

OTAY WATER DISTRICT
ENGINEERING, OPERATIONS & WATER RESOURCES COMMITTEE MEETING
and
SPECIAL MEETING OF THE BOARD OF DIRECTORS

2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CALIFORNIA
Board Room

MONDAY
December 9, 2013
12:00 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. APPROVE A PROFESSIONAL SERVICES CONTRACT WITH ATKINS NORTH AMERICA, INC. FOR THE 2015 WATER FACILITIES MASTER PLAN AND PROGRAM ENVIRONMENTAL IMPACT REPORT UPDATES IN AN AMOUNT NOT-TO-EXCEED \$434,731 (KENNEDY) [5 minutes]
4. APPROVE A CONSTRUCTION CONTRACT WITH ADVANCED INDUSTRIAL SERVICES, INC. FOR THE 624-2 RESERVOIR INTERIOR/EXTERIOR COATING AND UPGRADES PROJECT IN AN AMOUNT NOT-TO-EXCEED \$1,199,000 (CAMERON) [5 minutes]
5. APPROVE A CONSTRUCTION CONTRACT WITH COFFMAN SPECIALTIES, INC. FOR THE POTABLE WATER UTILITY RELOCATIONS ASSOCIATED WITH THE CALTRANS SR-11-SEQUENCE 1 PROJECT IN AN AMOUNT NOT-TO-EXCEED \$992,380 (MARCHIORO) [5 minutes]
6. APPROVE AN AGREEMENT BETWEEN THE SAN DIEGO COUNTY SANITATION DISTRICT (COUNTY) AND THE DISTRICT FOR REIMBURSEMENT TO THE COUNTY FOR THE DESIGN AND CONSTRUCTION COSTS ASSOCIATED WITH THE RANCHO SAN DIEGO PUMP STATION REHABILITATION PROJECT; AND

APPROVE AN INCREASE IN CIP BUDGET S2027 IN THE AMOUNT OF \$600,000, INCREASING THE OVERALL CIP BUDGET FROM \$2,900,000 TO \$3,500,000 (KENNEDY) [5 minutes]

7. SAN DIEGO COUNTY WATER AUTHORITY UPDATE (WATTON) [10 minutes]
8. ADJOURNMENT

BOARD MEMBERS ATTENDING:
David Gonzalez, Chair
Gary Croucher

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. 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 that 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 December 6, 2013 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 December 6, 2013.

/s/ Susan Cruz, District Secretary

AGENDA ITEM 3



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	January 7, 2014		
SUBMITTED BY:	Bob Kennedy Engineering Manager	PROJECT:	P1210- 001101	DIV. NO.	ALL
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager				
SUBJECT:	Award of a Professional Engineering Services Contract for the 2015 Water Facilities Master Plan and Program Environmental Impact Report Updates to Atkins North America, Inc.				

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) award a professional services contract to Atkins North America, Inc. and to authorize the General Manager to execute an agreement with Atkins North America, Inc. for the 2015 Water Facilities Master Plan and Program Environmental Impact Report Updates in an amount not-to-exceed \$434,731.

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to enter into a professional engineering services contract with Atkins North America, Inc. for the 2015 Water Facilities Master Plan and Program Environmental Impact Report Updates in an amount not-to-exceed \$434,731.

ANALYSIS:

The District requires the services of a planning and environmental firm (Consultant) to provide professional engineering and environmental services as part of the District's Water Facilities Master Plan (WFMP) 2015 and Program EIR (PEIR) Updates (Capital Improvement Plan Number P1210). The previous Water Resources Master Plan Update was approved by the District's Board of Directors on February 3, 2010 and combined all previously existing master plans and facility plans into one system wide plan outlining the potable water and recycled water systems required to serve our customers at build-out conditions. Minor changes were made in November 2010 and May 2013 to reflect changes in land use and the demands for the City of San Diego Otay Mesa Community Plan Update and changes to the City of Chula Vista Otay Ranch development.

The purpose of the 2015 WFMP and PEIR Updates is to identify and provide planning and design data for future potable and recycled water capital improvement projects. Planning and design data must include, but not be limited to, population projections, analysis of historical data, land use categorization, hydraulic model construction, facilities sizing criteria and associated probable cost estimates. Facilities will include supply source, pump stations, storage reservoirs, transmission mains and distribution piping to meet the projected potable and recycled water market demands of existing and future customers within the jurisdiction and the identified area of influence of the District. The 2015 WFMP and PEIR Updates must develop a phased approach to outline the general Capital Improvement Program (CIP) projects necessary to meet the projected customer demands at 5-year intervals to the year 2050. A detailed CIP is required for each year through 2020.

In addition, the 2015 WFMP Update requires updating the previous Program Environmental Impact Report (PEIR) to address environmental impacts for each future CIP project. Pursuant to California Environmental Quality Act (CEQA) Guidelines, the District must prepare a PEIR to obtain approval and formal adoption of the WFMP. The PEIR is an informational document that provides an overview of the projects identified in the WFMP, and their impacts in terms of air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, landform alteration and visual aesthetics, land use and planning, noise and any other impacts deemed necessary for study.

In accordance with the Board of Directors Policy Number 21, the District initiated the consultant selection process on September 9,

2013, by placing an advertisement in the San Diego Daily Transcript, and posting the Project on the District's website for Professional Engineering Services. The advertisements attracted Letters of Interest and Statements of Qualifications from ten (10) consulting firms. A Pre-Proposal Meeting was held on October 1, 2013. Seventeen (17) people representing eight (8) prime consulting firms attended the meeting.

On October 14, 2013, proposals were received from the following five (5) consulting firms:

1. Dudek
2. Carollo Engineers, Inc.
3. Atkins North America, Inc.
4. Black & Veatch Corporation
5. HDR Engineering, Inc.

Among the prime engineering firms that submitted letters of interest, but did not propose, were CDM/Smith, Kennedy Jenks and Brown & Caldwell.

After the proposals were evaluated and ranked by a five-member review panel consisting of District Engineering, IT, and Operations staff, it was determined that three (3) proposals ranked sufficiently close to warrant being invited to make an oral presentation and respond to questions from the panel. After conducting the interviews on November 13, 2013, the panel completed the consultant ranking process and concluded that Atkins North America, Inc. had the best approach to the Project and provided the best overall value to the District. A summary of the complete evaluation is shown in Attachment B.

Scope and fee negotiations with Atkins North America, Inc. concluded on November 18, 2013 which resulted in acceptance of their proposed fee reduction from \$479,941 to \$434,731.

FISCAL IMPACT: Joe Beachem, Chief Financial Officer

As a part of the Fiscal Year (FY) 2014 operating budget development process, the total estimated budget for the WFMP Project was projected by staff to be \$400,000 with a \$200,000 expenditure anticipated to occur in both FY 2014 and FY 2015. The bid for the work is \$434,731. Staff expects a \$200,000 expenditure for FY 2014 and \$250,000 for 2015. Staff will modify the FY 2015 Operating Budget to accommodate this higher amount.

Based on a review of the budget, staff has determined that the approved FY 2014 and planned FY 2015 combined budgets are anticipated to be sufficient to support the WFMP Project.

STRATEGIC GOAL:

This Project supports the District's Mission statement, "To provide high value water and wastewater services to the customers of the Otay Water District in a professional, effective, and efficient manner" and the General Manager's Vision, "A District that is at the forefront in innovations to provide water services at affordable rates, with a reputation for outstanding customer service."

LEGAL IMPACT:

None.

