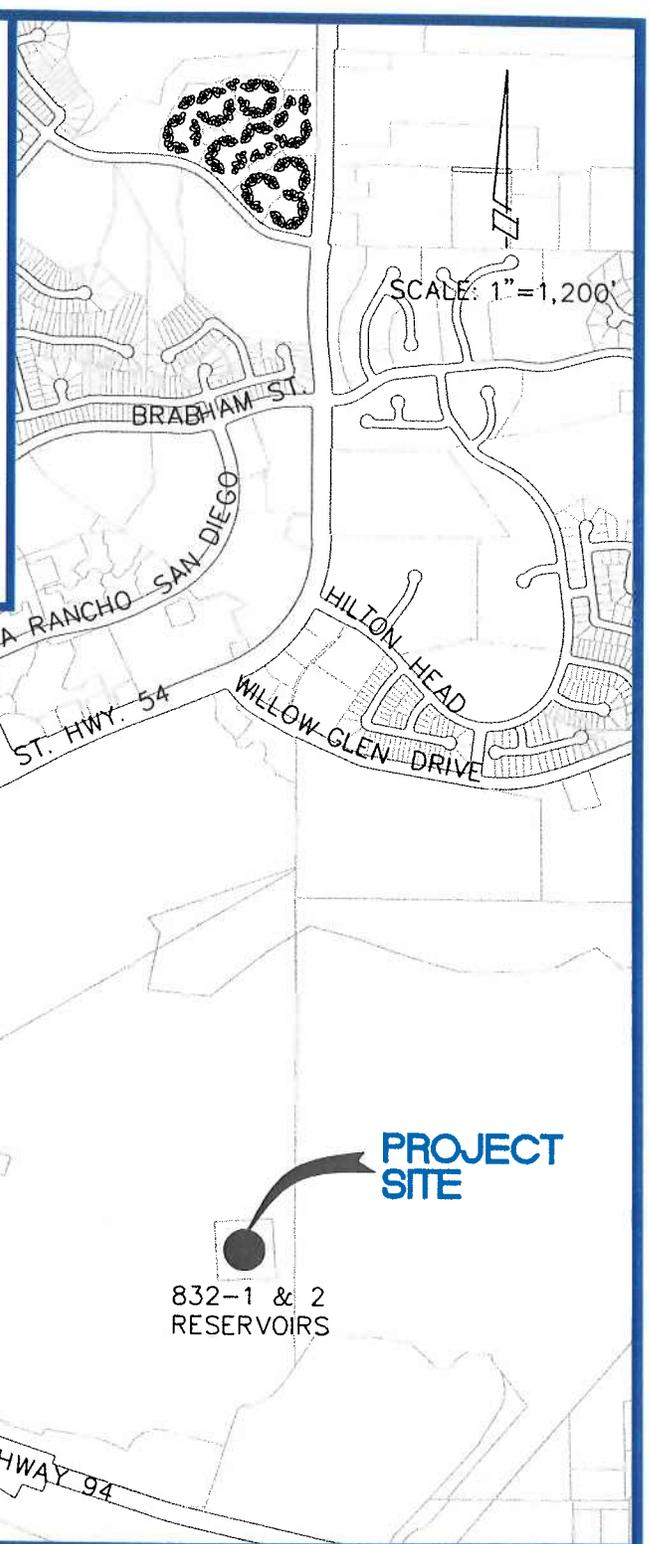
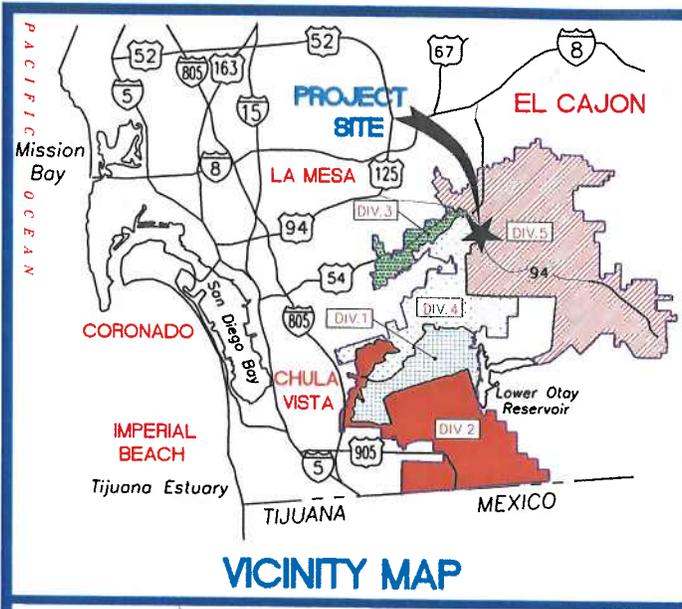
ATTACHMENT C. LEGAL DESCRIPTION OF THE PREMISES

ATTACHMENT D. DEPICTION OF THE PROPERTY AND PREMISES

**EXHIBIT B**

**ATTACHMENT A  
LOCATION MAP**

\\WORKING\LELLULAR\FASE\FILE\AT&T\CINGULAR\N632-1&2\agreement\Exhibit B Att. A.dwg 2/25/2008 12:52:22 PM PDT



**OTAY WATER DISTRICT**  
 NEW CINGULAR WIRELESS PCS, LLC SITE  
 832-1 & 2 RESERVOIRS

LOCATION MAP

**EXHIBIT B ATTACHMENT A**

**EXHIBIT B**

**ATTACHMENT B  
LEGAL DESCRIPTION OF THE PROPERTY**

All that certain real property situated in the County of San Diego, State of California, described as follows:

All that portion of Tract "F" of Rancho Jamacha, in the County of San Diego, State of California, according to Partition Map thereof filed in the Office of the County Recorder of San Diego County, in Case No. 13, Superior Court, entitled Wm. M. Keighler, et al, vs. Mary H. Eddy, et al, more particularly described as follows:

Commencing at Corner No. 6 of Tract "E" of Rancho Jamacha, said corner being the Northwest corner of Section 36, Township 16 South, Range 1 West, San Bernardino Base and Meridian, as shown on Record of Survey Map No. 6069, filed in the Office of the County Recorder of San Diego County;

Thence along a line shown on said Record of Survey South  $0^{\circ} 07'$  West 1313.45 feet;

Thence South  $89^{\circ} 53'$  East 649.99 feet;

Thence South  $20^{\circ} 11'$  East 293 feet;

Thence South  $40^{\circ} 19' 50''$  East 152.86 feet;

Thence South  $22^{\circ} 47' 15''$  East 775.15 feet;

Thence South  $72^{\circ} 29' 15''$  East 3791.98 feet to the true point of beginning of the property herein described;

Thence North  $3^{\circ} 43' 21''$  West 110.09 feet;

Thence North  $86^{\circ} 16' 39''$  East 399 feet;

Thence South  $3^{\circ} 43' 21''$  East 408 feet;

Thence South  $86^{\circ} 16' 39''$  West 399 feet;

Thence North  $3^{\circ} 43' 21''$  West 297.91 feet to the true point of beginning.

Assessor's Parcel Number: **506-021-06-00**

**EXHIBIT B**

**ATTACHMENT C  
LEGAL DESCRIPTION OF THE PREMISES**

# EXHIBIT "A"

**PROPOSED LEASE AREA DESCRIPTION:**

ALL THAT PORTION OF TRACT "F" OF RANCHO JAMACHA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY IN CASE NO. 13, SUPERIOR COURT, ENTITLED WM. M. KEICHLER, ET AL, VS. MARY H. EDDY, ET AL, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1984 AS INSTRUMENT NO. 16550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 6686, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1986 AS FILE NO. 41585; THENCE ALONG THE SOUTHERLY LINE OF SAID D.R. 64-16550, NORTH 86°18'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°43'21" WEST, A DISTANCE OF 135.54 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'48" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 24.67 FEET; THENCE, SOUTH 09°12'48" EAST, A DISTANCE OF 8.67 FEET; THENCE, NORTH 80°47'14" EAST, A DISTANCE OF 24.67 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 213.78 SQ. FT.

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD OR APPARENT.

AS SHOWN IN EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

THIS DOCUMENT  
WAS MADE BY ME OR UNDER MY SUPERVISION.



BERT HAZE P.L.S. 7211

DATE 2/14/09

1	ISSUED FOR REVIEW	02/12/09	GWW
REV. #	DESCRIPTION	DATE	BY

**LEGAL DESCRIPTION EXHIBIT**  
SS-625-01  
OTAY CAMPO WATER  
  
12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



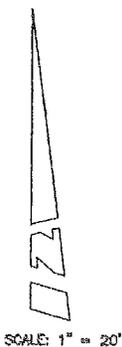
PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING  
3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX

DRAWN: 9/12/08  
BY: CWW  
CHECKED: JA/3H  
JN. 205383

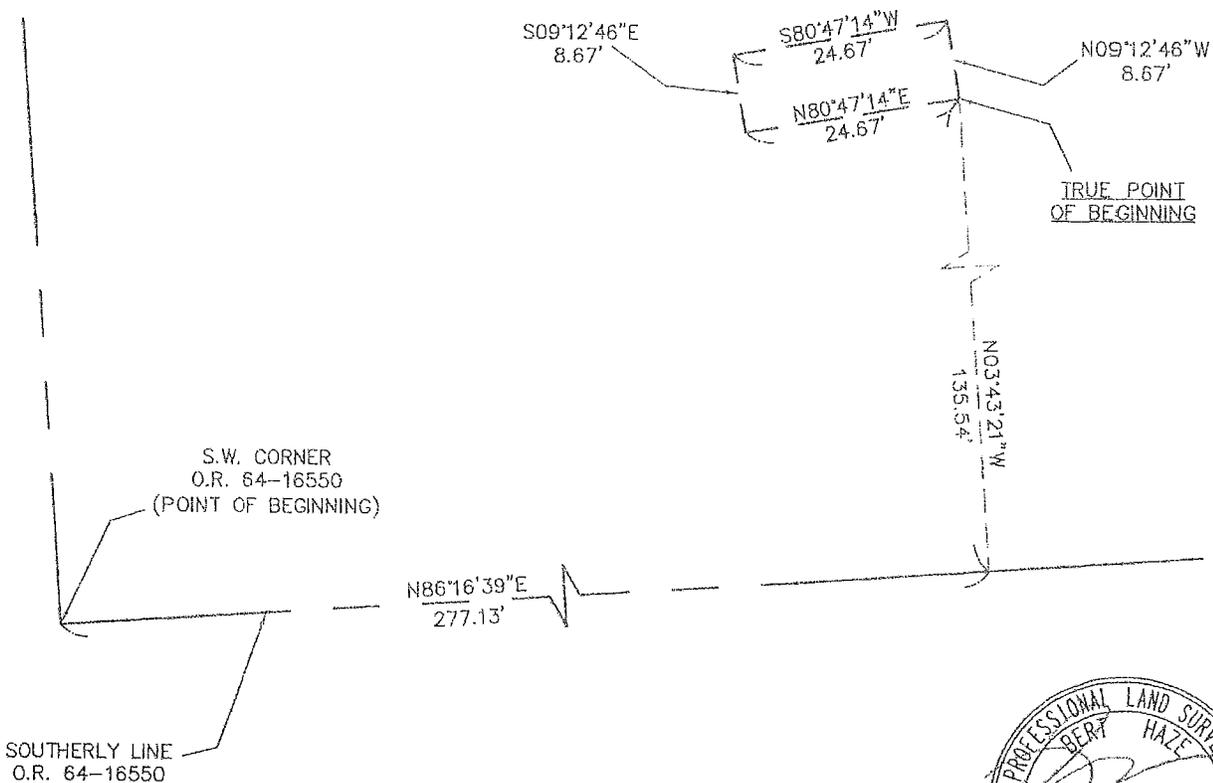
# EXHIBIT "B"

(PROPOSED LEASE AREA)



PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH

R.O.S. 6686



**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
⊙ CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**

SS-625-01  
OTAY CAMPO WATER

12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING  
3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX

SHEET

4

OF 7 SHEETS

DRAWN: 9/12/09

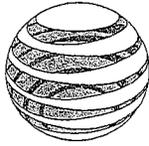
BY: CWW

CHECKED: JA/BH

JN. 205.083

**EXHIBIT B**

**ATTACHMENT D  
DEPICTION OF THE PROPERTY AND PREMISES**



at&t

# SS-625-01 OTAY CAMPO WATER

12118 CAMPO ROAD  
SPRING VALLEY, CA 91978

ARCHITECT  
D&B  
DORR BISHOP ASSOCIATES  
ARCHITECTURE + GRAPHICS  
10000 UNIVERSITY AVENUE, SUITE 100, SAN DIEGO, CA 92161  
TEL: 619-594-1100 FAX: 619-594-1101

**DRIVING DIRECTIONS FROM AT&T WIRELESS OFFICE:**

- TAKE 805 SOUTH
- TAKE I-8 EAST
- TAKE HWY 125 SOUTH
- TAKE HWY 94 EAST
- TURN RIGHT ON CAMPO ROAD

**PROJECT APPLICANT:**  
AT&T WIRELESS  
8925 Lusk Blvd  
SAN DIEGO, CA 92121

**CONSTRUCTION MANAGER:**  
GEORGE WATKINS  
H2ORO, LLC  
7480 CONROY CT  
SAN DIEGO, CA 92111  
619-296-6835 PHONE

**PLANNING REPRESENTATIVE:**  
DANIEL CALDEREY  
PLANCON INC.  
302 STATE PLACE  
ESCONDIDO, CA 92029  
619-917-8703 PHONE

**SITE ACQUISITION:**  
ROBERT FULFORD  
PLANCON INC.  
302 STATE PLACE  
ESCONDIDO, CA 92029  
619-900-1200 PHONE

**R.F. ENGINEERING REPRESENTATIVE:**  
WOLFF AZEZO  
AT&T WIRELESS  
6925 LUSK BLVD  
SAN DIEGO, CA 92121  
619-642-9442 PHONE

**PROPERTY OWNER:**  
QUAY WATER DISTRICT  
1204 SWEETWATER SPRINGS BLVD.  
SPRING VALLEY, CA 91978  
SITE CONTACT: DANIEL KUHNENGAARD  
619-472-2267 PHONE

**ARCHITECT:**  
DORR BISHOP ASSOCIATES  
10000 FIRST AVE, SUITE 100  
SAN DIEGO, CA 92161  
619-594-1100 PHONE  
619-299-4250 FAX  
dbr@dba.com

**PROJECT DESCRIPTION:**

THE PROJECT CONSISTS OF THE INSTALLATION AND OPERATION OF (11) ELEVEN ANTENNAS AND ASSOCIATED EQUIPMENT CABINETS FOR AT&T WIRELESS TELECOMMUNICATIONS NETWORK.

A TOTAL OF (11) ELEVEN ANTENNAS ARE TO BE MOUNTED ON AN EXISTING WATER TANK. THE EQUIPMENT CABINETS, AT GROUND LEVEL, ARE TO BE LOCATED BEHIND A PROPOSED 24'-0" x 8'-0" x 8'-0" HIGH CONCRETE WALL WITH AN OUTDOOR EQUIPMENT RACK.

THE FACILITY WILL ENHANCE THE GENERAL HEALTH, SAFETY, AND WELFARE OF THE COUNTY AND SURROUNDING CITIES BY PROVIDING MORE RELIABLE CELLULAR COMMUNICATION AT THIS LOCATION.

NOTE: EXISTING CARRIERS: T-MOBILE, VERIZON, SPRINT, NEXTEL

**T01 TITLE SHEET**

- Z01 SITE PLAN
- Z01.1 BMP PLAN
- Z02 AREA PLAN
- Z03 ELEVATIONS
- Z04 ELEVATIONS
- Z05 DETAILS
- L01 LANDSCAPE PLAN

**SITE ADDRESS:**  
12118 CAMPO ROAD  
SPRING VALLEY, CA 91978

**ASSessor'S PARCEL NUMBER:**  
506-021-08

**LATITUDE:**  
32°44'01.65" N NAD1983

**LONGITUDE:**  
119°55'45.33" W NAD1983

**TOTAL SITE AREA:**  
162,914 SQ. FT.

**EXISTING FLOOD AREA:**  
N/A

**PROPOSED PROJECT AREA:**  
APPROX. 460 SQ. FT.

**EXISTING TYPE OF CONSTRUCTION:**  
N/A

**EXISTING ZONING:**  
S-90

**ALL WORK SHALL COMPLY WITH THE FOLLOWING APPLICABLE CODES:**

- CALIFORNIA BUILDING CODE, 2007 EDITION
- CALIFORNIA PLUMBING CODE, 2007 EDITION
- CALIFORNIA MECHANICAL CODE, 2007 EDITION
- CALIFORNIA ELECTRICAL CODE, 2007 EDITION
- CALIFORNIA FIRE CODE, 2007 EDITION

IN THE EVENT OF CONFLICT, THE MOST RESTRICTIVE CODE SHALL PREVAIL.

**JURISDICTION:**  
COUNTY OF SAN DIEGO

**CURRENT USE:**  
WATER TANK

**EXISTING OCCUPANCY:**  
UNMANNED EQUIPMENT

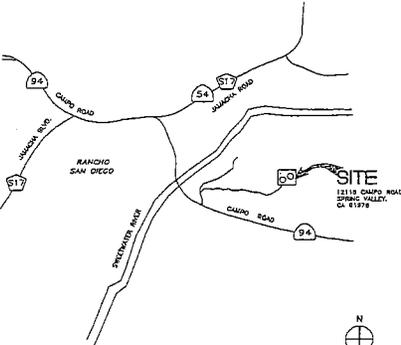
**PROPOSED OCCUPANCY:**  
S-90 AT EQ. SHELTER

**WATER /SEWAGE:**  
NOT APPLICABLE

**UTILITIES:**  
ELECTRICAL: SDCE

TELEPHONE: SBC

FIRE DEPT.: COUNTY OF SAN DIEGO



THOMAS BROTHER'S MAP #1272-A7

**VICINITY MAP**

ALL THAT PORTION OF TRACT "T" OF RANCHO JAJAACHA IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY IN CASE NO. 13, SUPERIOR COURT, ENTITLED W.M. H. KECHLER, et al., vs MARY H. EDDY, et al.

**LEGAL DESCRIPTION**

**CONTACTS**

#	TYPE OF INSPECTION	DESIGN STRENGTH

**SPECIAL INSPECTIONS**

**PROJECT INFORMATION**

FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. WIRELESS TELECOMMUNICATIONS MECHANICAL EQUIPMENT ROOMS ARE EXEMPT FROM REQUIREMENTS TO PROVIDE BUILDING UPGRADES FOR DISABLED ACCESS PER THE FOLLOWING:  
CBC SECTION 1058-BUILDING ACCESSIBILITY  
CAL ACS ACCESSIBILITY STANDARDS INTERPRETIVE MANUAL

**ADA COMPLIANCE**

**SHEET INDEX**

CONSTRUCTION MANAGER	
SITE ACQUISITION MANAGER	
R.F. ENGINEERING REPRESENTATIVE	
PLANNING REPRESENTATIVE	
AT&T REPRESENTATIVE	
LANDLORD	
DM-CB11	

**APPROVALS**

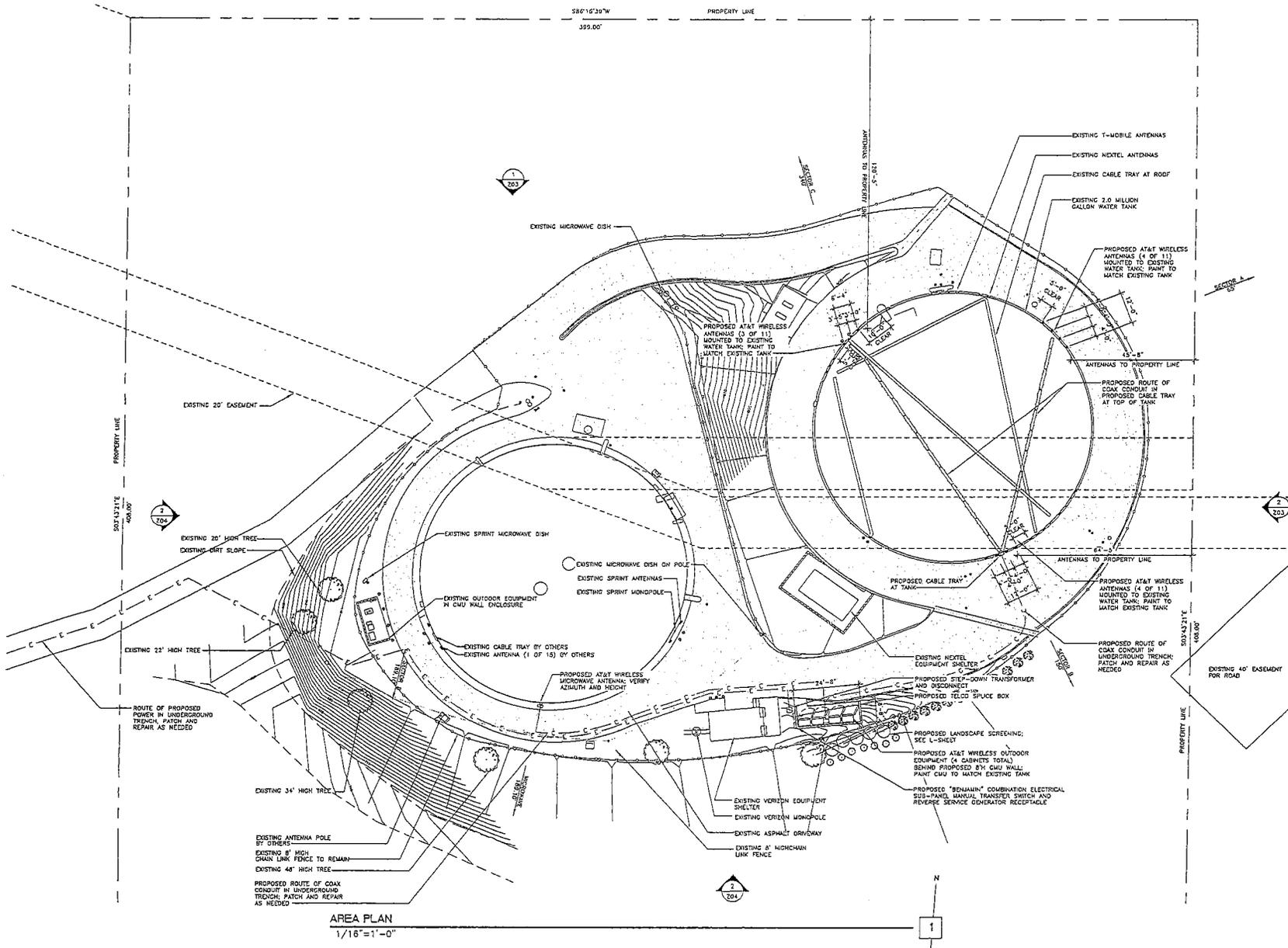
**SHEET INFORMATION**

DORR BISHOP ASSOCIATES  
ARCHITECTURE + GRAPHICS  
**T01**  
TITLE PAGE  
SS-625-01  
8/21/08  
PLOT SCALE 1:1 @ 36" x 48"

THESE REVISIONS, ANALYSES AND RECALCULATIONS HAVE BEEN CHECKED FOR ACCURACY BY THE ARCHITECT AND ENGINEER. THE USER OF THIS SHEET SHALL BE RESPONSIBLE FOR THE CONSULTANT'S PROFESSIONAL LIABILITY. THE USER SHALL BE RESPONSIBLE FOR THE CONSULTANT'S PROFESSIONAL LIABILITY. THE USER SHALL BE RESPONSIBLE FOR THE CONSULTANT'S PROFESSIONAL LIABILITY.







