

**AGENDA
IRVINE RANCH WATER DISTRICT
BOARD OF DIRECTORS
REGULAR MEETING**

October 8, 2012

PLEDGE OF ALLEGIANCE

CALL TO ORDER 5:00 P.M., Board Room, District Office
15600 Sand Canyon Avenue, Irvine, California

ROLL CALL Directors Reinhart, LaMar, Swan, Withers and President Matheis

NOTICE

If you wish to address the Board on any item, including Consent Calendar items, please file your name with the Secretary. Forms are provided on the lobby table. Remarks are limited to five minutes per speaker on each subject. Consent Calendar items will be acted upon by one motion, without discussion, unless a request is made for specific items to be removed from the Calendar for separate action.

COMMUNICATIONS TO THE BOARD

1. A. Written:
- B. Oral: Mrs. Joan Irvine Smith's assistant relative to the Dyer Road Wellfield.

2. **ITEMS RECEIVED TOO LATE TO BE AGENDIZED**

Recommendation: Determine that the need to discuss and/or take immediate action on item(s) introduced come to the attention of the District subsequent to the agenda being posted.

| | | |
|-------------------------|------------------------------------|------------------|
| CONSENT CALENDAR | Next Resolution No. 2012-41 | Items 3-6 |
|-------------------------|------------------------------------|------------------|

3. **MINUTES OF BOARD MEETINGS**

Recommendation: That the minutes of the September 21, 2012 Adjourned Regular Board Meeting and the September 24, 2012 Regular Board Meeting be approved as presented.

4. **RATIFY/APPROVE BOARD OF DIRECTORS' ATTENDANCE AT MEETINGS AND EVENTS**

Recommendation: That the Board ratify/approve the meetings and events for Steven LaMar, Mary Aileen Matheis, Douglas Reinhart, John Withers and Peer Swan.

CONSENT CALENDAR – Continued

Items 3-6

5. BASIS SWAPS – WELLS FARGO BANK ISDA AGREEMENT APPROVAL

Recommendation: That the Board approve the draft *International Swap and Derivatives Agreement* with Wells Fargo Bank N.A. in substantially the form provided.

6. ASSET OPTIMIZATION – LAKE FOREST/SERRANO SUMMIT PROPERTY FUEL MODIFICATION AND TEMPORARY EASEMENT AGREEMENT

Recommendation: That the Board approve the Fuel Modification and Temporary Easement Agreement for the Asset Optimization – Lake Forest (Serrano Summit) project in substantially the form submitted.

ACTION CALENDAR

7. ASSET OPTIMIZATION – LAKE FOREST/SERRANO SUMMIT PROPERTY FINAL MAP BUDGET INCREASE AND CONSULTANT SELECTIONS

Recommendation: That the Board approve an increase to the FY 2012-13 Capital Budget in the amount of \$1,590,000 for project 1264, Asset Optimization – Lake Forest Property Development for costs related to obtaining a Final Map on the property and approve an Expenditure Authorization for \$1,590,000.

8. ESTABLISHING CONNECTION FEES IN IMPROVEMENT DISTRICTS 184/284

Recommendation: That the Board approve establishing residential connection fees in Improvement Districts 184/284 and adopt a resolution adopting changes to connection fees as set forth in the schedule of rates and charges in Exhibit “B” to the Rules and Regulations of IRWD for water, sewer, recycled water and Natural Treatment System service.

Reso. No. 2012-

9. DENTAL AND VISION INSURANCE COVERAGE FOR CALENDAR YEAR 2013

Recommendation: That the Board authorize the General Manager to continue coverage for IRWD with ACWA/JPIA for Delta DPO Plan A with child and adult orthodontic coverage, and with EyeMed Vision Care for the 2013 calendar year; and to change the maximum age for dependents in each of these plans to age 26, as allowed under the federal Health Care Reform Act.

OTHER BUSINESS

Pursuant to Government Code Section 54954.2, members of the Board of Directors or staff may ask questions for clarification, make brief announcements, make brief reports on his/her own activities. The Board or a Board member may provide a reference to staff or other resources for factual information, request staff to report back at a subsequent meeting concerning any matter, or direct staff to place a matter of business on a future agenda. Such matters may be brought up under the General Manager's Report or Directors' Comments.

10. A. General Manager's Report

B. Directors' Comments

C. CLOSED SESSION RELATIVE TO Conference with Real Property Negotiator - Government Code Section 54956.8:

Property: Portions of Sections 3 and 4 of T30S, R26E MDB&M, Kern County
Parcels Nos. 534-010-27, 534-010-28, 534-010-29, 534-010-30, 534-010-32

Negotiating Parties: Anthony L. Leggio, President of Bolthouse Properties, LLC

Agency Negotiator: Paul Cook, General Manager

Purpose of Negotiations: Price and Term of Payment

D. Adjourn

* * * * *

Availability of agenda materials: Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the Irvine Ranch Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection in the District's office, 15600 Sand Canyon Avenue, Irvine, California ("District Office"). If such writings are distributed to members of the Board less than 72 hours prior to the meeting, they will be available from the District Secretary of the District Office at the same time as they are distributed to Board Members, except that if such writings are distributed one hour prior to, or during, the meeting, they will be available at the entrance to the Board of Directors Room of the District Office.

The Irvine Ranch Water District Board Room is wheelchair accessible. If you require any special disability-related accommodations (e.g., access to an amplified sound system, etc.), please contact the District Secretary at (949) 453-5300 during business hours at least seventy-two (72) hours prior to the scheduled meeting. This agenda can be obtained in alternative format upon written request to the District Secretary at least seventy-two (72) hours prior to the scheduled meeting.

October 8, 2012

Prepared and

Submitted by: L. Bonkowski

Approved by: P. Cook

LB
/ P. Cook

CONSENT CALENDAR

MINUTES OF REGULAR BOARD MEETING

SUMMARY:

Provided are the minutes of the September 21, 2012 Adjourned Regular Board meeting and the September 24, 2012 Regular Board meeting for approval.

FISCAL IMPACTS:

None.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

Not applicable.

RECOMMENDATION:

THAT THE MINUTES OF THE SEPTEMBER 21, 2012 ADJOURNED REGULAR BOARD AND THE SEPTEMBER 24, 2012 REGULAR BOARD MEETING BE APPROVED AS PRESENTED.

LIST OF EXHIBITS:

Exhibit "A" – Minutes of September 21, 2012 Adjourned Regular Board Meeting

Exhibit "B" – Minutes of September 24, 2012 Regular Board Meeting

EXHIBIT "A"

MINUTES OF ADJOURNED REGULAR MEETING – SEPTEMBER 21, 2012

The adjourned regular meeting of the Board of Directors of the Irvine Ranch Water District (IRWD) was called to order at 11:00 a.m. by President Matheis on September 21, 2012 in the District office, 15600 Sand Canyon Avenue, Irvine, California.

Directors Present: LaMar, Matheis, Reinhart, Withers (via conference call) and Swan

Directors Absent: None.

Also Present: General Manager Cook, Executive Director of Operations Pedersen, Executive Director of Engineering and Planning Burton, Executive Director of Water Policy Heiertz, Acting Director of Finance/Treasurer Jacobson, Director of Public Affairs Beeman, Director of Administrative Services Mossbarger, Secretary Bonkowski, Legal Counsel Arneson, Director of Water Resources Weghorst, Ms. Kirsten McLaughlin, Mr. Mike Hoolihan and Mr. Wayne Clark.

WRITTEN COMMUNICATION: None.

ORAL COMMUNICATION: None.

REVIEW AGENDA AND DESIRED OUTCOMES

General Manager Cook reviewed the agenda and desired outcomes.

IRWD GROUNDWATER WORK PLAN UPDATE

Using a PowerPoint presentation, Principal Engineer Hoolihan provided an overview of the District's Groundwater Work Plan. He said that the objectives of the plan include implementing cost effective groundwater projects to meet future water requirements in a timely manner, and a plan that assists in achieving IRWD's reliability objectives. He noted several changed conditions since the last update noting that the DATS project will become non-exempt in 2016; Wells 21 and 22 will become operational in November 2012 and become non-exempt in 2032; and that the demand factors and projections were updated in May of 2012. He reviewed the demand factor study and the final demand factor calibrations as well as the demand projections for potable, recycled and untreated water to 2035 which totaled 113,620 acre feet.

Mr. Hoolihan reviewed the groundwater future assumptions including current Orange County Water District (OCWD) annexation in 2014, OCWD's recycled water penalty, and basin production percentage assumptions and provided an overview of the findings of the 2008 reliability study. He then reviewed a listing of potential groundwater projects being evaluated at this time. Director Withers left the Board meeting via conference call at 12:09 p.m. Project prioritization criteria was discussed relative to cost effectiveness and readiness. Following discussion relative to partnering with other agencies, on MOTION by Reinhart, seconded and carried (LaMar, Swan, Matheis and Reinhart voting aye, and Wither absent), STAFF WILL CONTINUE TO PURSUE ELIMINATION OF OCWD'S RECYCLED WATER "PENALTY" AND THE CURRENT ANNEXATION REQUEST, STUDY WELLS 51, 52, AND 53, AND

COMPLETE HYDRAULIC MODELING TO OPTIMIZE FUTURE GROUNDWATER CONVEYANCE.

RECESS AND RECONVENE

President Matheis declared a recess at 12:45 p.m. The meeting was reconvened at 12:55 p.m. with Directors LaMar, Reinhart, Swan, and Matheis present (Withers absent).

INITIATIVE PROPOSED BY WATEREUSE CALIFORNIA AND THE WATEREUSE FOUNDATION TO STUDY INDIRECT POTABLE REUSE AND DIRECT POTABLE REUSE

Using a PowerPoint presentation, General Manager Cook reported on the WateReuse California and the WateReuse Foundation proposed initiative study for the expanded use of Indirect Potable Reuse (IPR) and Direct Potable Reuse (DPR). Mr. Cook said that the Irvine Ranch Water District has been invited, along with a number of water agencies interested in the expanded role of recycled water in California, to participate in the funding of these studies.

Mr. Cook said that the research to be conducted will address technical issues critical to advancing the acceptance of IPR and DPR and focus on safety, quality control, measuring of data, implementation, economic and social impacts. Research will be awarded through competitive Request for Proposals, select direct grants, White Papers and expert analyses. Studies will adhere to standards of scientific inquiry, peer-review quality, and journalistic transparency. All research will be designed for use in advocacy and public education. Mr. Cook said that the funding goal for research studies, advocacy programs, and public education campaigns is \$3,000,000 by 2016. A California Research Task Force consisting of a cross-section of stakeholders including NWRI will meet in December to identify specific research needs to be addressed that will facilitate the use of DPR.

Mr. Cook reviewed the specific goals to be achieved through collaboration, the value of the research, stakeholder benefits, the monetary challenge and phase one of the funding program. Following discussion, on MOTION by Swan, seconded and carried, (LaMar, Swan, Matheis and Reinhart voting aye, and Withers absent) **SUBJECT TO FUNDING COMMITMENTS BY OTHER FUNDING PARTNERS, THE BOARD APPROVED THE IRVINE RANCH WATER DISTRICT'S PARTICIPATION IN THE INITIATIVE PROPOSED BY WATEREUSE CALIFORNIA AND THE WATEREUSE FOUNDATION TO STUDY INDIRECT POTABLE REUSE AND DIRECT POTABLE REUSE, INCLUDING FUNDING THE STUDY IN AN AMOUNT NOT TO EXCEED \$50,000 OVER TWO YEARS.**

BAY DELTA CONSERVATION PLAN POLICY PRINCIPLES

Government Relations Manager McLaughlin reported that the Board adopted the IRWD Bay Delta Policy Principles on September 28, 2009 as a tool for guiding IRWD's positions on Delta-related legislation, regulation, and activities. Ms. McLaughlin said that in July 2012, state and federal leaders announced revisions to the proposed Bay Delta Conservation Plan (BDCP), a preferred conveyance alternative, and plans for moving forward toward plan finalization and implementation. The proposal is based on shared objectives including science, conservation, cooperation and governance, finance, adaptive management, sustaining Delta communities, protecting upstream water users, and improved statewide water management. The BDCP is a

key component of a comprehensive Delta solution that will achieve the co-equal goals of water supply reliability and ecosystem restoration.

Ms. McLaughlin said that the Plan includes a \$13 billion alternative conveyance project comprised of two tunnels under the Delta that would convey water to the federal and state pumps near Tracy, California. The tunnels could carry up to 9,000 cubic feet per second, but state and federal regulatory agencies will determine the amount of water actually conveyed by the project. Construction on the proposed plan could begin as early as 2017 and is expected to be completed by 2026. The proposal, along with the entire BDCP process, continues to receive both strong support and strong opposition from various stakeholders. Many business, labor, agriculture, and water industry entities maintain their strong support for the BDCP process, while environmentalists and the Delta communities continue to voice opposition.

Ms. McLaughlin also said that IRWD has supported developing a balanced solution to the challenges posed by competing interests within the Delta. The BDCP is the foundation for a long-term solution that achieves the co-equal goals of ecosystem restoration and water supply reliability. The proposed IRWD Bay Delta Conservation Plan Policy Principles is intended to supplement the 2009 IRWD Bay Delta Policy Principles and inform the District's ideal outcome for the BDCP.