BK:jf

P:\WORKING\CIP 00210 WMP & PEIR\Water Resources Master Plan\2015 WFMP Update\Agreement\BD 01-07-14, Staff Report, Award of an Engineering Services Contract to Atkins North America, (KS-BK).docx

Attachments: Attachment A - Committee Action
Attachment B - Summary of Proposal Rankings



ATTACHMENT A

SUBJECT/PROJECT: P1210-001101	Award of a Professional Engineering Services Contract for Production of the 2015 Water Facilities Master Plan and Program Environmental Impact Report Updates to Atkins North America, Inc.
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee (Committee) reviewed this item at a meeting held on December 9, 2013. 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
Summary of Proposal Rankings for 2015 Water Facilities Master Plan Update and PEIR

		WRITTEN							ORAL							REFERENCES	
		Qualifications of Team	Responsiveness and Project Understanding	Technical and Management Approach	INDIVIDUAL SUBTOTAL - WRITTEN	AVERAGE SUBTOTAL - WRITTEN	Proposed Fee*	Consultant's Commitment to DBE	TOTAL - WRITTEN	Additional Creativity and Insight	Strength of Project Manager	Presentation and Communication Skills	Responses to Questions	INDIVIDUAL TOTAL - ORAL	AVERAGE TOTAL ORAL	TOTAL SCORE	
MAXIMUM POINTS		30	25	30	85	85	15	Y/N	100	15	15	10	10	50	50	150	Poor/Good/Excellent
HDR	Dan Martin	26	22	27	75	76	15	Y	91	10	11	8	6	35	34	125	
	Bob Kennedy	27	23	27	77					10	11	7	6	34			
	Gary Stalker	26	22	26	74					10	9	6	6	31			
	Lisa Coburn-Boyd	27	23	27	77					11	10	7	6	34			
	Ming Zhao	28	23	26	77					11	10	7	6	34			
Carollo	Dan Martin	23	18	19	60	62	1	Y	63	NOT INTERVIEWED							
	Bob Kennedy	23	20	23	66												
	Gary Stalker	19	20	20	59												
	Lisa Coburn-Boyd	23	18	24	65												
	Ming Zhao	20	20	20	60												
Dudek	Dan Martin	22	18	20	60	63	1	Y	64	NOT INTERVIEWED							
	Bob Kennedy	22	19	22	63												
	Gary Stalker	20	21	24	65												
	Lisa Coburn-Boyd	22	20	23	65												
	Ming Zhao	22	20	22	64												
Black & Veatch	Dan Martin	24	23	23	70	70	4	Y	74	11	12	9	6	38	37	111	
	Bob Kennedy	23	20	22	65					11	11	7	6	35			
	Gary Stalker	24	20	22	66					10	10	7	6	33			
	Lisa Coburn-Boyd	27	22	27	76					11	11	7	6	35			
	Ming Zhao	26	22	24	72					14	11	10	7	42			
Atkins	Dan Martin	27	21	25	73	75	9	Y	84	14	15	9	8	46	45	129	Excellent
	Bob Kennedy	27	22	26	75					14	14	8	8	44			
	Gary Stalker	26	21	25	72					13	14	9	8	44			
	Lisa Coburn-Boyd	28	23	28	79					14	14	8	8	44			
	Ming Zhao	28	22	25	75					14	14	9	8	45			

RATES SCORING CHART					
Firm	HDR	Carollo	Dudek	Black & Veatch	Atkins
Fee	\$353,000	\$655,468	\$649,970	\$593,350	\$479,941
Score	15	1	1	4	9

*Note: Review Panel does not see or consider proposed fee when scoring other categories. The proposed fee is scored by the PM, who is not on Review Panel.

AGENDA ITEM 4



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	January 7, 2014
SUBMITTED BY:	Kevin Cameron Assistant Civil Engineer II	PROJECT:	P2493-001103
	Bob Kennedy Engineering Manager	DIV. NO.:	4
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager		
SUBJECT:	Award of a Construction Contract to Advanced Industrial Services, Inc. for the 624-2 Reservoir Interior/Exterior Coating & Upgrades Project		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) award a construction contract to Advanced Industrial Services, Inc. (AIS) and to authorize the General Manager to execute an agreement with AIS for the 624-2 Reservoir Interior/Exterior Coating & Upgrades Project in an amount-not-to exceed \$1,199,000 (see Exhibit A for Project location).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to enter into a construction contract with AIS for the 624-2 Reservoir Interior/Exterior Coating & Upgrades Project in an amount-not-to exceed \$1,199,000.

ANALYSIS:

In June 2013, the District's corrosion consultant, V&A Consulting Engineers, completed a Corrosion Control Program (CCP) that addressed the installation, maintenance, and monitoring of corrosion protection systems for the District's steel reservoirs and buried metallic piping. The CCP included a reservoir maintenance schedule that showed the 624-2 Reservoir is due to be recoated on both the interior and exterior surfaces. In addition to replacing the coatings of the reservoir, structural upgrades will be added to comply with the current American Water Works Association (AWWA) and the Occupational Safety and Health Administration standards for both Federal (OSHA) and State (Cal-OSHA) levels.

An external inspection of the reservoir was performed in 2008 by Utility Service Company, Inc. as part of a multiple tank investigation. An internal inspection was completed in May 2013 by Coating Specialists and Inspection Services, Inc. (CSI Services). The recommended coating and structural upgrades, developed with input from engineering and operations staff, are as follows: replace the twenty (20) year old coating on the interior and exterior surfaces, replace the existing level indicators, install a new fall prevention device on the interior ladder, modify anode access ports, replace all anodes, replace the roof vents, install new safety cable lanyards, and add miscellaneous tank penetrations for chlorination and sampling. These upgrades will ensure compliance with AWWA, OSHA, Cal-OSHA requirements as well as upgrade antiquated equipment on the tank.

This Project was previously bid in August 2013. At the bid opening, five (5) bids were received and opened, however, forty-five (45) minutes later, FedEx delivered three (3) additional bids. Per District policy, the three (3) bids were returned unopened. Due to the uncertainty as to the value of the unopened bids, Staff recommended to reject all bids, and at the October 2, 2013 Board Meeting, the Board rejected all bids.

The Project was re-advertised on October 7, 2013 on the District's website and several other publications including the San Diego Daily Transcript. One (1) addendum was sent out to all bidders and plan houses to address questions and clarifications to the contract documents during the bidding period. Bids were publicly opened on October 29, 2013, with the following results:

	CONTRACTOR	TOTAL BID AMOUNT
1	Advanced Industrial Services, Inc. (AIS)	\$1,199,000.00
2	Paso Robles Tank, Inc.	\$1,404,000.00
3	ABHE & SVOBODA, Inc.	\$1,424,875.00
4	Western Industrial Inc.	\$1,468,400.04
5	KM Industrial, Inc.	\$1,861,942.00
6	Blastco, Inc.	\$2,035,600.00

The Engineer's Estimate is \$1,413,500.

AIS was one of the three contractors whose bid was received late and unopened. Rebidding the project represented a savings to the District, as AIS' current bid is \$82,603 less than the previous low bid received in August 2013.

Staff reviewed the bids submitted for conformance with the contract requirements and determined that AIS was the lowest responsive and responsible bidder. AIS holds a Class C-33, Painting and Decorating, Contractor's License, which meets the contract document's requirements, and is valid through January 31, 2014. AIS also holds a current QP-1 certification from Society for Protective Coatings, which was also a requirement. The reference checks indicated an excellent performance record on similar projects. An internet background search of the company was performed and revealed no outstanding issues with this company. AIS previously worked with the District on two previous projects and completed the work on both within budget.

