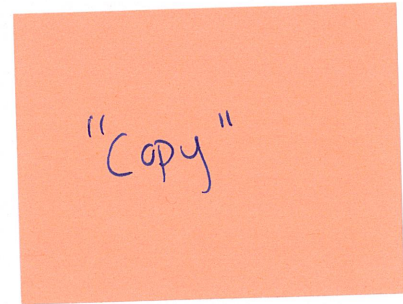




State of California
Secretary of State

FILE NO. \_\_\_\_\_



(Office Use Only)

AMENDMENT OF A JOINT POWERS AGREEMENT
(Government Code section 6503.5)

Instructions:

- 1. Complete and mail to: Secretary of State, P.O. Box 942870, Sacramento, CA 94277-2870.
2. Include filing fee of \$1.00.
3. Do not include attachments.
4. A copy of the full text of the joint powers agreement and amendments, if any, must be submitted to the State Controller's office.

Date of filing initial notice with the Secretary of State: On or around July 1, 2001

File number of initial notice: \_\_\_\_\_

Name of the agency or entity created under the agreement and responsible for the administration of the agreement: South Orange County Wastewater Authority

Agency's or Entity's Mailing Address: 34156 Del Obispo Street Dana Point, CA 92629

Title of the agreement: Amendment #1 to the Joint Exercise of Powers Agreement creating South Orange County Wastewater Authority Orange County, California (SOCWA) and

Terminating Aliso Water Management Agency, South East Regional Reclamation Authority, South Orange County Reclamation Authority

Complete one or more boxes below. The agreement has been amended to:

[ X ] Change the parties to the agreement as follows: Amendment #1 memorializes the removal of certain member agencies, with the remaining agencies to be El Toro Water District, South Coast Water District, Santa Margarita Water District, City of Laguna Beach, City of San Clemente, and Emerald Bay Services District.

[ ] Change the name of the administering agency or entity as follows: \_\_\_\_\_

[ ] Change the purpose of the agreement or the powers to be exercised as follows: \_\_\_\_\_

[ ] Change the short title of the agreement as follows: \_\_\_\_\_

[ X ] Make other changes to the agreement as follows: Certain Member Agency capacity rights were also revised and are captured in the exhibit to Amendment #1.

RETURN ACKNOWLEDGMENT TO: (Type or Print)

January 28, 2025

NAME Adriana R. Ochoa

Date

Adriana R. Ochoa

ADDRESS Snell & Wilmer

Signature

CITY/STATE/ZIP 3611 Valley Centre Drive, Suite 500, San Diego, CA 92130

Adriana R. Ochoa, SOCWA General Counsel

Typed Name and Title

**AMENDMENT #1**

**TO THE JOINT EXERCISE OF POWERS AGREEMENT CREATING SOUTH  
ORANGE COUNTY WASTEWATER AUTHORITY  
Orange County, California  
(SOCWA)  
AND TERMINATING ALISO WATER MANAGEMENT AGENCY, SOUTH EAST  
REGIONAL RECLAMATION AUTHORITY, SOUTH ORANGE COUNTY  
RECLAMATION AUTHORITY**

This Amendment (**Amendment**) to the Joint Exercise of Powers Agreement Creating South Orange County Wastewater Authority Orange County, California (**SOCWA**) and Terminating Aliso Water Management Agency, South East Regional Reclamation Authority, South Orange County Reclamation Authority (**Joint Powers Agreement**) shall be effective on December 12, 2024 (the **Amendment Date**) and is executed by and between Moulton Niguel Water District, a California water district (**MNWD**), South Coast Water District, a county water district (**SCWD**), Emerald Bay Service District, a California community services district (**EBSD**), City of Laguna Beach, a California municipality (**CLB**), El Toro Water District, a California water district (**ETWD**), Santa Margarita Water District, a California water district (**SMWD**) and the City of San Clemente, a California municipal corporation (**CSC**). The public entities listed above may be referred to in this Amendment collectively or in combination(s) as the “**parties**” or individually as a “**party**”. Capitalized terms not immediately defined herein shall have the definitions set forth in Article I of the Joint Powers Agreement.

**RECITALS**

- A. WHEREAS, effective on or about May 19, 2022, the City of San Juan Capistrano (**CSJC**) withdrew as a member agency of SOCWA;
- B. WHEREAS, effective on or about May 4, 2023, Trabuco Canyon Water District (**TCWD**) withdrew as a member agency of SOCWA;
- C. WHEREAS, effective on or about July 1, 2023, Irvine Ranch Water District (**IRWD**) withdrew as a member agency of SOCWA;
- D. WHEREAS, effective on or around the Amendment Date, MNWD will withdraw as a member agency of SOCWA pursuant to a written withdrawal agreement which is referenced in the list below;
- E. WHEREAS, SOCWA is going through certain other organizational changes that will affect member agency capacity rights and assign or transfer certain assets and liabilities, all of which shall be reflected in the following separate agreements which, along with this Amendment, shall be referred to collectively as the “**2024 SOCWA Reorganization Agreements**”:

- (1) “Asset and Capacity Transfer Agreement (Agreement No. 1)”;

- (2) “Regional Treatment Plant Capacity Rights Transfer Agreement (Agreement No. 2) (ETWD, SCWD, CLB and EBSD Solids Capacity Rights in Project Committee 17)”;
- (3) “Coastal Treatment Plant Capacity Rights Transfer Agreement (Agreement No. 3) (MNWD Capacity Rights in Project Committee 15)”;
- (4) “MNWD – SOCWA Withdrawal Agreement (Agreement No. 4)”;
- (5) “Assignment and Assumption Agreement (Agreement No. 5) (Project Committee 2)”;
- (6) “Assignment and Assumption Agreement (Agreement No. 6) (Project Committee 5)”;
- (7) “Assignment and Assumption Agreement (Agreement No. 7) (Project Committees 21 and 24)”;
- (8) “Agreement for Solids Treatment and Handling Services at the Joint Regional Treatment Plant by Moulton Niguel Water District (Agreement No. 8)”;
- (9) “Moulton Niguel Water District SOCWA Continued Services Agreement (Agreement No. 9)”;
- (10) “Amendment No. 7, Agreement for Acquisition, Use, Operation, Maintenance and Expansion of Sewage Treatment Plant of City of San Juan Capistrano by South East Regional Reclamation Authority for and on Behalf of Project Committee No. 2”
- (11) “Memorandum of Understanding, Allocation of MNWD’s Transfer Price Payment for the Regional Treatment Plant and Withdrawal from SOCWA and Evaluation of Reducing SOCWA Overhead Expenses”.

F. WHEREAS, the parties wish to memorialize and acknowledge the current membership of SOCWA and summarize their respective capacity rights in one central record and recognize the supremacy of the 2024 SOCWA Reorganization Agreements that are being approved prior to or concurrently with this Amendment;

G. WHEREAS, the parties hereby agree to amend the Joint Powers Agreement as set forth below:

### AGREEMENT

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into the Joint Powers Agreement as though set forth in full therein.

2. **Supremacy.** The terms set forth in the 2024 SOCWA Reorganization Agreements, as further defined and as described in the Asset and Capacity Transfer Agreement (Agreement 1), are meant to and hereby do supersede and control over any conflicting terms in

the Joint Powers Agreement and any other predecessor agreement executed by and between the parties or any combination of parties thereof, including, but not limited to, Project Committee Agreements. Each and every other term and condition, article, obligation, right and provision of the Joint Powers Agreement or any Project Committee agreement not in conflict with the terms set forth in the 2024 SOCWA Reorganization Agreements shall remain in full force and effect. It is the intent of the parties that the 2024 SOCWA Reorganization Agreements should be read as a whole, in context, and, if possible, to give the same weight and effect to every word within each of the 2024 SOCWA Reorganization Agreements. The parties are bound to give consistent, harmonious, and sensible effect to all of the parts of the 2024 SOCWA Reorganization Agreements, to the extent possible. However, to the extent any terms cannot be harmonized within the 2024 SOCWA Reorganization Agreements and in the unlikely event terms within the 2024 SOCWA Reorganization Agreements conflict with one another, the 2024 SOCWA Reorganization Agreements shall control in the supremacy order set forth below (in other words, the agreement listed below as 1 controls over the subsequent agreement listed as 2, and so forth):

<b>Supremacy Order/Order of Control</b>	<b>Name of Agreement</b>	<b>Signatories</b>
1	Amendment #1 to Joint Powers Agreement	MNWD, SOCWA, SCWD, EBSD, ETWD, CLB, SMWD & CSC
2	Asset and Capacity Transfer Agreement (Agreement 1) (Excluding all Exhibits thereto)	MNWD, SOCWA, SCWD, EBSD, ETWD, CLB & CSC
3	SOCWA Withdrawal Agreement	MNWD, SOCWA, SCWD, EBSD, ETWD, CLB, SMWD & CSC
4	Assignment and Assumption Agreement (PC 2) (Agreement #5)	MNWD, SMWD & SCWD
4	Assignment and Assumption Agreement (PC 5) (Agreement #6)	MNWD, CSC, SCWD & SMWD
4	Assignment and Assumption Agreement (PC 21/24) (Agreement #7)	MNWD, CLB, EBSD, SCWD & ETWD
5	RTP Capacity Rights Transfer Agreement (PC 17) (Agreement #2)	MNWD, SCWD, EBSD, ETWD & CLB
5	CTP Capacity Rights Transfer Agreement (PC 15) (Agreement #3)	MNWD, SCWD, EBSD & CLB

6	RTP Solids Handling Agreement (Agreement #8)	MNWD, SCWD, EBSD, ETWD & CLB
7	MNWD-SOCWA Continued Services Agreement (Agreement #9)	MNWD & SOCWA, AND REMAINING MEMBER AGENCIES
8	Labor MOU	MNWD, SOCWA & SOCWA Employees Association
9	Transfer Price Allocation MOU	CLB, CSC, EBSD, ETWD, SCWD & SMWD
10	Laboratory Lease	MNWD & SOCWA
11	RTP Property Transfer Agreement	MNWD & SOCWA
12	RTP Property Transfer Agreement Grant Deed	MNWD & SOCWA
13	RTP Property Transfer Agreement Bill of Sale	SOCWA
14	RTP Property Transfer Agreement Promissory Notes	MNWD
15	Amendment No.7 to the PC 2 Agreement	MNWD, SOCWA, SMWD & SCWD

3. **Concurrency.** This Amendment shall not be effective, and no term shall be enforceable, until all of the 2024 SOCWA Reorganization Agreements are effective and enforceable.