Following discussion, on MOTION by Swan, seconded and carried (LaMar, Swan, Matheis and Reinhart voting aye, and Wither absent), SUBJECT TO RESTATING THE IMPORTANCE OF HIGH-QUALITY WATER SUPPLIES FROM THE SACRAMENTO-SAN JOAQUIN DELTA AND THAT THE BDCP SHOULD CONSIDER POSITIONING THE CONVEYANCE INTAKES ABOVE THE DISCHARGE POINT OF THE REGIONAL WASTEWATER TREATMENT PLANT AND OUTSIDE OF THE TIDAL ZONE IN ORDER TO PROTECT THE QUALITY OF EXPORTED WATER SUPPLIES, THE BOARD AFFIRMED SUPPORT OF THE PROPOSED BAY DELTA CONSERVATION PLAN POLICY PRINCIPLES AND AFFIRMED IRWD'S SUPPORT OF THE BAY DELTA CONSERVATION PLAN PROCESS.

RECESS AND RECONVENE

President Matheis declared a recess at 2:20 p.m. The meeting was reconvened at 2:30 p.m. with Directors LaMar, Reinhart, Swan, and Matheis present (Withers absent).

IRWD GOALS AND PRIORITIES

General Manager Cook reported that staff has updated the IRWD Target Activities Priorities List for the Board's review, comment, and approval. He reviewed the revisions to the Priorities List with comments provided from the Board.

ADJOURNMENT

There being no further discussion, President Matheis adjourned the meeting at 2:50 p.m.

APPROVED and SIGNED this 8th day of October, 2012.

President, IRVINE RANCH WATER DISTRICT

Secretary IRVINE RANCH WATER DISTRICT

APPROVED AS TO FORM:

Legal Counsel - Bowie, Arneson, Wiles & Giannone

EXHIBIT "B"

MINUTES OF REGULAR MEETING – SEPTEMBER 24, 2012

The regular meeting of the Board of Directors of the Irvine Ranch Water District (IRWD) was called to order at 5:00 p.m. by President Matheis on September 24, 2012 in the District office, 15600 Sand Canyon Avenue, Irvine, California.

Directors Present: Matheis, LaMar, Reinhart, Swan, and Withers (arrived at 5:08 p.m.)

Directors Absent: None.

Also Present: General Manager Cook, Acting Director of Finance/Treasurer Jacobson, Executive Director of Operations Pedersen, Executive Director of Engineering Burton, Executive Director of Water Policy Heiertz, Director of Human Resources Wells, Secretary Bonkowski, Legal Counsel Arneson, Mr. Mike Bray, Ms. Fiona Sanchez, Mr. Eric Akiyoshi, Mr. Craig Irey, Mr. Eric Olivolo, Ms. Julie Bendzick-Sin, Ms. Cheryl Kelly, Mr. Bruce Newell, Mr. Jim Moss, and other members of the public and staff.

WRITTEN COMMUNICATION: None.

ORAL COMMUNICATION:

Mr. Jeff Thomas, MWDOC's Director, invited the Board to attend an Elected Officials Forum on November 29, 2012, and also noted that a discussion of the Bay Delta will be held at the next MWDOC/OCWD Joint Committee meeting on October 24, 2012.

Mrs. Joan Irvine Smith's assistant addressed the Board of Directors with respect to the Dyer Road wellfield. She said it was her understanding that currently wells 2, 4, 5, 7, C-8, C-9, 10, 12, 13, 14, 15, 17 and 18 will operate in accordance with the District's annual pumping plan. Wells 1, 3, 6, 11 and 16 will be off. This was confirmed by Mr. Cook, General Manager of the District.

With respect to the OCWD annexation of certain IRWD lands, on June 5, 2009, IRWD received a letter from OCWD noting that OCWD has completed the formal responses to comments they previously received on the draft program Environmental Impact Report. The letter further noted that with this task completed, OCWD has exercised its right to terminate the 2004 Memorandum of Understanding (MOU) regarding annexation. OCWD also indicated that due to the lack of progress on the annexation issue, the draft program Environmental Impact Report will not be completed. On June 8, 2009, OCWD completed the Long-Term Facilities Plan which was received and filed by the OCWD Board in July 2009. Staff has been coordinating with the City of Anaheim (Anaheim) and Yorba Linda Water District (YLWD) on their most recent annexation requests and has reinitiated the annexation process with OCWD. IRWD, YLWD and Anaheim have negotiated a joint MOU with OCWD to process and conduct environmental analysis of the annexation requests. The MOU was approved by the OCWD Board on July 21, 2010. This was confirmed by Mr. Cook.

With respect to the Groundwater Emergency Service Plan, IRWD has an agreement in place with various south Orange County water agencies, MWDOC and OCWD, to produce additional

groundwater for use within IRWD and transfer imported water from IRWD to south Orange County in case of emergencies. IRWD has approved the operating agreement with certain south Orange County water agencies to fund the interconnection facilities needed to affect the emergency transfer of water. MWDOC and OCWD have also both approved the operating agreement. This was confirmed by Mr. Cook.

CONSENT CALENDAR

Director LaMar asked that a meeting be added to item No. 4 as he would like to be approved for attending ACWA's Integrated Water Management Planning Session in Sacramento. There being no objection to this addition to the monthly meetings and events, on MOTION by LaMar, seconded and carried (LaMar, Matheis, Swan and Reinhart voting aye and Withers absent), **CONSENT CALENDAR ITEMS 3 THROUGH 7 WERE APPROVED AS FOLLOWS:**

3. MINUTES OF REGULAR BOARD MEETING

Recommendation: That the minutes of the September 10, 2012 Regular Board Meeting be approved as presented.

4. RATIFY/APPROVE BOARD OF DIRECTORS' ATTENDANCE AT MEETINGS AND EVENTS

Recommendation: That the Board ratify/approve the meetings and events for Steven LaMar, Mary Aileen Matheis, Douglas Reinhart, Peer Swan and John Withers as amended.

5. DISTRICT STRATEGIC MEASURES' DASHBOARD

Recommendation: That the Board receive and file the Strategic Measures' Dashboard and Information items.

6. AUGUST 2012 FINANCIAL REPORTS

Recommendation: That the Board receive and file the Treasurer's Investment Summary Report and the Monthly Interest Rate Swap Summary for August 2012; approve the August 2012 Summary of Payroll ACH payments in the total amount of \$1,363,244.60, and approve the August 2012 Accounts Payable Disbursement Summary of Warrants Nos. 331996 through 332971, Workers' Compensation distributions, wire transfers, payroll withholding distributions and voided checks in the total amount of \$20,589,023.20.

7. REIMBURSEMENT AGREEMENT WITH SHEA BAKER RANCH ASSOCIATES

Recommendation: That the Board authorize the General Manager to execute a Reimbursement Agreement with Shea Baker Ranch Associates for the construction of capital facilities for a total estimated cost of \$647,900.

ACTION CALENDAR

ON-CALL CONSTRUCTION INSPECTION SERVICES

General Manager Cook reported that the District's current and upcoming inspection workload for capital, development and operational improvement projects continues to exceed the level that cannot be supported by the District's inspection staff. Mr. Cook said that based on currently active and upcoming construction projects, staff anticipates the need for the continued support of one full-time field inspector for a period of up to two years. Director Withers arrived at 5:08 p.m.

Executive Director of Engineering Burton reported that the current consultant field inspector provided by Tetra Tech has worked well within the inspection group and demonstrated the ability to inspect and coordinate multiple projects simultaneously. Mr. Burton said that the existing one-year on-call inspection services contract with Tetra Tech is nearly expended and Mr. Mark Sanchez, the inspector assigned to IRWD, is in the process of changing employment to AndersonPenna. He said that staff met with AndersonPenna, the construction management and inspection services company that recently hired Mr. Sanchez, and negotiated the same very favorable fully-burdened rate of \$95 per hour for him, which includes a truck and fuel, cell phone and laptop computer.

Director Reinhart reported that this item was reviewed and approved by the Engineering and Operations Committee on September 18, 2012. On MOTION by Reinhart, seconded and unanimously carried, **THE BOARD AUTHORIZED THE GENERAL MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH ANDERSONPENNA IN THE AMOUNT OF \$400,000 FOR ON-CALL CONSTRUCTION INSPECTION SERVICES.**

POTABLE WATER SYSTEM HYDRAULIC MODEL CONSULTANT SELECTION

General Manager Cook reported that the 2012 Potable Water System Hydraulic Model project will provide an important tool to more efficiently plan, manage, and operate the District's potable water distribution system. Mr. Cook said that in the late 1990s, the District developed a static hydraulic computer model which was an effective tool, but developed primarily to aid with preparation of the 1999/2000 Water Resources Master Plan. He said that current technology allows for Extended Period Simulation (EPS) models to be developed and calibrated. The proposed project consists of developing a District-wide EPS potable water system hydraulic model. Major components of the project include a calibrated, extended period simulation, existing system model and an "ultimate" (in 2035) system model.

Executive Director of Engineering Burton reported that in June 2012, a Request for Proposal was issued to AKM Consulting Engineers (AKM), Brown & Caldwell, CDM Smith, DCSE, Dudek Consultants, HDR, Inc., ID Modeling, Kennedy/Jenks Consultants, RBF Consulting, Stantec, Tetra Tech, and MWH Americas, Inc. Six proposals were received from AKM, DCSE, Dudek Consultants, ID Modeling/Stantec Team (IDM/Stantec), RBF Consulting, and MWH. Mr. Burton said that the proposals were reviewed and ranked based on project understanding, technical approach, project team qualifications and experience, with the intent of interviewing the top two or three consultants. He said that based on the proposal evaluations, AKM and IDM/Stantec were shortlisted for interviews and given an opportunity to present its approach for

model development, calibration of the model, and working with and training District staff on using the model. Based on the evaluation, staff recommends that the project be awarded to AKM as they demonstrated an understanding of the District's system and the project, and prepared a detailed field monitoring plan, including equipment rental for 51 pressure sites, 25 largest water users, and 12 flow monitoring locations. The proposal also included adequate time to accomplish the field work with minimal assistance by District staff; the field monitoring effort supported the proposal to develop diurnal curves based on both land use types and pressure zones; and the approach to collaboration, training, and data collection fit well with the needs and culture of the District and demonstrated how this can be accomplished with minimal impacts to the project schedule or budget. AKM's proposal, in the amount of \$359,690, is approximately \$120,000 higher than the IDM/Stantec proposal. Staff believes that the demonstrated understanding of the appropriate level of effort and value-added components in AKM's proposal validate the higher cost for field monitoring and diurnal curve development as well as data collection, control settings, training and collaboration.

Director Reinhart reported that this item was reviewed and approved by the Engineering and Operations Committee on September 18, 2012. On MOTION by Reinhart, seconded and unanimously carried, THE BOARD AUTHORIZED A BUDGET INCREASE TO THE FY 2012-13 CAPITAL BUDGET FOR PROJECT 11384 (1095) BY \$66,000, FROM \$401,500 TO \$467,500; APPROVED AN EXPENDITURE AUTHORIZATION IN THE AMOUNT OF \$467,500 FOR PROJECT 11384 (1095); AND AUTHORIZED THE GENERAL MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH AKM CONSULTING ENGINEERS IN THE AMOUNT OF \$359,690 FOR DEVELOPMENT OF THE POTABLE WATER SYSTEM HYDRAULIC MODEL, PROJECT 11384 (1095).

WELLS 21 AND 22 DESALTER CONTRACT CHANGE ORDER

Executive Director of Engineering Burton reported that Contract Change Order No. 17 (CCO) in the amount of \$302,496, consists of construction changes associated with the major site layout change executed with CCO No. 4 prior to fully developing the revised construction design drawings in the amount of \$165,540; project enhancements, substitutions, and deletions in the amount of \$740; and extended field operating costs and additional contract time in the amount of \$136,216 and 191 calendar days. Mr. Burton said that staff has reviewed the cost and time proposals, negotiated changes, and mutually agreed with Pascal & Ludwig on this change order amount. He said that the construction of the plant facilities is nearing completion and the change order includes a time extension of 191 calendar days, which staff has evaluated and found to be acceptable. This extension provides additional time to compensate for delayed procurements, added work, loss of efficiency due to more confined work area, re-sequenced schedule activities, and all impacts associated with these changes. Based on this request, the current completion date of May 8, 2012 will be extended to November 15, 2012.

The project has been proceeding in accordance with the revised USBR funding schedule that requires reimbursable project costs to be incurred prior to October 31, 2012. With the revised completion schedule extending beyond the funding milestone, staff will begin coordination efforts with USBR to discuss available options which may include a schedule extension request.

Director Reinhart reported that this item was reviewed and approved by the Engineering and Operations Committee on September 18, 2012. On MOTION by Reinhart, seconded and unanimously carried, THE BOARD APPROVED AN EXPENDITURE AUTHORIZATION IN

THE AMOUNT OF \$1,659,600 AND APPROVED CONTRACT CHANGE ORDER NO. 17 IN THE AMOUNT OF \$302,496 TO PASCAL & LUDWIG CONSTRUCTORS FOR THE WELLS 21 AND 22 DESALTER, PROJECT 10286 (1081).