AREA PLAN  
1/16"=1'-0"

ARCHITECT

**di**  
DI DONATO ASSOCIATES  
ARCHITECTURE + CIVIL ENGINEERING

3033 FIRST AVENUE, SUITE 100, SAN DIEGO, CA 92108  
619.237.4176 | 619.237.4170 FAX | DDONATO@DIAA.COM

PROJECT NAME

**at&t**  
SS-625-01  
OTAY CAMPO WATER  
12118 CAMPO WATER MAIN, SPRING VALLEY, CA 91778

ISSUES REVISIONS

NO.	DATE	BY	ISSUE DESCRIPTION
1	03-22-09	CMS	ISSUE FOR REVIEW

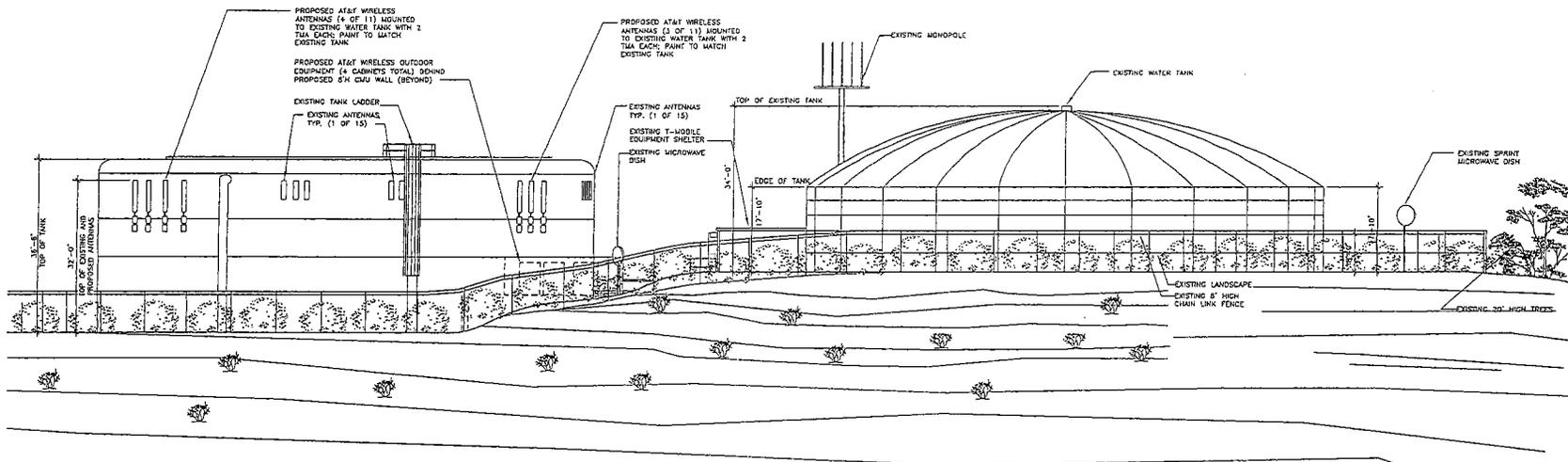
SHEET INFORMATION

DI DONATO ASSOCIATES  
ARCHITECTURE + CIVIL ENGINEERING

**Z02**  
AREA PLAN

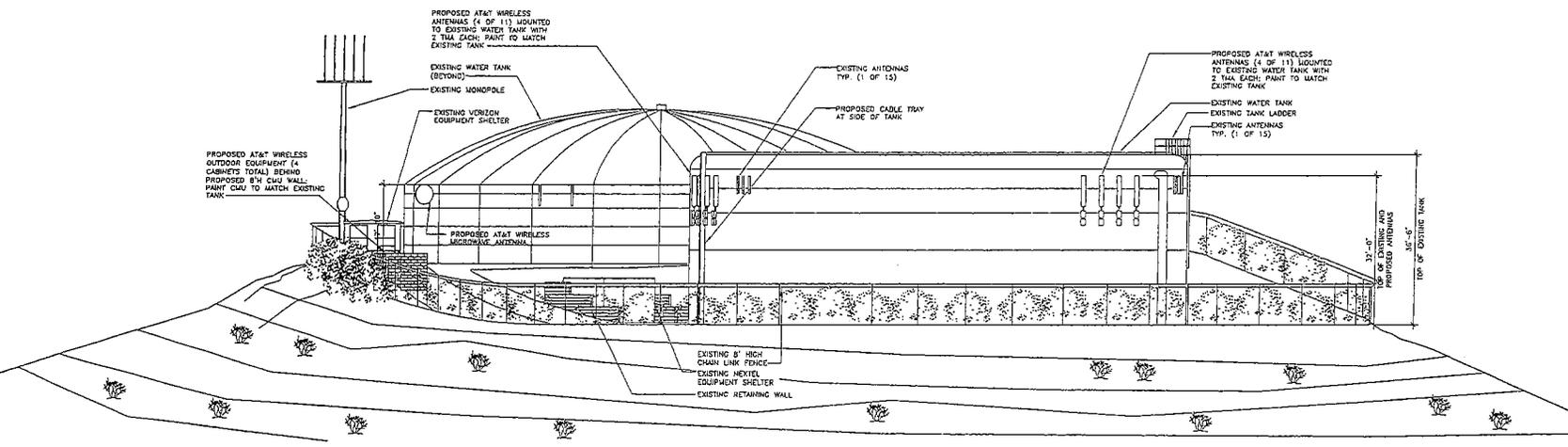
SS-625-01  
830106  
PLOT SCALE 1/16"=1'-0" (2X)

THESE DOCUMENTS AND PROJECTIONS ARE THE PROPERTY AND COPYRIGHT OF DI DONATO ASSOCIATES ARCHITECTURE + CIVIL ENGINEERING. NO PART OF THESE DOCUMENTS OR PROJECTIONS MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF DI DONATO ASSOCIATES ARCHITECTURE + CIVIL ENGINEERING. THIS DOCUMENT SHALL BE KEPT ON FILE FOR A PERIOD OF FIVE YEARS FROM THE COMPLETION OF THE PROJECT.



NORTH ELEVATION  
3/32" = 1'-0"

1



EAST ELEVATION  
3/32" = 1'-0"

2

ARCHITECT



DI DONATO ASSOCIATES  
ARCHITECTURE + GRAPHICS  
2318 FIRST AVENUE, SUITE 100 SAN DIEGO, CA 92101  
619.331.4110 • 619.331.0384 • DDAA@AOL.COM

PROJECT NAME



SS-625-01  
OTAY CAMPO WATER  
13118 CAMPO WATER ROAD, SPRING VALLEY, CA 91978

ISSUE REVISIONS

DATE	BY	CHK	ISSUE DESCRIPTION
07-07-09	...	...	...

SHEET INFORMATION

DI DONATO ASSOCIATES  
ARCHITECTURE + GRAPHICS  
**Z03**  
ELEVATIONS  
SS-625-01  
SHEET  
PLOT SCALE 1/16" = 1'-0"

ALL RIGHTS RESERVED BY ARCHITECT. THIS DRAWING IS THE PROPERTY OF DI DONATO ASSOCIATES ARCHITECTURE + GRAPHICS. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF DI DONATO ASSOCIATES ARCHITECTURE + GRAPHICS.







**EXHIBIT C**

**TO AGREEMENT BETWEEN NEW CINGULAR WIRELESS PCS, LLC AND OTAY TO LOCATE COMMUNICATION FACILITIES AT OTAY'S 832-1&2 RESERVOIR SITE, DATED \_\_\_\_\_, \_\_\_\_\_ (THE "LEASE")**

**DEPICTION AND LEGAL DESCRIPTION OF TEMPORARY TRENCH EASEMENT**

Easement Requested?  Yes  No  
Easement Granted?  Yes  No

**If Easement granted, complete the following information:**

For good and valuable consideration, receipt of which is hereby acknowledged, the Otay Water District, as Grantor, hereby grants to New Cingular Wireless PCS, LLC, as Tenant, a temporary Easement to excavate, remove dirt and do any act necessary to install, operate and maintain power lines and connection lines as required in connection with the communications facilities and the antenna to be located on the Premises. The legal description of the land subject to the Easement is as follows:

A drawing depicting the Easement is attached hereto. Tenant may not sell, transfer or assign the Easement herein granted to Tenant. Tenant's rights under the Easement are specifically limited to the installation of such power lines, transmission lines and other communications lines and accessories as required to efficiently operate Tenant's communication facilities on the Premises.

The Easement shall **automatically terminate** on the day that is thirty (30) years from the date of the Lease. However, if the Lease is terminated earlier for any reason, the Easement will become unenforceable and, for all purposes, terminate on the date the Lease is terminated.

Grantor reserves the right to use the lands that are subject to the Easement in a manner such that it will not interfere with Tenant's use thereof.

Grantor retains the right to remove, at Tenant's expense, from the surface of the Easement any item, structure improvement or portion thereof that interferes or conflicts with Otay's use of the Property.

Tenant agrees to indemnify, defend and hold harmless the Grantor for any damage to property or person (including death) and any, claim, suit, action, cost or expense arising in connection with the Easement or Tenant's use or installation of any item, line, facility or other thing in connection therewith.

Tenant agrees to maintain the portion of the Property subject to the Easement in substantially the condition it is on the date the Lease is executed, excepting only such changes as are accepted by Otay in writing.

**EXHIBIT "C"**  
(PROPOSED COAX EASEMENTS)

PROPOSED COAX EASEMENT DESCRIPTIONS:

TWO A STRIPS OF LAND, 2 FEET IN WIDTH, OVER THAT PORTION OF TRACT "F" OF RANCHO JAMACHA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY IN CASE NO. 13, SUPERIOR COURT, ENTITLED WM. M. KEIGHLER, ET AL, VS. MARY H. EDDY, ET AL, THE CENTERLINES OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1964 AS INSTRUMENT NO. 16550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 6866, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1966 AS FILE NO. 41585; THENCE ALONG THE SOUTHERLY LINE OF SAID O.R. 64-16550, NORTH 86°16'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°43'21" WEST, A DISTANCE OF 135.54 FEET; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 17.71 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 2.19 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 4.00 FEET; THENCE, NORTHEASTERLY ALONG SAID CURVE 6.32 FEET THROUGH A CENTRAL ANGLE OF 90°31'03"; THENCE, NORTH 81°18'17" EAST, A DISTANCE OF 26.65 FEET; THENCE, NORTH 51°55'47" EAST, A DISTANCE OF 7.49 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 29.07 FEET, A RADIAL TO SAID BEGINNING BEARS SOUTH 38°04'23" EAST; THENCE, NORTHEASTERLY ALONG SAID CURVE 17.76 FEET THROUGH A CENTRAL ANGLE OF 35°00'46" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 40.79 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 73°46'11" EAST; THENCE, NORTHERLY ALONG SAID CURVE 16.69 FEET THROUGH A CENTRAL ANGLE OF 23°26'43"; THENCE, NORTH 07°12'54" WEST, A DISTANCE OF 12.94 FEET.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO TERMINATE AT ALL ANGLE POINTS AND AT THE TRUE POINT OF BEGINNING BY A LINE BEARING SOUTH 80°47'14" WEST AND NORTHERLY AT A LINE BEARING NORTH 82°47'06" EAST.



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

<b>LEGAL DESCRIPTION EXHIBIT</b> SS-625-01 OTAY CAMPO WATER  12118 CAMPO WATER ROAD SPRING VALLEY, CA 91978	PREPARED FOR:  12900 PARK PLAZA DRIVE CERRITOS, CA 90703	PREPARED BY: <b>BERT HAZE</b> AND ASSOCIATES LAND SURVEYING & MAPPING 3188 AIRWAY AVE., SUITE X-1 COSTA MESA, CALIFORNIA 92626 714 557-1587 OFFICE 714 557-1589 FAX	DRAWN: 9/12/09 BY: CWW CHECKED: JA/RH JPL 265.063

**EXHIBIT "C"**  
(PROPOSED COAX EASEMENTS)

PARCEL 2:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1964 AS INSTRUMENT NO. 18550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 6866, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1966 AS FILE NO. 41586; THENCE ALONG THE SOUTHERLY LINE OF SAID O.R. 64-16550, NORTH 86°18'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°43'21" WEST, A DISTANCE OF 135.54 FEET; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 18.97 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'40" WEST, A DISTANCE OF 5.07 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 4.00 FEET; THENCE, NORTHWESTERLY ALONG SAID CURVE 6.20 FEET THROUGH A CENTRAL ANGLE OF 89°51'57"; THENCE, SOUTH 81°55'17" WEST, A DISTANCE OF 32.69 FEET; THENCE, SOUTH 66°39'51" WEST, A DISTANCE OF 50.26 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 62.33 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 31°00'00" EAST; THENCE, WESTERLY ALONG SAID CURVE 36.95 FEET THROUGH A CENTRAL ANGLE OF 33°57'37"; THENCE, NORTH 05°16'20" EAST, A DISTANCE OF 11.66 FEET.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO TERMINATE AT ALL ANGLE POINTS AND AT THE TRUE POINT OF BEGINNING BY A LINE BEARING SOUTH 80°47'14" WEST AND NORTHERLY AT A LINE BEARING NORTH 84°43'40" WEST.

CONTAINING 425.72 SQ. FT. (0.01 ACRES) TOTAL OF BOTH PARCELS

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD OR APPARENT.

AS SHOWN IN EXHIBIT "C" ATTACHED HERETO AND MADE A PART HEREOF.



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/08	CWW

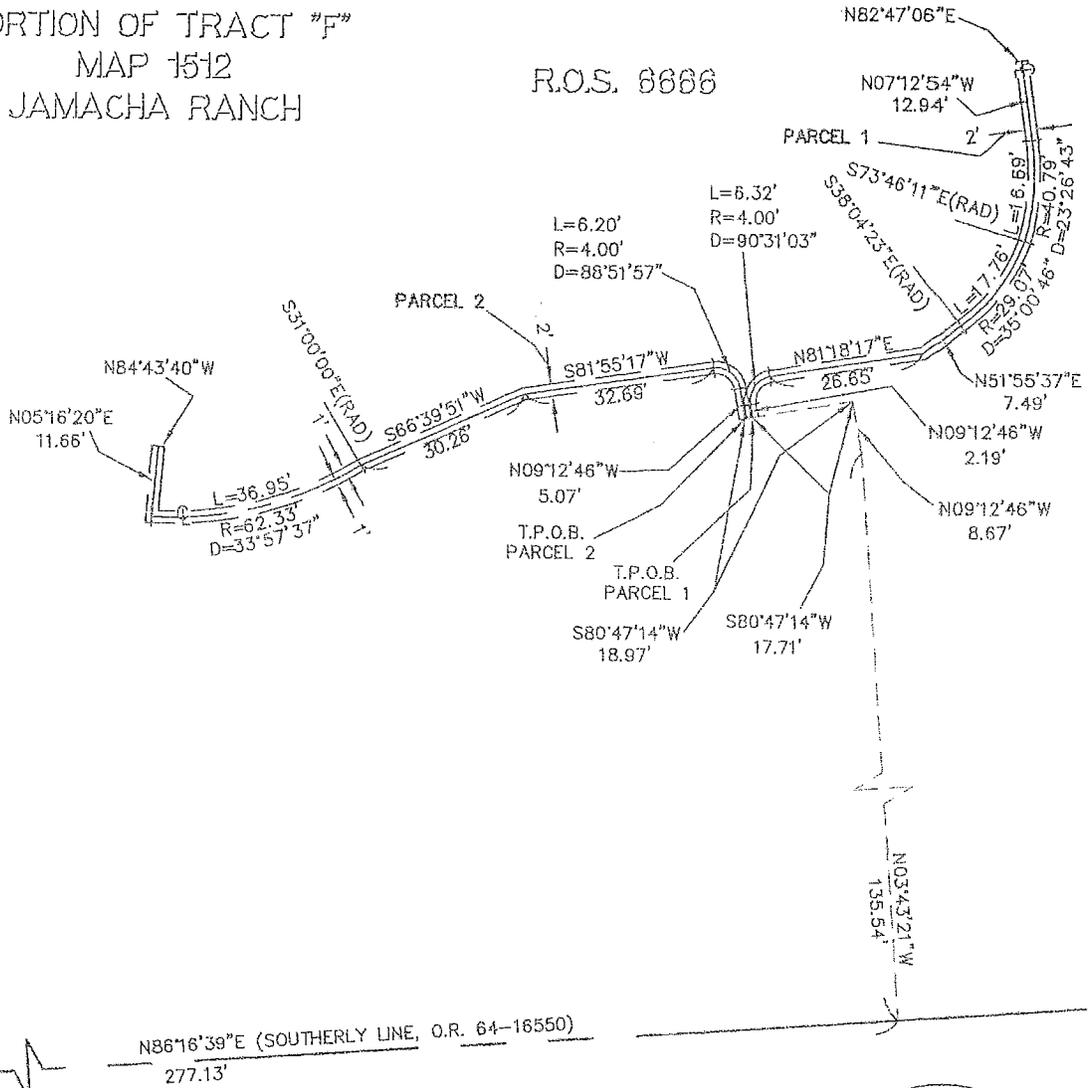
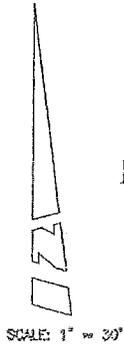
<b>LEGAL DESCRIPTION EXHIBIT</b> SS-625-01 OTAY CAMPO WATER  12118 CAMPO WATER ROAD SPRING VALLEY, CA 91978	PREPARED FOR:  12940 PARK PLAZA DRIVE GERRITUS, CA 92025	PREPARED BY: <b>BERT HAZE</b> AND ASSOCIATES LAND SURVEYING & MAPPING 3168 AIRWAY AVE., SUITE K-1 COSTA MESA, CALIFORNIA 92626 714 557-1567 OFFICE 714 557-1558 FAX	DRAWN: 9/12/08 BY: CWW CHECKED: JA/BN IN: 205.955

# EXHIBIT "C"

(PROPOSED COAX EASEMENTS)

PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH

R.O.S. 8666



S.W. CORNER  
O.R. 64-16550  
(POINT OF  
BEGINNING)

**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
 CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**

SS-625-01  
OTAY CAMPO WATER

12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



12900 PARK PLAZA DRIVE  
CERRITOS, CA 90703

PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING

3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX

SHEET

5

OF 7 SHEETS

DRAWN: 9/12/09

BY: CWW

CHECKED: JA/BH

JN. 205.083

# EXHIBIT "A"

**PROPOSED POWER EASEMENT DESCRIPTION:**

A STRIP OF LAND, 2 FEET IN WIDTH, OVER THAT PORTION OF TRACT "F" OF RANCHO JAMACHA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY IN CASE NO. 13, SUPERIOR COURT, ENTITLED WM. M. KEIGHLER, ET AL, VS. MARY H. EDDY, ET AL, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1964 AS INSTRUMENT NO. 16550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 6666, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1966 AS FILE NO. 41585; THENCE ALONG THE SOUTHERLY LINE OF SAID O.R. 64-16550, NORTH 86°16'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°43'21" WEST, A DISTANCE OF 135.54 FEET; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 1.83 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 6.23 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 4.00 FEET; THENCE, ALONG SAID CURVE 6.20 FEET THROUGH A CENTRAL ANGLE OF 88°51'57"; THENCE, SOUTH 81°55'17" WEST, A DISTANCE OF 49.46 FEET; THENCE, SOUTH 66°38'20" WEST, A DISTANCE OF 30.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 60.83 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 31°00'00" EAST; THENCE, WESTERLY ALONG SAID CURVE 94.50 FEET THROUGH A CENTRAL ANGLE OF 89°00'25"; THENCE, SOUTH 69°10'52" WEST, A DISTANCE OF 24.32 FEET; THENCE, NORTH 65°22'28" WEST, A DISTANCE OF 69.77 FEET; THENCE, SOUTH 58°01'40" WEST, A DISTANCE OF 37.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 526.33 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 19°47'06" WEST; THENCE, SOUTHWESTERLY ALONG SAID CURVE 224.74 FEET THROUGH A CENTRAL ANGLE OF 24°27'53"; THENCE, SOUTH 37°07'39" WEST, A DISTANCE OF 129.44 FEET; THENCE, SOUTH 44°45'09" WEST, A DISTANCE OF 114.68 FEET; THENCE, SOUTH 45°14'51" EAST, A DISTANCE OF 7.37 FEET.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO TERMINATE AT ALL ANGLE POINTS AND AT THE TRUE POINT OF BEGINNING BY A LINE BEARING SOUTH 80°47'14" WEST AND SOUTHERLY AT A LINE BEARING NORTH 44°45'09" EAST.

CONTAINING 1591.48 SQ. FT. (0.04 ACRES)

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD OR APPARENT.

AS SHOWN IN EXHIBIT "D" ATTACHED HERETO AND MADE A PART HEREOF.