4. **Acknowledgment of MNWD Withdrawal.** Effective on the Amendment Date, MNWD will no longer be a member agency of SOCWA, nor will MNWD be a member of any SOCWA Project Committee, and all voting rights of MNWD in SOCWA and in any Project Committee thereof will be extinguished as of the Amendment Date, though the obligations of MNWD to SOCWA and the other member agencies shall continue as detailed in the 2024 SOCWA Reorganization Agreements, approved and executed concurrently together with this Amendment.

5. **Remaining SOCWA Member Agencies.** Effective on the Amendment Date, SOCWA shall have six remaining member agencies: SCWD, CLB, EBSD, CSC, SMWD, and ETWD.

6. **Acknowledgment of Remaining Capacity Rights.** The parties hereby acknowledge **Exhibit I** attached hereto, which summarizes the capacity rights for the remaining

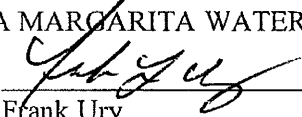
member agencies in SOCWA Project Committees 2, 5, 24, 15, and 21 effective on the Amendment Date.


7. **Signing Authority.** Each party represents and warrants that each person or persons executing this Amendment on its behalf is duly authorized to do so by the respective party and that this Amendment shall bind the parties.

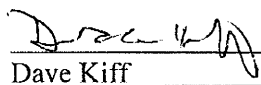
8. **Successors & Assigns.** The terms of this Amendment are binding upon and will inure to the benefit of and be enforceable by the respective successors and assigns of the parties.

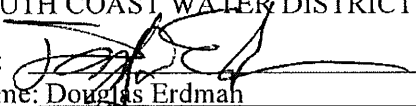
9. **Counterparts.** Each party represents and warrants that it has the full power and authority to execute this Amendment. This Amendment may be executed in counterparts and/or electronically (e.g., via DocuSign), each of which shall be deemed an original and all of which shall constitute one instrument. A faxed, .pdf, scanned or other electronic copy of the fully executed original version of this Amendment shall have the same legal effect as an executed original for all purposes.

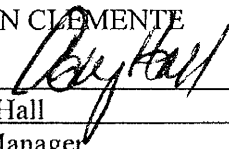
**IN WITNESS WHEREOF**, the parties hereto have by their respective officers thereunto duly authorized caused this Amendment to be executed on the dates set forth below, effective on the Amendment Date.

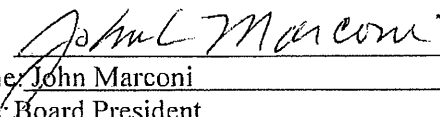
SANTA MARGARITA WATER DISTRICT  
By:   
Name: Frank Ury  
Title: Board Member  
Date: \_\_\_\_\_

MOULTON NIGUEL WATER DISTRICT  
By:   
Name: Duane Cave  
Title: Board President  
Date: \_\_\_\_\_

CITY OF LAGUNA BEACH  
By:   
Name: Dave Kiff  
Title: City Manager  
Date: 12/9/24

SOUTH COAST WATER DISTRICT  
By:   
Name: Douglas Erdman  
Title: Board President  
Date: \_\_\_\_\_

CITY OF SAN CLEMENTE  
By:   
Name: Andy Hall  
Title: City Manager  
Date: \_\_\_\_\_

EMERALD BAY SERVICE DISTRICT  
By:   
Name: John Marconi  
Title: Board President  
Date: 12-9-2024

EL TORO WATER DISTRICT

By: Mark Monin  
Name: Mark Monin \_\_\_\_\_  
Title: Board President \_\_\_\_\_  
Date: \_\_\_\_\_

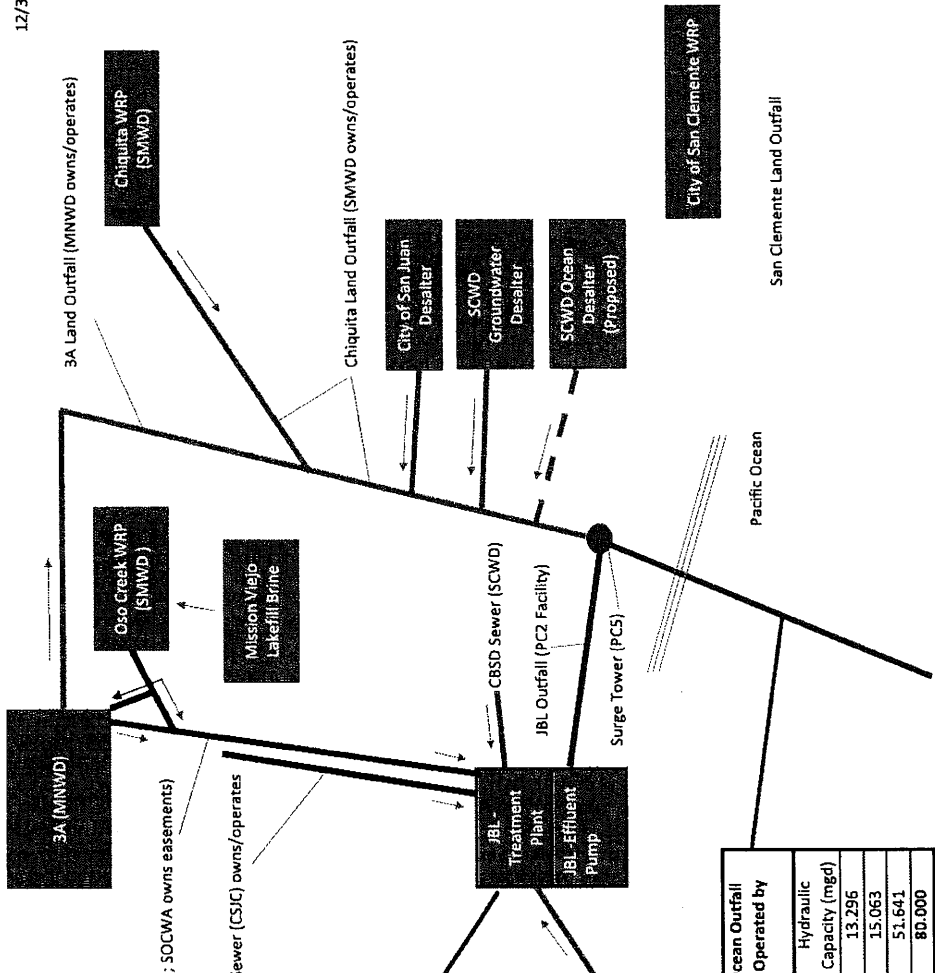
**EXHIBIT 1**

**SUMMARY OF CAPACITY RIGHTS FOR SOCWA PROJECT COMMITTEES 2, 5, 24,  
15, AND 21**



SOCWA SICOW System Summary – Project Committees 2 & 5

12/3/2024



PC 2 - SOCWA JBL Capacity Summary (Owned and Operated by SOCWA)

Agency	Liquids (mgd)	Solids (mgd)(1)	Solids (lbs)(1)	Common-5 (%)	Common-1 (%)
SCWD	6.75	7.70	16,055	41.62%	51.97%
SMWD	6.25	10.80	22,518	58.38%	48.08%
<b>Total</b>	<b>13.00</b>	<b>18.50</b>	<b>38,573</b>	<b>100.00%</b>	<b>100.00%</b>

PC 5 - SOCWA San Juan Creek Ocean Outfall Capacity Summary (Owned and Operated by SOCWA)

Agency	Ownership Percent (%)	Hydraulic Capacity (mgd)
CSC	16.620	13,296
SCWD	18.829	15,063
SMWD	64.551	51,641
<b>Total</b>	<b>100.000</b>	<b>80,000</b>

**SOCWA ACOO System Summary: Project Committees 15, 21 & 24**

12/3/2024

**PC 21 - Effluent Transmission Main (ETM)  
Capacity Summary Reach B/C/D (Owned and Maintained by SOCWA)**

Agency	Hydraulic Capacity (mgd)	Ownership Percent (%)
ETWD	15	100%
<b>Total</b>	<b>15</b>	<b>100%</b>