Staff has verified that the bid bond provided by AIS is valid. Staff will also verify that AIS' Performance Bond and Labor and Materials Bond are valid prior to execution of the contract.

FISCAL IMPACT: Joe Beachem, Chief Financial Officer

The total budget for CIP P2493, as approved in the FY 2014 budget, is \$1,950,000. Total expenditures, plus outstanding commitments and forecast, are \$1,504,585.

Based on a review of the financial budget, the Project Manager anticipates that the budget is sufficient to support the Project. See Attachment B for the budget detail for CIP P2493.

Finance has determined that 100% of the funding is available from the Replacement Fund for CIP P2493.

STRATEGIC GOAL:

This Project supports the District's Mission statement, "To provide high value water and wastewater services to the customers of the Otay Water District in a professional, effective, and efficient manner" and the General Manager's Vision, "A District that is at the forefront in innovations to provide water services at affordable rates, with a reputation for outstanding customer service."

LEGAL IMPACT:

None.

KC/BK:jf

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Attachments: Attachment A - Committee Action
Attachment B - Budget Detail
Exhibit A - Location Map



ATTACHMENT A

SUBJECT/PROJECT: P2493-001103	Award of a Construction Contract to Advanced Industrial Services, Inc. for the 624-2 Reservoir Interior/Exterior Coating & Upgrades Project
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee (Committee) reviewed this item at a meeting held on December 9, 2013. The Committee supported Staff's recommendation.

NOTE:

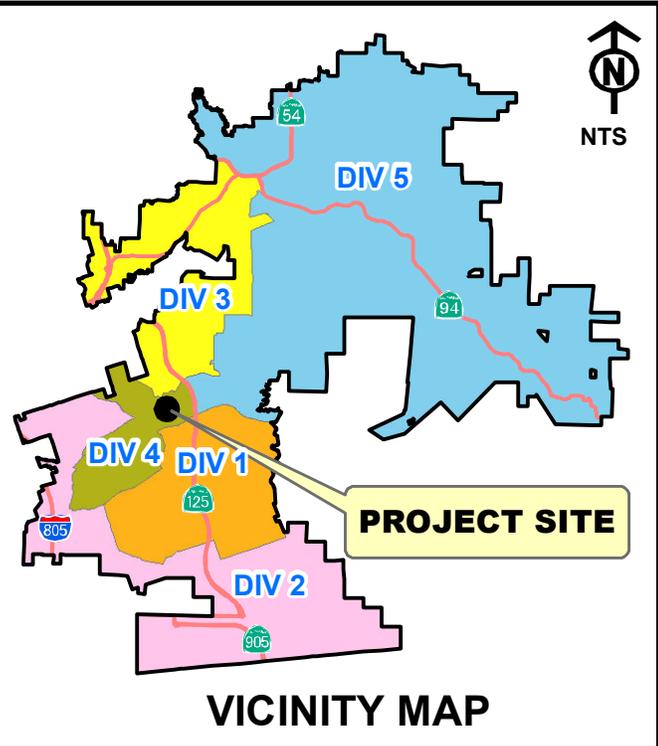
The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



ATTACHMENT B – Budget Detail

SUBJECT/PROJECT: P2493-001103	Award of a Construction Contract to Advanced Industrial Services, Inc. for the 624-2 Reservoir Interior/Exterior Coating & Upgrades Project
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Otay Water District					Date Updated: 10/30/2013
P2493-624-2 Reservoir Interior/Exterior Coating & Upgrades					
Budget	Committed	Expenditures	Outstanding Commitment & Forecast	Projected Final Cost	Vendor/Comments
1,950,000					
Planning					
Standard Salaries	1,127	1,127	-	1,127	
Total Planning	1,127	1,127	-	1,127	
Design					
Standard Salaries	44,778	34,278	10,500	44,778	
Professional Legal Fees	239	239	-	239	STUTZ ARTIANO SHINOFF
Consultant Contracts	2,715	2,715	-	2,715	CSI SERVICES INC
Service Contracts	1,520	1,520	-	1,520	MAYER
	43	43	-	43	SAN DIEGO DAILY TRANSCRIPT
Total Design	49,295	38,795	10,500	49,295	
Construction					
Standard Salaries	78,502	3,502	75,000	78,502	
Construction Contract	1,199,000	-	1,199,000	1,199,000	ADVANCED INDUSTRIAL SERVICES
Service Contracts	47	47	-	47	SAN DIEGO DAILY TRANSCRIPT
	75,160	-	75,160	75,160	HARPER & ASSOCIATES
	25,200	-	25,200	25,200	CONSTRUCTION MANAGEMENT
Equipment Rental	725	725	-	725	HORIZON CRANE SERVICE LLC
Professional Legal Fees	554	554	-	554	STUTZ ARTIANO SHINOFF
Regulatory Agency Fees	25	25	-	25	PETTY CASH CUSTODIAN
Project Closeout	15,000	-	15,000	15,000	CLOSEOUT
Project Contingency	59,950	-	59,950	59,950	5% CONTINGENCY
Total Construction	1,454,163	4,853	1,449,310	1,454,163	
Grand Total	1,504,585	44,775	1,459,810	1,504,585	



624-2 Steel
8.0 MG Reservoir

OTAY WATER DISTRICT
624-2 Reservoir Interior/Exterior
Coating and Upgrades



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AGENDA ITEM 5



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	January 7, 2014
SUBMITTED BY:	Jeff Marchioro Senior Civil Engineer	PROJECT:	P2453- DIV. NO. 2 002102
	Bob Kennedy Engineering Manager		
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager		
SUBJECT:	Award of a Construction Contract to Coffman Specialties, Inc. for SR-11 Potable Water Utility Relocations - Sequence 1		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) award a construction contract to Coffman Specialties, Inc. (Coffman) for the potable water utility relocations associated with the Caltrans SR-11-Sequence 1 Project in an amount not-to-exceed \$992,380 (see Exhibits A and B for Project location and detail).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to enter into a construction contract with Coffman in an amount not-to-exceed \$992,380 for potable water utility relocations associated with the Caltrans SR-11-Sequence 1 Project.

ANALYSIS:

Caltrans is currently in the process of completing land acquisition and design for the SR-11 freeway in Otay Mesa. The first phase of the freeway (Sequence 1) starts at the SR-905 freeway and ends at Enrico Fermi Drive. Part of this process is to relocate existing utilities that conflict with this work. The District's existing pipelines in Sanyo Avenue and utility easements within the future SR-11 right-of-way will need to be relocated to accommodate the new freeway.

The District entered into a Utility Agreement with Caltrans on July 23, 2013 in follow up to a staff report approved by the Board on July 3, 2013. The Utility Agreement included a \$961,521 reimbursement to the District. The District has prior and superior rights at three (3) separate crossings including 760 linear-feet of existing 10-inch ACP potable water distribution main currently located within a District permanent easement on private property between Sanyo Avenue and Dornoch Court, 355 linear-feet of existing 18-inch steel cylinder rod wrapped (SCRW) potable water transmission main located within a District owned utility easement on private property east of Dornoch Court, and 40 linear-feet of existing 12-inch ACP potable water distribution main located in Sanyo Avenue.

The District's relocations will be constructed through a construction contract administered by the District separately from Caltrans freeway construction project. At the request of Caltrans, the District's relocations were bid as six (6) separate "work windows" to provide flexibility to Caltrans' contractor. The work windows essentially created separate projects under one contract requiring separate mobilization/demobilization for each work window. In other words, District's contractor would be "on call" to construct any work window in any order within a relatively long contract time (900 calendar days) coinciding with Caltrans' construction contract.