1	ISSUED FOR REVIEW	09/12/09	CWW
REV. #	DESCRIPTION	DATE	BY

<b>LEGAL DESCRIPTION EXHIBIT</b> SS-625-01 OTAY CAMPO WATER	PREPARED FOR:  12900 PARK PLAZA DRIVE GERRITOS, CA 90703	PREPARED BY:  3188 AIRWAY AVE., SUITE K-1 COSTA MESA, CALIFORNIA 92626 714 557-1567 OFFICE 714 557-1568 FAX	SHEET 3 OF 7 SHEETS DRAWN: 9/12/09 BY: CWW CHECKED: JA/BH JN. 205.083
---	---	--	---

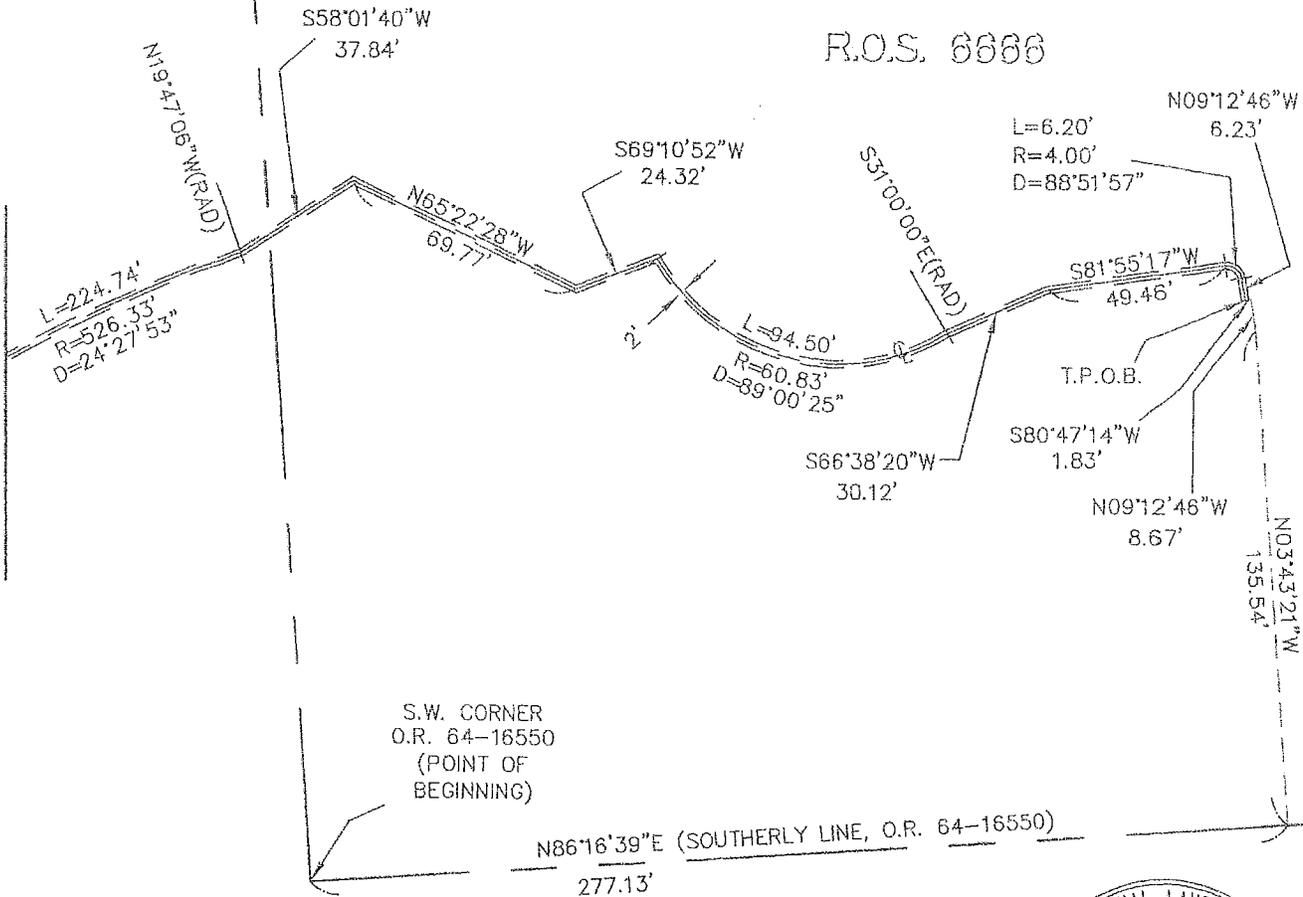
**EXHIBIT "D"**  
(PROPOSED POWER EASEMENT)

PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH

R.O.S. 6666

SCALE 1" = 50'

MATCH LINE SEE SHEET 7



S.W. CORNER  
O.R. 64-16550  
(POINT OF BEGINNING)

N86°16'39"E (SOUTHERLY LINE, O.R. 64-16550)  
277.13'

**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
⊙ CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**

SS-625-01  
OTAY CAMPO WATER

12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING  
3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX

SHEET

6

OF 7 SHEETS

DRAWN: 9/12/09

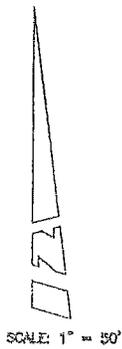
BY: CWW

CHECKED: JA/BH

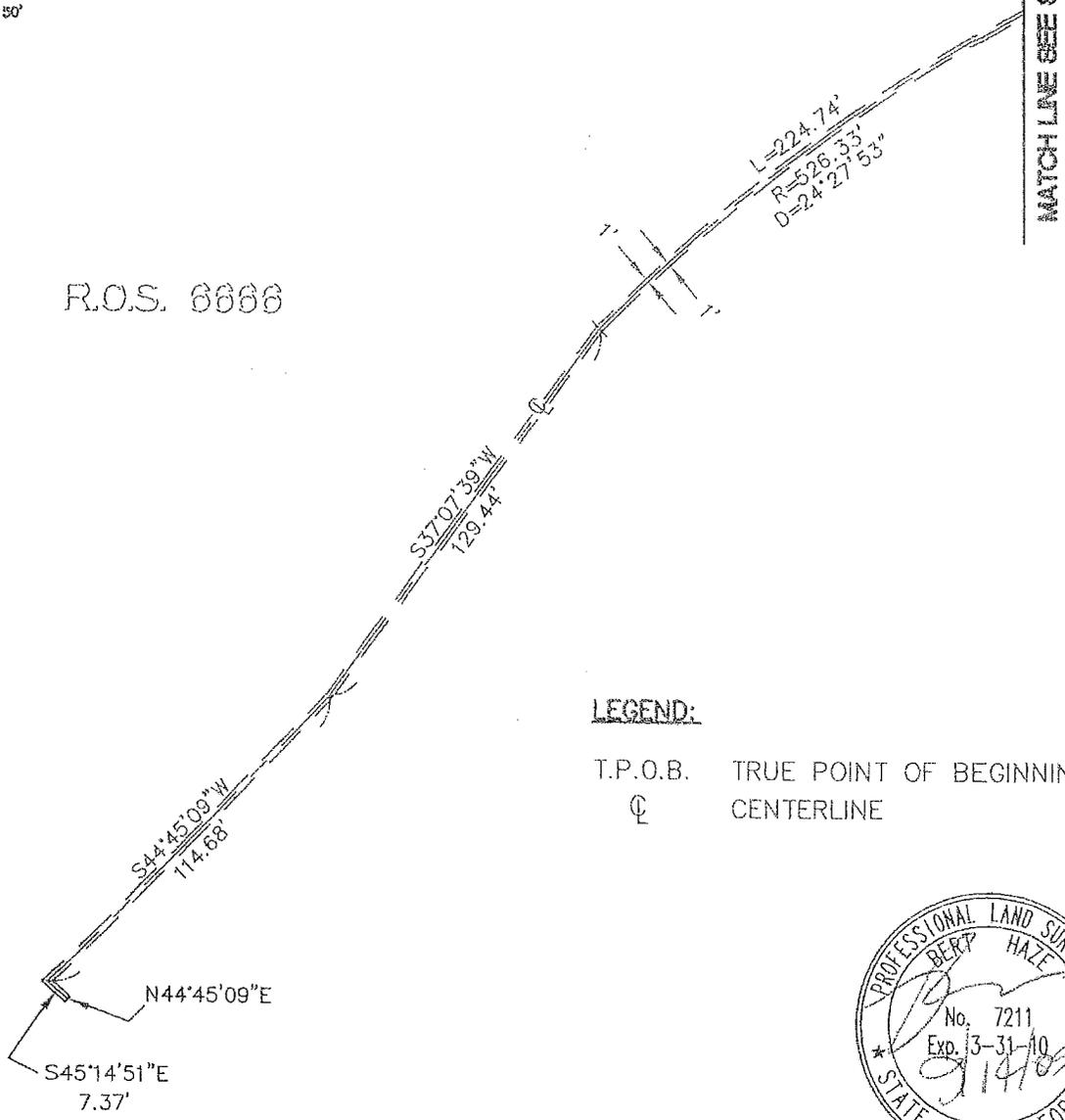
JN. 205.083

**EXHIBIT "D"**  
(PROPOSED POWER EASEMENT)

PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH



R.O.S. 6666



MATCH LINE SEE SHEET 6

**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
 CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**  
 SS-625-01  
 OTAY CAMPO WATER  
 12118 CAMPO WATER ROAD  
 SPRING VALLEY, CA 91978

PREPARED FOR:



12900 PARK PLAZA DRIVE  
 CERRITOS, CA 90703

PREPARED BY:

**BERT HAZE**  
 AND ASSOCIATES  
 LAND SURVEYING & MAPPING  
 3188 AIRWAY AVE., SUITE K-1  
 COSTA MESA, CALIFORNIA 92626  
 714 557-1567 OFFICE  
 714 557-1568 FAX

SHEET  
 7  
 OF 7 SHEETS  
 DRAWN: 9/12/09  
 BY: CWW  
 CHECKED: JA/BH  
 JN. 205.083

**EXHIBIT D**

**ATTACHMENT A  
DEPICTION OF THE TELECOMMUNICATION FACILITIES**

**BMP NOTES:**

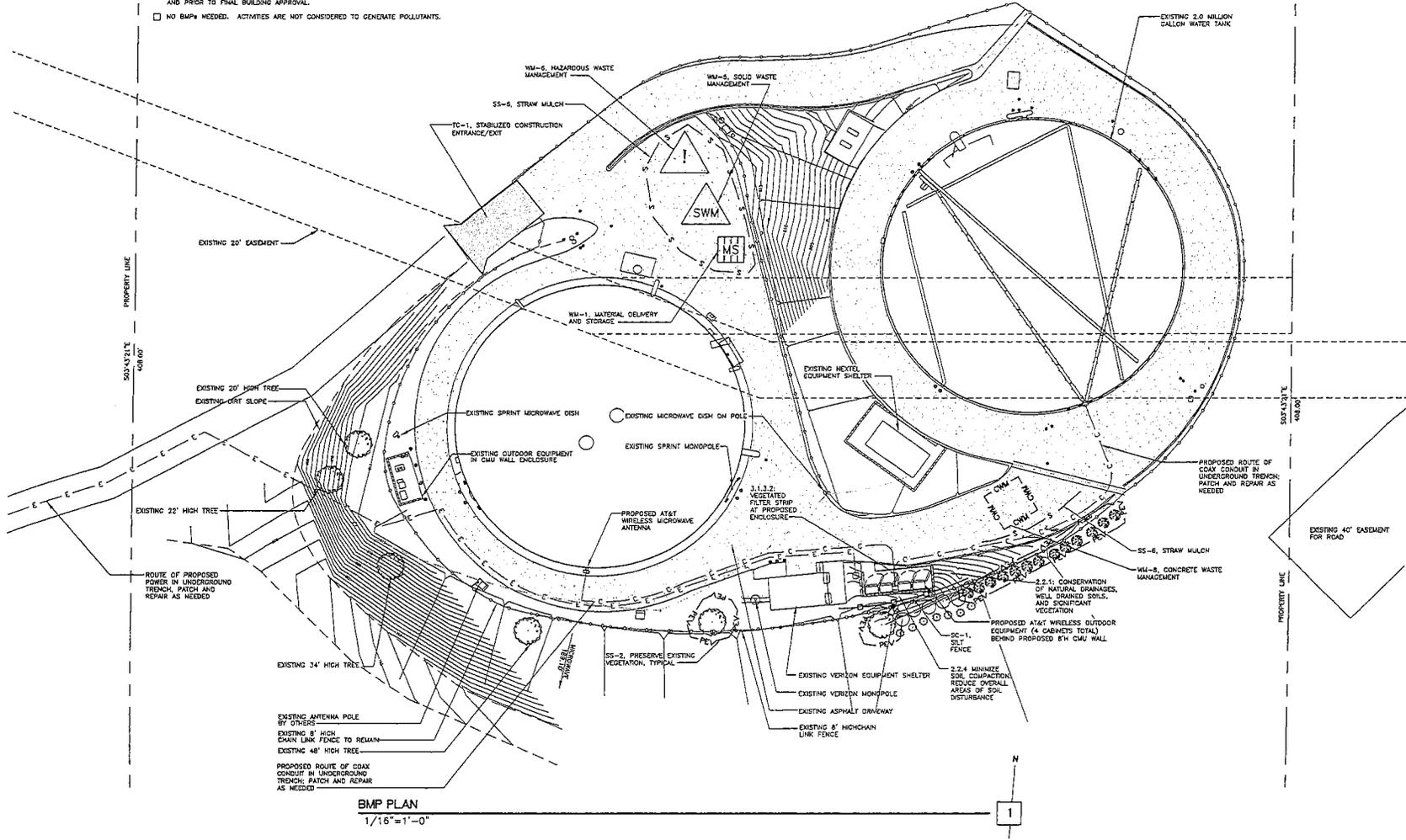
THE BMPs SELECTED ARE THOSE THAT WILL BE IMPLEMENTED DURING CONSTRUCTION OF THE PROJECT. THE APPLICANT IS RESPONSIBLE FOR THE PLACEMENT AND MAINTENANCE OF THE BMPs SELECTED. ATTACH DESCRIPTIONS OF THE BMPs AND THEIR APPLICATION (AVAILABLE AT THE DPW COUNTER) AS ATTACHMENT A.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> SILT FENCE                            | <input type="checkbox"/> DESILTING BASIN                          |
| <input type="checkbox"/> FIBER ROLLS                                      | <input type="checkbox"/> DRAVEL BAG BERM                          |
| <input type="checkbox"/> STREET SWEEPING AND VACUUMING                    | <input type="checkbox"/> SANDBAG BARRIER                          |
| <input type="checkbox"/> STORM DRAIN INLET PROTECTION                     | <input checked="" type="checkbox"/> MATERIAL DELIVERY AND STORAGE |
| <input type="checkbox"/> STOCKPILE MANAGEMENT                             | <input type="checkbox"/> SPILL PREVENTION AND CONTROL             |
| <input checked="" type="checkbox"/> SOLID WASTE MANAGEMENT                | <input checked="" type="checkbox"/> CONCRETE WASTE MANAGEMENT     |
| <input checked="" type="checkbox"/> STABILIZED CONSTRUCTION ENTRANCE/EXIT | <input checked="" type="checkbox"/> WATER CONSERVATION PRACTICES  |
| <input type="checkbox"/> DEWATERING OPTIONS                               | <input type="checkbox"/> PAVING AND GRINDING OPERATIONS           |
| <input type="checkbox"/> VEHICLE AND EQUIPMENT MAINTENANCE                |   |
- ANY MINOR SLOPES CREATED INCIDENTAL TO CONSTRUCTION AND NOT SUBJECT TO A MAJOR OR MINOR GRADING PERMIT SHALL BE PROTECTED BY COVERING WITH PLASTIC OR TARP PRIOR TO A RAIN EVENT, AND SHALL HAVE VEGETATIVE COVER REESTABLISHED WITHIN 180 DAYS OF COMPLETION OF THE SLOPE AND PRIOR TO FINAL BUILDING APPROVAL.
- NO BMPs NEEDED. ACTIVITIES ARE NOT CONSIDERED TO GENERATE POLLUTANTS.

**NOTE:**  
1. NO WASTE/DEBRIS WILL BE STORED ON DISTRICT PREMISES DURING CONSTRUCTION.

**BMP LEGEND:**

---	SS-6	STRAW MULCH
---	SC-1	SILT FENCE
---	TC-1	STABILIZED CONSTRUCTION ENTRANCE/EXIT
---	WM-1	MATERIAL DELIVERY AND STORAGE
---	WM-5	SOLID WASTE MANAGEMENT
---	WM-8	HAZARDOUS WASTE MANAGEMENT
---	WM-8	CONCRETE WASTE MANAGEMENT
---	WM-9	SANITARY/SEPTIC WASTE MANAGEMENT



**ARCHITECT**

**at&t**  
DI ROMATO ASSOCIATES  
ARCHITECTURE + GRAPHICS  
11222 AVENUE 150, SUITE 100  
SAN DIEGO, CA 92120  
TEL: 619.594.1100  
WWW.ATANDT.COM

**PROJECT NAME**

**at&t**  
SS-625-01  
**OTAY CAMPO WATER**  
13118 CAMPO WATER ROAD, SPRING VALLEY, CA 91978

**ISSUES REVISIONS**

DATE	ISSUE DESCRIPTION	BY
03-20-2018	ISSUE FOR REVIEW	

**SHEET INFORMATION**

DI ROMATO ASSOCIATES  
ARCHITECTURE + GRAPHICS  
**Z01.1**  
BMP PLAN  
SS-625-01  
03/1/18  
PLOT SCALE 1:1 (GRAPHIC 1/16")

**EXHIBIT D**

**ATTACHMENT B  
PERMITS**



# COUNTY OF SAN DIEGO

DEPARTMENT OF PLANNING AND LAND USE

5201 Ruffin Road, Suite B

San Diego, CA 92123

858-694-2960

RECEIPT NUMBER: 09-0587360

Cashier: JTANA2PL

APN: 506-021-06-00  
 DATE ISSUED: 28-AUG-2009  
 PERMIT: 1019 20090148  
 SCOPE: COMM'L MISC (ANTENNA, CANOPY, RACKS)  
 SITE ADDRESS: 12118 CAMPO RD  
 SUBDIVISION:  
 CITY: SPRING VALLEY, CA 91978

PARCEL OWNER: OTAY WATER DISTRICT  
 ADDRESS:  
 CITY/STATE/ZIP: , 00000  
 PERMIT OWNER: AT&T MOBILITY  
 ADDRESS: 5738 PACIFIC CENTER  
 CITY/STATE/ZIP: SAN DIEGO, CA 92121

### Fees Calculated 12 Months Back

<u>Date</u>	<u>Fee Code</u>	<u>Description</u>	<u>Paid to Date</u>	<u>This Receipt</u>	<u>Balance Due</u>
28-AUG-2009	1CO0001XXO	BUILDING PERMIT - VALUATION	\$0.00	\$639.50	\$0.00
28-AUG-2009	1CO0008XXO	BLDG PERMIT - DISABLE.ACCESS	\$0.00	\$63.95	\$0.00
28-AUG-2009	1CO0016XXO	STATE FEE (COMMERCIAL)	\$0.00	\$6.15	\$0.00
28-AUG-2009	1CO0017XXO	SEISMIC FEE (COMMERCIAL)	\$0.00	\$21.00	\$0.00
28-AUG-2009	1CO0043XXO	ARCHIVING FEE - LETTER/LEGAL UP TO 11X17	\$0.00	\$40.00	\$0.00
28-AUG-2009	1BP0145XXO	ELECTRIC PERMIT ONLY	\$0.00	\$226.00	\$0.00
28-AUG-2009	1CO0040XXO	ARCHIVING BASE FEE - RECORDS RETENTION	\$0.00	\$8.20	\$0.00
28-AUG-2009	1CO0041XXO	ARCHIVING FEE - PLAN PAGES (OVER 11X17)	\$0.00	\$48.30	\$0.00
28-AUG-2009	1CO0021XXO	GREEN BLDG FEE (RES & COMM)	\$0.00	\$4.00	\$0.00
<b>Totals:</b>				\$1,057.10	\$0.00

<u>Payment Code</u>	<u>Description</u>	<u>Amount</u>
CHECK	CHECK #31170	\$1,057.10

Tendered: \$1,057.10  
 Change: \$0.00  
 Balance Due: \$0.00



**COUNTY OF SAN DIEGO**

DEPT. OF PLANNING AND LAND USE  
BUILDING DIVISION  
5201 Ruffin Road, Suite B  
San Diego, CA 92123-1666  
(858) 565-5920

SS0625  
ck. 3170

**FEE STATEMENT**

Permit Type & Number: 1019 - 20090148		Statement Date: 28 AUG 2009	
Permit Description: PERMIT-COMMERCIAL			
Project Name:		Project No:	
Permit Owner Name: AT&T MOBILITY		Client No:	
Site Address: 12118 CAMPO RD SPRING VALLEY, CA 919			
APN: 506-021-06-00			

**Project Description/Scope**  
Cross street: JAMACHA RD.

Description of Work: UNMANNED CELL SITE INCLUDING THE INSTALLATION OF 11 ANTENNAS ON EXISTING WATER TANK, 225 SQFT CMU WALL WITH EQUIPMENT CABINETS BEHIND & 200 AMP SERVICE FOR AT&T MOBILITY

Fee/Deposit Details		Valuation: \$100,000.00	
Fee Code	Description	Acct. Code	Amount
1CO0001XXO	BUILDING PERMIT - VALUATION	1006372-995-10	639.50
1CO0008XXO	BLDG PERMIT - DISABLE.ACCESS	1006372-995-10	63.95
1CO0016XXO	STATE FEE (COMMERCIAL)	1006372-995-10	6.15
1CO0017XXO	SEISMIC FEE (COMMERCIAL)	1006372-995-10	21.00
1CO0021XXO	GREEN BLDG FEE (RES & COMM)	1006372-995-10	4.00
1BP0145XXO	ELECTRIC PERMIT ONLY	1006372-995-10	226.00
1CO0040XXO	ARCHIVING BASE FEE - RECORDS RETENTION	1006372-995-10	8.20
1CO0041XXO	ARCHIVING FEE - PLAN PAGES (OVER 11X17)	1006372-995-10	48.30
1CO0043XXO	ARCHIVING FEE - LETTER/LEGAL UP TO 11X17	1006372-995-10	40.00
Total Amount Due:			\$1,057.10

DA  
JAY  
08.28.09

SAN DIEGO COUNTY PLANNING COMMISSION

5201 Ruffin Road

San Diego, CA 92123

May 8, 2009

Decision of the Planning Commission  
On the Application of Major Use Permit  
Number P08-021

GRANT, as per redlined plot plan and elevations dated March 19, 2009, consisting of eight (8) sheets, a Major Use Permit, pursuant to Section 6985, 6986, and 7358 of the Zoning Ordinance, to authorize the location and use of an unmanned wireless telecommunication facility. The facility includes panel antennas that will be mounted on the existing water tank located on the east side of the property and a GPS antenna mounted on the existing water tank located on the west side of the property. All associated equipment will be enclosed by a CMU wall. Pursuant to Section 6985A of the Zoning Ordinance, a Major Use Permit is required because the project site is located in an area zoned S90 (Holding Area), is not located on a high voltage transmission tower, and is not covered by a Wireless Community Master Plan.

CONDITIONS

The following conditions are imposed with the granting of this Major Use Permit:

Building permit plans must conform in detail to this approved design. Failure to conform can cause delay to or denial of building permits and require formal amendment of this approved design. No waiver of the Uniform Building Code standards or any other code or ordinance is intended or implied.

- A. Prior to obtaining any building or other permit pursuant to this Major Use Permit, and prior to commencement of construction or use of the property in reliance on this Major Use Permit, the applicant shall:
1. Pay off all existing deficit accounts associated with processing this application to the satisfaction of the Department of Planning and Land Use and the Department of Public Works.
  2. Have a registered civil engineer, a registered traffic engineer, or a licensed land surveyor provide a certified signed statement that physically, there is a minimum unobstructed sight distance in both directions along Campo Road (SR-94) from the private easement road, for the prevailing operating speed of traffic on Campo Road (SR-94). The above shall be to the satisfaction of CALTRANS and the Director of Public Works.

3. Submit evidence to the satisfaction of the Director of Planning and Land Use (Building Division) that all "Prior to Use or Occupancy" conditions B.1 and B.2 of this Major Use Permit have been printed on a separate sheet of all building plans associated with this Major Use Permit: [DPLU, FEE]
    - a. The conditions shall be printed on a separate sheet of the building plans.
  4. Furnish the Director of Planning and Land Use a letter from the Director of the Department of Public Works stating Conditions A.1 – A.2 have been complied with to that Department's satisfaction.
- B. Prior to any occupancy or use of the premises pursuant to this Major Use Permit, the applicant shall:
1. Provide photographic evidence to the Director of Planning and Land Use that demonstrates the panel antennas, equipment shelter and landscaping are installed according to the approved plot plan and photo-simulations filed under Major Use Permit P08-021.
  2. Pay the Major Use Permit Compliance Inspection Fee as specified in the DPLU Fee Ordinance at Section 362 of the San Diego County Administrative Code. The fee shall be paid at the DPLU Zoning Counter. The permittee shall also schedule an appointment for an initial inspection with the County Permit Compliance Coordinator to review the on-going conditions associated with the permit. The inspection should be scheduled for a date approximately six months subsequent to establishing occupancy or use of the premises.
- C. The following conditions shall apply during the term of the Major Use Permit:
1. The applicant shall allow the County to inspect the property for which the Major Use Permit has been granted, at least once every twelve months, to determine if the applicant is complying with all terms and conditions of the Major Use Permit. If the County determines the applicant is not complying with the Major Use Permit terms and conditions the applicant shall allow the County to conduct follow up inspections more frequently than once every twelve months until the County determines the applicant is in compliance.
  2. The applicant is responsible for the maintenance and repair of any damage caused by them to on-site and off-site private roads that serve the project.