**ETWD**

Los Alisos Water Reclamation Plant (Owned and Operated by IRWD) and ETWD Plant (owned and operated by ETWD)

ETM Reach A (owned and operated by ETWD)

**PC 21 - Effluent Transmission Main (ETM)  
Capacity Summary Reach E (Owned and Maintained by SOCWA)**

Agency	Hydraulic Capacity (mgd)	Ownership Percent (%)
ETWD	32.2	100.00%
<b>Total</b>	<b>32.2</b>	<b>100.00%</b>

**Joint Regional Treatment Plant (MNWD Facility)**

**PC 24 - Allso Creek Ocean Outfall (ACOO)  
Capacity Summary (Owned and Operated by SOCWA)**

Agency	Hydraulic Capacity (mgd)	Ownership Percent (%)
CLB	5.500	11.000%
EBSD	0.390	0.780%
ETWD	37.955	75.910%
SCWD	6.155	12.310%
<b>Total</b>	<b>50.000</b>	<b>100.000%</b>

**CTP and AWT**

**PC 15 - Coastal Treatment Plant Capacity Summary (CTP Owned and Operated by SOCWA; AWT is owned by SCWD but operated by SOCWA.)**

Agencies	Liquids (mgd)	AWT (%)	Common (%)
CLB	3.64	0%	54.30%
EBSD	0.20	0%	2.99%
SCWD	2.86	100%	42.70%
<b>Total</b>	<b>6.70</b>	<b>100%</b>	<b>99.99%</b>

Pacific Ocean

**JOINT EXERCISE OF POWERS AGREEMENT  
CREATING SOUTH ORANGE COUNTY  
WASTEWATER AUTHORITY  
Orange County, California  
(SOCWA)**

**AND TERMINATING ALISO WATER MANAGEMENT AGENCY,  
SOUTH EAST REGIONAL RECLAMATION AUTHORITY,  
SOUTH ORANGE COUNTY RECLAMATION AUTHORITY**

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**JOINT EXERCISE OF POWERS AGREEMENT  
CREATING SOUTH ORANGE COUNTY  
WASTEWATER AUTHORITY  
Orange County, California  
(SOCWA)**

**AND TERMINATING ALISO WATER MANAGEMENT AGENCY,  
SOUTH EAST REGIONAL RECLAMATION AUTHORITY,  
SOUTH ORANGE COUNTY RECLAMATION AUTHORITY**

THIS AGREEMENT is made and entered into as of the 1<sup>st</sup> day of July, 2001, to be effective on the Effective Date (as hereinafter defined) by and between CITY OF LAGUNA BEACH (CLB), CITY OF SAN CLEMENTE (CSC), CITY OF SAN JUAN CAPISTRANO / CAPISTRANO VALLEY WATER DISTRICT (SJC/CVWD), EL TORO WATER DISTRICT (ETWD), EMERALD BAY SERVICES DISTRICT (EBSB), IRVINE RANCH WATER DISTRICT (IRWD), MOULTON NIGUEL WATER DISTRICT (MNWD), SANTA MARGARITA WATER DISTRICT (SMWD), SOUTH COAST WATER DISTRICT (SCWD), and TRABUCO CANYON WATER DISTRICT (TCWD), which are water purveyors and/or wastewater service providers within the San Juan Creek and/or Aliso Creek watersheds and other watershed areas within the jurisdiction of the California Regional Water Quality Control Board, San Diego Region ("Region 9") and (in some cases) Santa Ana Region ("Region 8"). The public entities listed above may be referred to in this Agreement collectively or in combination(s) as "parties" or "Members Agencies" or individually as "party" or a "Member Agency". Capitalized terms not otherwise defined shall have the definitions set forth in Section I.

## RECITALS

A. CSC, MNWD, SCWD, SJC/CVWD and SMWD are Member Agencies of South East Regional Reclamation Authority (SERRA) formed under and pursuant to Government Code Section 6500 *et seq.* and that certain joint powers agreement dated March 9, 1970, entitled "Joint Exercise of Powers Agreement Creating South East Regional Reclamation Authority, Orange County, California (SERRA)" as thereafter amended from time-to-time ("SERRA Joint Powers Agreement").

B. CLB, EBSD, ETWD, IRWD (as the consolidated successor to Los Alisos Water District), MNWD and SCWD are members of Aliso Water Management Agency (AWMA) formed under and pursuant to Government Code Section 6500 *et seq.* and that certain joint powers agreement dated March 1, 1972, entitled "Joint Exercise of Powers Agreement Creating Aliso Water Management Agency, Orange County, California (AWMA)," as thereafter amended from time-to-time ("AWMA Joint Powers Agreement").

C. ETWD, IRWD (as the consolidated successor to IRWD and Los Alisos Water District), MNWD, SJC/CVWD, SCWD, SMWD and TCWD are members of South Orange County Reclamation Authority (SOCRA) formed under and pursuant to Government Code Section 6500 *et seq.* and that certain joint powers agreement dated November 29, 1994, entitled "Amended and Restated Joint Exercise of Powers Agreement Creating South Orange County Reclamation Authority," as thereafter amended from time-to-time ("SOCRA Joint Powers Agreement").

D. CVWD is currently a subsidiary district of SJC, with the SJC City Council as its legislative body. Pursuant to Orange County Local Agency Formation Commission (LAFCO)



Reorganization R096-15, SJC will formally merge with CVWD upon the completion of certain terms and conditions under LAFCO Resolution No. R096-15. This Agreement provides for the membership of SJC/CVWD in Authority as a single Member Agency and recognizes SJC as the successor SOCRA member to CVWD and to all of CVWD's rights, obligations, agreements, liabilities, and all other duties previously held by CVWD in its capacity as a member of SOCRA. SJC hereby assumes all of CVWD's rights, obligations, agreements, liabilities and all other duties previously held by CVWD in its capacity as a member of SOCRA.

E. Effective December 31, 2000, IRWD is the successor-in-interest to Los Alisos Water District (LAWD), a former member of AWMA, and to IRWD and LAWD, former members of SOCRA, pursuant to both Orange County Local Agency Formation Commission Resolution DC 00-05 adopted on September 13, 2000, which approved the consolidation of LAWD and IRWD, and Orange County Board of Supervisors Resolution 00-399 adopted on October 24, 2000, which ordered the consolidation of LAWD with IRWD, leaving IRWD as the consolidated successor district. The boards of directors of AWMA and SOCRA have adopted, respectively, AWMA Resolution No. 2001- 01 and SOCRA Resolution No. 2001-01 formally recognizing IRWD as the successor AWMA member to LAWD and as the successor SOCRA member to LAWD and IRWD, and to all of the rights, obligations, agreements, liabilities and all other duties previously held by LAWD in its capacity as a member of AWMA and by LAWD and IRWD in their capacities as members of SOCRA.

F. AWMA, SERRA and SOCRA (collectively the "JPAs") currently share in the administrative support costs necessary to administer the JPAs, including the services of the General Manager of the JPAs and the administrative support staff, as well as the joint use of administrative building facilities for the operation of the JPAs, pursuant to that certain agreement

entitled "Agreement Among the South East Regional Reclamation Authority, Aliso Water Management Agency and South Orange County Reclamation Authority Establishing Procedures for Shared Staff Resources", recently amended on November 2, 2000, to provide for the consolidation of administrative facilities operations at the SERRA treatment plant in the near future.

G. In accordance with extensive reviews and reports initiated by the JPAs over the past five years, including a 1996 administrative and management review study by Griffith & Associates, and the 1999 report entitled "Evaluation of the Future Policy Direction for the AWMA/SERRA Organization" prepared by the JPAs' General Manager in accordance with board direction, the boards of directors of the JPAs desire at this time to formally consolidate the JPAs into one joint powers authority in the interests of furthering a regional approach to wastewater treatment and reclamation, and additional operational and administrative efficiencies, subject to the unanimous approval by the respective Member Agencies of the termination of AWMA, SERRA and SOCRA concurrently with the formation of a consolidated joint powers agency by execution of this Agreement.

H. Each of the parties hereto has territory within or related to the San Juan Creek and/or Aliso Creek watershed areas or other watershed areas within the Orange County portion of Region 9 and/or Region 8 as set forth and depicted on Exhibit A to this Agreement including the designation thereon of the existing boundaries of the parties. There is a continued need for efficiencies in the coordinated regional planning of wastewater disposal, reclamation and total water management, as well as of production, transmission, storage and distribution of Nondomestic Water and a coordinated effort to facilitate and expedite new and increased use of Nondomestic Water, within the area set forth in Exhibit A. Additionally, the continued

implementation of a primary user permit for use of Recycled Water and to process associated modifications to water quality objectives and beneficial use designations for groundwaters and surface waters, as necessary, for implementation of reclamation plans within certain of the area designated in Exhibit A and also within Region 9 can most efficiently be achieved through the continued cooperative action of the parties operating through a consolidated joint exercise of powers agency in lieu of all three JPAs.