The District's As-Needed Engineering Design Consultant (Atkins) prepared the bid documents. Mayer Reprographics (Mayer) distributed the bid documents electronically through Mayer's online planroom.

Staff contacted several contractors prior to the bid process to encourage them to submit a bid including Coffman since Coffman received Caltrans construction contract award. Staff also reached out to contractors that have successfully completed similar District projects in the past.

The Project was publicly advertised for bid on October 15, 2013 on the District's website and several other publications including the San Diego Daily Transcript. A Pre-bid Meeting and site visit were held on October 29, 2013, which was attended by four (4) prime contractors. Four addenda were sent out to all bidders and plan houses October 31 through November 8, 2013 to provide pre-bid meeting minutes and address contractors' questions asked during the bidding period.

Five (5) bids were received on November 13, 2013. The table below provides the bid results.

<u>CONTRACTOR</u>	<u>BID AMOUNT</u>
1. Coffman Specialties, Inc.	\$992,380
2. Wier Construction Corporation	\$999,202
3. Basile Construction, Inc.	\$1,332,521
4. CCL Contracting Inc.	\$1,651,606
5. Charles King Company, Inc.	\$1,164,252*

*Charles King Company, Inc. bid was deemed non-responsive because Addendum No. 1 updated bid listed was not used.

The Engineer's Estimate is \$707,000 for the base bid.

The evaluation process included reviewing all bids submitted for conformance to the contract documents. The lowest bidder, Coffman, submitted a responsible bid and holds a Class A Contractor's license which expires on November 30, 2013 (staff will confirm that Coffman's license is valid at the time of award). Staff checked the references provided with Coffman's bid indicating a good performance record on similar past projects. Staff has verified the bid bond provided by Coffman is valid. Staff will also verify that Coffman's performance bond is valid prior to execution of the contract. The proposed Project Manager has experience throughout southern California on similar projects and received good references. A background search of the company was performed on the internet and revealed no outstanding issues with this company. Coffman submitted the Company Background and Company Safety Questionnaires as required by the Contract Documents. Coffman successfully completed past Caltrans construction projects.

Staff has verified that the bid bond provided by Liberty Mutual Insurance Company is valid. Once Coffman signs the contract, they will furnish the performance bond and labor and materials bond. Staff will verify both bonds prior to executing the contract.

Award of the District's construction contract to Coffman has a side benefit of streamlining Caltrans and District coordination. Caltrans and the District will avoid coordination between two contractors since only a single contractor (Coffman) will control the site.

FISCAL IMPACT: Joe Beachem, Chief Financial Officer

The total budget for CIP P2453, as approved in the FY 2014 budget, is \$2,250,000. Total expenditures, plus outstanding commitments and forecast, are \$44,796. See Attachment B for budget detail.

Based on a review of the financial budget, the Project Manager anticipates that the budget for CIP P2453 is sufficient to support the Project.

Finance has determined that 100% of the funding is available from the Replacement Fund for CIP P2453.

STRATEGIC GOAL:

This Project supports the District's Mission statement, "To provide high value water and wastewater services to the customers of the Otay Water District in a professional, effective, and efficient manner" and the General Manager's Vision, "A District that is at the forefront in innovations to provide water services at affordable rates, with a reputation for outstanding customer service."

LEGAL IMPACT:

An amendment to the Caltrans Utility Agreement will be processed in the future since the difference between the low bid (\$992K) and the Engineer's Estimate (\$707K) exceeds 25% of the estimated cost of the executed Utility Agreement.

JM/BK:jf

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- Attachments: Attachment A - Committee Action
 Attachment B - Budget Detail
 Exhibit A - Location Map
 Exhibit B - Location Detail Map



ATTACHMENT A

SUBJECT/PROJECT: P2453-002102	Award of a Construction Contract to Coffman Specialties, Inc. for SR-11 Potable Water Utility Relocations-Sequence 1
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee (Committee) reviewed this item at a meeting held on December 9, 2013. The Committee supported Staff's recommendation.

NOTE:

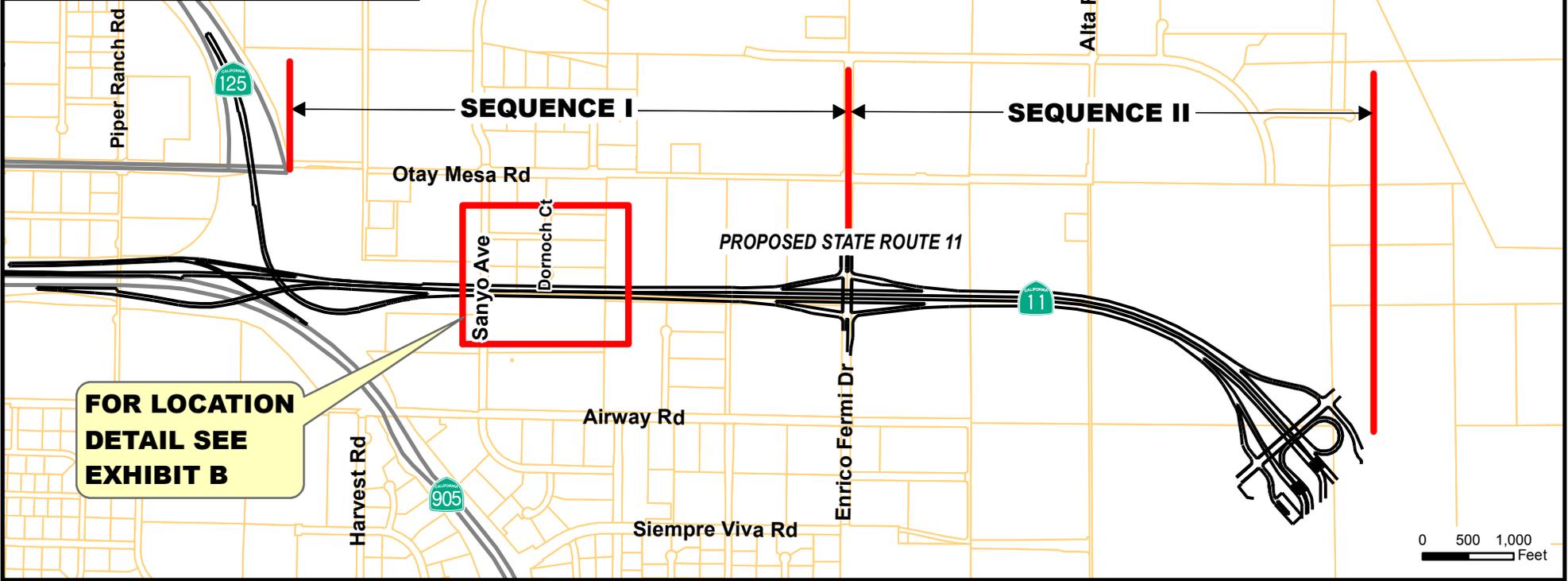
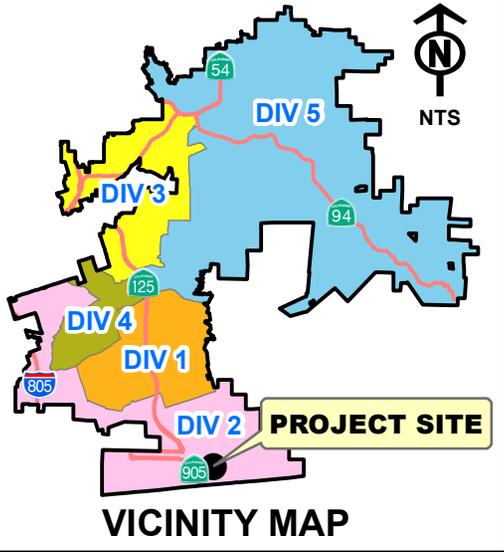
The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