CLOSED SESSION

President Matheis said that a Closed Session would be held as follows:

CONFERENCE WITH LABOR NEGOTIATORS - Government Code Section 54957.6.
Agency Designated Representatives: Paul Cook, Janet Wells, Jim Payne and Jim Moss.
Employee Organization: Irvine Ranch Water District Employees Association

OPEN SESSION

MEMORANDUM OF UNDERSTANDING WITH THE IRVINE RANCH WATER DISTRICT EMPLOYEES ASSOCIATION

Following the Closed Session, the meeting was reconvened with Directors Swan, LaMar, Reinhart, Withers and Matheis present. General Manager Cook said that in Closed Session the Board authorized the General Manager to execute the Memorandum of Understanding between Irvine Ranch Water District and the Irvine Ranch Water District Employees Association (IRWDEA) subject to non-substantive changes. Mr. Cook said that he, along with Director of Human Resources Wells, and special legal counsel James Payne and Jim Moss of Payne and Fears, LLP were appointed by the IRWD Board of Directors to act as negotiators to develop a Memorandum of Understanding (MOU) with IRWDEA. He also said that he and Director Wells spent considerable time with the IRWDEA Board collaborating on the MOU. On September 12, 2012, the dues-paying members of the IRWDEA voted on the proposed MOU and it was approved by a vote of 36 "For" and six "Opposed". The IRWDEA Board members were in the audience and introduced to the Board. IRWDEA Board member Julie Bendzick-Sin addressed the Board saying that they established a good relationship with the IRWD designated representatives and thanked the Board for letting the process move forward with the approval of the MOU.

FINAL RESOLUTION TO AMEND CALPERS CONTRACT

California Public Employees' Retirement System (CalPERS) has provided a Final Resolution to amend IRWD's contract to provide Section 20475 – Different Level of Benefits; the addition of Section 21353 – 2% @ 60 Full Formula; and the addition of Section 20037 – Three-Year Final Compensation. On MOTION by Swan, seconded and unanimously carried, THE BOARD ADOPTED THE FOLLOWING RESOLUTION BY TITLE:

RESOLUTION NO. 2012-40

RESOLUTION AUTHORIZING AN AMENDMENT
TO THE CONTRACT (BETWEEN THE BOARD OF
ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM AND THE BOARD OF DIRECTORS
OF IRVINE RANCH WATER DISTRICT)

2013 MEDICAL INSURANCE COVERAGE RENEWAL

General Manager Cook reported that the District currently utilizes the CalPERS medical insurance program and receives premium rates each year in advance of open enrollment in September or October. For the 2013 calendar year, CalPERS has notified the District of premium increases for each of the specific plans from which IRWD employees can choose. IRWD has retained a consultant, Aon Hewitt, to review the District's overall retirement and health benefits package to maximize value to the employees and develop an equitable cost sharing method to minimize increasing exposure to rising costs. The study is on-going, with further results to be delivered in the area of health benefits. Initial recommendations from the consultant include continuing in the CalPERS medical insurance program for calendar year 2013. As a result, staff recommends that the District make adjustments to the employee contribution rates for the CalPERS medical plans in line with the District's past practices. With the recommended adjustments to employee contributions and assuming similar plan enrollments as 2012, the District's projected overall medical insurance costs for FY 2012-13 (\$3,692,688) will increase by 6.7% over projected actual costs for FY 2011-12 (\$3,460,560).

On MOTION by Swan, seconded and unanimously carried, THE BOARD AUTHORIZED THE CONTINUANCE OF THE DISTRICT'S HEALTH CARE COVERAGE WITH CALPERS FOR THE CALENDAR YEAR 2013 AND APPROVED CHANGES IN EMPLOYEE CONTRIBUTION LEVELS AS RECOMMENDED.

GENERAL MANAGER'S REPORT

General Manager Cook reported on staff's participated in the annual OCWA Pipe Tapping Contest. Mr. Cook also provided an update on the recruitment process for the Executive Director of Finance position.

DIRECTORS' COMMENTS

Director LaMar reported that he attended an NWRI Operations Committee meeting and an ACWA Region 8, 9, and 10 briefing which was hosted by IRWD at its Learning Center. He congratulated Assistant Director of Conservation Fiona Sanchez on her recent appointment as Vice Chairman of the Urban Water Council.

Director Reinhart reported that he attended a WateReuse Board meeting in Hollywood, Florida. He said he also attended an ACWA Region 8, 9, and 10 briefing along with a WACO Planning meeting.

Director Swan reported that he attended a WACO Planning meeting, an ACWA 8, 9, and 10 briefing, an ACWA Finance Subcommittee meeting, and an OCWD Committee meeting.

Director Withers reported on his attendance at an NWRI Committee meeting.

Director Matheis reported that she attended Irvine Valley College's 9/11 commemoration, a City of Lake Forest event, and an ACWA Region 8, 9, and 10 event. She further said she was very impressed with Shadetree Partnership's efforts with providing trees and shrubs to various nearby cities as well as its recent berm planting in the San Joaquin Wildlife Sanctuary. She said that its General Manager, Mr. Tom Bonkowski, has done an excellent job in running this non-profit organization. She also complimented Shadetree's Director Matt Rayl and past Shadetree Board member Kay Phillies on their contributions to this organization.

CLOSED SESSION

President Matheis said that a Closed Session would be held as follows:

Conference with Legal Counsel – ANTICIPATED LITIGATION – Government Code Section 54956.9 (b) - (1) significant exposure to litigation concerning a claim filed by Lisa and Shawn Williams on behalf of themselves and a class of similarly situated homeowners against IRWD under the Government Tort Claims Act, on file with the District (one potential case)

OPEN SESSION

Following the Closed Session, the meeting was reconvened with Directors Swan, LaMar, Reinhart, Withers and Matheis present. President Matheis said that was no action to report.

ADJOURNMENT

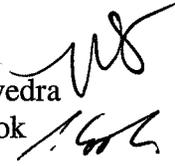
President Matheis adjourned the meeting.

Approved and signed this 8th day of October, 2012.

President, IRVINE RANCH WATER DISTRICT

Secretary, IRVINE RANCH WATER DISTRICT

October 8, 2012
Prepared and
Submitted by: N. Savedra
Approved by: P. Cook



CONSENT CALENDAR

RATIFY/APPROVE BOARD OF DIRECTORS'
ATTENDANCE AT MEETINGS AND EVENTS

SUMMARY:

Pursuant to Resolution 2006-29 adopted on August 28, 2006, approval of attendance of the following events and meetings are required by the Board of Directors.

Events/Meetings

Steven LaMar

09/25/12 ACWA Integrated Water Management Meeting, Sacramento, CA
10/11/12 CORO Southern California Event
10/25/12 Water Education Foundation 35th Anniversary Event, Sacramento, CA
10/26/12 CMUA/CUWA Urban Water Forum, Sacramento, CA

Mary Aileen Matheis

10/10/12 ABC Green Home Grand Opening Event at OC Great Park
10/18/12 Association of California Cities-Orange County City Leader Reception

Douglas Reinhart

10/18/12 Association of California Cities-Orange County City Leader Reception
10/29-30/12 CalDesalination Conference, Irvine, CA

Peer Swan

09/25/12 ACWA Integrated Water Management Meeting, Sacramento, CA
10/17/12 ACWA Water Management Committee Meeting, Sacramento, CA
10/18/12 Association of California Cities-Orange County City Leader Reception

John Withers

09/14/12 IRWD Representative-Concordia Univ. Center-Public Policy Board Meeting
10/10/12 ABC Green Home Grand Opening Event at OC Great Park
10/11/12 CORO Southern California Event
10/18/12 Association of California Cities-Orange County City Leader Reception
10/19/12 ACWA Regions 9 & 10 Joint Program Event

RECOMMENDATION:

THAT THE BOARD RATIFY/APPROVE THE MEETINGS AND EVENTS FOR STEVEN LAMAR, MARY AILEEN MATHEIS, DOUGLAS REINHART, PEER SWAN AND JOHN WITHERS AS DESCRIBED.

LIST OF EXHIBITS:

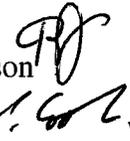
None
Board Mtgs Events.doc

October 8, 2012

Prepared by

Submitted by: Rob Jacobson

Approved by: Paul Cook



CONSENT CALENDAR

BASIS SWAPS – WELLS FARGO BANK ISDA AGREEMENT APPROVAL

SUMMARY:

On January 9, 2012, the Board approved Term Sheet No. 7 providing general parameters under which an interest rate basis swap(s) could be considered for execution by the District. Consistent with the District's *Interest Rate Swap Policy* (Swap Policy), the Finance & Personnel Committee further defines the swap parameters, which include approval of the form of swap counterparty agreement and the selection of swap counterparties. Staff is recommending that the Board approve the draft swap counterparty agreement in substantially the form provided.

BACKGROUND:

An interest rate basis swap is the exchange of payments based on two variable interest rate indices – typically a tax-exempt index (e.g. SIFMA) and a taxable index (e.g. 1-month LIBOR). In low interest rate environments, the ratio between these indices can sometimes be well above historical levels due to a compression in short term rates. Other factors that can significantly affect the ratio include the supply and perceived credit risk of municipal bonds in the market and uncertainty about future tax rates and tax laws.

Consistent with the approval process outlined in the District's Swap Policy, general parameters for a basis swap strategy were approved by the Board at its meeting on January 9, 2012. The terms approved by the Board (Term Sheet No. 7) include a SIFMA/LIBOR basis swap(s) with a maximum notional amount of \$100 million, executed at a minimum tax-exempt/taxable ratio of 96% for a period not to exceed 20 years.

The Swap Policy provides for the Committee to establish additional, more specific, parameters including timing of transaction(s), counterparty selection, form of counterparty agreement, etc. Finally, the Treasurer, with the concurrence of the Committee, will be authorized to execute swap transactions within these parameters.

Swap Counterparty Agreement:

The District's swap financial advisor, Swap Financial Group (SFG), District staff and legal counsel have agreed to terms for a draft *International Swap and Derivatives Agreement* (ISDA) with Wells Fargo Bank N.A. (Wells), a counterparty previously approved by the Committee. A copy of the draft agreement is attached as Exhibit "A".

The Wells ISDA includes the Master Agreement and the Credit Support Annex and outlines the specific terms of the swap agreement between the District and Wells. Key

terms included in the agreement are consistent with the ISDA terms recently negotiated with Bank of New York Mellon (BNYM) and previously approved by the Committee and Board. Consistent with the BNYM agreement, significant terms negotiated in the Wells ISDA include:

- Collateral posting requirements/thresholds for the counterparty based on their respective credit ratings;
- No collateral posting requirement for the District due to its excellent credit rating; and
- Events that could trigger an automatic termination of the swap transaction for both the District and the counterparties.

Staff will discuss minor differences between the Wells and BNYM agreements in more detail at the meeting. The differences are primarily based on individual bank compliance language and are viewed by staff and SFG as non-substantive.

FISCAL IMPACTS:

Unable to determine at this time.

ENVIRONMENTAL COMPLIANCE:

This item is not a project as defined in the California Environmental Quality Act Code of Regulations, Title 14, Chapter 3, Section 15378.

COMMITTEE STATUS:

This item was reviewed by the Finance and Personnel Committee on October 2, 2012.

RECOMMENDATION:

THAT THE BOARD APPROVE THE DRAFT INTERNATIONAL SWAP AND DERIVATIVES AGREEMENT WITH WELLS FARGO BANK N.A. IN SUBSTANTIALLY THE FORM PROVIDED.

LIST OF EXHIBITS:

Exhibit “A” – Draft ISDA Agreement – Wells Fargo Bank N.A.

(Local Currency-Single Jurisdiction)

ISDA[®]**International Swaps and Derivatives Association, Inc.****MASTER AGREEMENT**

dated as of October 5, 2012

among

WELLS FARGO BANK, N.A.

and

IRVINE RANCH WATER DISTRICT

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement (the "Master Agreement"), which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions. Accordingly, the parties agree as follows:—

1. Interpretation

(a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations**(a) General Conditions.**

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such

delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

- (a) ***Furnish Specified Information.*** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.
- (b) ***Maintain Authorizations.*** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.
- (c) ***Comply with Laws.*** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

5. Events of Default and Termination Events

(a) ***Events of Default.*** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) ***Failure to Pay or Deliver.*** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) ***Breach of Agreement.*** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

- (3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;
- (iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;
- (v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);
- (vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);
- (vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

- (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional

liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) ***Merger Without Assumption.*** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) ***Termination Events.*** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) ***Illegality.*** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

- (1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
- (2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) ***Credit Event Upon Merger.*** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee

entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) **Right to Terminate.** If:—

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if

there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) ***Calculations.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) ***Payment Date.*** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss," and a payment method, either the "First Method" or the "Second Method." If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method," as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default:—

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

10. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

12. Definitions

As used in this Agreement:—

“Additional Termination Event” has the meaning specified in Section 5(b).

“Affected Party” has the meaning specified in Section 5(b).

“Affected Transactions” means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

“Affiliate” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“Applicable Rate” means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

“consent” includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

“Credit Event Upon Merger” has the meaning specified in Section 5(b).

“Credit Support Document” means any agreement or instrument that is specified as such in this Agreement.