I. The parties have and possess one or more of the following powers:

(1) the power and authorization to acquire and construct facilities for the collection, transmission, treatment and disposal of sewage and other waste products, including the reclamation of wastewater for the benefit of the lands and inhabitants within their respective boundaries;

(2) the power and authorization to acquire and construct facilities for the production, treatment, transmission, storage and distribution of Nondomestic Water for the benefit of the lands and inhabitants within their respective boundaries; and

(3) the power and authorization to acquire and construct facilities to supply the inhabitants and lands within their respective boundaries with potable and recycled water for irrigation, domestic and municipal purposes, inclusive of providing for the development and conservation of water supplies.

J. The parties own and operate or have capacity rights in wastewater treatment and/or reclamation plants under the jurisdiction of Region 9, and/or utilize groundwaters or surface waters in accordance with basin plans approved by Region 9. Additionally, ETWD and IRWD each include within their respective boundaries watershed areas within the jurisdiction of Region 8. The parties previously undertook regional wastewater disposal and reclamation

programs, as well as total water management plans within the areas designated in Exhibit A through cooperative action by operating through the JPAs. The groundwaters and surface waters are used in accordance with certain water quality objectives and beneficial use designations set forth in basin plans approved by Region 9 or Region 8.

K. The parties previously constructed, with the assistance of federal and State Clean Water Act grant funding, and now operate and maintain certain wastewater treatment and reclamation plants through the AWMA/SERRA organization. In addition to ongoing capital improvements for such plants and other AWMA/SERRA facilities, the parties are undertaking the planning and construction of facilities for the production and utilization of Nondomestic Water from the wastewater treatment and reclamation plants and/or through other means with available groundwaters and/or surface waters, which include additional treatment, production, transmission, storage, pumping and distribution facilities. The governing body of Region 9 previously supported and encouraged the establishment of SOCRA for the purposes of holding a single primary producer/user permit for the San Juan Creek and Aliso Creek watersheds, and other watershed areas within the Orange County portion of Region 9, amending the associated basin plans in conjunction with implementation of recycled water plans for those areas and coordinating and regulating the use of Nondomestic Water within such areas. SOCRA administered compliance with all regulations, orders and permits issued from time to time relative to Recycled Water previously performed by Region 9, and implemented amendments to basin plans under the jurisdiction of Region 9 in order to provide for uniform water quality objectives and Nondomestic Water use requirements.

L. Each of the parties is authorized to contract with each other for the joint exercise of any common power under the Act. The parties desire to form a single joint powers authority

as a successor-in-interest to AWMA, SERRA and SOCRA for all purposes by execution of this Agreement, subject to the terms and conditions set forth in this Agreement. Generally, the terms and conditions include the continuation of all existing AWMA, SERRA and SOCRA project committees, and corresponding project agreements, including but not limited to the rights, duties and liabilities of the respective Member Agencies under all such project committees and agreements. Additionally, plans, benefits, permits, contracts, policies and all other rights and legal obligations of the JPAs will be assumed by the successor joint powers authority in the manner provided in this Agreement as a means to effecting the consolidation without adverse impacts to the continuous facilities operations of the JPAs.

In consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

## AGREEMENT

### **I. DEFINITIONS**

1.1 Definitions. For the purpose of this Agreement, the following words shall have the following meanings:

- (a) "Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as now or hereinafter amended.
- (b) "Agreement" means this joint exercise of powers agreement.
- (c) "Authority" means the SOUTH ORANGE COUNTY WASTEWATER AUTHORITY formed pursuant to this Agreement.

- (d) "Board" or "Board of Directors" means the governing body of the Authority.
- (e) "Bond Law" means Article 2 of the Act (commencing with Section 6540 of the California Government Code), the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 of the Act (commencing with Section 6584 of the California Government Code), the Mello-Roos Community Facilities Act of 1982 (commencing with Section 53311 of the California Government Code), as any of the aforementioned statutes are now or hereafter amended , or any other law presently or hereafter legally available for use by the Authority in the authorization and issuance of Bonds to finance or refinance the acquisition, construction, renovation, leasing, subleasing, maintenance or operation of Projects authorized hereunder.
- (f) "Bonds" means bonds, notes or other obligations of the Authority issued pursuant to the Bond Law or pursuant to any other provision of law which may be used by the Authority for the authorization and issuance of bonds, notes or other obligations.
- (g) "Effective Date" means July 1, 2001; provided, the Effective Date with respect to the termination of AWMA, SERRA and SOCRA as provided for in Section II may be a later date for certain limited purposes as may be required.
- (h) "Fiscal Year" means July 1st to and including the following June 30<sup>th</sup>.

- (i) "General Budget" means the approved budget applicable to the expenses of administration of the Authority.
- (j) "Member Agency" or "Member" means each of the parties which become a signatory to this Agreement, accepting the rights and obligations of the Authority hereunder, including any public entity executing an addendum to this Agreement as a Member Agency as hereinafter provided.
- (k) "Nondomestic Water" means Recycled Water (as defined below), groundwater, surface water and any other nonpotable water produced and or utilized by the parties.
- (l) "Participating Director" means the director representing a Participating Member Agency.
- (m) "Participating Member Agency or Agencies" means a Member Agency(ies) that has or will acquire rights and assume obligations in connection with a particular Project.
- (n) "Project" means the facilities owned, constructed or operated and maintained by the Authority pursuant to the project budget procedure.
- (o) "Recycled Water" means secondary or higher treated effluent reclaimed under and pursuant to Title 22 requirements of the California Code of Regulations (or successor provisions) and used for irrigation and other purposes in the Aliso Creek, San Juan Creek watersheds or other watershed areas.

As used in this Agreement, words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise

indicates, words importing the singular shall include the plural and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

## II TERMINATION OF THE JPAs

2.1 Rescission . Except as may be necessary to wind up the affairs of AWMA, SERRA and SOCRRA in order to arrange for the orderly transition to the Authority of the JPAs' rights, duties and liabilities as more specifically detailed in this Agreement, or to otherwise accomplish the implementation of current employee plans or benefits, or other programs,

(a) pursuant to Sections 33 and 34 of the AWMA Joint Powers Agreement, CLB, ETWD, EBSD, IRWD, MNWD and SCWD individually and collectively rescind the AWMA Joint Powers Agreement and thereby terminate AWMA, such rescission and termination to be effective on the Effective Date, subject to the above-referenced proviso as to winding up AWMA affairs and subject to all other terms and conditions set forth in this Agreement and provided further, that the project committee agreements of AWMA shall not be terminated and shall be transferred automatically to the Authority on the Effective Date;

(b) pursuant to Sections 33 and 34 of the SERRA Joint Powers Agreement, CSC, SJC/CVWD, MNWD, SMWD and SCWD individually and collectively rescind the SERRA Joint Powers Agreement and thereby terminate SERRA, such rescission and termination to be effective on the Effective Date, subject to the above-referenced proviso as to winding up SERRA affairs and subject to all other terms and conditions set forth in this Agreement and provided further, that the project committee agreements of SERRA shall not be terminated and shall be transferred automatically to the Authority on the Effective Date; and



(c) pursuant to Sections 33 and 34 of the SOCRA Joint Powers Agreement, CVWD/SJC, ETWD, IRWD, MNWD, SMWD, SCWD and TCWD individually and collectively rescind the SOCRA Joint Powers Agreement and thereby terminate SOCRA, such rescission and termination to be effective on the Effective Date, subject to the above-referenced proviso as to winding up SOCRA affairs and subject to all other terms and conditions set forth in this Agreement and provided further, that the project committee agreements of SOCRA shall not be terminated and shall be transferred automatically to the Authority on the Effective Date.

### III. PURPOSE AND POWERS OF CONSOLIDATED JPA

3.1 Agency Created. A public entity to be known as the "SOUTH ORANGE COUNTY WASTEWATER AUTHORITY" (the "Authority") is hereby formed by the parties, such formation to be effective the Effective Date, and deemed to occur simultaneously with the termination of AWMA, SERRA and SOCRA. The Authority is formed by this Agreement pursuant to the provisions of the Act and the Bond Law. The Authority shall be a public entity separate from the parties.

3.2 Purpose of the Agreement; Common Powers to be Exercised. Each party to the Agreement has the common power to do the following:

- (a) Plan for, acquire, construct, maintain, repair, manage, operate and control facilities for the collection, transmission, treatment and disposal of wastewater, the reclamation and use of wastewater for any beneficial purposes, and the production, transmission, storage and distribution of Nondomestic Water.
- (b) Plan for, acquire, construct, maintain, repair, manage and operate and control facilities to supply the inhabitants and lands within their respective

boundaries with water for irrigation, domestic and municipal purposes, and in carrying out such purposes to provide for the development and conservation of water supplies.

- (c) Develop planning objectives and facilities as necessary to recharge groundwaters and utilize live-stream discharge opportunities.
- (d) Implement waste discharge requirements and basin plan amendments, acquire National Pollutant Discharge Elimination System ("NPDES") permits and primary producer/user permits for Recycled Water and provide for the development and conservation of potable water relating thereto.
- (e) Establish a Nondomestic Water management program for the area within Authority and a mechanism to interface with Region 9 and Region 8.

The purpose of this Agreement is to jointly exercise the foregoing common powers in the manner set forth in this Agreement.