3. All light fixtures shall be designed and adjusted to reflect light downward, away from any road or street, and away from adjoining premises, and shall otherwise conform to Section 6324 of The Zoning Ordinance.
4. The parking areas and driveways shall be well maintained.
5. All landscaping shall be adequately watered and well maintained at all times.
6. Property owners shall agree to preserve and save harmless the County of San Diego and each officer and employee thereof from any liability or responsibility for any accident, loss, or damage to persons or property happening or occurring as the proximate result of any of the work undertaken to complete this work, and that all of said liabilities are hereby assumed by the property owner.
7. The applicant shall maintain the appearance of the facility and associated equipment shelter, as depicted in photo simulations on file with Major Use Permit P08-021, for the duration of the facility's operation.
8. All graffiti on any components of the facility shall be removed promptly in accordance with County regulations. Graffiti on any facility in the public right-of-way must be removed within 48 hours of notification.
9. All wireless telecommunications sites shall be kept clean and free of litter.
10. All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.
11. All wireless carriers who intend to abandon or discontinue the use of any wireless telecommunications facility shall notify the County of such intention no less than 60 days prior to the final day of use.
12. Wireless telecommunications facilities with use discontinued shall be considered abandoned 90 days following the final day of use.
13. All abandoned facilities shall be physically removed by the facility owner no more than 90 days following the final day of use or determination that the facility has been abandoned, whichever occurs first.
14. The County reserves the right to remove any facilities that are abandoned for more than 90 days at the expense of the facility owner.

15. Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.
  16. Noise from any equipment supporting the facility shall meet the requirements of the County's Noise Ordinance on an average hourly basis.
  17. Equipment cabinets and antenna structures shall be secured to prohibit unauthorized access.
  18. Comply with all applicable stormwater regulations at all times. The activities proposed under this application are subject to enforcement under permits from the San Diego Regional Water Quality Control Board (RWQCB) and the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance (**Ordinance No. 9926**) and all other applicable ordinances and standards. This includes requirements for Low Impact Development (LID), materials and wastes control, erosion control, and sediment control on the project site. Projects that involve areas 1 acre or greater require that the property owner keep additional and updated information onsite concerning stormwater runoff. This requirement shall be to the satisfaction of the Director of Public Works.
  19. The project shall conform to the approved plot plan(s). Failure to conform to the approved plot plan(s); is an unlawful use of the land, and will result in enforcement action pursuant to Zoning Ordinance Section 7703.
- D. This Major Use Permit shall expire on May 8, 2011, at 4:00 p.m. (or such longer period as may be approved pursuant to Section 7376 of The Zoning Ordinance of the County of San Diego prior to said expiration date) unless construction or use in reliance on this Major Use Permit has commenced prior to said expiration date.

FINDINGS:

CEQA FINDINGS:

It is hereby found that the proposed project is exempt from the California Environmental Quality Act as specified under Section 15303 of the State CEQA Guidelines for the reasons detailed in the Notice of Exemption Form dated March 24, 2009, on file with DPLU as Environmental Review Number ER08-19-006.

**MSCP FINDINGS:**

The Multiple Species Conservation Program Conformance Findings dated March 24, 2009, on file with DPLU as Environmental Review Number 08-19-006.

**STORMWATER FINDINGS:**

It is hereby found that the project proposed by the applicant has prepared plans and documentation demonstrating compliance with the provisions of the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance.

**RESOURCE PROTECTION ORDINANCE FINDINGS:**

It is hereby found that the use or development permitted by the application is consistent with the provisions of the Resource Protection Ordinance.

**MAJOR USE PERMIT FINDINGS:**

Pursuant to Section 7358 (see Section 7359 for findings required for permits filed pursuant to Regional Land Use Element 3.8) of The Zoning Ordinance, the following findings in support of the granting of the Major Use Permit are made:

- (a) The location, size, design, and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures with consideration given to
1. Harmony in scale, bulk, coverage, and density

**Scale and Bulk:**

The subject parcel is developed with two water tanks and other existing wireless telecommunication facilities currently operated by T-mobile, Sprint, Nextel, and Verizon. The proposed unmanned wireless telecommunication facility includes eleven (11) panel antennas that will be mounted on and painted in matching color with the existing water tank and an eight-foot high CMU equipment shelter painted in dark tan to enclose all associated equipment. Photo simulations on file with Major Use Permit P08-021 (Attachment C) illustrate that the proposed antennas and associated equipment enclosure are unobtrusive to the surrounding viewshed. The view from the surrounding area will be minimized because the project is a stealth facility as the panel antennas will be mounted on and painted in the same color as the water tank and the equipment enclosure will be painted in dark tan. The enclosure will be screened by

proposed additional landscaping such as Toyons and Silverberry. The project is compatible with adjacent uses in terms of scale and bulk because of the stealth design. Therefore, the project will not substantially increase the scale and bulk of the existing structure and result in negative impacts to the surrounding properties.

Coverage:

The subject parcel is 3.74 acres in size. Surrounding land uses consist of vacant land, SR-94 (Campo Road), Steele Canyon High School and a commercial center, with parcel sizes ranging from approximately 3 acres to over 200 acres in size. The project is located on a parcel that is developed with two water tanks and wireless telecommunication facilities currently operated by T-mobile, Sprint, Nextel, and Verizon. The lease area for this unmanned wireless telecommunication facility will total 400 square-feet (less than 1% lot coverage). Considering the size of the subject lot compared with the size and location of the proposed structure, the size of the existing structures on the property, and the coverage characteristics of surrounding properties, the addition of the telecommunication facility will be consistent in terms of coverage of the surrounding area and will not substantially increase the lot area coverage.

Density:

The project is a Major Use Permit for the authorization of a telecommunication facility and does not have a residential component subject to density.

2. The availability of public facilities, services, and utilities

The project is located within the San Miguel Consolidated Fire Protection District. The project has been reviewed and found to be FP-2 compliant. The project will require water service for irrigation and the Otay Municipal Water District has verified that service is available to the project site.

3. The harmful effect, if any, upon desirable neighborhood character

The project is a Major Use Permit for the authorization of a wireless telecommunication facility. The facility will include eleven (11) panel antennas that will be mounted on and painted to match the existing water tank located on the east side of the property and an eight-foot high CMU equipment shelter painted in dark tan to enclose all associated equipment. The project site is located within a neighborhood that is predominately

comprised of vacant land, SR-94, Steele Canyon High School, and a commercial center.

The project will not adversely affect the desirable neighborhood character because the project proposes a wireless telecommunication facility that is designed to be stealth. The equipment shelter will be located within a CMU enclosure to conceal it from the surrounding properties. Photo simulations on file with Major Use Permit P08-021 (Attachment C) illustrate that the line, form, and color of the facility will be largely consistent with other elements that make up the visual setting of the area, such as the previously approved wireless telecommunication facilities consisting of panel antennas mounted on the existing water tank. Furthermore, the project was reviewed for noise impacts and determined to be consistent with the County Noise Ordinance. The project, as designed, will not cause any substantial, demonstrable negative aesthetic effect to views from the surrounding area and roadways. Therefore, the project will not have a harmful effect on the neighborhood character.

4. The generation of traffic and the capacity and physical character of surrounding streets

The traffic generated from the project is expected to be one maintenance trip per month and will utilize an easement connected to Campo Road (SR-94), a public road for access. Existing parking is available on the property. The use associated with this Major Use Permit is compatible with the existing nature of the area because the number of maintenance trips will not substantially alter the expected traffic or physical character of the surrounding streets and will be compatible with adjacent uses. Therefore, the number of maintenance trips will not substantially increase or alter the physical character of Campo Road (SR-94) and other vicinity roadways.

5. The suitability of the site for the type and intensity of use or development which is proposed

The project proposes a Major Use Permit for the authorization of an unmanned wireless telecommunication facility. The subject property is 3.74 acres in size and is developed with access and utility services adequate to serve the proposed use. The installation of the telecommunication facility will not require significant alteration to the land form. The project, as designed, will be stealth and will not change the characteristics of the area and is suitable for this site and the type and intensity of uses and development. For reasons stated above, the proposed project will be compatible with adjacent land uses.

## 6. Any other relevant impact of the proposed use

None identified.

- (b) The impacts, as described in Findings (a) above, and the location of the proposed use will be consistent with the San Diego County General Plan.

The project is subject to the Regional Category – Current Urban Development Area (CUDA), General Plan Land Use Designation General - (21) Specific Plan (Rancho San Diego), and the Valle De Oro Community Plan. The subject property is excluded from the Rancho San Diego Specific Plan but surrounded by land designated as Open Space in the Specific Plan. The project complies with the General Plan because civic uses are allowed if they support the local population. In addition, the project is consistent with Policy 4 of the Public Safety Element of the County General Plan that encourages the support, establishment, and continual improvement of Countywide telephone communications system, particularly with respect to enhancing emergency communications.

- (c) That the requirements of the California Environmental Quality Act have been complied with.

Pursuant to Section 15303 of the State CEQA Guidelines, the project is exempt from CEQA because it is an unmanned wireless telecommunication facility that involves the installation of Small, New Equipment and Facilities in Small Structures. It has been determined that the project is not in an environmentally sensitive location; will not have a cumulative effect on the environment; is not on a hazardous waste site; will not cause substantial change in the significance of a historical resource; and will not result in damage to a scenic highway

NOTICES:

**NOTICE:** The 90 day period in which the applicant may file a protest of the fees, dedications or exactions begins on May 8, 2009.

**NOTICE:** This subject property is known to contain Coastal sage scrub plant community. Such plant community is habitat for the coastal California gnatcatcher. The Federal government recently listed the gnatcatcher as a threatened species under the Federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.). THE LISTING MAY RESULT IN AN APPLICANT'S INABILITY TO PROCEED WITH HIS/HER PROJECT WITHOUT A PERMIT FROM THE FEDERAL GOVERNMENT IF THE SPECIES OR ITS HABITAT ARE PRESENT ON THE PROJECT SITE. It is advisable to contact the United States Fish and Wildlife Service to determine the applicability of the prohibitions under the Act to each applicant's property.

**NOTICE:** THE ISSUANCE OF THIS PERMIT BY THE COUNTY OF SAN DIEGO DOES NOT AUTHORIZE THE APPLICANT FOR SAID PERMIT TO VIOLATE ANY FEDERAL, STATE, OR COUNTY LAWS, ORDINANCES, REGULATIONS, OR POLICIES INCLUDING, BUT NOT LIMITED TO, THE FEDERAL ENDANGERED SPECIES ACT AND ANY AMENDMENTS THERETO.

**NOTICE:** Low Impact Development (LID) requirements apply to all priority projects as of March 25, 2008. These requirements can be found at the following link beginning on Page 32, Section 67.812, of the Municipal Stormwater Permit:

<http://www.sdcounty.ca.gov/cob/ordinances/ord9926.doc>

The draft LID Handbook is a source for LID information and is to be utilized by County staff and outside consultants for implementing LID in our region. The handbook gives an overview of LID. Section 2.2 reviews County DPW planning strategies as they relate to requirements from the Municipal Permit. The Fact Sheets in the Appendix may be useful for information on all of the engineered techniques. Additional information can be found in the extensive Literature Index. You can access the Handbook at the following DPLU web address:

<http://www.co.san-diego.ca.us/dplu/docs/LID-Handbook.pdf>

**NOTICE:** On January 24, 2007, the San Diego Regional Water Quality Control Board (SDRWQCB) issued a new Municipal Stormwater Permit under the National Pollutant Discharge Elimination System (NPDES). The requirements of the Municipal Permit must be implemented beginning March 25, 2008. The Low Impact Development (LID) Best Management Practices (BMP) Requirements of the Municipal Permit can be found at the following link beginning on Page 32, Section 67.812, of the Municipal Stormwater Permit:

<http://www.sdcounty.ca.gov/cob/ordinances/ord9926.doc>

All priority projects must minimize directly connected impervious areas and promote biofiltration. Section 67.812 includes the minimal site design requirements that project applicants must address and implement. These can be summarized into the following four requirements: Disconnect impervious surfaces, Design impervious surfaces to drain into properly designed pervious areas, Use pervious surfaces wherever appropriate, Implement site design BMPs. The applicant / engineer must determine the applicability and feasibility of each requirement for the proposed project and include them in the project design, unless it can be adequately demonstrated which (if any) of the requirements do not apply.

AGREEMENT BETWEEN NEW CINGULAR  
WIRELESS PCS, LLC, A DELAWARE LIMITED  
LIABILITY COMPANY AND OTAY WATER  
DISTRICT TO LOCATE A COMMUNICATIONS  
FACILITY AT OTAY'S 832-1&2 RESERVOIR SITE

This Agreement ("Lease") is entered into and effective on the date specified in the signature page (the "Commencement Date"), by and between the Otay Water District, a municipal water district organized and operated pursuant to the Water Code Section 71000, et seq. ("Otay"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Tenant"). Any special terms or conditions agreed to by Otay and Tenant will be set forth on Exhibit A.

RECITALS

A. Otay owns a site on which it has constructed water facilities known as the "832-1&2 Reservoir Site," as depicted on Attachment A to Exhibit B (the "Reservoir Site").

B. Tenant has requested Otay to allow it to locate a communications facility and transmitting and receiving antennas at the Reservoir Site.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Otay and Tenant agree as follows:

1. Premises. Otay owns the real property described in Attachment B to Exhibit B (the "Property"). Otay agrees to lease to Tenant, for the installation of an antenna and related telecommunications equipment, approximately 214 square feet of real property within the Property, as more particularly described on Attachment C to Exhibit B (the "Premises"). A depiction of the Property and the Premises is attached hereto as Attachment D to Exhibit B.

2. Grant of Non-Exclusive Trench Easement(s). Otay has also agreed to grant a temporary non-exclusive easement to Tenant for certain portions of the Property, as legally described in Exhibit C to this Lease (the "Easement"), for the purpose of trenching and installation of the necessary utilities to operate Tenant's equipment. It is expressly agreed that any such Easement shall run concurrent with this Lease. Tenant agrees and understands that if the Lease is terminated or ceases to exist for any reason, the Easement shall not have any force or effect. Tenant agrees to return and maintain all portions of land subject to the Easement that are disturbed in connection with the installation, connection, maintenance, repair, access or any other Tenant activity, to their original condition at Tenant's sole cost and expense.

This easement shall be non-exclusive. Otay, or any other tenant of Otay may utilize the easement area for similar purposes or for any other purpose which does not interfere with Tenant's uses. Otay shall provide Tenant with advance notice of any intention to use the temporary easement area by Otay or any current or future tenant of Otay.

3. Use of the Premises. The Premises may be used by Tenant only for the purpose of installing, constructing, housing, operating, maintaining and repairing telecommunication equipment, including appurtenant antennae and electronic equipment, as further described and conditioned in this Agreement (collectively, the "Facilities"), for the lawful provision of communication services. Tenant may not sublease or sublicense any use or space of the Premises or the Facilities thereon except as otherwise provided in Paragraph 12, below.

4. Access. Otay shall provide access to Tenant, Tenant's employees, agents, contractors and subcontractors to the Premises 24 hours a day, seven days a week, at no charge to Tenant. Otay hereby grants to Tenant such rights of ingress and egress over the Property as may be necessary and consistent with the authorized use of the Premises as outlined by Otay Operations. Subject to Otay's reasonable rules, Otay shall permit Tenant's employees, agents,

contractors, subcontractors and invitees to park vehicles on the Property as necessary and consistent with the authorized use of the Premises. Otay shall, at its expense, maintain all access roadways or driveways from the nearest public roadway to the Premises in a manner reasonably sufficient to allow access. In addition, Tenant shall obtain such permits, licenses or easements, from the owners of property adjoining the leased premises, as may be necessary for Tenant to have access to and from the leased Premises and also for access to utilities. Tenant shall provide copies of these documents to Otay prior to the start of construction.

5. Term. The term of this Lease shall be five (5) years (the "Initial Term"), commencing on the Commencement Date. Tenant shall have the right to extend the term of the Lease for three (3) additional terms of five (5) years each by giving Otay written notice of its intention to do so at least 120 days prior to the date that the then current term would otherwise end (each, an "Extension Term"). In addition, Tenant may request, in writing, two additional extensions of five (5) years each, which Otay may grant or deny at its sole discretion (each, an "Additional Term" and together with the Initial Term and Extension Term, or individually, as the context requires, the "Term"). Each such request shall be made in writing no less than 120 days prior to the expiration of the then current Extension Term or Additional Term, as applicable.

6. Administrative Fee. Tenant, prior to entering on Otay Property to conduct its investigation of the Premises, shall provide Otay with a non-refundable administrative fee in the amount of SEVEN THOUSAND DOLLARS AND NO CENTS (\$7,000.00). This fee will defray Otay's administrative expenses and costs related to the supervision and assistance for entering on Otay Property to conduct investigation of the proposed Premises, site selection, planning, and design, including legal expenses.

Additionally, upon final execution of the Agreement by both parties, Tenant shall provide Otay with a non-refundable administrative fee in the amount of TWO THOUSAND FIVE

HUNDRED DOLLARS AND NO CENTS (\$2,500.00). This second administrative fee shall be used to defray Otay's administrative expenses and costs related to Otay's supervision and assistance with construction phases of the project. These administrative fees shall not be considered rent or part of the rental installment.

7. Rent. Beginning on the Commencement Date, Tenant shall pay Otay as rent the sum of \$3,175 per month payable on the first day of each month in advance. If the Commencement Date is other than the first day of the calendar month, the rate shall be prorated for the first month of the Initial Term.

The rent shall be increased on each calendar anniversary of the Commencement Date at a rate of fourpercent (4%) per annum. However, at the beginning of each Extension Term or Additional Term, if any, Otay may, at its sole and absolute discretion, choose to adjust the annual rent, effective on the first year of said Extension Term or Additional Term, by an amount equal to the greater of: (i) four percent (4%); or (ii) the amount necessary to ensure that the rent equals the amount it would have been if each annual increase during the previous Term had been calculated based on the average percentage increases in the consumer price index published by the United States Department of Labor, Bureau of Labor Statistics (1982-1984 = 100) (the "CPI") for "All Items - All Urban Consumers" for the San Diego Metropolitan Statistical Area for the immediately preceding 5 year period. If the publication of the Consumer Price Index is discontinued, or if the Consumer Price Index is altered in some material manner, including changing the name of the index, the geographic area covered, the consumers or workers so included, or the base year, the Parties must use their reasonable best efforts to agree on a substitute index or procedure that reasonably reflects and monitors consumer prices. After such an adjustment, the rent shall increase at a rate of four percent (4%) per annum for the rest of the applicable Extension Term or Additional Term, if any. Otay shall also have the discretion to

adjust the base rent to then current market rent in the Additional Term if said market rent is greater than the CPI increase provided for in the above formula. The "then current market rent" shall be defined as the most recent rent transaction entered into by Otay with other similar tenants for the same or similar purposes.

8. Environmental. Otay represents that to the best of its knowledge the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials other than those materials normally used by Otay for the treatment of water and that there is no hazardous waste on the Premises. Notwithstanding any other provision of this Lease, Tenant relies upon the representations stated herein as a material inducement for entering into this Lease. Tenant shall not bring any hazardous materials onto the Premises except for those contained in its back-up power facilities (e.g. lead-acid batteries and diesel fuel) and properly stored, reasonable quantities of common materials used in telecommunications operations (e.g. cleaning solvents). Tenant shall handle, store and dispose of all hazardous materials it brings onto the Premises in accordance with all federal, state and local laws and regulations ("Laws"). "Hazardous materials" means any substance, chemical, pollutant or waste that is presently identified as hazardous, toxic or dangerous under any applicable federal, state or local law or regulation and specifically includes, but is not limited to asbestos and asbestos containing materials, polychlorinated biphenyl's (PCBs) and petroleum or other fuels (including crude oil or any fraction or derivative thereof).

9. Installation and Maintenance of Facilities. Tenant is authorized to install, maintain and operate on the Premises only the Facilities described and depicted on Attachment A to Exhibit D; provided that all permits and zoning approvals shall have been obtained by Tenant.

a. *Installation of the Facilities.* Tenant's design and installation of all portions of the Facilities shall be done according to plans approved by Otay, and such approval

shall not be unreasonably withheld. The Tenant shall be responsible for painting its antennae and/or equipment to match Otay's facility. Otay will provide Tenant with specifications regarding paint type, color and application method to accomplish this requirement. Painting/coating submittals shall be provided to Otay by the Tenant prior to receiving permission to begin painting. Otay may specify a camouflage design if appropriate. These camouflage designs may include but are not limited to palm trees, pine trees and flag poles.

b. *Record Drawings.* Within thirty (30) days after completion of the Facilities, Tenant shall provide Otay with "record" drawings of Facilities showing and identifying all the equipment and improvements installed on the Premises. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property and antennae located on the Premises and any such property of Tenant located in the Easement. No property of Tenant other than such identified property shall be located on the Premises or the Property at any time.

c. *Alterations.* Tenant shall not alter or change its facilities in a material manner without the prior approval of Otay, such approval not to be unreasonably withheld. "Material" refers to any physical change that could affect the building or its appearance or any change that could disrupt Otay's workplace or communications. All of Tenant's construction and installation work shall be performed at Tenant's sole cost and expense in a good and workmanlike manner. Tenant shall have the right to remove all facilities it installs at its sole expense on or before the expiration or termination of this Lease.

d. *Improvements to Facilities / Additional Space.* If, at any time during the Term, Tenant requests permission from Otay to add improvements requiring construction to its then existing Facilities, the then current Administrative Fees shall be payable to Otay for reimbursement for staff time to process the new request, construction inspection and monitoring

during construction. If the requested Tenant improvements include additional lease space, a new lease agreement for the additional lease space must be executed prior to start of construction and Tenant shall pay the Administrative Fees then in effect, and shall comply with Otay's requirements then in effect. The administrative fees for the additional lease space shall be in addition to, and shall not replace the administrative fees for improvements requiring construction to the Facilities.

e. *Permits and Compliance with Applicable Laws.* Prior to commencing any construction or improvements, and from time to time, as applicable, Tenant agrees to obtain all necessary approvals for its communications operations and for the Facilities and to operate and maintain the same, at all times in accordance with all applicable laws, rules and regulations.

i. Prior to commencing construction, Tenant shall deliver to Otay copies of all executed licenses, approvals and permits required by local, state or federal agency in connection with the Facilities, which permits shall be attached hereto as Attachment B to Exhibit D.

ii. From time to time, as required by law or regulation in connection with the normal operation of the Facilities or as needed due to improvements or alterations to the same, Tenant shall provide Otay with copies of updated permits, licenses and/or approvals. Tenant shall provide written evidence, satisfactory to Otay of all FCC approvals and other governmental permits and approvals, including but not limited to compliance with FCC Electromagnetic Radiation Guidelines.

iii. Otay agrees, at no expense to Otay, to cooperate with Tenant in making application for and obtaining all licenses, permits and any and all

necessary approvals that may be required for Tenant's intended use of the Premises.

f. *Utilities.* Tenant shall be authorized to install utilities for the Premises and the Facilities at Tenant's expense and to improve the present utilities on or near the Premises (including, but not limited to the installation of an emergency back-up power) subject to Otay's approval of the location, which approval shall not be unreasonably withheld. Tenant shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Tenant's facilities.

g. *Repair of Otay's Improvements.* Any damage done to Otay's improvement on the property during installation and/or during operations caused by Tenant or in connection with installation operation shall be repaired or replaced immediately at Tenant's expense and to Otay's reasonable satisfaction. In connection with the installation and operation of the antennae facilities, Tenant shall not locate or attach any antennae or other equipment to Otay's facilities without the prior written approval of Otay. Tenant shall pay all costs and expenses in relation to maintaining the integrity of Otay's facilities in connection with Tenant's installation and operation of the antennae facilities.

h. *Maintenance and Repair.* At all time during the Term, Tenant shall maintain the Premises and the Facilities in a manner acceptable to Otay. Tenants use of its facilities shall not interfere with Otay's operation of its improvements.

i. *Liens.* Tenant shall not encumber or allow the Premises or the Property to be encumbered in any manner other than as expressly authorized herein.

j. *Security.* Tenant recognizes and agrees that the Premises and the Reservoir Site are a sensitive area. Tenant agrees to provide for the proper supervision of all Tenant personnel assigned to enter and do work at the Premises. Tenant also agrees to, at its

own cost and expense, comply with any and all security measures instituted by Otay from time to time.