“Credit Support Provider” has the meaning specified in the Schedule.

“Default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iii).

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Illegality” has the meaning specified in Section 5(b).

“law” includes any treaty, law, rule or regulation and **“lawful”** and **“unlawful”** will be construed accordingly.

“Local Business Day” means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

“Loss” means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

“Market Quotation” means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are

provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

“Non-default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Potential Event of Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Reference Market-makers” means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

“Scheduled Payment Date” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“Set-off” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

“Settlement Amount” means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party’s Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

“Specified Entity” has the meaning specified in the Schedule.

“Specified Indebtedness” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“Specified Transaction” means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar

transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“Terminated Transactions” means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

“Termination Event” means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

WELLS FARGO BANK, N.A.

IRVINE RANCH WATER DISTRICT

By: _____
Name: Harold E. Sprague
Title: Authorized Signatory
Date:

By: _____
Name:
Title: Treasurer
Date:

SCHEDULE
to the
MASTER AGREEMENT
dated as of October 5, 2012
between
WELLS FARGO BANK, N.A. (“Party A”),
a national banking association established under
the laws of the United States of America,
and
IRVINE RANCH WATER DISTRICT (“Party B”),
a water district organized and existing under
the laws of the State of California

Part 1. Termination Provisions.

In this Agreement:—

(a) **“Specified Entity”** means in relation to Party A for the purpose of:—

| | |
|--|------------------------|
| Section 5(a)(v) (Default under Specified Transaction), | Affiliates of Party A. |
| Section 5(a)(vi) (Cross Default), | Not Applicable. |
| Section 5(a)(vii) (Bankruptcy), | Not applicable. |
| Section 5(b)(ii) (Credit Event Upon Merger), | Not Applicable. |

and in relation to Party B for the purpose of:—

| | |
|--|-----------------|
| Section 5(a)(v) (Default under Specified Transaction), | Not Applicable. |
| Section 5(a)(vi) (Cross Default), | Not Applicable. |
| Section 5(a)(vii) (Bankruptcy), | Not Applicable. |
| Section 5(b)(ii) (Credit Event Upon Merger), | Not applicable. |

(b) **“Specified Transaction”** will have the meaning specified in Section 12 of this Agreement.

(c) The **“Cross Default”** provisions of Section 5(a)(vi) will apply to Party A and Party B subject to amendment by adding at the end thereof the following words:

“provided, however, that, notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if (I) the default, or other similar event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay or deliver caused by an error or omission of an administrative or operational nature, and (II) funds or the asset to be delivered were available to such party to enable it to make the relevant payment or delivery when due and

(III) such payment or delivery is made within three (3) Local Business Days following receipt of written notice from an interested party of such failure to pay.”

The following provisions apply:—

“*Specified Indebtedness*” shall have the meaning as specified in Section 12 of the Agreement; *provided, however*, that such definition shall exclude any deposits received in the ordinary course of business.

“*Threshold Amount*” means 2% of Shareholders’ Equity of Wells Fargo & Co. (“WFC”), in the case of Party A and, \$25,000,000, in the case of Party B. “Shareholders Equity” means an amount equal to WFC’s total assets minus its total liabilities, as reflected on WFC’s most recent audited financial statements.

- (d) The “*Automatic Early Termination*” provisions of Section 6(a) will not apply to either Party A or Party B.
- (e) *Payments on Early Termination.* For the purpose of Section 6(e) of this Agreement, Market Quotation and the Second Method will apply.

In the case of any Terminated Transaction that is, or is subject to, any unexercised option, the words “economic equivalent of any payment or delivery” appearing in the definition of “Market Quotation” shall be construed to take into account the economic equivalent of the option.

- (f) *Additional Termination Event* will apply. The following shall constitute Additional Termination Events:—
 - (i) (A) The public rating of the long-term, unsecured, unenhanced senior debt (not taking into account any third party credit enhancement) of Party A is withdrawn, suspended or falls below (1) “A3” as determined by Moody’s Investor’s Service or any successor thereto (“Moody’s”), or (2) “A-” as determined by Standard & Poor’s Financial Service LLC or any successor thereto (“S&P”) or (B) Party A fails to have any rated long-term, unsecured, unenhanced senior debt (not taking into account any third party credit enhancement) rated publically by either Moody’s or S&P. For the purpose of the foregoing Termination Event, Party A shall be the sole Affected Party.
 - (ii) (A) The public rating of Party B’s long-term, unenhanced Parity Obligations (as defined in the Covered Indenture) (not taking into account any third party credit enhancement) is withdrawn, suspended or falls below (1) “Baa1” as determined by Moody’s or (2) “BBB+” as determined by S&P or (B) Party B fails to have rated long-term, unenhanced Parity Obligations (as defined in the Covered Indenture) (not taking into account any third party credit enhancement) rated publically by either Moody’s or S&P. For the purpose of the foregoing Termination Event, Party B shall be the sole Affected Party.
- (g) *Events of Default.*
 - (i) *Bankruptcy.* Clause (6) of Section 5(a)(vii) of this Agreement is hereby amended to read in its entirety as follows:—

“(6)(A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or (B) in the case of a Government Entity, (I) there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to oversee or declare a financial emergency or similar state of financial distress with respect to it or (II) there shall be declared by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress with respect to it;”.

(ii) ***Merger Without Assumption.*** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:—

“(viii) ***Merger Without Assumption.*** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is a Government Entity, an entity such as an organization, board, commission, authority, agency, or body succeeds to the principal functions of, or powers and duties granted to, such party or any Credit Support Provider of such party) and, at the time of such consolidation, amalgamation, merger, transfer or succession:—

(1) the resulting, surviving, transferee, or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement.”

(h) ***Termination Events.*** The Credit Event Upon Merger provision in Section 5(b)(ii) of this Agreement which applies to both parties is hereby amended to read in its entirety as follows:—

“(ii) ***Credit Event Upon Merger.*** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if X is a Government Entity, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, X, any Credit Support Provider of X or any Specified Entity of X) and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving, transferee or successor entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or”.

(i) ***Right to Terminate Following Termination Event.*** Section 6(b)(iii) of the Agreement is amended by adding the following last sentence:

“Notwithstanding anything to the contrary in this Agreement, an Affected Party will not have the right to designate an Early Termination Date under Section 6(b)(iii) as a result of an Illegality under Section 5(b)(i) if the Illegality relates to performance by such party of an obligation to make payment under Section 6(e) and does not relate to an obligation to make payment or delivery under Section 2(a)(i).”

Part 2. Agreement to Deliver Documents.

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents, as applicable:—

| <u>Party required to deliver document</u> | <u>Form/Document/Certificate</u> | <u>Date by which to be Delivered</u> | <u>Covered by Section 3(d)</u> |
|---|--|---|--------------------------------|
| Party A | With respect to the initial Transaction, opinion of counsel to Party A substantially in the form of Exhibit A to this Schedule and with respect to each Transaction thereafter, in form and substance reasonably acceptable to Party B. | Promptly after execution of each Confirmation hereunder. | No |
| Party B | With respect to the initial Transaction, opinion of counsel to Party B substantially in the form of Exhibit B to this Schedule and with respect to each Transaction thereafter, in form and substance reasonably acceptable to Party A. | Promptly after execution of each Confirmation hereunder. | No |
| Party A and Party B | An incumbency certificate with respect to the signatory of this Agreement and each Confirmation. | Prior to the execution of this Agreement and, with respect to each Transaction and upon request of the other party, prior to the execution of the related Confirmation. | Yes |
| Party B | A certified copy of (i) the resolution or resolutions (or the equivalent thereof) of the governing body and any other bodies or officials of Party B pursuant to which Party B is authorized to enter into this Agreement and each Transaction hereunder and (ii) Party B's Interest Rate Swap Policy. | Prior to the execution of this Agreement and, with respect to each Transaction and upon request of Party A, prior to the execution of the related Confirmation. | No |

| <u>Party required to deliver document</u> | <u>Form/Document/Certificate</u> | <u>Date by which to be Delivered</u> | <u>Covered by Section 3(d)</u> |
|---|---|--|--------------------------------|
| Party A and Party B | A copy of the annual report of such party for each fiscal year commencing with the fiscal year ending in 2012 containing audited consolidated financial statements for such fiscal year certified by independent public accountants and prepared in accordance with generally accepted accounting principles consistently applied, provided that in the case of Party A, the Annual Report will be that of WFC. | As soon as available and in any event within 210 days after the end of each fiscal year. Such reports of WFC shall be deemed delivered if available on the internet through a Wells Fargo website, currently at: https://www.wellsfargo.com/invest_relations/investor_relations | Yes |
| Party B | A copy of the Covered Indenture (as defined below), certified by an appropriate official of Party B. | Prior to the execution of this Agreement, and, with respect to any amendment or modification thereto or supplement thereof, promptly following a request by Party A after the execution of such amendment, modification or supplement. | Yes |

Part 3. Miscellaneous.

(a) *Addresses for Notices.* For the purpose of Section 10(a) to this Agreement:—

Address for notices or communications to Party A:—

All notices to Party A under Sections 5 or 6 (other than notices under Section 5(a)(i)) shall be sent to:

Address: Wells Fargo Bank, N.A.
45 Fremont Street, 30th Floor
MAC A0194-300
San Francisco, California 94105
Attention: Derivatives Documentation Manager
Fax No.: (877) 564-8524

Address for financial statements to Party A: —

Wells Fargo Bank, N.A.
707 Wilshire Blvd., 11th Floor
MAC E2818-114
Los Angeles, California 90017
Attention: Corrie Bowman, Relationship Manager
Facsimile No.: (213) 614-3555

Address for notices or communications to Party B:—

Address: Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, California 92618
Attention: Treasurer
Fax No.: 949-453-0128
Tel. No.: 949-453-5358

- (b) **Calculation Agent.** Unless otherwise specified in a Confirmation in relation to a Transaction, the Calculation Agent is Party A; *provided, however*, that following the occurrence of an Event of Default with respect to which Party A is the Defaulting Party and only while such event is continuing, the Calculation Agent shall be a leading dealer in the relevant derivatives market selected by Party B and approved by Party A (such approval not to be unreasonably withheld). Party A shall be deemed to have consented to the substitute Calculation Agent selected by Party B if Party A does not reject such selection within two Local Business Days of receipt of notice from Party B identifying such entity.
- (c) **Credit Support Document.** Details of any Credit Support Document:—

In the case of Party A, the ISDA Credit Support Annex dated as of the date hereof between the parties hereto and incorporated by reference herein (the “Credit Support Annex”).

In the case of Party B, the Covered Indenture and the Credit Support Annex.
- (d) **Credit Support Provider.** Credit Support Provider means, not applicable.
- (e) **Governing Law.** This Agreement, and each written agreement relating hereto, will, unless otherwise expressly provided, be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, except that the capacity, power or authority of the Government Entity to enter into this Agreement and any Transaction shall be governed by and construed in accordance with the laws of the State of California.
- (f) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply to all Transactions; *provided, however*, if the parties otherwise so agree, then subparagraph (ii) of Section 2(c) shall not apply.
- (g) **“Affiliate”** will have the meaning specified in Section 12 of this Agreement.

Part. 4 Other Provisions.

- (a) **Obligations.**
- (i) Section 2(a)(iii) of this Agreement is hereby amended to read in its entirety as follows:—

“(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination

Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.”

(ii) If a party withholds any payment under Section 2(a)(i) due to the occurrence of an Incipient Illegality with respect to the other party, it will, to the extent permitted by applicable law, subject to the other provisions of this Agreement and provided no Event of Default or Potential Event of Default with respect to the other party exists, pay interest on the withheld amount to the other party on demand (but no more frequently than once per month) for the period such payment is withheld under Section 2(a)(iii) for such Incipient Illegality, at the Non-default Rate (determined as though such withholding party were the Non-defaulting Party).

(b) **Representations.**

(i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:—

“Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), 3(e), 3(f), 3(g) and 3(h), at all times until the termination of this Agreement) that:—”

(ii) Section 3(a)(ii) of this Agreement is hereby amended to read in its entirety as follows:—

“(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action and made all necessary determinations and findings to authorize such execution, delivery and performance, the individual(s) executing and delivering this Agreement and any other documentation (including any Credit Support Document) relating to this Agreement to which it is a party or that it is required to deliver are duly empowered and authorized to do so, and it has duly executed and delivered this Agreement and any Credit Support Document to which it is a party;”

(iii) Section 3(b) of this Agreement is hereby amended to read in its entirety as follows:—

“(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Incipient Illegality (in the case of a Government Entity) or Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.”

(iv) Section 3 of this Agreement is hereby amended by adding the following subsection “(e)” thereto, which subsection shall apply only to the Government Entity:—

“(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments and not for purposes of speculation.”

(v) Section 3 of this Agreement is hereby amended by adding the following subsection “(f)”, “(g)” and “(h)” thereto:—

“(f) **No Immunity.** Except as provided in Title 1, Division 3.6 of the California Government Code, Party B is not entitled to claim immunity on the grounds of sovereignty or other similar grounds and Party B is subject to claims and to suit for damages in connection with its obligations under this Agreement pursuant to and in accordance with the laws of the State of California applicable to Party B.