3.3 Specific Powers. The Authority shall have the power in its own name to do any of the following, subject to the limitations otherwise herein set forth:

- (a) To exercise jointly the common powers of the Members Agencies in studying and planning ways and means to provide a reasonable program for wastewater disposal and reclamation, as well as a water management program for the Aliso Creek and San Juan Creek watersheds and related areas;

- (b) To exercise jointly the common powers of the Member Agencies in planning and implementing a reasonable program for management and use of Nondomestic Water, as practicable;
- (c) To make and enter into contracts, including contracts for the construction of public works, in the same manner as a California water district, Section 34000 *et seq.* of the California Water Code;
- (d) To contract for the services of engineers, attorneys, planners, financial consultants, and separate and apart therefrom to employ such other persons, as it deems necessary;
- (e) To acquire, construct, manage, maintain and operate any buildings, facilities, works, or improvements;
- (f) To acquire, hold and dispose of real and other property;
- (g) To issue Bonds and otherwise to incur debts, liabilities or obligations, subject to applicable limitations;
- (h) To sue and be sued in its own name;
- (i) To apply for and hold permits, including NPDES permits and primary producer and/or user permit or other similar permit for production or use of Recycled Water and to provide for the implementation and enforcement of permit conditions;
- (j) To facilitate or undertake work designed to result in basin plan amendments in conjunction with formulating a regional reclamation plan and the use of Nondomestic Water;

- (k) To apply for appropriate grants or loans or other available financing programs under any federal, state or local programs for assistance in developing or accomplishing any of the programs or purposes specified in this Agreement; and
- (l) To exercise any and all other powers as may be provided in the Act or in the Bond Law.

3.4 Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Act and in the Bond Law, and, except for those powers set forth in the Bond Law, shall be subject (in accordance with Section 6509 of the Act) to the restrictions upon the manner of exercising such powers that are imposed upon a California water district (see, Section 34000 *et seq.* of the California Water Code) in the exercise of similar powers and to any restrictions set forth elsewhere in this Agreement.

3.5 Authority as Successor to JPAs. Except as more specifically set forth herein as to certain rights and obligations, as of the Effective Date Authority shall be deemed the successor-in-interest to AWMA, SERRA and SOCRA for all purposes, and shall assume all assets, obligations, agreements and liabilities of the JPAs, including but not limited to:

- (a) project committees and project committee agreements; contracts; NPDES permits and Recycled Water primary user permits; interagency agreements with the Member Agencies as well as other public entities; operating and encroachment permits; licenses and leases; federal and/or state grant contracts or loans; policies, resolutions, rules and regulations, ordinances; and joint powers memberships/joint powers agreements, except for the joint powers agreements expressly terminated in Section II hereof;

- (b) the 1978 and 1979 AWMA Lease Revenue Bonds, and the 1998 AWMA Refunding Lease Revenue Bonds;
- (c) the AWMA and SERRA administrative, wastewater treatment and disposal, potable water, Recycled Water, Nondomestic Water and sewer facilities and capacities (as applicable) and associated lands and rights-of-way;
- (d) personal property, including vehicles, office furniture equipment and documents; and
- (e) capital, operating, reserve, investment, and all other funds and cash balances.

3.6 Adoption of Rules, Regulations, Policies. Except as otherwise specified in this Agreement, all the AWMA, SERRA and SOCRA resolutions, policies, ordinances and rules and regulations shall be deemed adopted by Authority and the Board of Directors as of the Effective Date; provided, where there is conflict or inconsistency between such documents necessitating a resolution between inconsistent or conflicting terms, the parties shall take appropriate action so as to retain as nearly as practicable the substance of the policies, rules, etc., effecting each JPA prior to the Effective Date, unless otherwise agreed by the parties.

3.7 Personnel. All employees of AWMA and SERRA shall become employees of Authority as of the Effective Date. The AWMA/SERRA/SOCRA General Manager shall be the General Manager of Authority upon the Effective Date.

The current Memorandum of Understanding effective through June 30, 2001, by and between AWMA/SERRA and the AWMA/SERRA Employees Association, as well as the

AWMA/SERRA Personnel Policy, shall each be deemed assumed and adopted, respectively, by Authority as of the Effective Date.

The foregoing terms are set forth to effectuate the orderly succession of Authority to the JPAs and are not for the benefit of, nor shall such terms be enforceable by, any third party not a party to this Agreement.

3.8 Project Committees; Agreements. Notwithstanding the foregoing succession-in-interest by Authority to the JPAs, and except as may be agreed upon by the parties after the Effective Date, the rights, duties, obligations and liabilities of the parties (including any acknowledged successors to such parties) under and pursuant to the JPAs' project committees and project agreements, and any other agreements and budgetary procedures arising out of or in connection with the project committee structure or the JPAs generally (except the joint powers agreements terminated under Section II hereof), including but not limited to capacity rights and liabilities, shall remain intact and unchanged by the consolidation of the JPAs, the formation of Authority and its' assumption of the aforesaid obligations, agreements, liabilities and assets, or the execution of this Agreement.

#### IV. ORGANIZATION

4.1 Membership. The Members of the Authority shall be each public entity which has executed or hereafter executes this Agreement, or any addendum, amendment or supplement thereto, and which has not, pursuant to the provisions hereof, withdrawn therefrom.

4.2 Names. The names and addresses of the Member Agencies at any time shall be shown on Exhibit B, attached hereto, as amended or supplemented from time to time.

4.3 Designation of Directors. Within thirty (30) days after the execution of this Agreement, each Member Agency shall designate and appoint, by resolution of its governing

body, one person to act as its director on the Board. Each Member Agency shall also appoint one alternate director and may appoint a second alternate director, whose name(s) shall be on file with the Authority and who may assume all rights and duties of the absent director representing the appointing Member Agency. Each director and alternate(s) shall hold office from the first meeting of the Board after his appointment by the governing body which he represents until his successor is selected. Directors and alternates shall serve at the pleasure of the governing board of the appointing Member Agency and may be removed at any time, with or without cause, in the sole discretion of said Member Agency's governing board. A director or alternate may be (but is not required to be) a member of the governing board of the appointing Members. A director may receive such compensation from the Authority for his services as may from time to time be established by the Board, or, in the alternative at the election of any individual Member Agency, a director may be compensated directly by such Member Agency. A director may be reimbursed by the Authority for expenses incurred by such director in the conduct of the business of the Authority.

4.4 Principal Office. The principal office of the Authority shall be established by the Board. The Board is hereby granted full power and authority to change said principal office from one location to another in the County of Orange. Any change shall be noted by the Secretary of the Authority in appropriate documents of the Authority but shall not be considered an amendment to this Agreement.

4.5 Meetings. The Board shall meet at the principal office of the Authority or at such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board, and a copy of such resolution shall be furnished to each party hereto. Any meeting of a project committee shall be deemed to

be a meeting of the Authority and all such meetings of the Authority shall be open to all directors. Regular, adjourned and special meetings of the Authority, including project committee meetings, shall be called and held in the manner as provided in Chapter 9, Division 2, Title 5 of the Government Code of the State of California (commencing at Section 54950).

4.6 Quorum. Two-thirds (2/3) of the Board of Directors shall constitute a quorum for the purposes of the transaction of business relating to the Authority. A majority of the Participating Directors acting on behalf of a project committee, but not less than two (2) (subject to Section 8.1.1 hereof), shall constitute a quorum for the purposes of the transaction of business of the Authority on matters relating to each Project in which not all of the Member Agencies are participating.

4.7 Voting Powers and Limitations Thereon. All of the powers and authority of the Authority shall be exercised by the Board, subject, however, to the reserved right of the Member Agencies as herein set forth. Unless otherwise provided herein, each director or Participating Director shall be entitled to one vote, and a vote of the majority of the Board qualified to vote may adopt any motion, resolution, or order and take any other action which they deem appropriate to carry forward the objectives of the Authority or of a project committee.

4.8 Minutes. The Secretary of the Authority shall cause to be kept minutes of regular, adjourned regular and special meetings of the Board and project committees, and shall cause a copy of the minutes to be forwarded to each director and to each of the Member Agencies.

4.9 Rules. The Board may adopt, from time to time, such rules and regulations for the conduct of its affairs as may be required.

4.10 Vote or Assent of Members. The vote, assent, or approval of Member Agencies in any matter requiring such vote, assent, or approval hereunder shall be evidenced by a certified



copy of the resolution of the governing board of such Member filed with the Authority, or a certified copy of minutes evidencing such vote, assent or approval.

4.11 Officers. There shall be selected from the membership of the Board a Chairman and a Vice-Chairman. The Board shall appoint a Secretary, who may be a Director. The Chairman, Vice-Chairman and Secretary shall hold office for a period of one year commencing July 1st of each Fiscal Year or until their respective successors are duly qualified; provided, however, the first Chairman, Vice-Chairman and Secretary appointed shall hold office from the date of appointment to June 30<sup>th</sup> of the ensuing Fiscal Year.