10. Maintenance and Repair of Otay's Improvements. At any time during the Term, or while this Lease remains in effect, Otay may, at its option and upon written notice to Tenant, remove or cause Tenant to remove all or any portion of its Facilities at Tenant's expense, in order for Otay to paint, repair, or make replacements to its improvements on the Premises (the "Maintenance Work"), as deemed necessary by Otay in its sole discretion. Tenant agrees to fully cooperate with Otay's efforts in connection with any Maintenance Work, including removing and re-installing any portion of the Facilities identified by Otay to be removed.

a. *Temporary Facilities.* During the course of the Maintenance Work, Tenant may install temporary antennae, at Tenant's expense, on the leased Premises subject to Otay's approval of the location. Once the Maintenance Work is completed by Otay, Tenant agrees to promptly dismantle any temporary facilities and to relocate the facilities to their original location or to any other location approved by Otay, as appropriate. All work related to the removal of any portion of the Facilities, installation of temporary facilities, dismantling, relocation to their original location and any related work, shall be done at Tenant's sole cost and expense and in good and workmanlike manner.

b. *Repair of damage.* Tenant shall repair any damage caused by Tenant in connection with the installation, maintenance, operation or removal of any temporary facilities or the Facilities.

c. *Otay's option to remove temporary facilities.* If any temporary antennae is not removed within thirty (30) days from the date the Maintenance Work is completed, Otay will have the right to remove the temporary antennae and charge Tenant for such costs.

d. *Painting of the Facilities.* If the Maintenance Work includes the painting of Otay's improvements, the Tenant shall be responsible for repainting its antennas and/or equipment to match Otay's facility. Otay will provide specifications regarding paint type, color and application method to the Tenant to accomplish this requirement. The Tenant will be required to provide painting/coating submittals to Otay prior to receiving permission to begin painting.

11. Co-Location. Tenant agrees that Otay may enter into leases with other communication carriers, wireless communications carriers and other utilities for use of any portion of the "Reservoir Site" as long as said leases do not result in unreasonable interference with Tenant's use of the Premises. Tenant will reasonably cooperate with Otay's efforts in this regard including, at Otay's request, the relocation of, or changes to, the Facilities; provided that any alterations or relocation needed, at Otay's sole discretion, to accommodate the new lessee shall be performed at the expense of Otay or the new lessee.

12. Subleasing/Encumbrance. Tenant may not sub-lease or sub-license or otherwise encumber the Premises or any portion of the Facilities without Otay's prior written consent, which may be granted or denied at Otay's sole discretion. Any sub-lease or other encumbrance will require an amendment to this Lease and shall specify the terms and conditions for the sub-lease or other encumbrance.

13. Condition of the Property at Expiration or Termination. Upon the expiration or termination of this Lease as herein provided, Tenant shall surrender the Premises, and any Easements granted by Otay in connection with this Lease, to Otay in good and broom-clean condition, with all portions of the Facilities, including but not limited to equipment, supplies, buried conduits, and structures removed along with subterranean foundations to a depth of three feet below grade; or as otherwise agreed to by Otay in writing.

14. Interference. Tenant shall not use, nor shall Tenant permit its agents or invitees to use any portion of the Premises in a manner which interferes with Otay's use of the Reservoir Site for its intended purpose including communications facilities relating to Otay's operation such as telemetry/radio communications or any other pre-existing communications facilities. This would not apply to interference with a tenant of Otay whose use did not "pre-exist" this lease; except as agreed to by Tenant in connection with the co-location of any subsequent tenant's facilities. If Tenant's operation in any way interferes with Otay's telemetry/radio facilities, Tenant will have five (5) business days to correct the problem after notice from Otay. Tenant acknowledges that continuing interference will cause irreparable injury to Otay and, therefore, Otay will have the right to terminate the Lease immediately upon notice to Tenant.

15. Taxes. During the term of this Lease, Tenant shall pay before delinquency all taxes, assessments, license fees, and any other charge of any type whatsoever that are levied, assessed, charged, or imposed on or against Tenant's personal property installed or located in or on the leased premises and that become payable during the term of this Lease.

16. Termination.

(a) This Lease may be terminated by Tenant without further liability if:

(i) Tenant delivers to Otay 30-day written notice at any time prior to the Commencement Date, for any reason or no reason;

(ii) Tenant gives Otay six months notice when Tenant determines at any time after the Commencement Date that any governmental or non-governmental license, permit, consent, approval, easement or restriction waiver that is necessary to enable Tenant to install or operate Tenant's facility cannot be obtained or renewed at reasonable expense or in reasonable time period.

(iii) Tenant determines at any time after the Commencement Date that the Premises are not appropriate or suitable for its operations for economic, environmental or technological reasons, including without limitation, any ruling or directive of the FCC or other governmental or regulatory agency, or problems with signal strength or interference not encompassed by subsection (iv) below; provided that the right to terminate under this subsection (iii) is exercisable only if Tenant pays Otay, as a termination fee, the lesser of twelve monthly installments of annual rent or the balance of the rent due for the remaining term of this Lease;

(iv) Otay commits a default under this Lease and fails to cure such default within a 30-day notice period, provided that if the period to diligently cure takes longer than 30 days and Otay commences to cure the default within the 30-day notice period, then Otay shall have such additional time as shall be reasonably necessary to diligently effect a complete cure;

(v) The Premises are totally or partially destroyed by fire or other casualty so as to hinder Tenant's normal operations and Otay does not provide to Tenant within ten (10) days after the casualty occurs a suitable temporary relocation site for Tenant's facility pending repair and restoration of the Premises.

(b) This Lease may be terminated by Otay without further liability if:

(i) Tenant commits a default under this Lease and fails to cure such default as provided under paragraph 17, below.

17. Default.

a. *Event of Default.* The parties covenant and agree that a default or breach of this Lease (an "Event of Default") shall occur and be deemed to exist if, after notice and opportunity to cure as provided below:

(i) Tenant shall default in the payment of rent or other payments hereunder and said default shall continue for ten (10) days after Otay provides written notice of the same; or

(ii) Either party shall default in the performance or observance of any other covenant or condition of this Lease to be performed or observed if such failure persists for a period of thirty (30) days after the non-defaulting party provides written notice of the default to the defaulting party.

b. *Rights upon Default.* Upon the occurrence of an Event of Default, in addition to any other rights or remedies available to the non-defaulting party under any law, the non-defaulting party shall have the right to terminate the Lease.

c. *Cure Rights.* An Event of Default shall not exist unless written notice has been given in accordance with this Lease, and the defaulting party has had the opportunity to cure as provided herein. The defaulting party shall cure the alleged default within the manner provided herein; provided however, that if the nature of an alleged default is such that it can not reasonably be cured within such thirty (30) day period, the defaulting party shall not be in breach of this Lease if it commences a cure within such period, and thereafter diligently proceeds with the actions necessary to complete such cure.

18. Destruction of Premises. If the Premises or the Facilities are destroyed or damaged, Tenant may elect to terminate this Lease as of the date of the damage or destruction by so notifying Otay no more than thirty (30) days following the date of damage or destruction, provided Otay does not provide to Tenant, within ten (10) days after the casualty occurs, a suitable temporary relocation site for Tenant's facility pending repair and restoration of the Premises.

19. Condemnation. If the condemning authority takes all the Property or a portion which in Tenant's opinion is sufficient to render the Premises unsuitable for Tenant's use, then this Lease shall terminate as of the date when possession is delivered to the condemning authority. In the event of any taking under the power of eminent domain, Tenant shall not be

entitled to any portion of the award paid for the taking and Otay shall receive the full amount of such award except as provided herein. Tenant hereby expressly waives any right or claim to any portion of a condemnation award, except for relocation benefits and goodwill. All other damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, shall belong to Otay.

20. Insurance. Tenant shall maintain the following insurance:

- a. Commercial general liability with limits of \$5,000,000 per occurrence;
- b. Automobile liability with the combined single limit of \$1,000,000 per accident;
- c. Worker's compensation, as required by law;
- d. Employer's liability with limits of \$1,000,000 per occurrence.

Tenant shall name Otay as an additional insured on each of the aforementioned insurance policies and the policies shall state that they are primary and that any policies Otay maintains shall be noncontributory. Tenant shall provide Otay with written certificates of insurance evidencing such coverage. Said policies shall expressly provide that the policies shall not be canceled or altered without at least thirty (30) days prior written notice to Otay. Said policies shall be with insurance companies with an A.M. Best rating of AVII or better.

Otay takes no responsibility for the protection of Tenant's property from acts of vandalism by third parties. The insurance requirements may be changed by Otay upon giving of notice to Tenant; provided that the requirements set forth above shall be the minimum insurance requirements during the Term.

21. Indemnity. Tenant shall hold harmless, indemnify and defend Otay and each of Otay's directors, officers, managers, employees, agents and successors and assigns, from any and all claims, suits or actions of any kind and description brought forth on account of injuries to or

death to any person or damage to any property, including damage to the Premises arising out of or related to its use of the Premises, except to the extent that such claims, suits or actions arise out of the sole negligence or willful misconduct of Otay.

22. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than thirty (30) days prior request by Otay, deliver to Otay a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modifications; (b) the dates to which rent and other charges have been paid; (c) as far as the person making the certificate knows, Otay is or is not in default under any provisions of the Lease; and (d) such other matters as Otay may reasonably request.

23. Assignment. Tenant shall not assign this Lease except to an affiliated parent entity, subsidiary, purchaser of assets, or holder of its FCC license, without Otay's prior written consent. If, during the term of this Lease, Tenant requests the written consent of Otay to any assignment, Otay's consent thereto shall not unreasonably be withheld. Consent to one assignment shall not be deemed to be a consent to any subsequent assignment, and any subsequent assignment without Otay's consent shall be void and shall, at Otay's option, terminate this Lease.

24. Memorandum of Lease. If requested by Tenant, Otay agrees to promptly execute and deliver to Tenant a recordable Memorandum of Lease substantially in the form of Exhibit E.

25. Resolution of Disputes. All controversies or claims arising out of or relating to this Lease shall be resolved by submission to final and binding arbitration at the offices of the American Arbitration Association ("AAA") located in San Diego, California. Such arbitration shall be conducted in accordance with the most recent version of the AAA commercial arbitration rules.

26. Choice of Law and Venue. This Lease shall be interpreted in accordance with the laws of the State of California, and any disputes shall be heard in a court of competent jurisdiction in the State of California.

27. Attorney's Fees. In the event that either party commences any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant, or condition of this Lease, the party prevailing in said action or proceeding shall be entitled to recover, in addition to court costs, reasonable attorneys' fees to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal.

28. Entire Agreement. This Lease contains all agreements, promises and understandings between Otay and Tenant and no verbal or oral agreements, promises or understandings shall or will be binding upon either Otay or Tenant and any addition, variation or modification to this Lease shall be in effect unless made in writing and signed by the parties hereto.

29. Incorporation of Exhibits and Recitals. All exhibits and attachments attached to this Lease and all Recitals above are incorporated and made a part hereof as if fully set forth herein.

30. Severability. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto.

31. Waiver. Waiver of any provision or term of this Agreement, or of any breach or default hereunder, shall not constitute a waiver of any other term, condition, breach or default, or

of a subsequent applicability of a term or condition, or a waiver of a subsequent breach or default, nor shall it constitute an amendment to the term, condition or provision that is waived.

32. Notice. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices may be given by facsimile if proof of transmission is retained. Notices shall be sent to the addresses sent forth below:

OTAY:                      Otay Water District  
                                  Attn: General Manager  
                                  2554 Sweetwater Springs Boulevard  
                                  Spring Valley, CA 91978-2096  
                                  Phone: (619) 670-2210  
                                  Fax : (619) 660-0829

TENANT:                    New Cingular Wireless PCS, LLC  
                                  Attn : Network Real Estate Administration  
                                  Re: Cell Site #: SS0625  
                                  Cell Site Name: Otay Campo Water  
                                  Fixed Asset No: 10068657  
                                  12555 Cingular Way, Suite 1300  
                                  Alpharetta, Georgia 30004

With a copy sent concurrently to Tenant's Legal Department:

If sent via certified or registered mail to:

New Cingular Wireless PCS, LLC  
Attn.: Legal Department  
Re: Cell Site #: SS0625  
Cell Site Name: Otay Campo Water  
Fixed Asset No: 10068662  
P.O. Box 97061  
Redmond, WA 98073-9761

If sent via nationally recognized overnight courier to:

New Cingular Wireless PCS, LLC  
Attn.: Legal Department  
Re: Cell Site #: SS0625  
Cell Site Name: Otay Campo Water  
Fixed Asset No: 10068662  
16331 NE 72<sup>nd</sup> Way  
Redmond, WA 98052-7827

33. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed this Lease as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This date is referred to as the Commencement Date in the Lease.

NEW CINGULAR WIRELESS PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation,  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

OTAY WATER DISTRICT  
2554 Sweetwater Springs Blvd.  
Spring Valley, CA 91979

By: \_\_\_\_\_  
Name: Mark Watton  
Its: General Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Yuri Calderon, General Counsel

\_\_\_\_\_  
Date

**EXHIBIT A**  
**SPECIAL TERMS AND CONDITIONS ADDED TO**  
**AGREEMENT BETWEEN NEW CINGULAR WIRELESS**  
**PCS, LLC AND OTAY TO LOCATE COMMUNICATION**  
**FACILITIES AT OTAY'S 832-1&2 RESERVOIR SITE,**  
**DATED \_\_\_\_\_, \_\_\_\_\_ (THE "LEASE")**

If any terms or conditions set forth herein contradict terms or conditions of the Lease to which this Exhibit is attached, as described above, the terms and conditions of this Exhibit shall control.

**SPECIAL TERMS AND CONDITIONS**

1. **Landscaping and Maintenance.** The installation, permitting, maintenance and upkeep, and all expenses or other obligations related thereto, in connection with any and all landscaping and irrigation systems mandated by the permitting agencies will be the sole responsibility of the Tenant. Otay Water District makes no commitment for delivery of water for said landscaping, except if Tenant obtains a water meter for the site and pays for water use.

2. **Rent.** At Tenant's election, subject to prior written notice as set forth in the Lease, Tenant may pay rent annually, in advance during each of the five-years of the Initial Term or during each of the five years in any Extension Term. Once the Initial Term or Extension Term, as applicable, has commenced, Tenant may not alter its election to pay monthly or annually.

3. **Tenant's Financing.** Notwithstanding anything to the contrary contained in this Lease, Tenant may assign, mortgage, pledge, hypothecate or otherwise transfer without prior notice or consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof; provided that no such assignment shall become binding on Otay until written notification is given by Tenant to Otay as provided in the Lease. A "financing entity" as used herein, does not include any entity which primary business is not that of banking, finance, lending or investing funds and does not include any entity whose primary business is telecommunications.

- a. **Waiver of Otay's Lien.** With respect to any such financing entity, Otay waives any lien rights it may have concerning the Facilities, which is deemed Tenant's personal property and not fixtures attached to the Property and Tenant or, if appropriate, the financing entity has the right to remove the same at any time without Otay's consent. The financing entity shall not have the right to operate the Facilities without Otay's prior written consent, which may be denied if the financing entity does not meet the definition of financing entity above.

- b. **Collateral.** Tenant may enter into a financing arrangement including promissory notes and financial and security agreements for the financing of the Facilities ("Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Otay (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.
- c. **Disposition of Collateral.** Notwithstanding paragraphs a. and b., above, if Tenant fails to remove the Collateral, or any component thereof, within five (5) days of the termination of this Lease, said failure shall constitute an abandonment. If thereafter, Tenant or any holder of Collateral, lender or assignee, whether or not notification was provided to Otay, fails to claim and remove the same, within thirty (30) calendar days of the date of termination of this Lease, Otay is hereby specifically authorized to remove and dispose of the Collateral, or any component thereof, so abandoned at Tenant's sole cost and expense and without incurring any liability to Tenant, or any lender with any interest in all or any part of the Collateral, or any assignee of this Lease.
- d. **No privity or obligation.** Otay does not have privity with any financing entity and specifically disclaims any obligation to any such entity, including any obligation to provide copies of any notices of default or right to cure under the Lease.

**EXHIBIT B**

**TO AGREEMENT BETWEEN NEW CINGULAR  
WIRELESS PCS, LLC AND OTAY TO LOCATE  
COMMUNICATION FACILITIES AT OTAY'S 832-1&2  
RESERVOIR SITE, DATED \_\_\_\_\_, \_\_\_\_\_ (THE  
"LEASE")**

**List of Attachments to Exhibit B:**

ATTACHMENT A. DEPICTION OF RESERVOIR FACILITIES

ATTACHMENT B. LEGAL DESCRIPTION OF THE PROPERTY

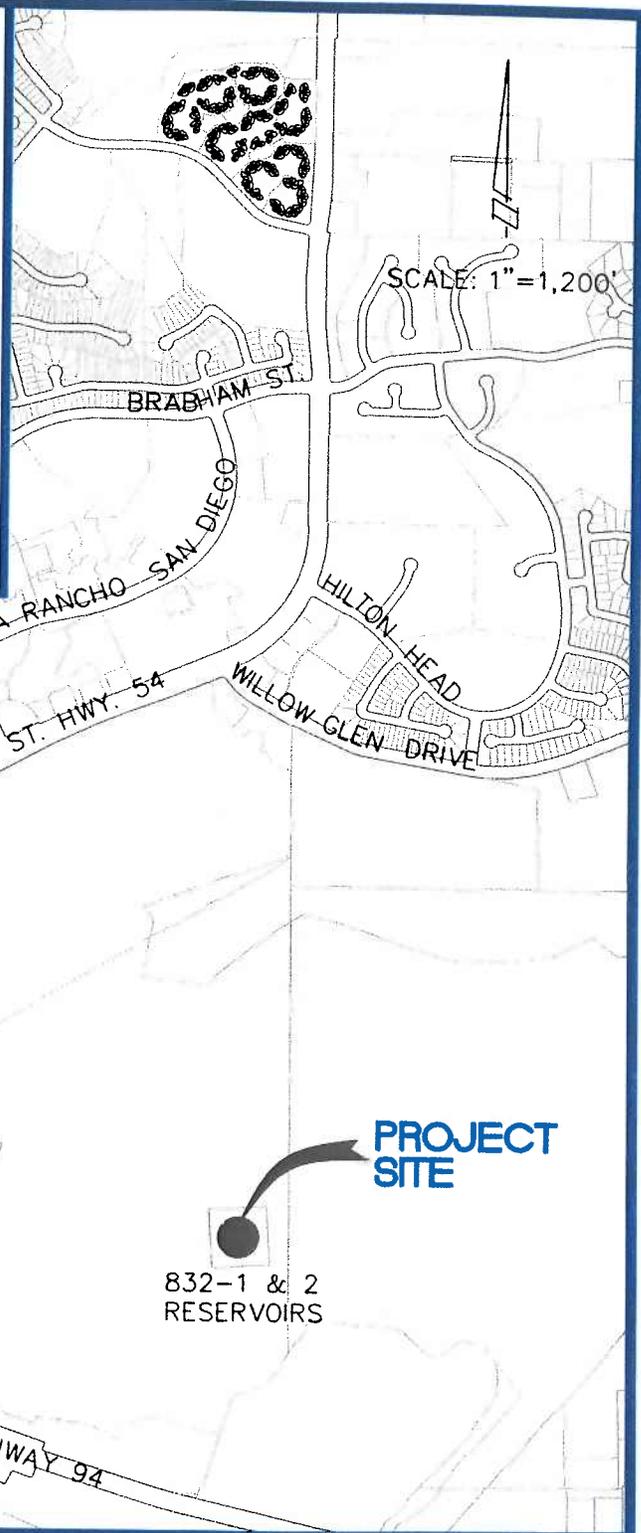
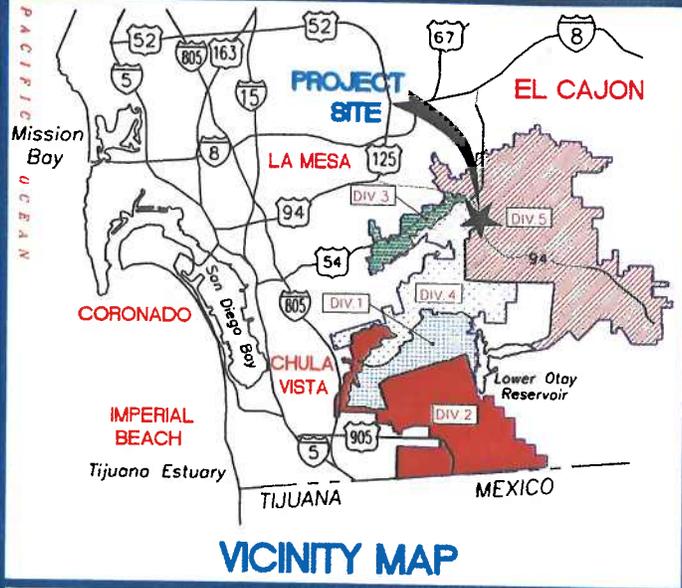
ATTACHMENT C. LEGAL DESCRIPTION OF THE PREMISES

ATTACHMENT D. DEPICTION OF THE PROPERTY AND PREMISES

**EXHIBIT B**

**ATTACHMENT A  
LOCATION MAP**

PA\WORKING\CELLULAR\_LEASE\_FILE\WATET\_CINGULAR\832-1&2\agreement\Exhibit B Att. A.dwg 8/25/2008 12:42:22 PM PD



**OTAY WATER DISTRICT**  
NEW CINGULAR WIRELESS PCS, LLC SITE  
832-1 & 2 RESERVOIRS

LOCATION MAP

**EXHIBIT B ATTACHMENT A**

**EXHIBIT B**

**ATTACHMENT B  
LEGAL DESCRIPTION OF THE PROPERTY**

All that certain real property situated in the County of San Diego, State of California, described as follows:

All that portion of Tract "F" of Rancho Jamacha, in the County of San Diego, State of California, according to Partition Map thereof filed in the Office of the County Recorder of San Diego County, in Case No. 13, Superior Court, entitled Wm. M. Keighler, et al, vs. Mary H. Eddy, et al, more particularly described as follows:

Commencing at Corner No. 6 of Tract "E" of Rancho Jamacha, said corner being the Northwest corner of Section 36, Township 16 South, Range 1 West, San Bernardino Base and Meridian, as shown on Record of Survey Map No. 6069, filed in the Office of the County Recorder of San Diego County;

Thence along a line shown on said Record of Survey South  $0^{\circ} 07'$  West 1313.45 feet;

Thence South  $89^{\circ} 53'$  East 649.99 feet;

Thence South  $20^{\circ} 11'$  East 293 feet;

Thence South  $40^{\circ} 19' 50''$  East 152.86 feet;

Thence South  $22^{\circ} 47' 15''$  East 775.15 feet;

Thence South  $72^{\circ} 29' 15''$  East 3791.98 feet to the true point of beginning of the property herein described;

Thence North  $3^{\circ} 43' 21''$  West 110.09 feet;

Thence North  $86^{\circ} 16' 39''$  East 399 feet;

Thence South  $3^{\circ} 43' 21''$  East 408 feet;

Thence South  $86^{\circ} 16' 39''$  West 399 feet;

Thence North  $3^{\circ} 43' 21''$  West 297.91 feet to the true point of beginning.