ATTACHMENT B – Budget Detail

SUBJECT/PROJECT: P2453-002102	Award of a Construction Contract to Coffman Specialties, Inc. for SR-11 Potable Water Utility Relocations-Sequence 1
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Otay Water District					Date Updated: 11/14/2013
p2453-SR-11 Utility Relocations					
<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment & Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
2,250,000					
Planning					
Standard Salaries	10,205	10,205	-	10,205	STAFF LABOR
Total Planning	10,205	10,205	-	10,205	
Design					
Standard Salaries	80,804	80,804		80,804	STAFF LABOR
Consultant Contracts	77,325	58,101	19,224	77,325	ATKINS
	2,763	2,763	-	2,763	V & A CONSULTING ENGINEERS
	970	970	-	970	ALTA LAND SURVEYING INC
	4,901	4,901	-	4,901	NARASIMHAN CONSULTING SERVICES
	2,561	2,561	-	2,561	CPM PARTNERS INC
Professional Legal Fees	101	101	-	101	STUTZ ARTIANO SHINOFF
Service Contracts	2,765	-	2,765	2,765	UNDERGROUND SOLUTIONS INC
	1,382	1,382	-	1,382	US BANK
	1,382	1,382	-	1,382	US BANK CORPORATE PAYMENT
	3,197	1,697	1,500	3,197	MAYER REPROGRAPHICS INC
	84	84	-	84	SAN DIEGO DAILY TRANSCRIPT
Total Design	178,235	154,746	23,488	178,235	
Construction					
Standard Salaries	51,814	11,814	40,000	51,814	STAFF LABOR
Consultant Contracts	5,000	-	5,000	5,000	ATKINS CONSTRUCTION SUPPORT
	30,000	-	30,000	30,000	ALYSON CONSULTING
Construction Contract	992,380	-	992,380	992,380	COFFMAN SPECIALTIES
	24,063	-	24,063	24,063	CLOSEOUT
Reimbursement Agreement	(961,521)	-	(961,521)	(961,521)	CALTRANS UTILITY AGREEMENT
	(285,380)	-	(285,380)	(285,380)	FUTURE CALTRANS AMENDMENT
Total Construction	(143,644)	11,814	(155,458)	(143,644)	
Grand Total	44,796	176,765	(131,970)	44,796	



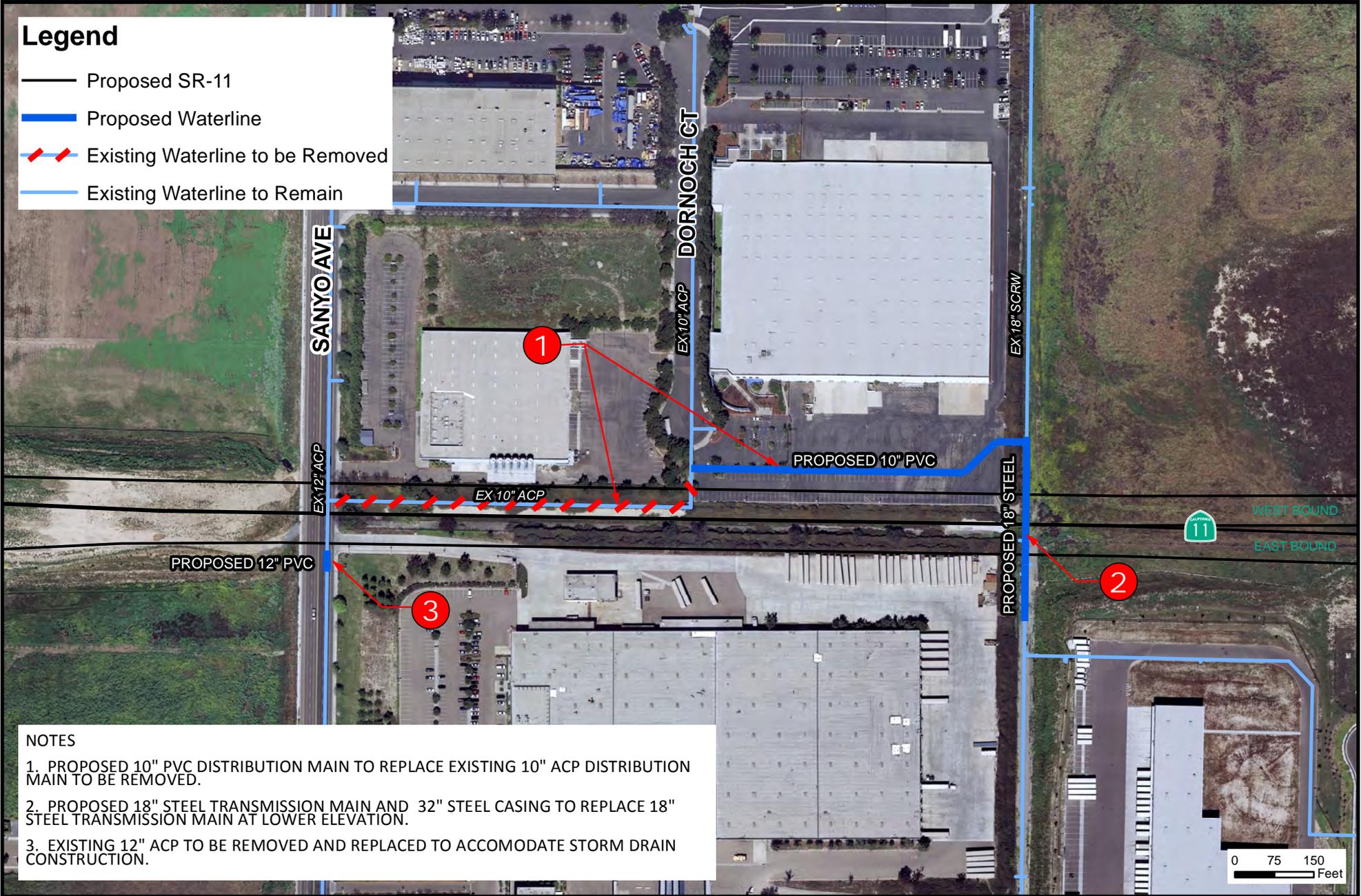
OTAY WATER DISTRICT
SR-11 UTILITY RELOCATIONS
LOCATION MAP



EXHIBIT A

Legend

- Proposed SR-11
- Proposed Waterline
- Existing Waterline to be Removed
- Existing Waterline to Remain



NOTES

1. PROPOSED 10" PVC DISTRIBUTION MAIN TO REPLACE EXISTING 10" ACP DISTRIBUTION MAIN TO BE REMOVED.
2. PROPOSED 18" STEEL TRANSMISSION MAIN AND 32" STEEL CASING TO REPLACE 18" STEEL TRANSMISSION MAIN AT LOWER ELEVATION.
3. EXISTING 12" ACP TO BE REMOVED AND REPLACED TO ACCOMODATE STORM DRAIN CONSTRUCTION.