(g) **ERISA.** Each party represents to the other party at all times hereunder that it is not (i) an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), or a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the “Code”), subject to Title I of ERISA or Section 4975 of the Code, or a plan as so defined but which is not subject to Title I of ERISA or Section 4975 of the Code but is subject to another law materially similar to Title I of ERISA or Section 4975 of the Code (each of which, an “ERISA Plan”), (ii) a person or entity acting on behalf of an ERISA Plan, or (iii) a person or entity the assets of which constitute assets of an ERISA Plan.

(h) **Two-way Payments.** It acknowledges that, pursuant to the terms of this Agreement (including, without limitation, Section 6(e)), it may owe a payment to the other party upon the designation of an Early Termination Date, even if such Early Termination Date is the result of an Event of Default or Termination Event (including any Additional Termination Event) with respect to such other party.”

(c) **Agreements.**

(i) The introductory clause of Section 4 of this Agreement is hereby amended to read in its entirety as follows:—

“Each party agrees with the other (or, in the case of Section 4(d), (e) and (f), Party B agrees with Party A) that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—”.

(ii) Section 4 of this Agreement is hereby amended by adding the following subsections “(d)”, “(e)” and “(f)” thereto:—

“(d) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, the Government Entity will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Incipient Illegality and will also give such other information about that Incipient Illegality as the other party may reasonably require.

(e) **Compliance with Covered Indenture.** The Government Entity will observe, perform and fulfill each provision in the Covered Indenture which is applicable to such Government Entity on the date hereof and which, if the Government Entity failed to so observe, perform and fulfill such provision, it would have a material adverse effect upon Party A (as such provisions may be amended, supplemented or modified for purposes of this Agreement with the prior written consent of Party A, the “Incorporated Provisions”), with the effect that Party A will have the benefit of each of the Incorporated Provisions (including without limitation, covenants, right to

consent to certain actions subject to consent under the Covered Indenture and delivery of financial statements and other notices and information). In the event the Covered Indenture ceases to be in effect prior to the termination of this Agreement, the Incorporated Provisions (other than those provisions relating to indemnifications or the payment of fees or requiring payments in respect of bonds, notes, warrants or other similar instruments issued under the Covered Indenture) will remain in full force and effect for purposes of this Agreement as though set forth herein until such date on which all of the obligations of the Government Entity under this Agreement and any obligations of the Government Entity or any Credit Support Provider of the Government Entity under a Credit Support Document have been fully satisfied. The Incorporated Provisions are hereby incorporated by reference and made a part of this Agreement to the same extent as if such provisions were set forth herein. For purposes of this Agreement, the Incorporated Provisions shall be construed as though (i) all references therein to any party making loans, extensions of credit or financial accommodations thereunder or commitments therefor (the “Financings”) were to the other party hereto and (ii) to the extent that such Incorporated Provisions are conditioned on or relate to the existence of such Financings or the Government Entity having any obligations in connection therewith, all references to such Financings or obligations were to the obligations of the Government Entity under this Agreement. Any amendment, supplement, modification or waiver of any of the Incorporated Provisions without the prior written consent of the other party hereto shall have no force and effect with respect to this Agreement. Any amendment, supplement or modification for which such consent is obtained shall be part of the Incorporated Provisions for purposes of this Agreement.

(f) ***Security and Source of Payment of Party B’s Obligations.*** The obligation of Party B to make payments to Party A under this Agreement with respect to each Transaction hereunder is a general unsecured obligation of Party B payable from any legally available monies.”

(d) ***Jurisdiction.*** Section 11(b)(i) of this Agreement is hereby amended to read in its entirety as follows:

“(b) ***Jurisdiction.*** With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:—

(i) submits, to the fullest extent permitted by applicable law, to the exclusive jurisdiction of the United States District Court with jurisdiction over the location of Party B (the “Court”); and

(ii) waives, to the fullest extent permitted by applicable law, (1) any objection which it may have at any time to the laying of venue of any Proceedings brought in the Court, (2) any claim that such Proceedings have been brought in an inconvenient forum and (3) the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction if (A) the Court lacks jurisdiction over the parties or the subject matter of the Proceedings or declines to accept the Proceedings on the grounds of lacking such jurisdiction; (B) the Proceedings are commenced by a party for the purpose of enforcing against the other party’s property, assets or estate any decision or judgment rendered by any court in which Proceedings may be brought as provided hereunder; (C) the Proceedings are commenced to appeal the Court’s decision or judgment to the United

States Court of Appeals for the Ninth Circuit or the U.S. Supreme Court; or (D) any suit, action or proceeding has been commenced in another jurisdiction by or against the other party or against its property, assets or estate (including, without limitation, any suit, action or proceeding described in Section 5(a)(vii)(4) of this Agreement), and, in order to exercise or protect its rights, interests or remedies under this Agreement, the party (1) joins, files a claim, or takes any other action, in any such suit, action or proceeding, or (2) otherwise commences any Proceeding in that other jurisdiction as the result of that other suit, action or proceeding having commenced in that other jurisdiction.”

(e) **Definitions.** Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:—

“**Covered Indenture**” means the Installment Sale Agreement, dated as of February 1, 2010 between Party B and Irvine Ranch Water District Water Service Corporation, relating to the Certificates of Participation, Irvine Ranch Water District Refunding, Series 2010, as amended and supplemented in accordance with the terms thereof.

“**Government Entity**” means Party B.

“**Incipient Illegality**” means (a) the enactment by the California Legislature of legislation which, would render unlawful the performance by the Government Entity of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by the Government Entity with any other material provision of this Agreement relating to such Transaction or (b) the occurrence with respect to the Government Entity of an event that constitutes an Illegality.

(f) This Agreement is hereby amended by adding the following Section “13” hereto:—

“13. Relationship Between Parties

Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):-

(a) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. It has not received from the other party any assurance or guarantee as to the expected results of that Transaction.

(b) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(c) **Status of Parties.** The other party is not acting as a fiduciary for or as an advisor to it in respect of that Transaction.

(d) **Eligible Contract Participant.** It is an “eligible contract participant” within the meaning of Section 1(a) of the Commodity Exchange Act, as amended.”

(g) **Transfer.** Section 7 of this Agreement is hereby amended by adding the following language thereto:

“Notwithstanding the provisions of this Section 7 of this Agreement, Party B may, without the prior written consent of Party A, transfer all of its rights and obligations under this Agreement (including any Transactions hereunder) to another entity (the “Transferee”) provided that:

- (1) the creditworthiness of the Transferee or its guarantor is reasonably acceptable to Party A in its sole discretion;
- (2) the Transferee and Party A shall have executed a master agreement in form and substance satisfactory to Party A with terms appropriate for counterparties with the Transferee’s (or its guarantor’s) credit rating, as determined by Party A in good faith (including such Credit Support Documents as shall be required by Party A and appropriate for counterparties with the Transferee’s (or its guarantor’s) credit rating, as determined by Party A in good faith) under which the transferred Transactions will be governed;
- (3) at the time of such transfer, no Early Termination Date shall have been designated under this Agreement and no Potential Event of Default, Event of Default or Termination Event shall have occurred and be continuing under this Agreement with respect to Party B;
- (4) such transfer will not result in the violation of any law, regulation, rule, judgment, order or other legal limitation or restriction applicable to Party A;
- (5) such transfer will not result in a violation of Party A’s counterparty eligibility or credit practices or policies or exposure limitations;
- (6) at the time of such transfer, no event which would constitute a Potential Event of Default, Event of Default or Termination Event with respect to the Transferee if the Transferee were a party to this Agreement (or its guarantor were a Credit Support Provider under this Agreement) shall have occurred and be continuing;
- (7) such transfer does not result in any adverse tax consequences to Party A, including the obligation to deduct or withhold an amount with respect to any tax from payments required to be made to the Transferee, the receipt of payments from the Transferee from which amounts with respect to any tax may be deducted or withheld or the imposition of any tax, levy, impost, duty charge, or fee of any nature by any government or taxing authority which would not have been imposed but for such transfer; and
- (8) the Transferee is organized under the laws of the United States or a state thereof or in a jurisdiction in which there is an opinion of counsel published by ISDA stating that netting under this Agreement is enforceable.”

- (h) **Waiver of Trial by Jury.** With respect to any suit, action or proceedings relating to this Agreement, each party irrevocably waives, to the extent permitted by law, its respective right to a jury trial of any and all claims or causes of action based upon or arising out of this Agreement and the other related documents. Each party (i) certifies that no representative, agent or attorney of the other party or any Credit Support Provider has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Agreement and provide for any Credit Support Document, as applicable, by, among other things, the mutual waivers and certifications in this section. If and to the extent that the foregoing waiver of the right to a jury trial is unenforceable for any reason in such forum, each of the parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.
- (i) **Accuracy of Specified Information.** Section 3(d) is hereby amended by adding in the third line thereof after the word “respect” and before the period the words “or, in the case of audited or unaudited financial statements or balance sheets, a fair presentation of the financial condition of the relevant person.”
- (j) **Independent Obligations.** (i) Although Party B may be entering into one or more Transactions under this Agreement to hedge against the interest expense of, or other risk associated with, an existing or future loan or other financing, this Agreement and each Transaction shall be an independent obligation of Party B separate and apart from any such loan or other financing, and therefore: (A) each party’s obligations under this Agreement or any Transaction shall not be contingent on whether any loan or other financing closes, is outstanding or is repaid, in whole or in part, at any time; (B) subject to paragraph (ii) below, any repayment, acceleration, satisfaction, discharge or release of, and any amendment, modification or waiver with respect to, any loan or other financing, whether in whole or in part, at any time, shall not in any way affect this Agreement, any Transaction or either party’s obligations under this Agreement or any Transaction except as otherwise expressly provided in this Agreement (including in any Additional Termination Event specified in this Schedule or in any Confirmation); (C) payments that become due under this Agreement or any Transaction shall be due whether or not (1) the Notional Amount of any Transaction at any time is different from the principal amount of any loan or other financing, (2) the Termination Date of any Transaction occurs before or after the maturity date of any loan or other financing, or (3) any other terms of any loan or other financing are different from the terms of this Agreement or any Transaction; (D) nothing in this Agreement or in any Confirmation is intended to be, nor shall anything herein or therein be construed as, a prepayment penalty, charge or premium for purposes of any loan or other financing, nor shall any terms of any loan or other financing be deemed a waiver of or otherwise impair any amount due or that may become due under this Agreement or under any Transaction; (E) if Party B at any time receives from Party A (or any of its affiliates) any payoff statement or other written statement regarding any loan or other financing, nothing in such statement shall be deemed to apply to this Agreement or any Transaction except as otherwise expressly provided in that statement with specific reference to this Agreement or such Transaction and then only to the extent so provided; (F) the terms under which any Transaction may be terminated early are set

forth in this Agreement (including any Confirmation of such Transaction), and any early termination of a Transaction other than pursuant to the provisions of this Agreement (including any such Confirmation) is subject to mutual agreement of the parties, the terms of which may require one party to pay an early termination fee to the other party based upon market conditions prevailing at the time of early termination, and with any mutually agreed early termination being evidenced by a termination Confirmation sent by Party A to Party B; and (G) if at any time any existing or future collateral or other credit support secures or otherwise supports both this Agreement (or any Transaction hereunder) and any loan or other financing (whether this Agreement or any Transaction hereunder is specifically identified in the collateral or credit support documents, or instead is referred to therein generically), then Party A (or its agent) shall be entitled to continue to hold such collateral or other credit support, and such collateral or other credit support shall continue to secure or otherwise support Party B's obligations under this Agreement (or any Transaction hereunder), until such time as all such obligations of Party B are completely satisfied notwithstanding any repayment, acceleration, satisfaction, discharge or release of any such loan or other financing.

Nothing in paragraph (i) above shall be construed as impairing or limiting: any set-off rights; any cross default, credit support default or other provisions contained in this Agreement or any Confirmation to the extent such provisions refer to any repayment or acceleration of any loan or other financing; any rights or obligations under any Credit Support Documents; or any obligations of Party B under any covenant incorporated in this Schedule by reference from any loan or other financing (provided that any amendment, modification or waiver executed and delivered by Party A in writing with respect to any such covenant shall be deemed to apply hereunder to that covenant as so incorporated unless otherwise expressly provided in such writing).

- (k) **Confirmation Procedures.** For each Transaction that Party A and Party B enter hereunder, Party A shall promptly send to Party B a Confirmation setting forth the terms of such Transaction. Party B shall execute and return the Confirmation to Party A or request correction of any error within five Local Business Days of receipt. Failure of Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation and acceptance of such terms.
- (l) **Recorded Conversations.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties or any of their Affiliates in connection with this Agreement or any Transaction or potential Transaction and (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and those of its Affiliates.
- (m) **Set-off.** Any Amount ("Early Termination Amount") payable to one party ("Payee") by the other party ("Payer") under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where either a Termination Event under Section 5(b)(ii) or any other Termination Event in which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by means of set off against any amount(s) ("Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the or instrument(s) or undertaking(s) issued or executed by the Payee to, or in the favor of, the Payer (and the Other Agreement Amount will be

discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this paragraph.

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the relevant currency.

Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

No amounts held by or payable to Party A in its capacity as trustee, paying agent, remarketing agent, tender agent or any other fiduciary capacity with respect to any bonds, notes or other evidences of indebtedness of Party B may be set-off against amounts owing to one party hereunder by the other party and no bank deposits held by Party A for Party B may be set-off against amounts owing to one party hereunder by the other party.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

WELLS FARGO BANK, N.A.

By: _____
Name: Harold E. Sprague
Title: Authorized Signatory

IRVINE RANCH WATER DISTRICT

By: _____
Name:
Title: Treasurer

EXHIBIT A to Schedule

[Form of Opinion of Counsel for Party A]

[DATE]

Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, California 92618

Master Agreement dated as of [DATE], between
Wells Fargo Bank, N.A. and Irvine Ranch Water District

Ladies and Gentlemen:

We have served as special counsel to Wells Fargo Bank, N.A. (the "Bank"), solely for the purpose of giving this opinion in connection with the ISDA Master Agreement dated as of [DATE] (the "Master Agreement", which includes the Schedule and Credit Support Annex thereto) and the [Swap Transaction Confirmation] dated [DATE] (the "Confirmation", and together with the Master Agreement, the "Agreement") each between the Bank and Irvine Ranch Water District (the "Counterparty"). This opinion is being delivered pursuant to the requirements of [Part 2] of the Schedule to the Master Agreement. Capitalized terms used in this letter and not defined shall have the definitions given to them in the Agreement.

In connection with the rendering of this opinion, we have examined the Agreement and such other documents, records and instruments as we have deemed necessary in connection with the rendering of this opinion.

Based upon the foregoing, we are of the opinion that:

(1) The Bank is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America and has full corporate power and authority to enter into and perform its obligations under the Agreement;

(2) The execution and delivery of the Agreement by the Bank and the performance by the Bank of its obligations thereunder have been duly authorized by all necessary corporate action on the part of the Bank; and

(3) The Agreement has been duly executed and delivered by the Bank and constitutes the legal, valid and binding obligation of the Bank, enforceable against the Bank in accordance with its terms.

Certain Assumptions

With your permission, we have assumed the following:

(a) the authenticity of original documents and the genuineness of all signatures;

- (b) the conformity to the originals of all documents submitted to us as copies;
- (c) the truth, accuracy and completeness of the information, factual matters, representations and warranties contained in the records, documents, instruments and certifications we have reviewed; and
- (d) that the documents referred to herein were duly authorized, executed and delivered on behalf of the respective parties thereto other than the Bank and that such documents are legal, valid and binding obligations of such parties other than the Bank.

Certain Limitations and Qualifications

Our opinion that any document is valid or binding on or enforceable in accordance with its terms is subject to:

- (a) limitations imposed by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally;
- (b) general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law;
- (c) the unenforceability under certain circumstances of provisions imposing penalties, forfeiture, late payment charges or an increase in interest rate upon delinquency in payment or the occurrence of any event of default; and
- (d) rights to indemnification and contribution which may be limited by applicable law or equitable principles or otherwise unenforceable as against public policy.

The opinions expressed herein are also subject to the following qualifications:

- (a) we express no opinion as to the effect of any federal or state securities laws or antitrust laws or as to the title to any assets or the creation, attachment, perfection, priority or enforcement of any security interest granted or conveyed under the Agreement;
- (b) certain of the remedial provisions with respect to the obligations of the Bank under the Agreement, including waivers with respect to the exercise of such remedies and including Section 6 of the Master Agreement to the extent they may require payment of amounts in excess of actual damages, may be unenforceable in whole or in part, but the inclusion of any such provision in the Agreement does not affect the validity of the Agreement and the Agreement, together with applicable law, contain adequate provisions for the practical realization of the benefits of the Agreement;
- (c) we express no opinion as to the enforceability of any agreement by the Bank to use its best or reasonable efforts to perform any action or achieve any result or of any agreement by the parties to mutually agree upon a matter in the future;
- (d) we express no opinion as to the enforceability of any provision providing that the Agreement may be amended only in writing or that any provision may be waived only in writing;

(e) we express no opinion with respect to the validity, binding effect or enforceability of any provision of the Agreement purporting to establish evidentiary standards or a consent to jurisdiction and venue or waiving service of process or demand or notice and hearing or constitutional rights (including a jury trial) or purporting to eliminate any obligation to marshal assets;

(f) we express no opinion as to any set-off provisions to the extent they relate to a party's affiliates;

(g) we express no opinion with respect to any severability provisions of the Agreement;

(h) we express no opinion as to the enforceability of Section 7 of the Master Agreement to the extent that it conflicts with Section 9-406(d) of the New York Uniform Commercial Code; and

(i) the choice of New York law to govern the Agreement may not be effective if the application of New York law would be contrary to a fundamental policy of a state or country which has a materially greater interest than New York in a particular issue and which has the most significant relationship to the parties and the transaction.

We express no opinion with respect to the effect of laws, other than the laws and regulations of the State of New York and the federal law of the United States of America in full force and effect on the date hereof, upon the validity and binding effect of the Agreement or upon any other matter set forth in this opinion.

This opinion is limited to the matters expressly set forth above, and no opinion is implied or may be inferred beyond the matters expressly so stated. This opinion is delivered to you in connection with the above-referenced transaction and may not be utilized or quoted by you for any other purpose whatsoever or relied upon by or delivered to any other person without our prior written consent. We disclaim any obligation to update this opinion letter for events occurring or coming to our attention after the date hereof.

Very truly yours,

EXHIBIT B to Schedule

[Form of Opinion of Counsel for Party B]

[DATE]

Wells Fargo Bank, N.A.
45 Fremont Street, 30th Floor
MAC A0194-300
San Francisco, California 94105

Re: ISDA Master Agreement (including the Schedule and Credit Support Annex thereto), dated as of [DATE], between Wells Fargo Bank, N.A., and Irvine Ranch Water District

Ladies and Gentlemen:

We have acted as counsel to Irvine Ranch Water District (“Party B”) in connection with the execution and delivery of the ISDA Master Agreement (the “Master Agreement”), the Schedule thereto, the Credit Support Annex supplementing and forming a part of the Master Agreement, each dated as of [DATE] and the Confirmation evidencing the Transaction referred to therein, dated [DATE] (collectively, the “Agreement”) by and between Wells Fargo Bank, N.A. (“Party A”) and Party B. All capitalized terms used and not otherwise defined herein shall have the meanings given them in the Agreement.

In such connection, we have reviewed the Agreement and certain proceedings taken by the Board of Directors and other bodies and officials of Party B and have relied upon certificates of public officials and of officers of Party B and such records of Party B and others to the extent we deemed necessary, without undertaking to verify the accuracy of the factual matters represented, warranted or certified therein. We have assumed the genuineness of all documents and signatures (of parties other than Party B) presented to us (whether as originals or as copies). We have also assumed that the Agreement constitutes the valid, binding and enforceable obligation of Party A pursuant to appropriate corporate authority.

We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the Agreement. We express no opinion as to any Transaction other than the Transaction evidenced by the Confirmation referred to herein. We express no opinion as to provisions of the Agreement (i) expressly or by implication waiving broadly or vaguely described rights or future rights or stating that rights or remedies are not exclusive, (ii) stating that rights or remedies are cumulative, any right or remedy may be exercised in addition to or with any other right or remedy, or that the election of some particular remedy or remedies does not preclude recourse to one or more other remedies, (iii) stating that the failure to exercise or delay in exercising rights or remedies will not operate as a waiver of any such rights or remedies, (iv) providing for recovery of more than actual damages or the payment or reimbursement of costs and expenses in excess of a reasonable amount determined by a court or other tribunal, (v) imposing any penalties (including termination payments if construed by a court or other tribunal as such),

forfeitures, late charges or increases in interest rate in the event of delinquency or default, (vi) waiving or limiting rights to trial by jury, (vii) requiring that amendments, modifications and waivers be in writing, (viii) relating to rights of set-off, (ix) prohibiting, restricting or requiring the consent of the other party for the transfer of, or creation, attachment, or perfection of a security interest in, the Agreement or an interest therein, or (x) restricting assignment by a party of its rights without the consent of the other party. We express no opinion regarding the tax consequences of any Transaction, or the effect on the legality, validity, binding effect, or enforceability of the Agreement or any Transaction of any federal or state securities laws, commodities exchange laws, pension or employee benefit laws, anti-money laundering laws, trading with the enemy laws, laws governing the regulation of transactions with consumers or retail customers, laws prohibiting or regulating gambling or the provision of insurance or the operation of a business that is engaged in the offer, purchase or sale of financial instruments, or any other laws of special or general application that, in our experience, normally are not applicable to governmental entities such as Party B in the State of California and transactions such as those contemplated by the Agreement. We express no opinion as to the priority, perfection, attachment or validity of any security interest created under the Agreement or the enforcement of remedies in connection therewith.

Based on our examination of the above and such other information and documents as we have considered necessary to render this opinion, it is our opinion that:

1. Party B is a California water district duly created, organized and existing under the laws of the State of California and in particular the California Water District Law, Division 13 of the California Water Code.

2. The execution, delivery and performance of the Agreement by Party B are within Party B's power. By official action of Party B duly taken prior to the execution and delivery of the Agreement, Party B has duly authorized the execution and delivery of the Agreement.

3. The Agreement has been duly executed and delivered by Party B and constitutes a valid and legally binding obligation of Party B enforceable against Party B in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, or by general equity principles (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or governmental agency, public board or body pending or, to our knowledge, threatened against Party B, in any way contesting or affecting the validity or enforceability of the Agreement, or in any way contesting the powers of Party B or its authority to enter into or perform its obligations under the Agreement.

5. The execution, delivery and performance of the Agreement by Party B do not conflict with, violate, or constitute a breach of or default under, any instrument relating to the creation, authorization, organization, or existence of Party B, any order or judgment of any court or other agency of government applicable to it or any of its assets, or the Covered Indenture (as defined in the Master Agreement) or, to our knowledge, any agreement or other instrument to which Party B is a party or is otherwise subject, which conflict, violation, breach of or default thereunder could have a material adverse effect upon Party B's ability to perform its obligations under the Agreement.

6. All consents, approvals, authorizations, or other orders of, and all filings and registrations with any California governmental authority having jurisdiction over Party B required in

connection with Party B's execution, delivery and performance of the Agreement have been duly obtained.

7. Except as provided in Title 1, Division 3.6 of the California Government Code, Party B is not entitled to claim immunity on the grounds of sovereign immunity in respect of its contractual obligations under the Agreement and is subject to suit in connection with its obligations under the Agreement pursuant to and in accordance with the laws of the State of California as applicable to Party B. We express no opinion with respect to the attachment of Party B's properties or assets or other legal process in respect thereof.

We disclaim any obligation to update this letter. We do not express any opinion as to laws other than laws of the State of California and laws of the United States of America. No attorney-client relationship has existed or exists between our firm and you in connection with the Agreement or by virtue of this letter. The opinions in this letter are expressed solely as of the date hereof for your benefit and may not be relied upon in any manner or for any purposes by, nor may copies be delivered to, any other person.

Very truly yours,

ISDA®

International Swaps and Derivatives Association, Inc.

CREDIT SUPPORT ANNEX

to the Schedule to the

ISDA MASTER AGREEMENT

dated as of October 5, 2012

between

| | | |
|-------------------------------|-----|------------------------------------|
| WELLS FARGO BANK, N.A. | and | IRVINE RANCH WATER DISTRICT |
| ("Party A") | | ("Party B") |

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:

Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the Pledgor will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

Paragraph 3. Credit Support Obligations

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Delivery Amount*" applicable to the Pledgor for any Valuation Date will equal the amount by which:

(i) the Credit Support Amount

exceeds

(ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Return Amount*" applicable to the Secured Party for any Valuation Date will equal the amount by which:

(i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party

exceeds

(ii) the Credit Support Amount.

"*Credit Support Amount*" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

(i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and

(ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) **Substitutions.**

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the “Substitute Credit Support”); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the “Substitution Date”); *provided* that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

Paragraph 5. Dispute Resolution

If a party (a “Disputing Party”) disputes (I) the Valuation Agent’s calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction

(or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction);

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

Paragraph 6. Holding and Using Posted Collateral

(a) **Care of Posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral; Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

- (i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and
- (ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) **Distributions and Interest Amount.**

(i) **Distributions.** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) **Interest Amount.** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

Paragraph 7. Events of Default

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;

(ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or

(iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

Paragraph 8. Certain Rights and Remedies

(a) ***Secured Party's Rights and Remedies.*** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

(i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;

(iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) ***Pledgor's Rights and Remedies.*** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

(i) the Pledgor may exercise all rights and remedies available to a Pledgor under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

Paragraph 9. Representations

Each party represents to the other party (which representation will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

Paragraph 10. Expenses

(a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.

(b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).

(c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

Paragraph 11. Miscellaneous

(a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obliged to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that the Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.

(c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).

(d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.

(e) ***Demands and Notices.*** All demands and notices given by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.

(f) ***Specifications of Certain Matters.*** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

Paragraph 12. Definitions

As used in this Annex:—

“Cash” means the lawful currency of the United States of America.

“Credit Support Amount” has the meaning specified in Paragraph 3.

“Custodian” has the meaning specified in Paragraphs 6(b)(i) and 13.

“Delivery Amount” has the meaning specified in Paragraph 3(a).