Assessor's Parcel Number: **506-021-06-00**

**EXHIBIT B**

**ATTACHMENT C  
LEGAL DESCRIPTION OF THE PREMISES**

# EXHIBIT "A"

**PROPOSED LEASE AREA DESCRIPTION:**

ALL THAT PORTION OF TRACT "F" OF RANCHO JAMACHA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY IN CASE NO. 13, SUPERIOR COURT, ENTITLED WM. M. KEIGHTLER, ET AL, VS. MARY H. EDDY, ET AL, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1964 AS INSTRUMENT NO. 16550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 6666, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1966 AS FILE NO. 41585; THENCE ALONG THE SOUTHERLY LINE OF SAID D.R. 64-16550, NORTH 88°16'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°43'21" WEST, A DISTANCE OF 135.54 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 24.67 FEET; THENCE, SOUTH 09°12'46" EAST, A DISTANCE OF 8.67 FEET; THENCE, NORTH 80°47'14" EAST, A DISTANCE OF 24.67 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 213.78 SQ. FT.

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD OR APPARENT.

AS SHOWN IN EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.



THIS DOCUMENT  
WAS MADE BY ME OR UNDER MY SUPERVISION.

BERT HAZE P.L.S. 7211

DATE

*9/14/09*

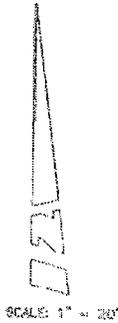
REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

<p><b>LEGAL DESCRIPTION EXHIBIT</b></p> <p>SS-625-01 OTAY CAMPO WATER</p> <p>12118 CAMPO WATER ROAD SPRING VALLEY, CA 91978</p>	<p>PREPARED FOR:</p> 	<p>PREPARED BY:</p> <p><b>BERT HAZE</b> AND ASSOCIATES LAND SURVEYING &amp; MAPPING</p> <p>3188 AIRWAY AVE., SUITE K-1 COSTA MESA, CALIFORNIA 92626 714 557-1567 OFFICE 714 557-1568 FAX</p>	<p>DRAWN: 9/12/09 BY: CWW CHECKED: JA/BH JH: 205.033</p>
---	--	--	--

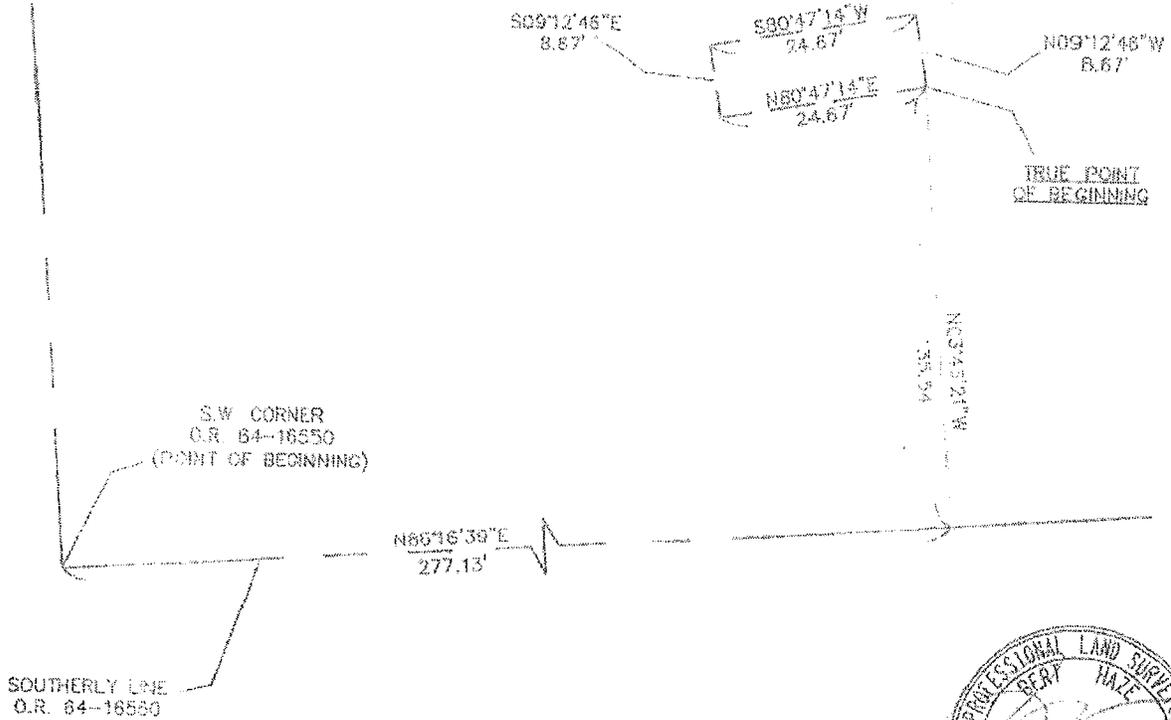
**EXHIBIT "B"**  
(PROPOSED LEASE AREA)

PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH

R.O.S. 6886



SCALE: 1" = 20'



**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
Ⓢ CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**  
SS-625-01  
OTAY CAMPO WATER  
  
12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91078

PREPARED FOR:



12900 PARK PLAZA DRIVE  
CERRITOS, CA 90703

PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING

3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX

DRAWN: 9/12/09  
BY: CWW  
CHECKED: JA/BN  
JN. 205.023

**EXHIBIT B**

**ATTACHMENT D  
DEPICTION OF THE PROPERTY AND PREMISES**



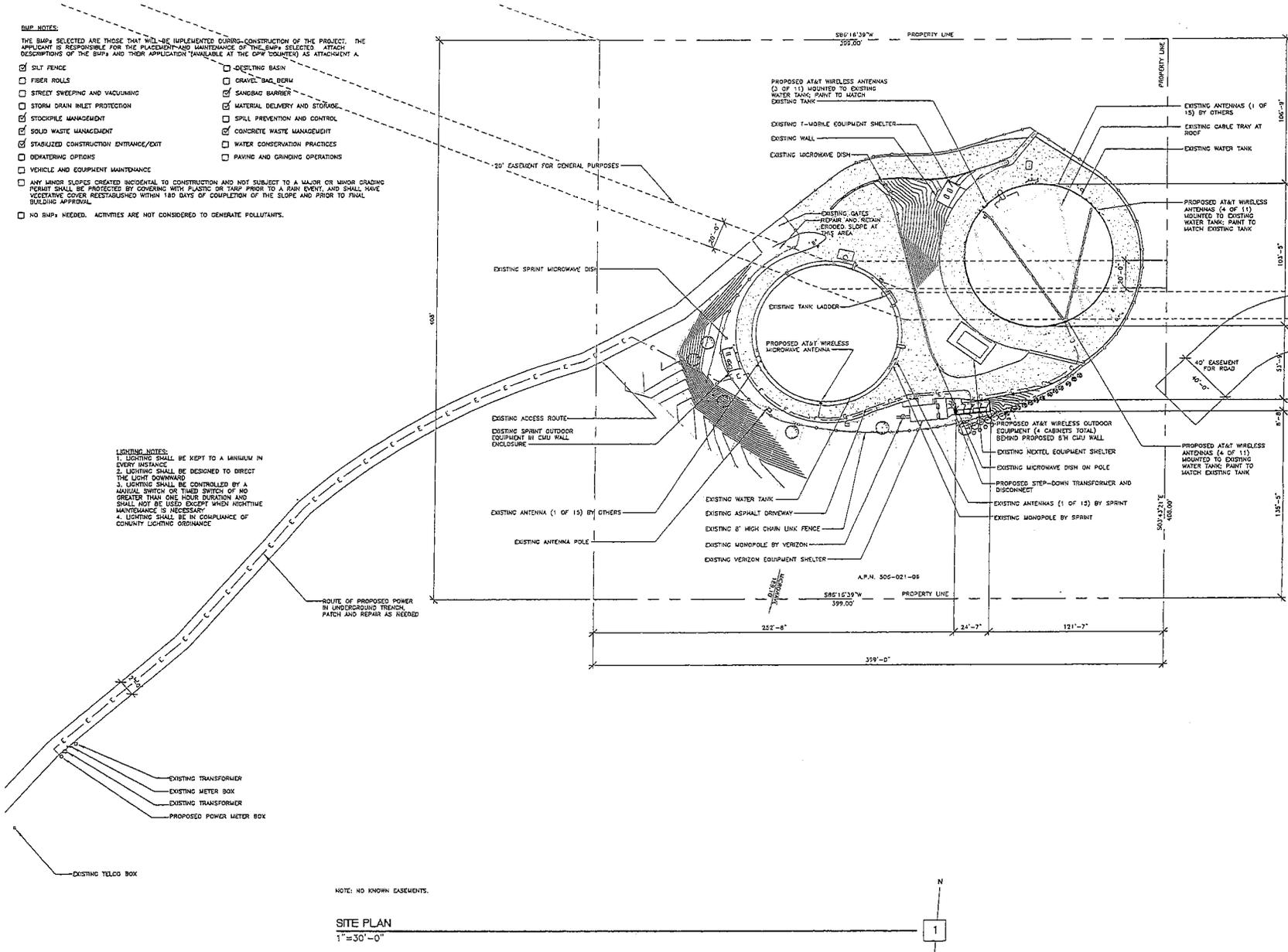
**BMP NOTES:**

THE BMPs SELECTED ARE THOSE THAT WILL BE IMPLEMENTED DURING CONSTRUCTION OF THE PROJECT. THE APPLICANT IS RESPONSIBLE FOR THE PLACEMENT AND MAINTENANCE OF THE BMPs SELECTED. ATTACH DESCRIPTIONS OF THE BMPs AND THEIR APPLICATION (AVAILABLE AT THE DWP OFFICES) AS ATTACHMENT A.

- SILT FENCE
  - FIBER ROLLS
  - STREET SWEEPING AND VACUUMING
  - STORM DRAIN INLET PROTECTION
  - STOCKPILE MANAGEMENT
  - SOLID WASTE MANAGEMENT
  - STABILIZED CONSTRUCTION ENTRANCE/EXIT
  - DEWATERING OPTIONS
  - VEHICLE AND EQUIPMENT MAINTENANCE
  - ANY MINOR SLOPES CREATED INCIDENTAL TO CONSTRUCTION AND NOT SUBJECT TO A MAJOR OR MINOR GRADING PERMIT SHALL BE PROTECTED BY COVERING WITH PLASTIC OR TARP PRIOR TO A RAIN EVENT, AND SHALL HAVE VEGETATIVE COVER REESTABLISHED WITHIN 180 DAYS OF COMPLETION OF THE SLOPE AND PRIOR TO FINAL BUILDING APPROVAL.
  - NO BMPs NEEDED. ACTIVITIES ARE NOT CONSIDERED TO GENERATE POLLUTANTS.
- SWEETING BASIN
  - GRAVEL BAG BERM
  - SANDBAG BARRIER
  - MATERIAL DELIVERY AND STORAGE
  - SPILL PREVENTION AND CONTROL
  - CONCRETE WASTE MANAGEMENT
  - WATER CONSERVATION PRACTICES
  - PAVING AND GRADING OPERATIONS

**LIGHTING NOTES:**

1. LIGHTING SHALL BE KEPT TO A MINIMUM IN EVERY INSTANCE.
2. LIGHTING SHALL BE DESIGNED TO DIRECT THE LIGHT DOWNWARD.
3. LIGHTING SHALL BE CONTROLLED BY A MANUAL SWITCH OR TIMER SWITCH OF NO GREATER THAN ONE HOUR DURATION AND SHALL NOT BE USED EXCEPT WHEN NIGHTTIME MAINTENANCE IS NECESSARY.
4. LIGHTING SHALL BE IN COMPLIANCE OF COUNTY LIGHTING ORDINANCE.



NOTE: NO KNOWN EASEMENTS.

**SITE PLAN**

1"=30'-0"

ARCHITECT



DIOMATO ASSOCIATES  
ARCHITECTURE + GRAPHICS  
12116 CAMPO WATER ROAD, SPRING VALLEY, CA 94774

**PROJECT NAME**

at&t  
SS-625-01  
**OTAY CAMPO WATER**  
12116 CAMPO WATER ROAD, SPRING VALLEY, CA 94774

**ISSUES REVISIONS**

NO.	DATE	BY	DESCRIPTION
1	03-20-20	CDP	ISSUE FOR REVIEW

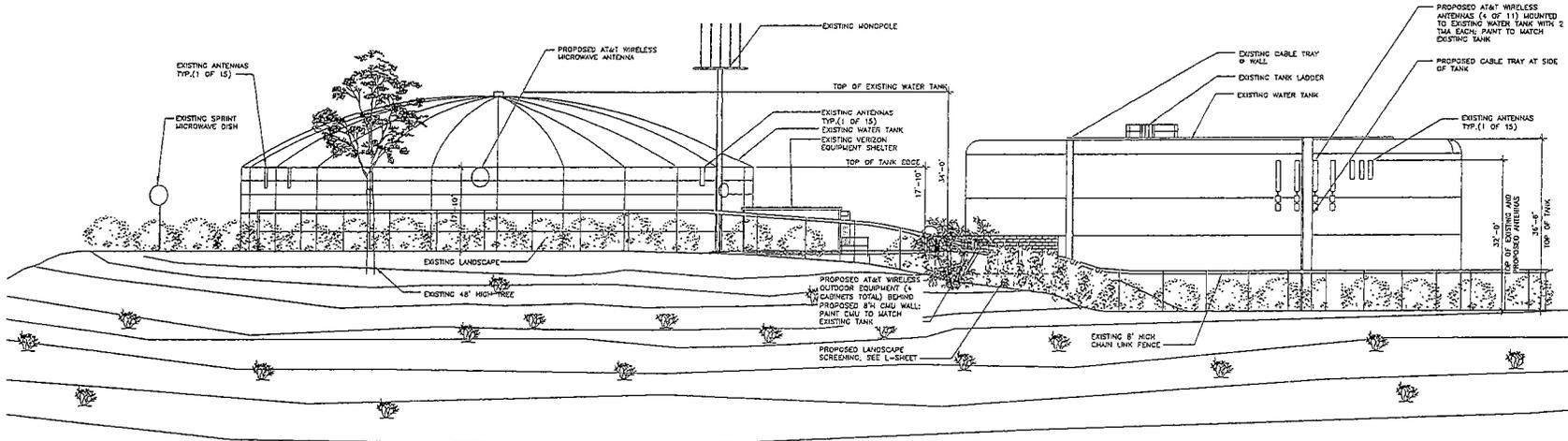
**SHEET INFORMATION**

DIOMATO ASSOCIATES  
ARCHITECTURE + GRAPHICS  
**Z01**  
SITE PLAN  
SS-625-01  
5501.06  
PLOT SCALE 1:1 (CAD) @ 1/8"=1'-0"



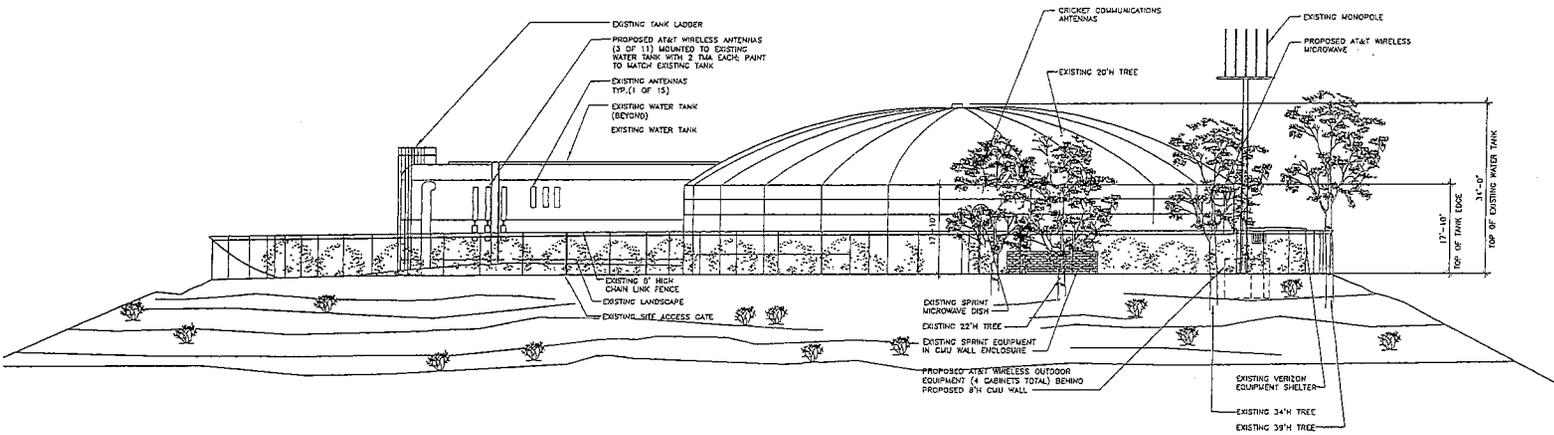






SOUTH ELEVATION  
3/32" = 1'-0"

1



WEST ELEVATION  
3/32" = 1'-0"

2



PROJECT NAME

at&t  
SS-625-01  
**OTAY CAMPO WATER**  
12118 CAMPO WATER ROAD, SPRING VALLEY, CA 91778

ISSUES REVISIONS

NO.	DATE	BY	DESCRIPTION
1	03-23-09	CHS	ISSUE FOR REVIEW

SHEET INFORMATION

OTAY CAMPO WATER  
OTAY CAMPO WATER  
ARCHITECTURE + GRAPHICS  
**Z04**  
ELEVATIONS  
SS-625-01  
8391.64  
PLOT SCALE 1:1 (GRAPHIC) 1/8"

THESE ELEVATIONS AND ANY EXPANSIONS ARE THE PROPERTY AND COPYRIGHT OF OTAY CAMPO WATER. NO PART OF THESE ELEVATIONS MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM OTAY CAMPO WATER. ALL RIGHTS RESERVED.





**EXHIBIT C**

**TO AGREEMENT BETWEEN NEW CINGULAR WIRELESS PCS, LLC AND OTAY TO LOCATE COMMUNICATION FACILITIES AT OTAY'S 832-1&2 RESERVOIR SITE, DATED \_\_\_\_\_, \_\_\_\_\_ (THE "LEASE")**

**DEPICTION AND LEGAL DESCRIPTION OF TEMPORARY TRENCH EASEMENT**

Easement Requested?  Yes  No  
Easement Granted?  Yes  No

**If Easement granted, complete the following information:**

For good and valuable consideration, receipt of which is hereby acknowledged, the Otay Water District, as Grantor, hereby grants to New Cingular Wireless PCS, LLC, as Tenant, a temporary Easement to excavate, remove dirt and do any act necessary to install, operate and maintain power lines and connection lines as required in connection with the communications facilities and the antenna to be located on the Premises. The legal description of the land subject to the Easement is as follows:

A drawing depicting the Easement is attached hereto. Tenant may not sell, transfer or assign the Easement herein granted to Tenant. Tenant's rights under the Easement are specifically limited to the installation of such power lines, transmission lines and other communications lines and accessories as required to efficiently operate Tenant's communication facilities on the Premises.

The Easement shall **automatically terminate** on the day that is thirty (30) years from the date of the Lease. However, if the Lease is terminated earlier for any reason, the Easement will become unenforceable and, for all purposes, terminate on the date the Lease is terminated.

Grantor reserves the right to use the lands that are subject to the Easement in a manner such that it will not interfere with Tenant's use thereof.

Grantor retains the right to remove, at Tenant's expense, from the surface of the Easement any item, structure improvement or portion thereof that interferes or conflicts with Otay's use of the Property.

Tenant agrees to indemnify, defend and hold harmless the Grantor for any damage to property or person (including death) and any, claim, suit, action, cost or expense arising in connection with the Easement or Tenant's use or installation of any item, line, facility or other thing in connection therewith.

Tenant agrees to maintain the portion of the Property subject to the Easement in substantially the condition it is on the date the Lease is executed, excepting only such changes as are accepted by Otay in writing.

**EXHIBIT "C"**  
(PROPOSED COAX EASEMENTS)

PROPOSED COAX EASEMENT DESCRIPTIONS:

TWO A STRIPS OF LAND, 2 FEET IN WIDTH, OVER THAT PORTION OF TRACT "F" OF RANCHO JAMACHA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY IN CASE NO. 13, SUPERIOR COURT, ENTITLED WM. M. KEIGHLER, ET AL., VS. MARY H. EDDY, ET AL, THE CENTERLINES OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1964 AS INSTRUMENT NO. 16550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 8666, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1966 AS FILE NO. 41585; THENCE ALONG THE SOUTHERLY LINE OF SAID O.R. 64-16550, NORTH 86°16'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°43'21" WEST, A DISTANCE OF 135.54 FEET; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 17.71 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 2.19 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 4.00 FEET; THENCE, NORTHEASTERLY ALONG SAID CURVE 6.32 FEET THROUGH A CENTRAL ANGLE OF 90°31'03"; THENCE, NORTH 81°18'17" EAST, A DISTANCE OF 26.65 FEET; THENCE, NORTH 51°55'47" EAST, A DISTANCE OF 7.49 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 29.07 FEET, A RADIAL TO SAID BEGINNING BEARS SOUTH 38°04'23" EAST; THENCE, NORTHEASTERLY ALONG SAID CURVE 17.76 FEET THROUGH A CENTRAL ANGLE OF 38°00'46" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 40.79 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 73°46'11" EAST; THENCE, NORTHERLY ALONG SAID CURVE 16.69 FEET THROUGH A CENTRAL ANGLE OF 23°26'43"; THENCE, NORTH 07°12'54" WEST, A DISTANCE OF 12.94 FEET.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO TERMINATE AT ALL ANGLE POINTS AND AT THE TRUE POINT OF BEGINNING BY A LINE BEARING SOUTH 80°47'14" WEST AND NORTHERLY AT A LINE BEARING NORTH 82°47'06" EAST.



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**  
SS-625-01  
OTAY CAMPO WATER  
  
12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING  
318B AIRWAY AVE., SUITE X-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1587 OFFICE  
714 557 1585 FAX

DRAWN: 9/12/09  
BY: CWW  
CHECKED: JA/SP  
PL 265083

**EXHIBIT "C"**  
(PROPOSED COAX EASEMENTS)

PARCEL 2:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1964 AS INSTRUMENT NO. 18550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 6888, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1966 AS FILE NO. 41586; THENCE ALONG THE SOUTHERLY LINE OF SAID O.R. 64-18550, NORTH 88°16'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°43'21" WEST, A DISTANCE OF 135.54 FEET; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 18.97 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'40" WEST, A DISTANCE OF 5.07 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 4.00 FEET; THENCE, NORTHWESTERLY ALONG SAID CURVE 5.20 FEET THROUGH A CENTRAL ANGLE OF 88°51'57"; THENCE, SOUTH 81°55'17" WEST, A DISTANCE OF 32.69 FEET; THENCE, SOUTH 66°39'51" WEST, A DISTANCE OF 30.26 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 62.33 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 31°00'00" EAST; THENCE, WESTERLY ALONG SAID CURVE 36.95 FEET THROUGH A CENTRAL ANGLE OF 33°57'37"; THENCE, NORTH 05°16'20" EAST, A DISTANCE OF 11.68 FEET.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO TERMINATE AT ALL ANGLE POINTS AND AT THE TRUE POINT OF BEGINNING BY A LINE BEARING SOUTH 80°47'14" WEST AND NORTHERLY AT A LINE BEARING NORTH 84°43'40" WEST.