The General Manager of the Authority shall serve as the Treasurer of the Authority, and shall direct the deposit and custody of all money of the Authority from whatever source in accordance with applicable policies approved by the Board. The General Manager of the Authority shall also be the Auditor of the Authority and shall draw all warrants and pay demands against the Authority approved by the Board. The Treasurer/Auditor hereby designated may be changed by the consent of a majority of the directors. As provided in Section 6505.6 of the Act, the Treasurer/ Auditor shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

The Board shall have the power to appoint such additional officers as it deems necessary. Any officer, employee or agent of the Board may also be an officer, employee or agent of any of the Member Agencies. The appointment by the Board of such a person shall be evidence that the two positions are compatible. The public officer or officers or persons who have charge of, handle, or have any access to any property of the Authority shall be bonded and the amount of their bond shall be designated and fixed in the applicable budget.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activity of officers, agents, or employees of any of the Member Agencies when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed, by reason of their employment by the Board, to be employed by any of the Member Agencies or, by reason of their employment by the Board, to be subject to any of the requirements of such Member Agencies.

## V. PLANNING

5.1 Planning Policy. In keeping with the purpose of this Agreement, the Member Agencies hereby authorize and direct the Board and Authority to undertake, from time-to-time, studies and planning relative to the Aliso Creek and San Juan Creek watersheds and related areas as may be necessary to provide for the collection, treatment, reclamation and total disposal of sewage of each of the Member Agencies, as well as for integrated water management plans for the areas within such watersheds and related areas. The specific objectives of the studies shall be to obtain and implement regional solutions to wastewater disposal and reclamation problems. To achieve this objective, the studies may include proposals for the construction of trunk and interceptor sewers, treatment plants, and outfalls for final disposal, as well as facilities for reclamation and water management within the watershed areas. Any such studies shall consider all phases of the maintenance and operation of regional facilities and the allocation to the benefitted Member Agencies of any maintenance and operating costs. In addition, the study may include the reclamation of sewage for any and all uses including, but not limited to, water for domestic, agricultural and recreational uses. The study or studies shall also concentrate on the

methods of financing any construction proposed and the allocation of construction costs among the benefitted members.

The Member Agencies hereby authorize and direct the Board and the Authority to undertake, from time-to-time, studies and planning relative to the watersheds and related areas, as may be necessary, to provide for the production, transmission, storage and distribution of Nondomestic Water by Authority as well as an integrated plan for use of Nondomestic Water by Authority, including any necessary amendments to basin plans of Region 9 and Region 8.

## **VI. BUDGETS AND PAYMENTS**

6.1 General Budget. Within sixty (60) days after the first meeting of the Board, a "General Budget" shall be adopted for the balance of the Fiscal Year and the ensuing Fiscal Year. The initial General Budget and each succeeding General Budget shall include the following: (a) the general administrative expenses of the Agency to be incurred during the period covered by the General Budget; and (b) the allocation among the Member Agencies of the amounts necessary to cover the General Budget expenditures. If the General Budget provides an allocation to the Member Agencies on some basis other than equal amounts, the General Budget must be approved by the unanimous consent of all of the Member Agencies. After the first full Fiscal Year, at or prior to each June meeting of the Board, a General Budget shall be adopted for the ensuing Fiscal Year.

6.2 Project Budgets. In addition to the General Budget, the Board may budget at any time for the study, implementation or construction of any specific Project proposed to be constructed by the Authority ("Project Budget"). Each Project Budget shall include at a minimum the following:

- (a) the administrative expenses allocated to the project during planning and construction;
- (b) the cost of studies and planning for the Project;
- (c) the cost of the engineering and construction of the Project;
- (d) the allocation among the Participating Member Agencies of the total Project costs;
- (e) an estimate of annual maintenance and operating expenses; and
- (f) a formula for allocating annual maintenance and operating expenses.

After the Board approves a Project Budget, it shall be submitted to each Member Agency which has expressed a desire to participate and is to be obligated for the payment of any amount thereunder. The Authority shall not incur any expense for the Project until the Project Budget has been approved by the governing body of each of the proposed Participating Member Agencies. In the event a Project Budget is not approved, the cost of preparing the budget shall be divided among the proposed Participating Member Agencies in accordance with the proposed allocation of the total Project costs.

6.3 Operation and Maintenance Budgets. For each Project operated and maintained by the Authority, a operations and maintenance budget ("O & M Budget") shall be prepared and approved at or prior to each June meeting of the Board for the ensuing Fiscal Year. Said budget shall include the following:

- (a) the estimated expenses of operating the Project;
- (b) the estimated expenses of maintaining the Project;
- (c) an estimate of income from operations, if any; and

- (d) the allocation of operation and maintenance expenses among the Participating Member Agencies in accordance with the formula set forth in the approved Project Budget.

An O & M Budget must be approved by two-thirds (2/3) of the directors or by two-thirds (2/3) of the Participating Directors if the budget affects less than the entire membership. Copies of each O & M Budget shall be mailed to each Participating Member Agency within thirty (30) days of its adoption.

6.3.1 O & M Costs/Capital Components. It is agreed as follows: (a) all operations and maintenance costs directly related to the use of the Project facilities, including necessary improvements, repairs, adjustments, replacements and incidental accounting and administrative costs in connection therewith, shall be paid by each Member Agency using the Project facilities in proportion to its use; and (b) the maintenance costs not directly related to use of the Project facilities, including necessary capital improvements, repairs, adjustments, replacements and extraordinary or standby maintenance, and incidental accounting and administrative costs in connection therewith, shall be paid by the Participating Member Agencies in proportion to their respective percentage share of the ownership of capacity in said Project facilities. Any change of the foregoing may be made by the unanimous consent of all of the Participating Member Agencies.

6.4 Effect of Failure of Approval of Budget. If, after one hundred twenty (120) days from the first submission of a General Budget or Project Budget, the budget fails to attain the required vote, the consenting Directors, in the case of the General Budget, or the Participating Directors, in the case of a Project Budget, may treat the refusal of the representative director to approve the respective budget as a request for a withdrawal from the Authority, in the case of

failure to approve a General Budget; or as a request from withdrawal from the Project, but not from the Authority, in the case of failure to approve a Project Budget, by such Participating Director; the remaining Member Agencies may thereafter, upon giving the non-consenting Member Agency thirty (30) days prior written notice, proceed with the adoption of a revised General or Project Budget, and the non-consenting member shall not be obligated for future debts of the Authority or of the Project, as the case may be, nor shall it receive any benefits therefrom. The foregoing is subject to the provisions of Section 12.3 of this Agreement.

6.5 Expenditures Under Approved Budgets. All expenditures within the designations and limitations of an approved General, Project or O & M Budget shall be made on the authorization of a majority of the directors for General Budget expenditures, or of a majority of the directors of the Participating Member Agencies for Project Budget or O & M Budget expenditures. No expenditures in excess of those budgeted in the General Budget or in a Project Budget shall be made without the unanimous consent and approval of the directors representing the Member Agencies affected by the budget under consideration. No expenditures in excess of those budgeted in an O & M Budget shall be made without the consent and approval of two-thirds (2/3) of the directors representing the Member Agencies affected by the O & M Budget under consideration.

6.6 Payment of Amounts Due. Amounts required to be paid by any Member Agency or Participating Member Agency, shall be due and payable forty-five (45) days after receipt of billing therefor from the Authority.

6.7 Reimbursement of Funds. Grant funds or loan proceeds or other funding assistance received by the Authority from any federal, state, or local agency to pay for budgeted expenditures for which the Authority has received all or a portion of said funds from the Member

Agencies shall be proportionally paid to the respective Member Agencies to reimburse the members for the funds advanced to the Authority for the construction of the Project facilities for which such funding has been received.

## **VII. BOND FINANCING**

7.1 Financing Method. The Board shall have the power and authority to issue Bonds on behalf of the Authority pursuant to the Act or the Bond Law, for the purposes now or hereinafter provided for in this Agreement and as specifically set forth in Section III. Any election or referendum provided for in the Act or Bond Law shall be held in the jurisdictional area(s) of the Member Agency(ies) on whose behalf a financing is undertaken by Authority, unless otherwise provided by the Act or Bond Law. The voters voting on the Bonds shall be the resident registered voters as defined by the California Elections Code, or as otherwise provided by the Act or Bond Law.

## **VIII. PROJECT CONSTRUCTION**

8.1 Project Members. If it is determined that a proposed Project includes participation by less than all of the Member Agencies, the Participating Directors for each project shall constitute a subcommittee of the Board referred to as the “\_\_\_\_\_ Project Committee”. All actions by a project committee shall be deemed actions of the Authority and shall be taken in the name of the Authority, provided, only the Participating Member Agencies shall have rights and obligations in said Project as herein provided. The project committees of AWMA, SERRA and SOGRA shall retain their existing designations, or may be re-numbered, but shall in any case be deemed to be the project committees of the Authority automatically upon the Effective Date.

8.1.1 Project Committee of One Member. In the event that only one Participating Member Agency desires to take action in the name of the Authority and fund and

operate a Project, a project committee may be formed consisting of only one Member Agency; provided, however, that all other Member Agencies shall have a right to participate in any project, and further provided that in the event a project committee is formed consisting of only one Member Agency, the Board of Directors may, by majority vote of the directors, impose conditions upon the manner of taking action of such a project committee.