“Disputing Party” has the meaning specified in Paragraph 5.

“Distributions” means, with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

“Eligible Collateral” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“Eligible Credit Support” means Eligible Collateral and Other Eligible Support.

“Exposure” means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of “Market Quotation”).

“Independent Amount” means, with respect to party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Interest Amount” means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the

form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

“Interest Period” means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

“Interest Rate” means the rate specified in Paragraph 13.

“Local Business Day,” unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

“Minimum Transfer Amount” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Notification Time” has the meaning specified in Paragraph 13.

“Obligations” means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

“Other Eligible Support” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“Other Posted Support” means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

“Pledgor” means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

“Posted Collateral” means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

“Posted Credit Support” means Posted Collateral and Other Posted Support.

“Recalculation Date” means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the “Recalculation Date” means the most recent Valuation Date under Paragraph 3.

“Resolution Time” has the meaning specified in Paragraph 13.

“Return Amount” has the meaning specified in Paragraph 3(b).

“Secured Party” means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

“Specified Condition” means, with respect to a party, any event specified as such for that party in Paragraph 13.

“Substitute Credit Support” has the meaning specified in Paragraph 4(d)(i).

“Substitution Date” has the meaning specified in Paragraph 4(d)(ii).

“Threshold” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Transfer” means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

- (i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;
- (ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;
- (iii) in the case of securities that can be paid or delivered in book-entry, the giving of written instruments to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and
- (iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

“Valuation Agent” has the meaning specified in Paragraph 13.

“Valuation Date” means each date specified in or otherwise determined pursuant to Paragraph 13.

“Valuation Percentage” means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

“Valuation Time” has the meaning specified in Paragraph 13.

“Value” means for any Valuation Date or other date for which Value is calculated, and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
 - (A) Cash, the amount thereof; and

- (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.

Paragraph 13. Elections and Variables

(a) **Security Interest for “Obligations”.** The term “Obligations” as used in this Annex includes the following additional obligations:

With respect to Party A: Not applicable.

With respect to Party B: Not applicable.

(b) **Credit Support Obligations.**

(i) **Delivery Amount, Return Amount and Credit Support Amount.**

(A) “**Delivery Amount**” has the meaning specified in Paragraph 3(a).

(B) “**Return Amount**” has the meaning specified in Paragraph 3(b).

(C) “**Credit Support Amount**” has the meaning specified in Paragraph 3.

(ii) **Eligible Collateral.** The following items will qualify as “**Eligible Collateral**” for the party specified:

| | <u>Collateral Type</u> | <u>Party A</u> | <u>Valuation Percentage</u> |
|-----|---|----------------|-----------------------------|
| (A) | Cash, in the form of U.S. Dollars | [X] | 100% |
| (B) | negotiable debt obligations issued by the U.S. Treasury Department having remaining maturities of not more than one year (“Treasury Bills”) | [X] | 98% |
| (C) | negotiable debt obligations issued by the U.S. Treasury Department having remaining maturities of more than one year but not more than ten years (“Treasury Notes”) | [X] | 95% |
| (D) | negotiable debt obligations issued by the U.S. Treasury Department having remaining maturities of more than ten years but not more than 30 years (“Treasury Bonds”) | [X] | 93% |

(iii) **Other Eligible Support.** The following items will qualify as “**Other Eligible Support**” for the party specified: Not applicable.

(iv) **Thresholds.**

(A) “**Independent Amount**” shall mean an amount, if any, as set forth in a Confirmation with respect to Party A.

“**Independent Amount**” shall not apply to Party B.

(B) “**Threshold**” as of any date shall be the amount set forth in the chart below under the caption “Threshold” and shall be, with respect to Party A, the amount set forth opposite the rating classification assigned to any long-term unsecured, unsubordinated, debt of Party A by any Relevant Rating Agency and, with respect to Party B, not applicable. If at any time all outstanding long-term unsecured, unsubordinated debt of Party A shall not be rated by either of the Relevant Rating Agencies or an Event of Default with respect to Party A exists, the Threshold for Party A shall be zero (USD 0.00). In the event of a split rating classification by the Relevant Rating Agencies, the Threshold shall be the amount opposite the lower of the ratings on the chart below. “Relevant Rating Agency” for the purposes hereof means S&P and Moody’s.

| <u>Moody’s Rating</u> | <u>S&P Rating</u> | <u>Party A Threshold</u> |
|---------------------------|---------------------------|------------------------------|
| Aa3 and above | AA– and above | \$30,000,000 |
| A1 | A+ | \$20,000,000 |
| A2 | A | \$10,000,000 |
| A3 | A– | \$5,000,000 |
| Baa1 | BBB+ | Zero |
| Baa2 | BBB | Zero |
| Baa3 and below | BBB– and below | Zero |

(C) “**Minimum Transfer Amount**” means, with respect to a party, \$100,000; provided, that if an Event of Default has occurred and is continuing with respect to a party as the Defaulting Party, the Minimum Transfer Amount with respect to such party shall be zero.

(D) **Rounding.** The Delivery Amount and the Return Amount will be rounded up and down respectively to the nearest integral multiple of \$10,000.

(c) **Valuation and Timing.**

(i) “**Valuation Agent**” means Party A, *provided, however,* that if an Event of Default has occurred and is continuing with respect to Party A, then in such case, and for so long as

the Event of Default continues, Valuation Agent shall be a leading dealer in the relevant derivatives market selected by Party B and approved by Party A (such approval not to be unreasonably withheld). It is acknowledged that the function of the Valuation Agent hereunder is administrative in nature, Party A is not acting as Party B’s agent, advisor or fiduciary for such purpose, and Party B shall remain responsible for making its own demands for a Delivery Amount or Return Amount based on the Valuation Agent’s calculations of Value and Exposure provided to Party B at its request for the relevant Valuation Date. As specified in the definition of Exposure in Paragraph 12, any calculation of Exposure will be a mid-market estimate, and therefore will not show an actual market price at which an offer would be made for unwinding any Transaction. Instead, it will show a mathematical approximation of a market value derived from proprietary models as of a given date based on certain assumptions regarding past, present and future market conditions. All such models and assumptions are subject to change and shall remain the Valuation Agent’s proprietary and confidential property.

- (ii) **“Valuation Date”** means each Local Business Day.
- (iii) **“Valuation Time”** means the close of business in New York City on the Local Business Day immediately before the Valuation Date or the date of calculation, as applicable; *provided* that the calculations of Value and Exposure will be made as of approximately the same time on the same date.
- (iv) **“Notification Time”** means by 3:00 p.m., New York time, on a Local Business Day.

(d) **Conditions Precedent and Secured Party’s Rights and Remedies.** The following Termination Event(s) will be a “Specified Condition” for the party specified (that party being the Affected party if the Termination Event occurs with respect to that party):

| | Party A |
|---------------------------------|---------|
| Illegality | [X] |
| Credit Event Upon Merger | [X] |
| Additional Termination Event(s) | [X] |

Notwithstanding the foregoing or anything to the contrary in this Annex, if an event or condition giving rise to a Specified Condition has occurred and is continuing in relation to a party (“X”), then the condition precedent specified in Paragraph 4(a) will cease to be a condition to each obligation of the other party (“Y”) under Paragraph 3, 4(d)(ii), 5 and 6(d) on the Condition End Date. For purposes of this Annex, “Condition End Date” means the first Local Business Day following the date falling 60 days after the first date on which Y does not make a Transfer otherwise required of it following the occurrence of the Specified Condition, unless a subsequent Specified Condition has occurred in relation to X and is continuing, in which case the Condition End Date will be the first Local Business Day following the date falling 60 days after the first due date on which Y does not make a Transfer otherwise required of it following the occurrence of each subsequent Specified Condition.

(e) **Substitution**

- (i) ***“Substitution Date”*** means (A) the Local Business Day on which the Secured Party receives the Substitute Credit Support, if notice of substitution is received by the Notification Time at least one Local Business Day prior to such date, and (B) the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, if notice of substitution is received after the Notification Time on the immediately preceding Local Business Day.
 - (ii) ***Consent.*** The Pledgor need not obtain the Secured Party’s consent for any substitution pursuant to Paragraph 4(d).
- (f) ***Dispute Resolution***
- (i) ***“Resolution Time”*** means 1:00 p.m. New York time on the Local Business Day following the date on which the notice is given that gives rise to a dispute under Paragraph 5.
 - (ii) ***“Value.”*** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support will be calculated as follows: in the case of Cash, the face amount thereof; and in the case of Eligible Collateral other than Cash, the mid-point between the bid and offered purchase rates or prices for that Posted Credit Support as reported on the Bloomberg electronic service as of the Resolution Time, or if unavailable, as quoted to the Valuation Agent as of the Resolution Time by a dealer in that Posted Credit Support of recognized standing selected in good faith by the Valuation Agent, which calculation shall include any unpaid interest on that Posted Credit Support.
 - (iii) ***Alternative.*** The provisions of Paragraph 5 will apply.
- (g) ***Holding and Using Posted Collateral.***
- (i) ***Eligibility to Hold Posted Collateral; Custodians.***

Party B’s Custodian will be entitled to hold Posted Collateral pursuant to Paragraph 6(b), *provided* that the following conditions are satisfied:
 - (1) Party B is not a Defaulting Party.
 - (2) The Custodian is a bank or trust company located in the State of New York having total assets of at least USD 10,000,000,000 and a long term debt or deposit rating of at least (i) “A2” from Moody’s and (ii) “A” from S&P.
 Initially, the Custodian for Party B shall be as set forth in a written notice delivered to Party A to the address and in the manner set forth in Paragraph (k).
 - (ii) ***“Use of Posted Collateral”*** The provisions of Paragraph 6(c) will apply.
- (h) ***Distributions and Interest Amount.***
- (i) ***“Interest Rate.”*** The “Interest Rate” will be with respect to Eligible Collateral in the form of Cash, for any day, the rate opposite the caption “Federal Funds (Effective)” for such day as published for such day (or if that day is not a New York Business Day, then

for the next preceding New York Business Day) in Federal Reserve Publication H.15(519) or any successor publication as published by the Board of Governors of the Federal Reserve System.

- (ii) **“Transfer of Interest Amount.”** The Transfer of the Interest Amount will be made on the first Local Business Day of each calendar month.
- (iii) **“Alternative to Interest Amount.”** The provisions of Paragraph 6(d)(ii) will apply.
- (i) **Additional Representation(s).** Not applicable.
- (j) **Other Eligible Support and Other Posted Support.**
 - (i) **“Value”** with respect to Other Eligible Support and Other Posted Support means: Not applicable.
 - (ii) **“Transfer”** with respect to Other Eligible Support and Other Posted means: Not applicable.
- (k) **Demands and Notices.** All demands, specifications and notices made by a party to this Annex will be made pursuant to the Notices Section of this Agreement, provided that the address for Party A for such purposes shall be:

WELLS FARGO BANK, N.A.
 550 South Tryon Street, 7th Floor
 Coll Mgmt – MAC-D1086-070
 Charlotte, NC 28202
 Attention: Collateral Management
 Fax: (704) 410-8515
 Phone: (704) 410-8116
 Email: collateral.mgmt@wellsfargo.com

And the address for Party B for such purposes shall be:

Irvine Ranch Water District
 15600 Sand Canyon Avenue
 Irvine, California 92618
 Fax No.: 949-453-0128
 Tel. No.: 949-453-5358

- (l) **Addresses for Transfers.**
 - (i) For each Transfer hereunder to Party A, instructions will be provided by Party A for that specific Transfer.
 - (ii) For each Transfer hereunder to Party B, instructions will be provided by Party B for that specific Transfer.

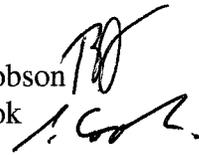
- (m) *Agreement as to Single Secured Party and Pledgor.* Party A and Party B agree that, notwithstanding anything to the contrary in this Annex, (including without limitation the recital, Paragraph 1(b) or Paragraph 2 or the definitions in Paragraph 12), (a) the term “**Secured Party**” as used in this Annex means only Party B, (b) the term “**Pledgor**” as used in this Annex means only Party A, (c) only Party A makes the pledge and grant in Paragraph 2, the acknowledgment in the final sentence of Paragraph 8(a) and the representations in Paragraph 9, (d) only Party A will be required to make Transfers of Eligible Credit Support hereunder, and (e) Party B has no obligation to make any pledge under this Annex to secure its Obligations.

October 8, 2012

Prepared and

Submitted by: Rob Jacobson

Approved by: Paul Cook



CONSENT CALENDAR

ASSET OPTIMIZATION – LAKE FOREST / SERRANO SUMMIT PROPERTY FUEL MODIFICATION AND TEMPORARY EASEMENT AGREEMENT

SUMMARY:

To facilitate future development activities at the District's Serrano Summit project, an agreement with the adjacent landowner will be necessary for fuel modification, weed abatement and grading purposes along the contiguous property line. Staff recommends Board approval of the Fuel Modification and Temporary Easement Agreement in substantially the form submitted.