CONTAINING 425.72 SQ. FT. (0.01 ACRES) TOTAL OF BOTH PARCELS

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD OR APPARENT,

AS SHOWN IN EXHIBIT "C" ATTACHED HERETO AND MADE A PART HEREOF.



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	08/12/08	CWW

<b>LEGAL DESCRIPTION EXHIBIT</b> SS-625-01 OTAY CAMPO WATER  12118 CAMPO WATER ROAD SPRING VALLEY, CA 91978	PREPARED FOR:   12900 PARK PLAZA DRIVE CERRITOS, CA 94528	PREPARED BY:  <b>BERT HAZE</b> AND ASSOCIATES LAND SURVEYING & MAPPING 3188 AIRWAY AVE., SUITE K-1 COSTA MESA, CALIFORNIA 92626 714 557-1557 OFFICE 714 557-1548 FAX	DRAWN: 9/12/08 BY: CWW CHECKED: J.R./B IN 205.053
	LEGAL DESCRIPTION EXHIBIT		

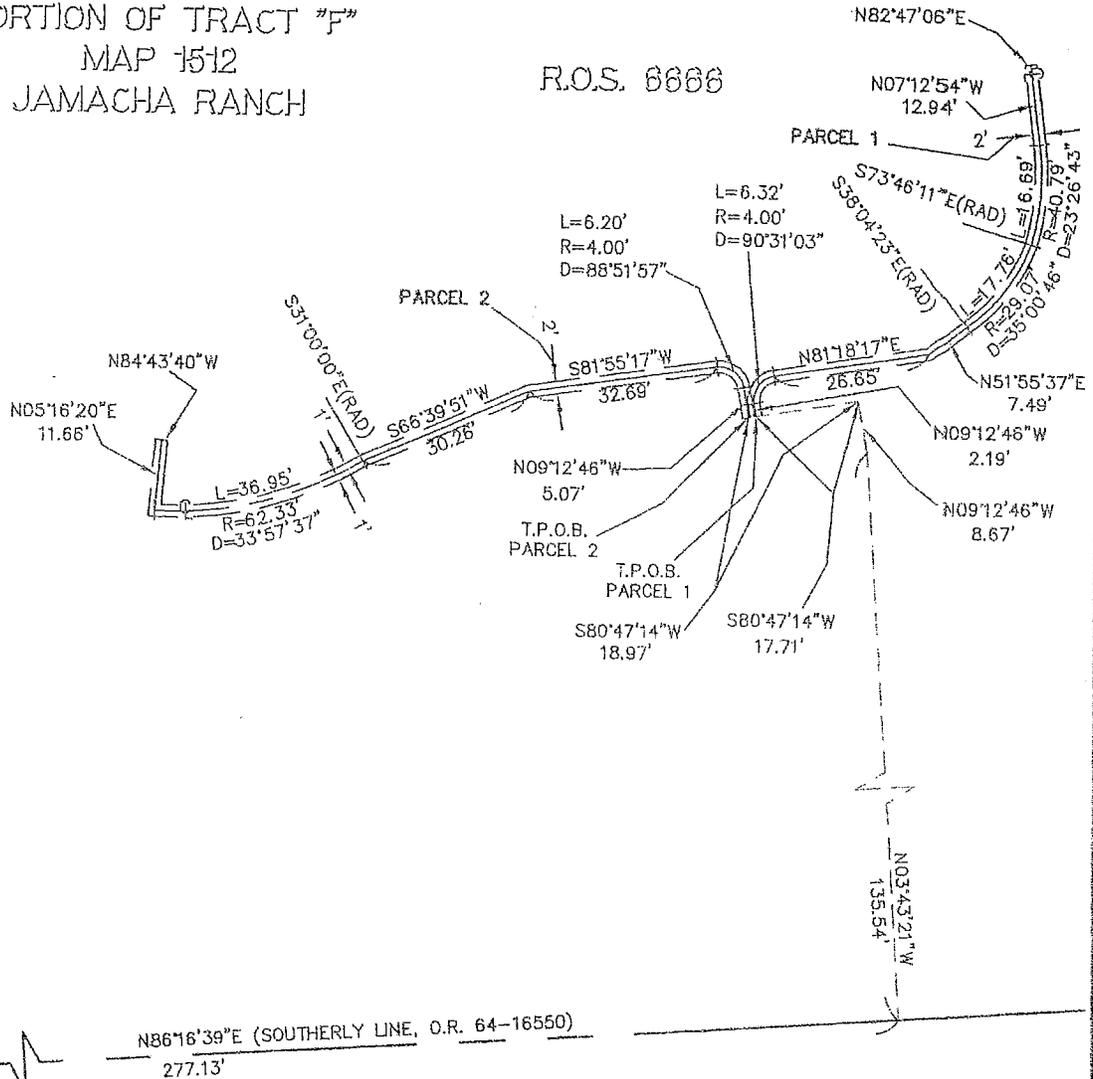
# EXHIBIT "C"

(PROPOSED COAX EASEMENTS)

PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH

R.O.S. 6666

SCALE: 1" = 30'



S.W. CORNER  
O.R. 64-16550  
(POINT OF  
BEGINNING)

**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
⊙ CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**  
SS-625-01  
OTAY CAMPO WATER  
  
12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



12600 PARK PLAZA DRIVE  
CERRITOS, CA 90703

PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING  
3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX

SHEET  
5  
OF 7 SHEETS  
DRAWN: 9/12/09  
BY: CWW  
CHECKED: JA/BH  
JN. 205.083

**EXHIBIT "D"**  
(PROPOSED POWER EASEMENT)

**PROPOSED POWER EASEMENT DESCRIPTION:**

A STRIP OF LAND, 2 FEET IN WIDTH, OVER THAT PORTION OF TRACT "F" OF RANCHO JAMACHA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY IN CASE NO. 13, SUPERIOR COURT, ENTITLED WM. M. KEIGHLER, ET AL, VS. MARY H. EDDY, ET AL, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND GRANTED TO OTAY MUNICIPAL WATER DISTRICT IN THE DOCUMENT RECORDED ON JANUARY 28, 1984 AS INSTRUMENT NO. 16550, OF OFFICIAL RECORDS OF SAID COUNTY, AS SHOWN ON RECORD OF SURVEY NO. 8886, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 10, 1968 AS FILE NO. 41585; THENCE ALONG THE SOUTHERLY LINE OF SAID O.R. 64-16550, NORTH 86°16'39" EAST, A DISTANCE OF 277.13 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE, NORTH 03°13'21" WEST, A DISTANCE OF 135.64 FEET; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 8.67 FEET; THENCE, SOUTH 80°47'14" WEST, A DISTANCE OF 1.83 FEET TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 09°12'46" WEST, A DISTANCE OF 6.23 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 4.00 FEET; THENCE, ALONG SAID CURVE 8.20 FEET THROUGH A CENTRAL ANGLE OF 88°51'57"; THENCE, SOUTH 81°55'12" WEST, A DISTANCE OF 49.46 FEET; THENCE, SOUTH 66°38'20" WEST, A DISTANCE OF 30.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 60.83 FEET. A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 31°00'00" EAST; THENCE, WESTERLY ALONG SAID CURVE 94.50 FEET THROUGH A CENTRAL ANGLE OF 89°00'25"; THENCE, SOUTH 69°10'52" WEST, A DISTANCE OF 24.32 FEET; THENCE, NORTH 65°22'28" WEST, A DISTANCE OF 69.77 FEET; THENCE, SOUTH 58°01'40" WEST, A DISTANCE OF 37.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 526.33 FEET, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 19°47'06" WEST; THENCE, SOUTHWESTERLY ALONG SAID CURVE 224.74 FEET THROUGH A CENTRAL ANGLE OF 24°27'53"; THENCE, SOUTH 37°07'39" WEST, A DISTANCE OF 129.44 FEET; THENCE, SOUTH 44°45'09" WEST, A DISTANCE OF 114.68 FEET; THENCE, SOUTH 45°14'51" EAST, A DISTANCE OF 7.37 FEET.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO TERMINATE AT ALL ANGLE POINTS AND AT THE TRUE POINT OF BEGINNING BY A LINE BEARING SOUTH 80°47'14" WEST AND SOUTHERLY AT A LINE BEARING NORTH 44°45'09" EAST.

CONTAINING 1591.48 SQ. FT. (0.04 ACRES)

SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD OR APPARENT.

AS SHOWN IN EXHIBIT "D" ATTACHED HERETO AND MADE A PART HEREOF.



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**  
SS-625-01  
OTAY CAMPO WATER  
  
12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



12900 PARK PLAZA DRIVE  
DENVER, CO 80203

PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING  
3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557 1568 FAX

DRAWN: 9/12/09  
BY: CWW  
CHECKED: JAZ/09  
JUN. 2009.083

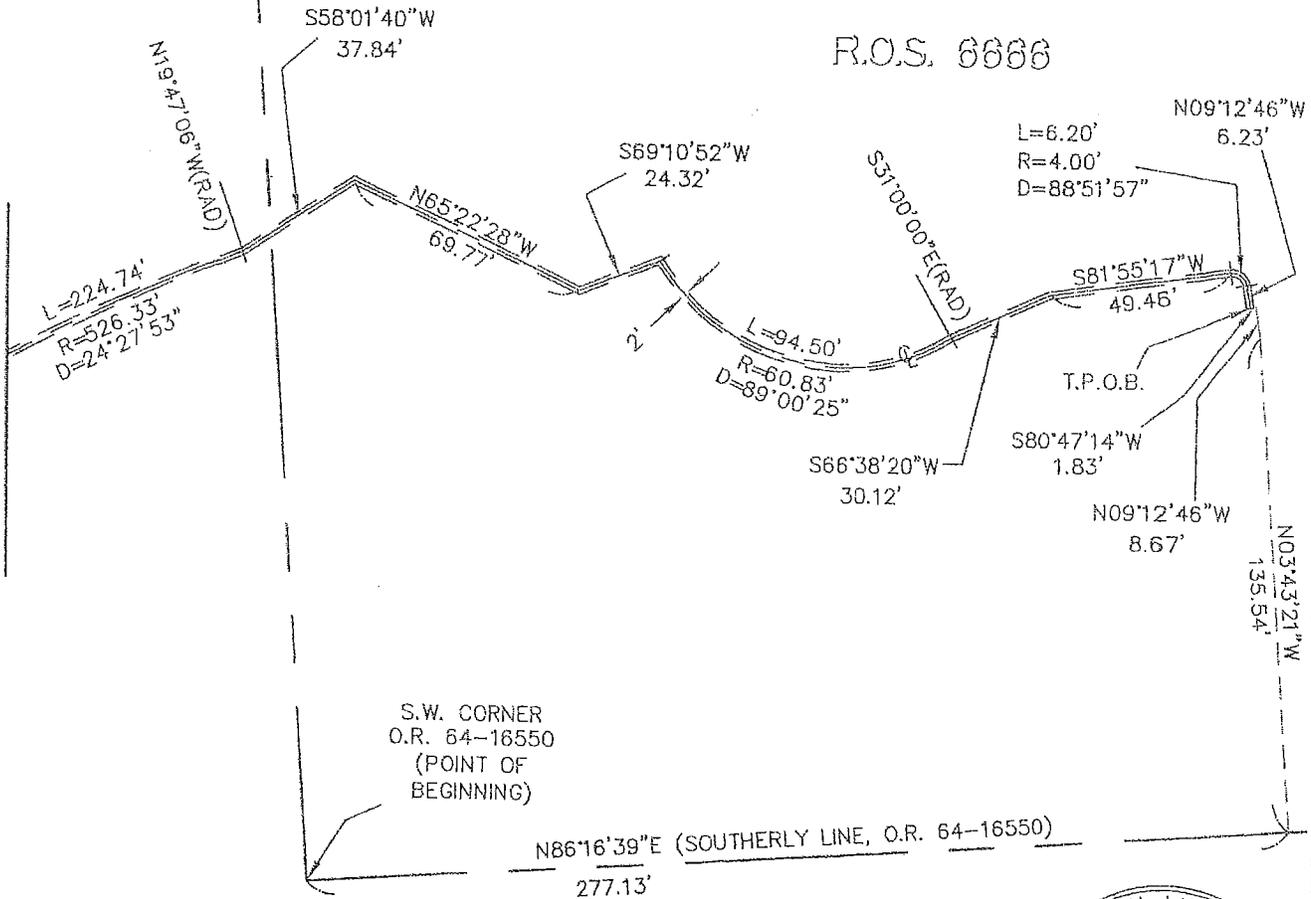
**EXHIBIT "D"**  
(PROPOSED POWER EASEMENT)

PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH

R.O.S. 6666

SCALE: 1" = 80'

MATCH LINE SEE SHEET 7



S.W. CORNER  
O.R. 64-16550  
(POINT OF  
BEGINNING)

N86°16'39"E (SOUTHERLY LINE, O.R. 64-16550)  
277.13'

**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
⊙ CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**

SS-625-01  
OTAY CAMPO WATER

12118 CAMPO WATER ROAD  
SPRING VALLEY, CA 91978

PREPARED FOR:



12900 PARK PLAZA DRIVE  
CERRITOS, CA 90703

PREPARED BY:

**BERT HAZE**  
AND ASSOCIATES  
LAND SURVEYING & MAPPING

3188 AIRWAY AVE., SUITE K-1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX

SHEET

6

OF 7 SHEETS

DRAWN: 9/12/09

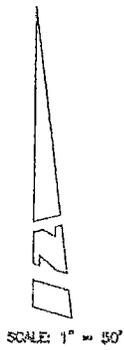
BY: CWW

CHECKED: JA/BH

JN. 205.083

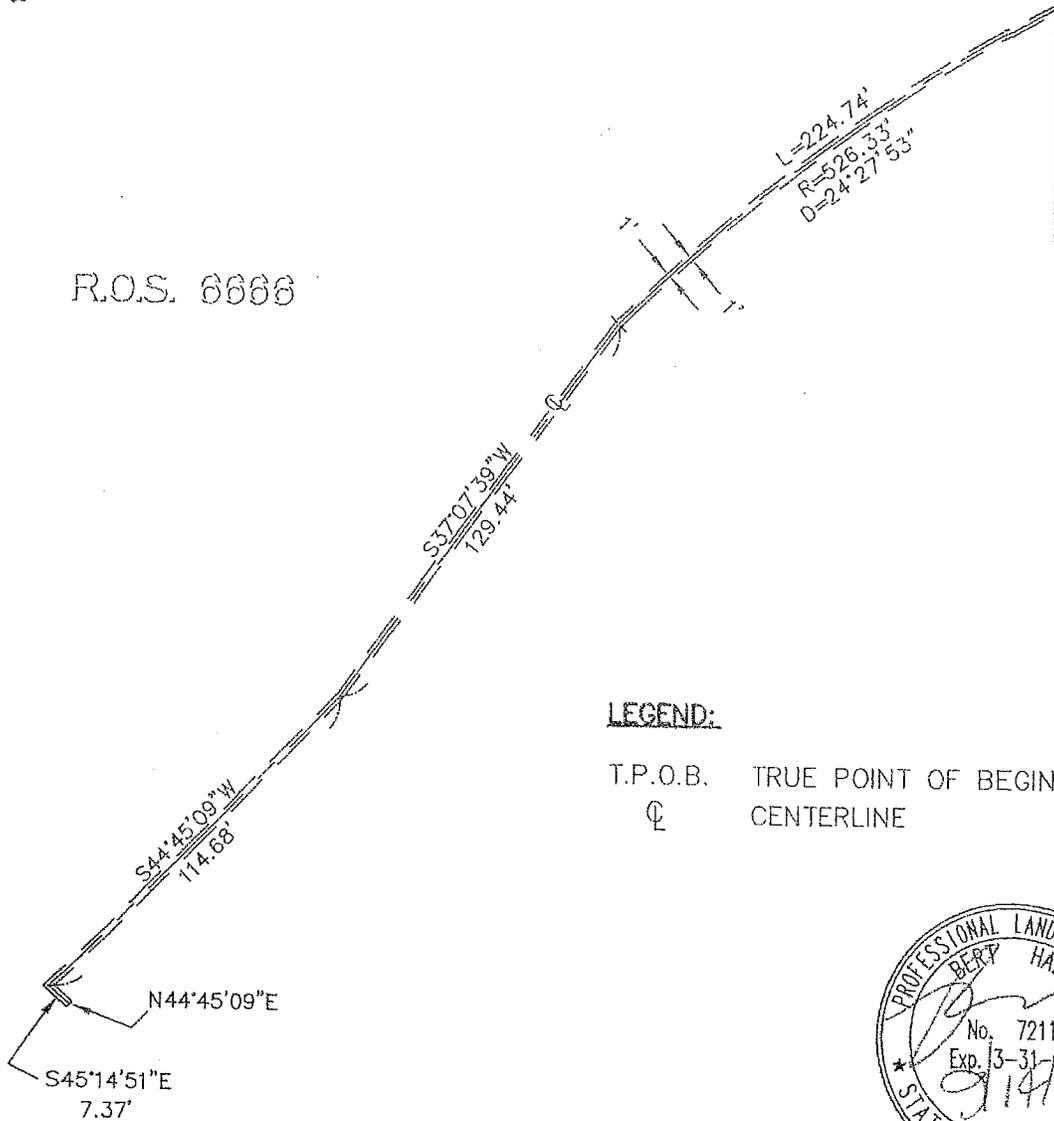
**EXHIBIT "D"**  
(PROPOSED POWER EASEMENT)

PORTION OF TRACT "F"  
MAP 1512  
JAMACHA RANCH



SCALE: 1" = 50'

R.O.S. 6666



MATCH LINE SEE SHEET 6

**LEGEND:**

T.P.O.B. TRUE POINT OF BEGINNING  
 CENTERLINE



REV. #	DESCRIPTION	DATE	BY
1	ISSUED FOR REVIEW	09/12/09	CWW

**LEGAL DESCRIPTION EXHIBIT**  
 SS-625-01  
 OTAY CAMPO WATER  
 12118 CAMPO WATER ROAD  
 SPRING VALLEY, CA 91978

PREPARED FOR:



12900 PARK PLAZA DRIVE  
 CERRITOS, CA 90703

PREPARED BY:

**BERT HAZE**  
 AND ASSOCIATES  
 LAND SURVEYING & MAPPING  
 3188 AIRWAY AVE., SUITE K-1  
 COSTA MESA, CALIFORNIA 92626  
 714 557-1567 OFFICE  
 714 557-1568 FAX

SHEET  
 7  
 OF 7 SHEETS  
 DRAWN: 9/12/09  
 BY: CWW  
 CHECKED: JA/BH  
 JN. 205.063

**EXHIBIT D**

**ATTACHMENT A  
DEPICTION OF THE TELECOMMUNICATION FACILITIES**

**BMP NOTES**

THE BMPs SELECTED ARE THOSE THAT WILL BE IMPLEMENTED DURING CONSTRUCTION OF THE PROJECT. THE APPLICANT IS RESPONSIBLE FOR THE PLACEMENT AND MAINTENANCE OF THE BMPs SELECTED. ATTACH DESCRIPTIONS OF THE BMPs AND THEIR APPLICATION (AVAILABLE AT THE DPW COUNTER) AS ATTACHMENT A.

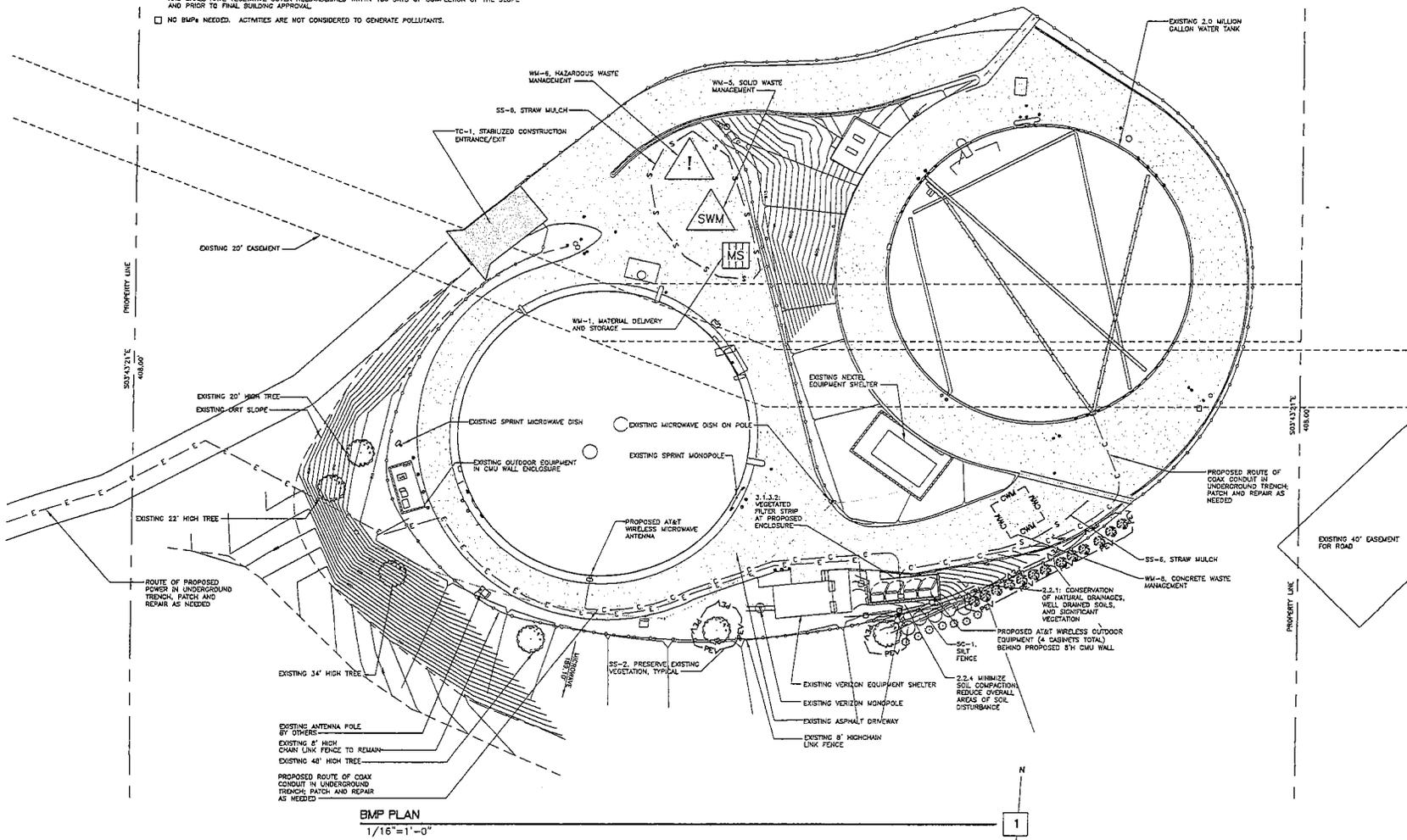
- SILT FENCE
- FIBER ROLLS
- STREET SWEEPING AND VACUUMING
- STORM DRAIN INLET PROTECTION
- STOCKPILE MANAGEMENT
- SOLID WASTE MANAGEMENT
- STABILIZED CONSTRUCTION ENTRANCE/EXIT
- DEWATERING OPTIONS
- VEHICLE AND EQUIPMENT MAINTENANCE
- ANY MINOR SLOPES CREATED INCIDENTAL TO CONSTRUCTION AND NOT SUBJECT TO A MAJOR OR MINOR GRADING PERMIT SHALL BE PROTECTED BY COVERING WITH PLASTIC OR TARP PRIOR TO A RAIN EVENT, AND SHALL HAVE VEGETATIVE COVER RESTORED WITHIN 180 DAYS OF COMPLETION OF THE SLOPE AND PRIOR TO FINAL BUILDING APPROVAL.
- NO BMPs NEEDED. ACTIVITIES ARE NOT CONSIDERED TO GENERATE POLLUTANTS.