OTAY WATER DISTRICT

SR-11 UTILITY RELOCATIONS - SEQUENCE 1

LOCATION DETAIL MAP



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AGENDA ITEM 6



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	January 7, 2014		
SUBMITTED BY:	Bob Kennedy Engineering Manager	PROJECT:	S2027-001103	DIV. NO.	3
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager				
SUBJECT:	Authorization to Execute a Reimbursement Agreement between the San Diego County Sanitation District and the Otay Water District for Project Costs Associated with the Rancho San Diego Pump Station Rehabilitation Project				

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board):

1. Increase the budget for S2027 by \$600,000 (increase overall CIP budget from \$2,900,000 to \$3,500,000).
2. Authorize the General Manager to execute an Agreement between the San Diego County Sanitation District (County) and the District for reimbursement to the County for design and construction costs associated with the Rancho San Diego Pump Station (RSDPS) Rehabilitation Project (see Exhibit A for Project location).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To increase the budget for S2027 and to obtain Board authorization for the General Manager to execute an Agreement (Exhibit B) with the County for costs associated with the Rancho San Diego Pump Station Rehabilitation Project. The Agreement provides that the District will reimburse the County for up to \$3,300,000.

ANALYSIS:

The San Diego County Sanitation District, as successor to the Spring Valley Sanitation District, entered into an agreement with the District for joint use and cost sharing of sewer facilities in 1997, as documented in the County Sanitation Minute Order No. 3. The Rancho San Diego Pump Station is one of the shared facilities and is identified in the Minute Order as the RSDPS. Costs for the RSDPS are to be split equally between the County and District.

The RSDPS requires improvements to existing pumps, piping, pipe accessories, and electrical facilities. The improvements will be implemented in two phases: Design and Construction. The design of the improvements is currently underway. The District has participated in a 30% design review of the improvements, and will review the Construction Documents at the 70% and 100% levels of completion. Black & Veatch is completing the design and is scheduled to have the Construction Documents ready for construction bids in April 2014.

The County will be responsible for all aspects of design, bidding, award, and construction of the RSDPS improvements. Project completion is projected for March 2016.

The attached agreement (Exhibit B) provides for reimbursement to the County to cover the actual design and construction costs for the improvements. Design costs are currently estimated at \$800,000, which includes County administration costs. Construction is currently estimated at \$5,800,000, which includes construction contract and construction support costs. The District will share in 50% of these costs for a not-to-exceed maximum of \$3,300,000 without prior written agreement by the parties.

FISCAL IMPACT: Joseph Beachem, Chief Financial Officer

The total budget for CIP S2027, as approved in the FY 2014 budget, is \$2,900,000. Expenditures to date are \$45,782. Total expenditures, plus outstanding commitments and forecast, is are \$3,369,547, as shown in Attachment B - Budget Detail for CIP S2027.

Based on a review of the financial budget, the Project Manager anticipates that with a budget increase of \$600,000 the Project will be completed within the new budget amount of \$3,500,000.

Currently, it is anticipated that the Sewer reserves are sufficient to cover this additional expenditure. However, this will increase

the amount of debt funding that is already anticipated in fiscal year 2016. The added borrowing will add upward pressure on the sewer rates. Staff has already begun to explore the options available to obtain debt financing and does not foresee any problem with obtaining the additional funding.

STRATEGIC GOAL:

This Project supports the District's Mission statement, "To provide high value water and wastewater services to the customers of the Otay Water District in a professional, effective, and efficient manner" and the General Manager's Vision, "A District that is at the forefront in innovations to provide water services at affordable rates, with a reputation for outstanding customer service."

LEGAL IMPACT:

The District's General Council and the County's Attorney have reviewed and accepted the Agreement as to form and legality.

BK:jf

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Attachments: Attachment A - Committee Action
Attachment B - Budget Detail
Exhibit A - Location Map
Exhibit B - Agreement



ATTACHMENT A

SUBJECT/PROJECT: S2027-001103	Authorization to Execute a Reimbursement Agreement between the San Diego County Sanitation District and the Otay Water District for Project Costs Associated with the Rancho San Diego Pump Station Rehabilitation Project
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee (Committee) reviewed this item at a meeting held on December 9, 2013. The Committee supported Staff's recommendation.

NOTE:

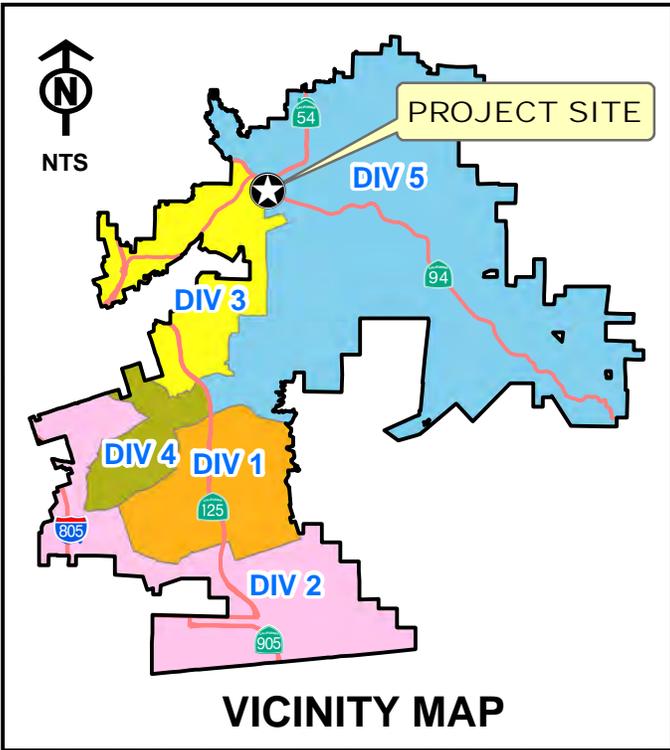
The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



ATTACHMENT B – Budget Detail

SUBJECT/PROJECT: S2027-001103	Authorization to Execute a Reimbursement Agreement between the San Diego County Sanitation District and the Otay Water District for Project Costs Associated with the Rancho San Diego Pump Station Rehabilitation Project
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Otay Water District					Date Updated: 11/06/2013
s2027-Rancho San Diego Pump Station Rehabilitation Project					
<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment & Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
2,900,000					
Planning					
Professional Legal Fees	420	420	-	420	STUTZ ARTIANO SHINOFF
Standard Salaries	38,375	38,375	-	38,375	
Total Planning	38,795	38,795	-	38,795	
Design					
Standard Salaries	45,000	4,073	40,927	45,000	
Interagency Reimbursement Cost	400,000	-	400,000	400,000	SD COUNTY SANITATION DISTRICT
Total Design	445,000	4,073	440,927	445,000	
Construction					
Standard Salaries	116,205	-	116,205	116,205	
Interagency Reimbursement Cost	2,900,000	-	2,900,000	2,900,000	SD COUNTY SANITATION DISTRICT
Total Construction	3,016,205	-	3,016,205	3,016,205	
Grand Total	3,500,000	42,868	3,457,132	3,500,000	



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OTAY WATER DISTRICT
REIMBURSEMENT AGREEMENT WITH
COUNTY OF SAN DIEGO FOR THE
RANCHO SAN DIEGO PUMP STATION IMPROVEMENTS



EXHIBIT B

REIMBURSEMENT AGREEMENT FOR PROJECT COSTS FOR THE RANCHO SAN DIEGO PUMP STATION IMPROVEMENTS BY AND BETWEEN THE OTAY WATER DISTRICT AND THE SAN DIEGO COUNTY SANITATION DISTRICT

THIS REIMBURSEMENT AGREEMENT FOR PROJECT COSTS FOR THE RANCHO SAN DIEGO PUMP STATION IMPROVEMENTS ("Agreement"), dated _____, 2014, is entered into by and between the Otay Water District ("Otay") and the San Diego County Sanitation District ("Sanitation District"). Otay and Sanitation District may be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Sanitation District, as the successor in interest of the Spring Valley Sanitation District, and Otay entered into an agreement in 1997 for the joint use of sewer facilities entitled "Agreement Between Spring Valley Sanitation District and Otay Water District for Joint Use of Sewer Facilities and Cost Sharing," on file with the Clerk of the Board of Supervisors for San Diego County, California as approved by Sanitation Minute Order No. 3 on July 22, 1997 (hereinafter "Joint Use Agreement").