8.2 Acquisition and Construction of Projects. No project shall be acquired or constructed by the Authority without the unanimous consent of every Member Agency or, if it is a project of less than all of the Member Agencies, unanimous consent of all of the Participating Member Agencies. Approval of a project budget by all of the Participating Member Agencies shall constitute consent for the acquisition and construction of the Project. In the event any individual Participating Member Agency or combination of such agencies desire to modify, rehabilitate or otherwise improve the Project, and those Participating Member Agencies agree to pay all costs associated with the modifications, rehabilitations or other improvements, including but not limited to the costs of all necessary permits and regulatory approvals, as well as engineering and construction costs, such agency or agencies may proceed with the modifications or other improvements upon approval of a simple majority vote of all Participating Member Agencies. No Participating Member Agency shall unreasonably withhold or condition its approval of a Project modification, rehabilitation or improvement which is proposed to be wholly funded by other Participating Member Agencies.

## **IX. MAINTENANCE AND OPERATION OF FACILITIES**

9.1 Maintenance and Operation of Facilities. The Board, or the project committee, as the case may be, shall determine whether or not the Authority shall maintain and/or operate Project facilities. If the Authority is to maintain and/or operate Project facilities, it shall do so in



an efficient and economical manner, and in a manner not detrimental to the Participating Member Agencies. It is the intent of the parties that any Project may be maintained and operated in the name of the Authority although, as herein provided, a majority of the Participating Directors shall make all determinations of the Authority in connection therewith. If it is determined by the Participating Member Agencies that one or more of the Member Agencies shall maintain and/or operate Project facilities, the Participating Member Agencies shall, by written agreement, consent unanimously thereto.

#### **X. ACCOUNTING AND AUDITS**

10.1 Accounting Procedures. Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with those utilized by, the Controller of the State of California for special districts, or for other public entities as specified by the Act. The Authority's Auditor and Treasurer shall comply strictly with requirements of the Act governing joint powers agencies relative to such matters.

10.2 Audit. In accordance with Section 6505 of the Act, the records and accounts of the Authority shall be audited annually by an independent certified public accountant and copies of such other reports shall be filed with the State Controller, Orange County Auditor and each Member Agency within six (6) months of the end of the Fiscal Year under examination. Copies shall also be provided to persons or entities so requesting as required by the Act.

#### **XI. PROPERTY RIGHTS**

11.1 Project Facilities. All Project facilities constructed or acquired by the Authority shall be held in the name of the Authority for the benefit of the membership of the Authority in accordance with the terms of this Agreement. The cost and depreciation of all Project facilities so constructed or acquired shall be charged or accrue to the Participating Member Agencies in

proportion to each Member's agreed percentage of capacity rights in such Project facility and shall not be charged or accrue to the account of the Authority unless agreed to in writing by all Participating Member Agencies; provided, however, that depreciation of all facilities acquired or constructed pursuant to funds obtained through the State or federal government through the Clean Water Grant Program or through other State or federal financing programs shall be charged or accrued to the account of the Authority if required by such programs. Capacity rights in Project facilities shall be held for the benefit of the Participating Member Agencies in proportion to each such member's agreed percentage of capacity rights in such Project facility unless otherwise agreed to in writing by said Participating Member Agencies. It is the intent of the foregoing provision that the Authority shall not acquire any unallocated capacity rights in any Project facility for disposal or use, except for the benefit of the Participating Member Agencies in proportion to their original percentage of capacity rights in said facility. Capacity rights may not be sold, leased or assigned to parties or entities other than Member Agencies, or between and among Member Agencies without the written consent of all Participating Member Agencies in a Project.

11.2 Distribution of Assets and Termination of Authority. To the extent that any funds (or property in lieu of funds) received from any Participating Member Agency are used for the acquisition or construction of Project facilities, the same shall be allocated annually on the books of the Authority to the credit of said contributing member. Upon termination or dissolution of the Authority herein created, the Project facilities and any funds in possession of the Authority at such time shall be distributed in kind or sold, and the proceeds thereof distributed to the Participating Member Agencies at the time of termination as their interests appear on the books of the Authority.

11.3 Liabilities. The parties to this Agreement do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 , as amended or supplemented. The parties further agree as follows: (i) pursuant to California Government Code Section 895.4, in the event the parties, under applicable law, are held liable for the acts or omissions of the Authority caused by a negligent or wrongful act or omission occurring in the performance of this Agreement; or (ii) in the case of any other liability incurred by the Authority during the course of its existence; then, with respect to (i) and (ii) the parties shall discharge any such liability from payments to be made to the Authority by each of the parties in proportion to each parties' contribution or approved participation in Project facilities of the Authority to which the liability is attributable, unless otherwise agreed; provided, the foregoing contribution from the Member Agencies shall be required only to the extent the Authority does not have insurance coverage for such liability. Each Member Agency shall indemnify, defend and hold harmless the other Member Agencies from any such liability in excess of its proportionate share. Except as provided herein, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the Member Agencies.

## **XII. FORMATION, TERM, TERMINATION, WITHDRAWAL**

12.1 Term. The Authority shall continue until this Agreement is rescinded or terminated as herein provided.

12.2 Rescission or Termination. This Agreement may be rescinded and the Authority terminated by written consent of all Member Agencies.

12.3 Withdrawal. Any Member Agency may withdraw from the Authority effective on the last day of a specified Fiscal Year by giving each of the Member Agencies written notice one

hundred and twenty (120) days prior to the end of a Fiscal Year which Fiscal Year shall be specified in said notice; provided, however, in the event the withdrawing Member Agency has any rights in any Project facility, or obligations to the Authority, said Member cannot sell, lease or transfer said rights or be relieved of its obligations, except its obligation to pay its share of operation and maintenance costs directly related to the use of the Project facilities, without the execution of a written agreement executed by it and all Member Agencies affected by such withdrawal. The Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawn Member. Upon termination, a withdrawn member will be treated like all other Members in regard to the provisions of Section 11.2 hereof.

### **XIII. GENERAL**

13.1 Admission of New Member Agencies. It is recognized that public entities, other than the signatories to this Agreement, may wish to participate in the Authority. Additional public entities may become Member Agencies of the Authority upon such terms and conditions as provided by the Board and the unanimous consent of each existing Member Agency of the Authority, evidenced by the execution of a written addendum to this Agreement, signed by all of the Member Agencies, including the additional Member Agency.

13.2 Insurance. The Member Agencies agree that the Authority shall obtain policies of general liability, workers' compensation and property insurance (as applicable) which shall remain in effect at all times the Authority remains in existence or is otherwise winding up its affairs pursuant to any termination thereof. The Authority shall name each of the Member Agencies and their officers, directors, employees and consultants as additional insureds under all such policies, including all excess policies.

13.3 Amendments. This Agreement may be amended only by the unanimous vote of all Member Agencies.

13.4 Notice. Any notice or instrument required to be given or delivered shall be validly given and made by depositing the same in any United States Post office, first class postage prepaid, addressed to the addresses of the Member Agencies as shown on Exhibit B, and shall be deemed to have been received by the party to whom the same is addressed at the expiration of seventy-two (72) hours after deposit of the same in the United States Post Office for transmission.

13.5 Arbitration. Any controversy or claim between any two or more parties to this Agreement, or between any such party or parties and the Authority, in respect to the Authority operations, or to any claims, disputes, demands, differences, controversies, or misunderstandings arising under, out of, or in relation to or in connection with this Agreement, or any breach thereof, shall be submitted to and determined by arbitration. To the extent not inconsistent herewith, the rules of the American Arbitration Association shall apply. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to every other party to this Agreement and the Authority. Such notice shall designate as "respondents" such other parties as the initiating party intends to have bound by and any award made therein. Any party not so designated but which desires to join in the arbitration may, within fifteen (15) days of service upon it of such notice, file a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within twenty (20) days of the service of the initial demand for arbitration, the American Arbitration Association, hereinafter referred to as "AAA" shall submit simultaneously to the initiating party and to all parties named as respondents or filing a response therein, an

identical list of names of persons chosen from the AAA National Panel of Arbitrators which persons shall be, to the extent possible, persons first in the field of wastewater disposal and reclamation as well as public law. Each party to the dispute shall have fifteen (15) days from the mailing date in which to cross off any names to which it objects, number the remaining names indicating the order of its preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree upon one of the persons named, or if an acceptable arbitrator is unable to act, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment of the arbitrator from other members of the panel without the submission of any additional list.

The arbitrator shall determine the rights of the parties in accordance with the law, and the award shall be subject to review as to the arbitrator's application of the law by any court having jurisdiction thereof, whether or not any mistake of law shall appear upon the face of the award. As to all questions of facts, however, the determination of the arbitrator shall be binding upon all parties and shall be final. Any party shall be entitled to written findings of fact and conclusions of law as to all issues determined by the award. Subject to the above limitations, the award shall be binding upon all parties to the arbitration and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

The arbitrator may, in his discretion, as part of the arbitration award impose upon any one party or allocate among two or more of the parties, the liability for the arbitration fees and expenses. Such allocable fees may include the initial administration fees, fees for second and

subsequent hearings, postponement fees, and overtime fees. Allocable expenses may include the expenses of producing witnesses, the cost of stenographic records, the cost of any transcripts, travel expenses of the arbitrator and tribunal administrator, the expenses of any witnesses, the costs of any proofs produced at the direct request of the arbitrator, and any other expenses relating directly to the arbitration. In the event of the failure of the arbitrator to provide for the allocation of such fees and expense, the arbitration fees shall be divided equally between the parties and the expenses shall be borne by the party incurring them.