- DESLTING BASIN
- GRAVEL BAG BERM
- SANDBAG BARRIER
- MATERIAL DELIVERY AND STORAGE
- SPILL PREVENTION AND CONTROL
- CONCRETE WASTE MANAGEMENT
- WATER CONSERVATION PRACTICES
- PAVING AND GRINDING OPERATIONS

**NOTE:**

1. NO WASTE/DEBRIS WILL BE STORED ON EXISTING PREMISES DURING CONSTRUCTION.

BMP LEGEND	
—	SS-6 STRAW MULCH
—	SC-1 SILT FENCE
□	TC-1 STABILIZED CONSTRUCTION ENTRANCE/EXIT
□	WM-1 MATERIAL DELIVERY AND STORAGE
△	WM-5 SOLID WASTE MANAGEMENT
△	WM-6 HAZARDOUS WASTE MANAGEMENT
□	WM-8 CONCRETE WASTE MANAGEMENT
□	WM-9 SANITARY/SEPTIC WASTE MANAGEMENT



**BMP PLAN**  
1/16" = 1'-0"

**ARCHITECT**

**at&t**  
AT&T ASSOCIATES  
ARCHITECTURE & ENGINEERS  
233 BING AVENUE - SUITE 100 SAN DIEGO, CA 92101  
619.291.4111 • 619.291.2574 FAX • DONALD@AT&T.COM

**PROJECT NAME**

**SS-625-01**  
**OTAY CAMPO WATER**  
12116 CAMPO WATER ROAD, SPRING VALLEY, CA 94576

**ISSUES REVISIONS**

DATE	BY	ISSUE DESCRIPTION
03-22-05	DBS	ISSUE FOR REVIEW
03-22-05	DBS	ISSUE FOR REVIEW

**SHEET INFORMATION**

DI DONATO ASSOCIATES  
ARCHITECTURE & ENGINEERS  
**Z01.1**  
BMP PLAN  
SS-625-01  
10/1/04  
PLOT SCALE 1:10480N TO B2D

**EXHIBIT D**

**ATTACHMENT B  
PERMITS**



# COUNTY OF SAN DIEGO

DEPARTMENT OF PLANNING AND LAND USE  
5201 Ruffin Road, Suite B  
San Diego, CA 92123  
858-694-2960

RECEIPT NUMBER: 09-0587360  
Cashier: JTANA2PL

APN: 506-021-06-00  
DATE ISSUED: 28-AUG-2009  
PERMIT: 1019 20090148  
SCOPE: COMM'L MISC (ANTENNA, CANOPY, RACKS)  
SITE ADDRESS: 12118 CAMPO RD  
SUBDIVISION:  
CITY: SPRING VALLEY, CA 91978

PARCEL OWNER: OTAY WATER DISTRICT  
ADDRESS:  
CITY/STATE/ZIP: , 00000  
PERMIT OWNER: AT&T MOBILITY  
ADDRESS: 5738 PACIFIC CENTER  
CITY/STATE/ZIP: SAN DIEGO, CA 92121

*Fees Calculated 12 Months Back*

<u>Date</u>	<u>Fee Code</u>	<u>Description</u>	<u>Paid to Date</u>	<u>This Receipt</u>	<u>Balance Due</u>
28-AUG-2009	1CO0001XXO	BUILDING PERMIT - VALUATION	\$0.00	\$639.50	\$0.00
28-AUG-2009	1CO0008XXO	BLDG PERMIT - DISABLE.ACCESS	\$0.00	\$63.95	\$0.00
28-AUG-2009	1CO0016XXO	STATE FEE (COMMERCIAL)	\$0.00	\$6.15	\$0.00
28-AUG-2009	1CO0017XXO	SEISMIC FEE (COMMERCIAL)	\$0.00	\$21.00	\$0.00
28-AUG-2009	1CO0043XXO	ARCHIVING FEE - LETTER/LEGAL UP TO 11X17	\$0.00	\$40.00	\$0.00
28-AUG-2009	1BP0145XXO	ELECTRIC PERMIT ONLY	\$0.00	\$226.00	\$0.00
28-AUG-2009	1CO0040XXO	ARCHIVING BASE FEE - RECORDS RETENTION	\$0.00	\$8.20	\$0.00
28-AUG-2009	1CO0041XXO	ARCHIVING FEE - PLAN PAGES (OVER 11X17)	\$0.00	\$48.30	\$0.00
28-AUG-2009	1CO0021XXO	GREEN BLDG FEE (RES & COMM)	\$0.00	\$4.00	\$0.00

**Totals:** \$1,057.10 \$0.00

<u>Payment Code</u>	<u>Description</u>	<u>Amount</u>
CHECK	CHECK #31170	\$1,057.10

<b>Tendered:</b>	\$1,057.10
<b>Change:</b>	\$0.00
<b>Balance Due:</b>	\$0.00



**COUNTY OF SAN DIEGO**

DEPT. OF PLANNING AND LAND USE  
BUILDING DIVISION  
5201 Ruffin Road, Suite B  
San Diego, CA 92123-1666  
(858) 565-5920

SS0625  
ck. 3170

**FEE STATEMENT**

Permit Type & Number: 1019 - 20090148	Statement Date: 28 AUG 2009
Permit Description: PERMIT-COMMERCIAL	
Project Name:	Project No:
Permit Owner Name: AT&T MOBILITY	Client No:
Site Address: 12118 CAMPO RD SPRING VALLEY, CA 919	
APN: 506-021-06-00	

**Project Description/Scope**  
Cross street: JAMACHA RD.

Description of Work: UNMANNED CELL SITE INCLUDING THE INSTALLATION OF 11 ANTENNAS ON EXISTING WATER TANK, 225 SQFT CMU WALL WITH EQUIPMENT CABINETS BEHIND & 200 AMP SERVICE FOR AT&T MOBILITY

Fee/Deposit Details		Valuation: \$100,000.00	
Fee Code	Description	Acct. Code	Amount
1CO0001XXO	BUILDING PERMIT - VALUATION	1006372-995-10	639.50
1CO0008XXO	BLDG PERMIT - DISABLE.ACCESS	1006372-995-10	63.95
1CO0016XXO	STATE FEE (COMMERCIAL)	1006372-995-10	6.15
1CO0017XXO	SEISMIC FEE (COMMERCIAL)	1006372-995-10	21.00
1CO0021XXO	GREEN BLDG FEE (RES & COMM)	1006372-995-10	4.00
1BP0145XXO	ELECTRIC PERMIT ONLY	1006372-995-10	226.00
1CO0040XXO	ARCHIVING BASE FEE - RECORDS RETENTION	1006372-995-10	8.20
1CO0041XXO	ARCHIVING FEE - PLAN PAGES (OVER 11X17)	1006372-995-10	48.30
1CO0043XXO	ARCHIVING FEE - LETTER/LEGAL UP TO 11X17	1006372-995-10	40.00
Total Amount Due:			\$1,057.10

DA  
ST  
08.28.09

SAN   DIEGO   COUNTY   PLANNING   COMMISSION

5201 Ruffin Road

San Diego, CA 92123

May 8, 2009

Decision of the Planning Commission  
On the Application of Major Use Permit  
Number P08-021

GRANT, as per redlined plot plan and elevations dated March 19, 2009, consisting of eight (8) sheets, a Major Use Permit, pursuant to Section 6985, 6986, and 7358 of the Zoning Ordinance, to authorize the location and use of an unmanned wireless telecommunication facility. The facility includes panel antennas that will be mounted on the existing water tank located on the east side of the property and a GPS antenna mounted on the existing water tank located on the west side of the property. All associated equipment will be enclosed by a CMU wall. Pursuant to Section 6985A of the Zoning Ordinance, a Major Use Permit is required because the project site is located in an area zoned S90 (Holding Area), is not located on a high voltage transmission tower, and is not covered by a Wireless Community Master Plan.

CONDITIONS

The following conditions are imposed with the granting of this Major Use Permit:

Building permit plans must conform in detail to this approved design. Failure to conform can cause delay to or denial of building permits and require formal amendment of this approved design. No waiver of the Uniform Building Code standards or any other code or ordinance is intended or implied.

- A. Prior to obtaining any building or other permit pursuant to this Major Use Permit, and prior to commencement of construction or use of the property in reliance on this Major Use Permit, the applicant shall:
1. Pay off all existing deficit accounts associated with processing this application to the satisfaction of the Department of Planning and Land Use and the Department of Public Works.
  2. Have a registered civil engineer, a registered traffic engineer, or a licensed land surveyor provide a certified signed statement that physically, there is a minimum unobstructed sight distance in both directions along Campo Road (SR-94) from the private easement road, for the prevailing operating speed of traffic on Campo Road (SR-94). The above shall be to the satisfaction of CALTRANS and the Director of Public Works.

3. Submit evidence to the satisfaction of the Director of Planning and Land Use (Building Division) that all "Prior to Use or Occupancy" conditions B.1 and B.2 of this Major Use Permit have been printed on a separate sheet of all building plans associated with this Major Use Permit: [DPLU, FEE]
    - a. The conditions shall be printed on a separate sheet of the building plans.
  4. Furnish the Director of Planning and Land Use a letter from the Director of the Department of Public Works stating Conditions A.1 – A.2 have been complied with to that Department's satisfaction.
- B. Prior to any occupancy or use of the premises pursuant to this Major Use Permit, the applicant shall:
1. Provide photographic evidence to the Director of Planning and Land Use that demonstrates the panel antennas, equipment shelter and landscaping are installed according to the approved plot plan and photo-simulations filed under Major Use Permit P08-021.
  2. Pay the Major Use Permit Compliance Inspection Fee as specified in the DPLU Fee Ordinance at Section 362 of the San Diego County Administrative Code. The fee shall be paid at the DPLU Zoning Counter. The permittee shall also schedule an appointment for an initial inspection with the County Permit Compliance Coordinator to review the on-going conditions associated with the permit. The inspection should be scheduled for a date approximately six months subsequent to establishing occupancy or use of the premises.
- C. The following conditions shall apply during the term of the Major Use Permit:
1. The applicant shall allow the County to inspect the property for which the Major Use Permit has been granted, at least once every twelve months, to determine if the applicant is complying with all terms and conditions of the Major Use Permit. If the County determines the applicant is not complying with the Major Use Permit terms and conditions the applicant shall allow the County to conduct follow up inspections more frequently than once every twelve months until the County determines the applicant is in compliance.
  2. The applicant is responsible for the maintenance and repair of any damage caused by them to on-site and off-site private roads that serve the project.

3. All light fixtures shall be designed and adjusted to reflect light downward, away from any road or street, and away from adjoining premises, and shall otherwise conform to Section 6324 of The Zoning Ordinance.
4. The parking areas and driveways shall be well maintained.
5. All landscaping shall be adequately watered and well maintained at all times.
6. Property owners shall agree to preserve and save harmless the County of San Diego and each officer and employee thereof from any liability or responsibility for any accident, loss, or damage to persons or property happening or occurring as the proximate result of any of the work undertaken to complete this work, and that all of said liabilities are hereby assumed by the property owner.
7. The applicant shall maintain the appearance of the facility and associated equipment shelter, as depicted in photo simulations on file with Major Use Permit P08-021, for the duration of the facility's operation.
8. All graffiti on any components of the facility shall be removed promptly in accordance with County regulations. Graffiti on any facility in the public right-of-way must be removed within 48 hours of notification.
9. All wireless telecommunications sites shall be kept clean and free of litter.
10. All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.
11. All wireless carriers who intend to abandon or discontinue the use of any wireless telecommunications facility shall notify the County of such intention no less than 60 days prior to the final day of use.
12. Wireless telecommunications facilities with use discontinued shall be considered abandoned 90 days following the final day of use.
13. All abandoned facilities shall be physically removed by the facility owner no more than 90 days following the final day of use or determination that the facility has been abandoned, whichever occurs first.
14. The County reserves the right to remove any facilities that are abandoned for more than 90 days at the expense of the facility owner.

15. Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.
  16. Noise from any equipment supporting the facility shall meet the requirements of the County's Noise Ordinance on an average hourly basis.
  17. Equipment cabinets and antenna structures shall be secured to prohibit unauthorized access.
  18. Comply with all applicable stormwater regulations at all times. The activities proposed under this application are subject to enforcement under permits from the San Diego Regional Water Quality Control Board (RWQCB) and the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance (**Ordinance No. 9926**) and all other applicable ordinances and standards. This includes requirements for Low Impact Development (LID), materials and wastes control, erosion control, and sediment control on the project site. Projects that involve areas 1 acre or greater require that the property owner keep additional and updated information onsite concerning stormwater runoff. This requirement shall be to the satisfaction of the Director of Public Works.
  19. The project shall conform to the approved plot plan(s). Failure to conform to the approved plot plan(s); is an unlawful use of the land, and will result in enforcement action pursuant to Zoning Ordinance Section 7703.
- D. This Major Use Permit shall expire on May 8, 2011, at 4:00 p.m. (or such longer period as may be approved pursuant to Section 7376 of The Zoning Ordinance of the County of San Diego prior to said expiration date) unless construction or use in reliance on this Major Use Permit has commenced prior to said expiration date.

FINDINGS:

CEQA FINDINGS:

It is hereby found that the proposed project is exempt from the California Environmental Quality Act as specified under Section 15303 of the State CEQA Guidelines for the reasons detailed in the Notice of Exemption Form dated March 24, 2009, on file with DPLU as Environmental Review Number ER08-19-006.

**MSCP FINDINGS:**

The Multiple Species Conservation Program Conformance Findings dated March 24, 2009, on file with DPLU as Environmental Review Number 08-19-006.

**STORMWATER FINDINGS:**

It is hereby found that the project proposed by the applicant has prepared plans and documentation demonstrating compliance with the provisions of the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance.

**RESOURCE PROTECTION ORDINANCE FINDINGS:**

It is hereby found that the use or development permitted by the application is consistent with the provisions of the Resource Protection Ordinance.

**MAJOR USE PERMIT FINDINGS:**

Pursuant to Section 7358 (see Section 7359 for findings required for permits filed pursuant to Regional Land Use Element 3.8) of The Zoning Ordinance, the following findings in support of the granting of the Major Use Permit are made:

- (a) The location, size, design, and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures with consideration given to
1. Harmony in scale, bulk, coverage, and density

**Scale and Bulk:**

The subject parcel is developed with two water tanks and other existing wireless telecommunication facilities currently operated by T-mobile, Sprint, Nextel, and Verizon. The proposed unmanned wireless telecommunication facility includes eleven (11) panel antennas that will be mounted on and painted in matching color with the existing water tank and an eight-foot high CMU equipment shelter painted in dark tan to enclose all associated equipment. Photo simulations on file with Major Use Permit P08-021 (Attachment C) illustrate that the proposed antennas and associated equipment enclosure are unobtrusive to the surrounding viewshed. The view from the surrounding area will be minimized because the project is a stealth facility as the panel antennas will be mounted on and painted in the same color as the water tank and the equipment enclosure will be painted in dark tan. The enclosure will be screened by

proposed additional landscaping such as Toyons and Silverberry. The project is compatible with adjacent uses in terms of scale and bulk because of the stealth design. Therefore, the project will not substantially increase the scale and bulk of the existing structure and result in negative impacts to the surrounding properties.

Coverage:

The subject parcel is 3.74 acres in size. Surrounding land uses consist of vacant land, SR-94 (Campo Road), Steele Canyon High School and a commercial center, with parcel sizes ranging from approximately 3 acres to over 200 acres in size. The project is located on a parcel that is developed with two water tanks and wireless telecommunication facilities currently operated by T-mobile, Sprint, Nextel, and Verizon. The lease area for this unmanned wireless telecommunication facility will total 400 square-feet (less than 1% lot coverage). Considering the size of the subject lot compared with the size and location of the proposed structure, the size of the existing structures on the property, and the coverage characteristics of surrounding properties, the addition of the telecommunication facility will be consistent in terms of coverage of the surrounding area and will not substantially increase the lot area coverage.

Density:

- The project is a Major Use Permit for the authorization of a telecommunication facility and does not have a residential component subject to density.
2. The availability of public facilities, services, and utilities  
  
The project is located within the San Miguel Consolidated Fire Protection District. The project has been reviewed and found to be FP-2 compliant. The project will require water service for irrigation and the Otay Municipal Water District has verified that service is available to the project site.
  3. The harmful effect, if any, upon desirable neighborhood character  
  
The project is a Major Use Permit for the authorization of a wireless telecommunication facility. The facility will include eleven (11) panel antennas that will be mounted on and painted to match the existing water tank located on the east side of the property and an eight-foot high CMU equipment shelter painted in dark tan to enclose all associated equipment. The project site is located within a neighborhood that is predominately

comprised of vacant land, SR-94, Steele Canyon High School, and a commercial center.

The project will not adversely affect the desirable neighborhood character because the project proposes a wireless telecommunication facility that is designed to be stealth. The equipment shelter will be located within a CMU enclosure to conceal it from the surrounding properties. Photo simulations on file with Major Use Permit P08-021 (Attachment C) illustrate that the line, form, and color of the facility will be largely consistent with other elements that make up the visual setting of the area, such as the previously approved wireless telecommunication facilities consisting of panel antennas mounted on the existing water tank. Furthermore, the project was reviewed for noise impacts and determined to be consistent with the County Noise Ordinance. The project, as designed, will not cause any substantial, demonstrable negative aesthetic effect to views from the surrounding area and roadways. Therefore, the project will not have a harmful effect on the neighborhood character.

4. The generation of traffic and the capacity and physical character of surrounding streets

The traffic generated from the project is expected to be one maintenance trip per month and will utilize an easement connected to Campo Road (SR-94), a public road for access. Existing parking is available on the property. The use associated with this Major Use Permit is compatible with the existing nature of the area because the number of maintenance trips will not substantially alter the expected traffic or physical character of the surrounding streets and will be compatible with adjacent uses. Therefore, the number of maintenance trips will not substantially increase or alter the physical character of Campo Road (SR-94) and other vicinity roadways.

5. The suitability of the site for the type and intensity of use or development which is proposed

The project proposes a Major Use Permit for the authorization of an unmanned wireless telecommunication facility. The subject property is 3.74 acres in size and is developed with access and utility services adequate to serve the proposed use. The installation of the telecommunication facility will not require significant alteration to the land form. The project, as designed, will be stealth and will not change the characteristics of the area and is suitable for this site and the type and intensity of uses and development. For reasons stated above, the proposed project will be compatible with adjacent land uses.

## 6. Any other relevant impact of the proposed use

None identified.

- (b) The impacts, as described in Findings (a) above, and the location of the proposed use will be consistent with the San Diego County General Plan.

The project is subject to the Regional Category – Current Urban Development Area (CUDA), General Plan Land Use Designation General - (21) Specific Plan (Rancho San Diego), and the Valle De Oro Community Plan. The subject property is excluded from the Rancho San Diego Specific Plan but surrounded by land designated as Open Space in the Specific Plan. The project complies with the General Plan because civic uses are allowed if they support the local population. In addition, the project is consistent with Policy 4 of the Public Safety Element of the County General Plan that encourages the support, establishment, and continual improvement of Countywide telephone communications system, particularly with respect to enhancing emergency communications.

- (c) That the requirements of the California Environmental Quality Act have been complied with.

Pursuant to Section 15303 of the State CEQA Guidelines, the project is exempt from CEQA because it is an unmanned wireless telecommunication facility that involves the installation of Small, New Equipment and Facilities in Small Structures. It has been determined that the project is not in an environmentally sensitive location; will not have a cumulative effect on the environment; is not on a hazardous waste site; will not cause substantial change in the significance of a historical resource; and will not result in damage to a scenic highway

NOTICES:

**NOTICE:** The 90 day period in which the applicant may file a protest of the fees, dedications or exactions begins on May 8, 2009.

**NOTICE:** This subject property is known to contain Coastal sage scrub plant community. Such plant community is habitat for the coastal California gnatcatcher. The Federal government recently listed the gnatcatcher as a threatened species under the Federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.). **THE LISTING MAY RESULT IN AN APPLICANT'S INABILITY TO PROCEED WITH HIS/HER PROJECT WITHOUT A PERMIT FROM THE FEDERAL GOVERNMENT IF THE SPECIES OR ITS HABITAT ARE PRESENT ON THE PROJECT SITE.** It is advisable to contact the United States Fish and Wildlife Service to determine the applicability of the prohibitions under the Act to each applicant's property.

**NOTICE:** THE ISSUANCE OF THIS PERMIT BY THE COUNTY OF SAN DIEGO DOES NOT AUTHORIZE THE APPLICANT FOR SAID PERMIT TO VIOLATE ANY FEDERAL, STATE, OR COUNTY LAWS, ORDINANCES, REGULATIONS, OR POLICIES INCLUDING, BUT NOT LIMITED TO, THE FEDERAL ENDANGERED SPECIES ACT AND ANY AMENDMENTS THERETO.

**NOTICE:** Low Impact Development (LID) requirements apply to all priority projects as of March 25, 2008. These requirements can be found at the following link beginning on Page 32, Section 67.812, of the Municipal Stormwater Permit:

<http://www.sdcounty.ca.gov/cob/ordinances/ord9926.doc>

The draft LID Handbook is a source for LID information and is to be utilized by County staff and outside consultants for implementing LID in our region. The handbook gives an overview of LID. Section 2.2 reviews County DPW planning strategies as they relate to requirements from the Municipal Permit. The Fact Sheets in the Appendix may be useful for information on all of the engineered techniques. Additional information can be found in the extensive Literature Index. You can access the Handbook at the following DPLU web address:

<http://www.co.san-diego.ca.us/dplu/docs/LID-Handbook.pdf>

**NOTICE:** On January 24, 2007, the San Diego Regional Water Quality Control Board (SDRWQCB) issued a new Municipal Stormwater Permit under the National Pollutant Discharge Elimination System (NPDES). The requirements of the Municipal Permit must be implemented beginning March 25, 2008. The Low Impact Development (LID) Best Management Practices (BMP) Requirements of the Municipal Permit can be found at the following link beginning on Page 32, Section 67.812, of the Municipal Stormwater Permit:

<http://www.sdcounty.ca.gov/cob/ordinances/ord9926.doc>

All priority projects must minimize directly connected impervious areas and promote biofiltration. Section 67.812 includes the minimal site design requirements that project applicants must address and implement. These can be summarized into the following four requirements: Disconnect impervious surfaces, Design impervious surfaces to drain into properly designed pervious areas, Use pervious surfaces wherever appropriate, Implement site design BMPs. The applicant / engineer must determine the applicability and feasibility of each requirement for the proposed project and include them in the project design, unless it can be adequately demonstrated which (if any) of the requirements do not apply.