WHEREAS, in accordance with the Joint Use Agreement, the Sanitation District and Otay agreed to share the cost of repairing and improving joint use facilities, including the Rancho San Diego Pump Station, which is identified in the Joint Use Agreement individually as the "RSPDS" and with other facilities as part of the "RSD Interceptor."

WHEREAS, Sanitation District wishes to make improvements to the Rancho San Diego Pump Station for the benefit of Otay and Sanitation District, which will include the replacement of pumps, mechanical piping, electrical components and other improvements (hereinafter "Rancho San Diego Pump Station Improvements").

WHEREAS, in accordance with Section 7(c) of the Joint Use Agreement, Otay and Sanitation District have determined that the cost of the Rancho San Diego Pump Station Improvements should be split equally between the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the Parties hereto, as follows:

EXHIBIT B

ARTICLE I. DEFINITIONS

1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section shall have the meanings herein specified for all purposes of this Agreement and of any amendment hereto, and of any certificate, opinion, estimate or other document herein mentioned.

“Agreement” means this “Reimbursement Agreement for Project Costs for the Rancho San Diego Pump Station Improvements.”

“Construction Contract” means the construction contract awarded by the Sanitation District to the lowest responsible and responsive bidder for the Project.

“Construction Documents” means the design plans, specifications and cost estimate to be approved by Otay in accordance with Article II of this Agreement which approval shall be deemed to satisfy the approval requirements of Section 9 of the Joint Use Agreement.

“Emergency” means an unexpected or unforeseen event that may pose a risk to the public or significantly increase Project costs as a result of delay or for other reasons and is used in the Agreement in the context of authorizing Construction Contract change orders or extra work.

“Joint Use Agreement” refers to the agreement between the Sanitation District, as the successor in interest of the Spring Valley Sanitation District, and Otay entered into in 1997 for the joint use of sewer facilities entitled “Agreement Between Spring Valley Sanitation District and Otay Water District for Joint Use of Sewer Facilities and Cost Sharing,” on file with the Clerk of the Board of Supervisors for San Diego County, California as approved by Sanitation Minute Order No. 3 on July 22, 1997.

"Otay" means the Otay Water District, a municipal water district duly organized and existing under the Municipal Water District Law of 1911, as set forth in the California Water Code.

"Project" means the Rancho San Diego Pump Station Improvements.

"Project Costs" means the total dollar amount of costs associated with the Project that are recoverable pursuant to Section 7(c)(2) of the Joint Use Agreement, including, but not limited to labor, oversight, bidding, permits, design consultants, easement acquisition, construction contracts, environmental review and change orders.

EXHIBIT B

"Rancho San Diego Pump Station Improvements" mean, collectively, the replacement of pumps, mechanical piping, electrical components and other improvements to the Rancho San Diego Pump Station as will be more particularly detailed in the Construction Documents.

"Sanitation District " means the San Diego County Sanitation District, a sewer district formed and operating pursuant to the County Sanitation District Act, California Health & Safety Code § 4700 et seq., and the successor in interest to the Spring Valley Sanitation District by virtue of a change of organization approved by the San Diego Local Agency Formation Commission effective July 1, 2011.

ARTICLE II. DESIGN/BIDDING

2.1 Design Phase. Sanitation District shall submit the Construction Documents for Project to Otay to review and provide comments. Otay shall provide comments within thirty (30) days of the receipt of the Construction Documents. This requirement shall be deemed satisfied if Otay is given the opportunity to comment on Construction Documents at the 30%, 70%, and 100% design. The Sanitation District estimates that the design phase will cost \$800,000, which includes design consultant and staff support costs.

2.2 Construction Documents/Project Construction.

2.2.1 Approval. Prior to advertisement of a construction contract, an authorized representative of Otay shall approve and sign the final Construction Plans. Otay shall not unreasonably condition or delay final approval. Only the final approved Construction Plans shall be included in the Sanitation District's Request for Bids for the Project.

2.2.2 Bidding and Award. Sanitation District shall be responsible for all aspects of the design, bidding and award of a contract for the construction and installation of the Project.

2.2.2.1 Bid Package. Sanitation District shall be responsible for preparing and circulation of the bid package.

2.2.2.2 Meetings. Sanitation District shall organize all pre-bid meetings and shall inform Otay of the time and date of such meeting, so that a representative of Otay may be present.

2.2.2.3 Selection of Lowest Responsible Bidder. Sanitation District, at its sole discretion, shall determine the lowest responsible bidder, which determination shall be binding on Otay. Sanitation District shall be solely responsible for its determination and agrees to protect, defend, and indemnify

EXHIBIT B

Otay with respect to any claims or litigation arising from or related to said determination.

- 2.2.2.4 Execution of Construction Contract. Sanitation District shall be responsible for executing the Construction Contract on the behalf of itself and Otay and ensure that Otay is identified as a third-party beneficiary of such agreement with the same rights and remedies as the Sanitation District.

ARTICLE III. CONSTRUCTION

- 3.1 Project Completion and Warranty. Otay and Sanitation District anticipate that Project will be completed on or about March 2016. Project, however, will not be deemed completed or accepted until Sanitation District has accepted the work. The contractor shall warrant all work for a period of no less than one (1) year from the date of acceptance. Acceptance will be evidenced by the filing of a Notice of Completion by the Sanitation District with the County of San Diego Recorder. The Construction Contract shall include this definition of project completion and acceptance. The Sanitation District estimates the construction phase will cost \$5,800,000, which includes construction contract and construction support costs.

ARTICLE IV. REIMBURSEMENT OF COSTS

- 4.1 Project Cost Reimbursement. Sanitation District will invoice Otay on an annual basis for the actual costs of the project. In accordance with Section 7(c)(2) of the Joint Use Agreement, within forty-five (45) calendar days of receiving a bill from the Sanitation District detailing the Project Costs, Otay will be responsible for fifty percent of the total Project Costs incurred, not to exceed \$3.3 million without prior written agreement by the Parties.

ARTICLE V. CHANGE ORDERS

- 5.1 Emergencies. Sanitation District may authorize contractor under the Construction Contract to proceed with any proposed construction changes and/or change orders, without consulting with Otay, in the event of an Emergency, as determined in the sole discretion of the Sanitation District. Notwithstanding the foregoing Sanitation District shall use its best efforts to notify Otay, as soon as reasonably possible, of the changes. Further, in all instances not constituting an emergency, Sanitation District shall notify and consult with Otay on any proposed change order as soon as reasonably possible.
- 5.2 Errors and Omissions. Sanitation District shall not make payment to design consultants or contractor or charge Otay for any costs or expenses of a change

EXHIBIT B

order resulting from an error or omission for which the design consultants or contractor is solely responsible.

ARTICLE VI. INSPECTION

- 6.1 Inspection Team. If reasonably required by the circumstances, Sanitation District will provide a full time inspector(s) to manage and monitor the Project during the construction phase.
- 6.2 Inspection Stages and Obligations. Otay shall have the right to conduct inspections of the Project during construction.
- 6.3 Inspection Costs. All inspection costs incurred by Otay will be borne by Otay.
- 6.4 Notification. Otay shall notify Sanitation District of any requested inspections at least twenty-four (24) hours prior to the inspection or such other shorter time as Otay and District may agree to in writing.