13.6 Severance. If any section, subsection, sentence, or clause or phrase of this Agreement, or the application thereof, to any of the Member Agencies or any other person or circumstances is for any reason held invalid, the validity of the remainder of the Agreement, or the application of such provision to the other Member Agencies, or to any other persons or circumstances, shall not be affected thereby. Each of the Member Agencies hereby declares that it would have entered into this Agreement, and each section, subsection, sentence, clause or phrase thereto, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, or the application thereof, to any Member Agency or any other person or circumstance be held invalid.

13.7 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

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CITY OF SAN CLEMENTE

By: Scott Dill  
Mayor

By: Maryana Erway  
City Clerk

CITY OF SAN JUAN CAPISTRANO/  
CAPISTRANO VALLEY WATER DISTRICT

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

By: \_\_\_\_\_  
City Clerk

EL TORO WATER DISTRICT

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

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

EMERALD BAY SERVICES DISTRICT

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

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

CITY OF SAN CLEMENTE

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

By: \_\_\_\_\_  
City Clerk

CITY OF SAN JUAN CAPISTRANO/  
CAPISTRANO VALLEY WATER DISTRICT

By: Wyatt Hart  
Mayor

By: Dawn Schandere  
City Clerk

EL TORO WATER DISTRICT

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

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

EMERALD BAY SERVICES DISTRICT

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

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

CITY OF SAN CLEMENTE

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

By: \_\_\_\_\_  
City Clerk


CITY OF SAN JUAN CAPISTRANO/  
CAPISTRANO VALLEY WATER DISTRICT

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

By: \_\_\_\_\_  
City Clerk

EL TORO WATER DISTRICT

By:   
President

By:   
Secretary

EMERALD BAY SERVICES DISTRICT

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

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

CITY OF SAN CLEMENTE

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

By: \_\_\_\_\_  
City Clerk

CITY OF SAN JUAN CAPISTRANO/  
CAPISTRANO VALLEY WATER DISTRICT

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

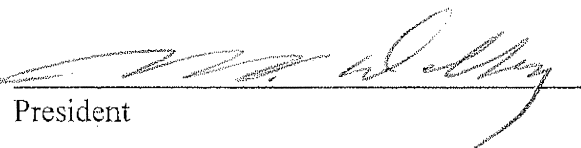
By: \_\_\_\_\_  
City Clerk

EL TORO WATER DISTRICT

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

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

EMERALD BAY SERVICES DISTRICT

By:   
Vice President

By:   
Secretary

IRVINE RANCH WATER DISTRICT

*Alh  
6-25-01*

By: *Ray Allen Mathew*  
President

By: *Leslie Bonkowski*  
Secretary

MOULTON NIGUEL WATER DISTRICT

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

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

SANTA MARGARITA WATER DISTRICT

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

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

SOUTH COAST WATER DISTRICT

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

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

IRVINE RANCH WATER DISTRICT

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

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

MOULTON NIGUEL WATER DISTRICT

By: *Paul R. Rigotti*  
President

By: *Jessie C. Kay Perry*  
Secretary

SANTA MARGARITA WATER DISTRICT

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

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

SOUTH COAST WATER DISTRICT

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

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

IRVINE RANCH WATER DISTRICT

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

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

MOULTON NIGUEL WATER DISTRICT

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

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

SANTA MARGARITA WATER DISTRICT

By: Betty H. Olson  
President

By: Judy K. Sakas  
Secretary

SOUTH COAST WATER DISTRICT

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

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

IRVINE RANCH WATER DISTRICT

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

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

MOULTON NIGUEL WATER DISTRICT

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

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

SANTA MARGARITA WATER DISTRICT

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

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

SOUTH COAST WATER DISTRICT

By: Robert W. Moore  
President

By: Michael P. Aunbar  
Secretary



TRABUCO CANYON WATER DISTRICT

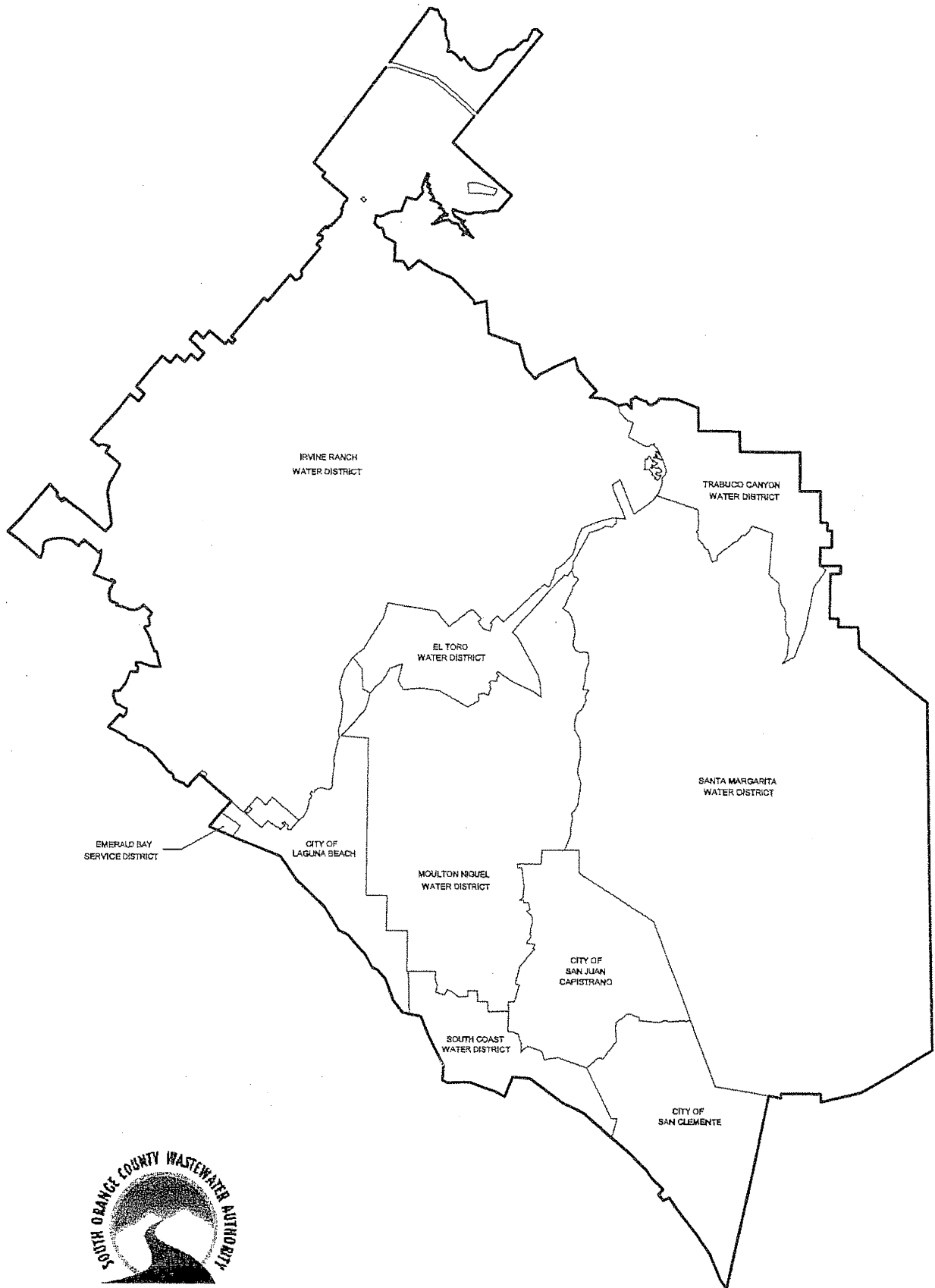
By:   
President

By:   
Secretary

EXHIBIT A

# South Orange County Wastewater Authority

## Jurisdictional Boundary



**EXHIBIT B  
MEMBER AGENCIES**

City of Laguna Beach

505 Forest Avenue  
Laguna Beach, CA 92651  
Phone: 949-497-0704  
Fax: 949-497-0791

City of San Clemente

910 Calle Negocio  
San Clemente, CA 92672  
Phone: 949-498-2533 Ext. #120

City of San Juan Capistrano

32400 Paseo Adelanto  
San Juan Capistrano, CA 92675  
Phone: 949-493-1171

El Toro Water District

P.O. Box 4000  
Laguna Hills, CA 92653  
Phone: 949-837-7050  
Fax: 949-837-7092

Emerald Bay Service District

600 Emerald Bay  
Laguna Beach, CA 92651  
Phone: 949-494-8571  
Fax: 949-497-0982

Irvine Ranch Water District

P.O. Box 57000  
Irvine, CA 92619-7000  
Phone: 949-453-5300  
Fax: 949-453-1228

Moulton Niguel Water District

27500 La Paz Road  
Laguna Niguel, CA 92656  
Phone: 949-643-2006  
Fax: 949-831-5651

Santa Margarita Water District

26111 Antonio Parkway  
Rancho Santa Margarita, CA 92688  
Phone: 949-459-6400  
Fax: 949-459-6463

South Coast Water District

P.O. Box 30205  
Laguna Niguel, Ca 92607-0205  
Phone: 949-499-4555  
Fax: 949-499-4265

Trabuco Canyon Water District

32003 Dove Canyon Drive, 92679  
P.O. Box 500  
Trabuco Canyon, CA 92678