ARTICLE VII. INSURANCE

- 7.1 Contractor's Insurance. Sanitation District shall ensure that its contractor provides evidence of insurance coverage, as required by Sanitation District, for the entire construction and, if applicable, warranty period. Such insurance shall, at a minimum, include a comprehensive general liability policy in an amount sufficient to cover all contractual obligations of the contractor under the Construction Contract, and no less than \$2,000,000. The policy of insurance shall name the Sanitation District and Otay, and their respective employees, officers, governing body members, and agents, as additional insureds, require a waiver of subrogation, and be primary insurance. Furthermore, Sanitation District shall obtain evidence that the contractor maintains worker's compensation insurance in accordance with applicable requirements of law.
- 7.2 Parties' Insurance. Otay and Sanitation District shall maintain insurance as customary in connection with their respective facilities.

ARTICLE VIII. INDEMNITY

- 8.1 Indemnity. Each Party hereto agrees to defend, indemnify, protect, and hold harmless ("Indemnitor") the other Party, its agents, officers, and employees ("Indemnitees") from and against any and all claims asserted or liability established for damages or injuries to any property or person, including death or dismemberment, which arise from or are caused by the negligent acts or omissions or willful misconduct of the Indemnitor's agents, officers or employees, in performing the work or services herein and all expenses of investigation and defending against same; provided, however, that each

EXHIBIT B

Party's duty to defend, indemnify and hold harmless the other shall not include any claims or liability arising from the sole negligence or willful misconduct of the other Indemnitee, its agents, officers or employees. Otay and Sanitation District agree that in the event of any joint or concurrent negligence, they will apportion any established or agreed upon liability proportionate to their respective degree of fault. For the purposes of this provision, the Sanitation District's contractor shall not be considered an agent of the Sanitation District or Otay. Claims related to the actions or omissions of the Sanitation District's contractor shall be addressed through provisions in the Construction Contract, which provisions shall include indemnity, defense, and hold harmless provisions from the Sanitation District's contractor in favor of both the Sanitation District and Otay.

ARTICLE IX. RECORDS

- 9.1 Retention of Records. Sanitation District shall require the Project contractor to maintain records related to this Construction Contract for a period of not less than four (4) years following notice of completion of the Project.
- 9.2 Audit of Records. Sanitation District shall make available and shall require that its contractor make available to Otay for examination at reasonable locations within the County of San Diego and at any time during normal business hours and as often as Otay deems necessary, all of the records with respect to all matters covered by this Agreement and the Construction Contract. Sanitation District and contractor will permit Otay to make audits of all invoices, materials, payrolls, records of personnel, and other records relating to all matters covered by this Agreement and the Construction Contract. Otay shall be solely responsible for the costs of any audits requested by it.

ARTICLE X. NOTICES

- 10.1 Writing. Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 10.2 Effective Date. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested, (iii) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (iv) upon successful transmission of facsimile.
- 10.3 Recipients. All demands or notices required or permitted to be given shall be sent to all of the following:

EXHIBIT B

10.3.1 Otay:

Otay Water District
2554 Sweetwater Springs Boulevard
Spring Valley, California 91978
Fax: 619-670-8920
Attention: District Project Manager

10.3.2 Sanitation District:

San Diego County Sanitation District
Department Of Public Works, Wastewater Section
5500 Overland Avenue, Suite 315
San Diego, California 92123
Attention: Sanitation District Project Manager

10.4 Change of Address(es). Notice of change of address shall be given in the manner set forth in this Article.

ARTICLE XI. MISCELLANEOUS

11.1 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

11.2 Gender & Number. Whenever the context requires, the use herein of (i) the neutral gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.

11.3 Reference to Paragraphs. Each reference in this Agreement to a section refers, unless otherwise stated, to a section of this Agreement.

11.4 Incorporation of Recitals. All recitals herein are incorporated into this Agreement and are made a part hereof.

11.5 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the Sanitation District or Otay, shall be deemed to be both covenants and conditions.

11.6 Integration. This Agreement and any Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

EXHIBIT B

- 11.7 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 11.8 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision that is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 11.9 Conflicts Between Terms. If a conflict or inconsistency exists between this Agreement, the Joint Use Agreement and any laws, rules, regulations, orders, or codes, the conflict shall be resolved in a manner that best effects the intent of the Parties to ensure an equal allocation of Project Costs. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 11.10 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.
- 11.11 Good Faith Performance. The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 11.12 Further Assurances. Sanitation District and Otay each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement. Approval of this Agreement by the Board of Directors of the Sanitation District shall be deemed to include a delegation authority to the Director, Department of Public Works, or his designee to execute and deliver such additional documents.
- 11.13 Controlling Law. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 11.14 Jurisdiction, Venue, and Attorney Fees. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 11.15 Agency/Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of Otay or the Sanitation District.
- 11.16 Third Party Relationships. Nothing in this Agreement shall create a contractual relationship with any third party; however, the Sanitation District shall ensure

EXHIBIT B

that Otay is an intended third party beneficiary of the Construction Contract and shall share all of the rights and benefits of the Sanitation District with respect to the contractor.

- 11.17 **Limitation on Otay Remedies and Waiver of Claims.** Otay understands that the sole purpose of this Agreement is to establish a method to reimburse the Sanitation District for obligations of Otay for payment of Project Costs. In accordance with such purpose, Otay agrees that its sole remedy for construction defects, breach by contractor of the Construction Contract, damage to property or persons, including death, to Otay personnel or any third parties, or other claims arising out of or related to the work performed to install and/or construct Project improvements shall be against the Sanitation District's contractor or its subcontractors and agents, and, hereby, waives any and all claims it may hereafter have against the Sanitation District, arising out of the same, except for those claims arising out of the negligence or willful misconduct of the County. This waiver extends to and includes a waiver of any rights Otay may have by virtue of California Civil Code § 1542.
- 11.18 **Non-Assignment.** Except as it relates to the Construction Contract, the Sanitation District shall not assign the obligations under this Agreement without the consent of Otay, which consent shall not be unreasonably withheld.
- 11.19 **Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 11.20 **No Waiver.** No failure of either the Sanitation District or Otay to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 11.21 **Administrative Claims Requirements and Procedures.** The Parties shall meet and confer in good faith prior to initiating any claims, actions or other proceedings against one another related to this Agreement. The alternative dispute resolution proceedings in the Joint Use Agreement shall apply to any disputes arising from this Agreement.
- 11.22 **Administration of Contract.** Sanitation District hereby designates Mark Perrett as the Sanitation District Project Manager for the Project and as the primary

EXHIBIT B

contact for all matters relating to this Agreement, including the submittal of Sanitation District invoices for reimbursement.

Otay hereby designates Kevin Schmidt, as the Otay Project Manager and as the primary contact for all matters relating to this Agreement, including the processing, documenting, and approval of Sanitation District invoices.

11.23 Signing Authority. The representative for each Party signing on behalf of such Party hereby declares that authority has been obtained to sign on behalf of the Sanitation District and/or Otay, as applicable and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

11.24 Impact on Joint Use Agreement. The terms of this Agreement shall prevail over any contrary provisions in the Joint Use Agreement with respect to those matters related to the sharing of Project Costs. This Agreement shall not otherwise be interpreted to modify or amend the Joint Use Agreement.

IN WITNESS WHEREOF, Sanitation District and Otay have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms:

San Diego County Sanitation District

Otay Water District

Dated: _____

Dated: _____

By: _____

By: _____

Mark Watton, General Manager

APPROVED AS TO FORM:

Legal Counsel