BACKGROUND:

On February 7, 2012, the Lake Forest City Council approved the Serrano Summit tentative tract map depicting the future planning areas and corresponding Area Plan for the property, as well as certification of a project-specific Environmental Impact Report (EIR). The Serrano Summit project will include up to 608 residential units, neighborhood and passive parks, a city hall and civic center complex, and IRWD operating facilities. In February 2012, the City Council approved the intent to form a Community Facilities District (CFD) on the property, and the requisite public hearing process formally completed the CFD formation on April 17, 2012. On April 23, 2012, the Board approved the retention of Lewis Operating Corporation to manage the process to obtain a recordable Final Map for the Serrano Summit project.

Fuel Modification and Temporary Easement Agreement:

The Serrano Summit project is adjacent to another approved residential property known as the Serrano Highlands (Highlands) project. The property is owned by Madison Investors, LP and Westbay Trust and is located on the western boundary of the District's property.

At this time it is not known which project will be first to begin development. An agreement between the parties is required by the City as a condition for final map approval to clearly define the terms and conditions for construction activities along the property line during initial grading and construction. To comply with this requirement, counsel for the District and Highlands ownership have drafted an agreement addressing fuel modification, weed abatement and grading considerations. A copy of the draft Fuel Modification and Temporary Easement Agreement (Agreement) is attached as Exhibit "A" for the Board's review and approval.

As shown in the Agreement, the temporary easement area is approximately 150 feet wide along the contiguous boundary of the two properties. The Agreement also includes terms for equitably allocating habitat mitigation expenses should any be located in the easement area.

FISCAL IMPACTS:

None.

ENVIRONMENTAL COMPLIANCE:

This project is subject to the California Environmental Quality Act (CEQA) and in conformance with the California Code of Regulations Title 14, Chapter 3, Article 7, an EIR was certified by the City of Lake Forest on February 7, 2012.

COMMITTEE STATUS:

This item was reviewed by the Asset Management Committee on October 1, 2012.

RECOMMENDATION:

THAT THE BOARD APPROVE THE FUEL MODIFICATION AND TEMPORARY EASEMENT AGREEMENT FOR THE ASSET OPTIMIZATION – LAKE FOREST (SERRANO SUMMIT) PROJECT IN SUBSTANTIALLY THE FORM SUBMITTED.

LIST OF EXHIBITS:

Exhibit “A” – Draft Fuel Modification and Temporary Easement Agreement

Exhibit "A"

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, CA 92618
Attention: General Manager

Space Above This Line For Recorder's Use Only

FUEL MODIFICATION AND TEMPORARY EASEMENT AGREEMENT

This Fuel Modification and Temporary Easement Agreement ("Agreement") is entered into this ___ day of _____, 2012, by and between Madison Investors, LP, a California limited partnership ("Madison"), Westbay Trust, Gary R. Emsiek, its Trustee ("Westbay"), and the Irvine Ranch Water District ("IRWD") (Madison and Westbay constitute and are referred to herein as one "Party" and IRWD as the other "Party," and together they are referred to as the "Parties"), with regard to the following:

RECITALS

A. Madison and Westbay own that certain real property described on Exhibit "A" attached hereto (the "Serrano Highlands Property") as tenants in common, each having a fifty percent (50%) undivided ownership interest therein.

B. IRWD owns that certain real property described on Exhibit "B" attached hereto (the "IRWD Property"); the Serrano Highlands Property and the IRWD Property are in some instances individually referred to as a "Property" and collectively as "Properties").

C. The Properties are contiguous, presently undeveloped, and planned for development. For the purpose of meeting certain local regulations and otherwise facilitating its development activities, each Party desires to secure certain temporary rights to use the adjacent portion of the other Party's Property. The need to exercise such rights will depend, among other things, on the timing of development activities on each Property and in what sequence their respective activities are carried out. In recognition that the relative timing of the Parties' development activities is uncertain but each Party will need to establish such rights in advance of its development activities in order to satisfy local regulations, each of the Parties desires to provide certain rights to, and obtain reciprocal rights from, the other Party and also obtain a temporary, nonexclusive construction easement from the other Party within the other Party's Property.

D. The reciprocal rights and easement presently contemplated by the Parties are for fuel modification and/or weed abatement and grading purposes.

E. The area of the temporary, nonexclusive construction easement is a strip of land over both Properties, lying on each side of the common property line, as depicted on Exhibit "C" attached hereto (the "Easement Area").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The Parties hereto hereby incorporate into the terms of this Agreement each and every one of the Recitals contained in Paragraphs A through E, inclusive, above, as though fully set forth herein.

2. **Grant of Reciprocal Easements for Fuel Modification and Grading; Costs and Expenses.** Each Party hereby grants to the other Party and its successors and assigns a temporary, nonexclusive easement over and across the portion of the Easement Area located on the granting Party's Property for the purposes of performing fuel modification and/or weed abatement and grading. The temporary, nonexclusive construction easement granted by this Agreement with respect to a Party's Property shall be appurtenant to the other Party's Property.

The Parties agree that all costs and expenses of fuel modification and/or weed abatement and grading performed pursuant to this Agreement will be borne by the Party that proceeds first with such fuel modification and/or weed abatement and grading, and that such Party who proceeds first will be entitled to reimbursement from the other Party only for any habitat mitigation fees it is required to pay relating to the activities on the other Party's Property and will not be entitled to any reimbursement of any other fuel modification and/or weed abatement and grading costs and expenses. Any reimbursement pursuant to this Section 2 shall be paid by the owing Party prior to the commencement of development of such Party's Property. The foregoing notwithstanding, if the Parties' development activities would require both Parties to proceed with fuel modification and/or weed abatement and grading at substantially the same time, the Parties agree to coordinate their activities so as to concurrently satisfy local regulation as to both Properties, and in such case each Party will bear the costs and expenses of the fuel modification and/or weed abatement and grading in the portion of the Easement Area on its own Property. The obligation of one Party to reimburse the other Party pursuant to this Section 2 shall survive termination of the easement granted herein.

Grading within the Easement Area shall be performed in accordance with the grading plans in Exhibit "D" attached hereto, as modified by the City-approved grading plans or as otherwise mutually agreed by the Parties.

3. **Temporary Maintenance.** The Party first proceeding with fuel modification and/or weed abatement and grading shall have the right and obligation to perform temporary maintenance of the fuel modification and/or weed abatement and grading area within the Easement Area on the other Party's Property so as to maintain the fuel modification and/or weed abatement and grading area in conformity with the applicable local regulations and requirements for fuel modification and/or weed abatement and grading. This right and obligation of such Party to conduct temporary maintenance of the fuel modification and/or weed abatement and grading within the portion of the Easement Area on the other Party's Property and the temporary easement granted herein shall terminate automatically upon the commencement of development on the other Party's Property. As used in this Agreement, "commencement of development" on a Property means the issuance of a grading permit for the grading of such Property. The temporary maintenance right and obligation of the Party first proceeding with fuel modification and/or weed abatement and grading on the other Party's Property, and the temporary

construction easement on such other Party's Property, shall likewise terminate if commencement of development of the other Party's Property has not occurred within three years of the date of commencement of development of such first Party's Property, and upon the expiration of such three year period the other Party shall then assume and perform the obligation for maintenance of the fuel modification and/or weed abatement and grading on its own Property in conformity with the applicable local regulations and requirements.

4. **Indemnification.** Each of the Parties hereby covenants and agrees to indemnify and hold harmless the other Party, its successors and assigns, and each of their employees, officers and agents, from any and all claims arising out of the negligent acts or omissions or willful misconduct of the indemnifying Party or its employees, officers, agents in the use of the rights and easement granted hereunder.

5. **Termination.** The easement granted herein by the granting Party within the portion of the Easement Area on its Property shall be automatically terminated upon the commencement of development of the granting Party's Property, without the necessity for any formal notice from one Party to the other and without the recordation of any document, provided, however, each Party agrees to execute a recordable document evidencing such termination if requested by the other Party. The termination of one, but not the other, of the reciprocal easements under the preceding sentence shall not affect the other easement or any other rights and obligations of the Parties under this Agreement.

6. **Habitat Removal Mitigation.** The Party that first proceeds with fuel modification and/or weed abatement and grading shall pay the mitigation fees and costs and satisfy any other mitigation requirements for the removal of coastal sage scrub or other habitat resulting from the fuel modification and/or weed abatement and grading in the Easement Area, subject to reimbursement as provided in Section 2 above.

7. **Miscellaneous.**

7.1 **Attorneys' Fees.** In the event of any dispute between the Parties hereto or the institution of any proceeding to interpret or enforce this Agreement, or arising out of the subject matter of this Agreement or the transactions contemplated hereby, the prevailing Party shall be entitled to recover its actual expenses, actual attorneys' fees and costs, as determined by the Arbitrator.

7.2 **No Modification.** No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by the Parties hereto.

7.3 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.4 **Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the Parties.

7.5 Binding Effect. This Agreement shall constitute an equitable servitude upon, and a covenant running with, the Property and shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Parties hereto.

7.6 Arbitration of Disputes. ANY DISPUTE UNDER THIS AGREEMENT SHALL BE BROUGHT IN ORANGE COUNTY, CALIFORNIA, AND SHALL BE DECIDED BY BINDING ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE JUDICIAL ARBITRATION AND MEDIATION SERVICES (“JAMS”) BEFORE AN ARBITRATOR SELECTED FROM THE RETIRED JUDGES PANEL OF THE ARBITRATORS OF JAMS. IN ADDITION TO THE JAMS RULES, THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE SUBJECT TO THE DISCOVERY PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE (“CCP”), AND PARTICULARLY CCP SECTION 1283.05. THE FEE PAYABLE TO JAMS TO INITIATE THE ARBITRATION SHALL BE REMITTED BY THE REQUESTING PARTY, PROVIDED, HOWEVER, THAT THE COSTS OF ARBITRATION SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR. THE PARTIES AGREE THAT THE DETERMINATION OF THE ARBITRATOR AND AWARD, IF ANY, MAY BE ENTERED WITH ANY COURT HAVING JURISDICTION AND THE DETERMINATION AND AWARD, IF ANY, MAY THEN BE ENFORCED AMONG THE PARTIES, WITHOUT FURTHER EVIDENTIARY PROCEEDINGS, AS IF ENTERED BY A COURT AT THE CONCLUSION OF A JUDICIAL PROCEEDING IN WHICH NO APPEAL WAS TAKEN.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.

BY PLACING THEIR INITIALS HERE:

MADISON _____, HEERS _____, IRWD _____,

THE PARTIES AGREE TO ARBITRATION AS SET FORTH ABOVE.

7.7 Counterparts Delivery by Facsimile Transmission. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document. The signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Any Party may deliver its signed counterpart of this Agreement to the other Party by facsimile transmission, and such delivery shall be deemed made and completed upon receipt of such facsimile transmission by the other Party. Any Party delivering a signed counterpart by facsimile transmission agrees to promptly send the counterpart bearing its original signature to the other Party; provided that a delay or failure to do so shall not negate the effectiveness of the delivery made by the facsimile transmission.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first set forth above.

“Madison”

MADISON INVESTORS, L.P., a California limited partnership

By: _____

Name: Gary Emsiek

Its: General Partner

“Westbay”

WESTBAY FAMILY TRUST

By: _____

Name: Gary R. Emsiek

Its: Trustee

“IRWD”

IRVINE RANCH WATER DISTRICT

By: _____

Name: _____

Its: _____

STATE OF)
) ss
COUNTY OF)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF)
) ss
COUNTY OF)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF)
) ss
COUNTY OF)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF THE SERRANO HIGHLANDS PROPERTY

3/12/12 9088.23
#103071 v3

A-1

A-9

EXHIBIT "A"

LEGAL DESCRIPTION

In the City of Lake Forest, County of Orange, State of California, Being Lot 5 of Tract No. 10931 as per map filed in Book 511, Pages 1 through 5, inclusive, of Miscellaneous Maps, together with Parcel 6 of Lot Line Adjustment No. 2003-04 Recorded December 23, 2004, as Instrument No. 2004001140913 of Official Records, both in the Office Recorder of Orange County, California.

A-1
ORANGE\SSMITH\47137.8

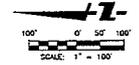
EXHIBIT "B"

LEGAL DESCRIPTION OF THE IRWD PROPERTY

←

TRACT NO. 19344
M.M. 847 / 38 - 42
LOT 42

TRACT NO. 8737
M.M. 473 / 36 - 40



PROPOSED EASEMENTS:
 (1) EASEMENT FOR PIPELINES AND ACCESS FOR I.R.W.D.
 (2) EASEMENT FOR EMERGENCY ACCESS & PUBLIC SERVICE FOR THE CITY

TRACT NO. 14318
M.M. 879 / 19 - 23
LOT 11

PARCEL MAP NO. 88-108
P.M.B. 387 / 28 - 31
PARCEL 2

PARCEL MAP NO. 89-218
(AMENDING MAP)

TRACT NO. 11279
M.M. 483 / 14 - 21

TRACT NO. 34916
M.M. 879 / 19 - 23
LOT 8

TRACT NO. 19344
M.M. 847 / 38 - 42
LOT 7

TRACT NO. 12809
M.M. 582 / 7 - 9

TRACT NO. 10881
M.M. 611 / 1 - 5

A-14

PLAN SET: M
17/14/11

| NO. | DATE | REVISIONS | APPROVED |
|-----|------|-----------|----------|
| | | | |
| | | | |
| | | | |

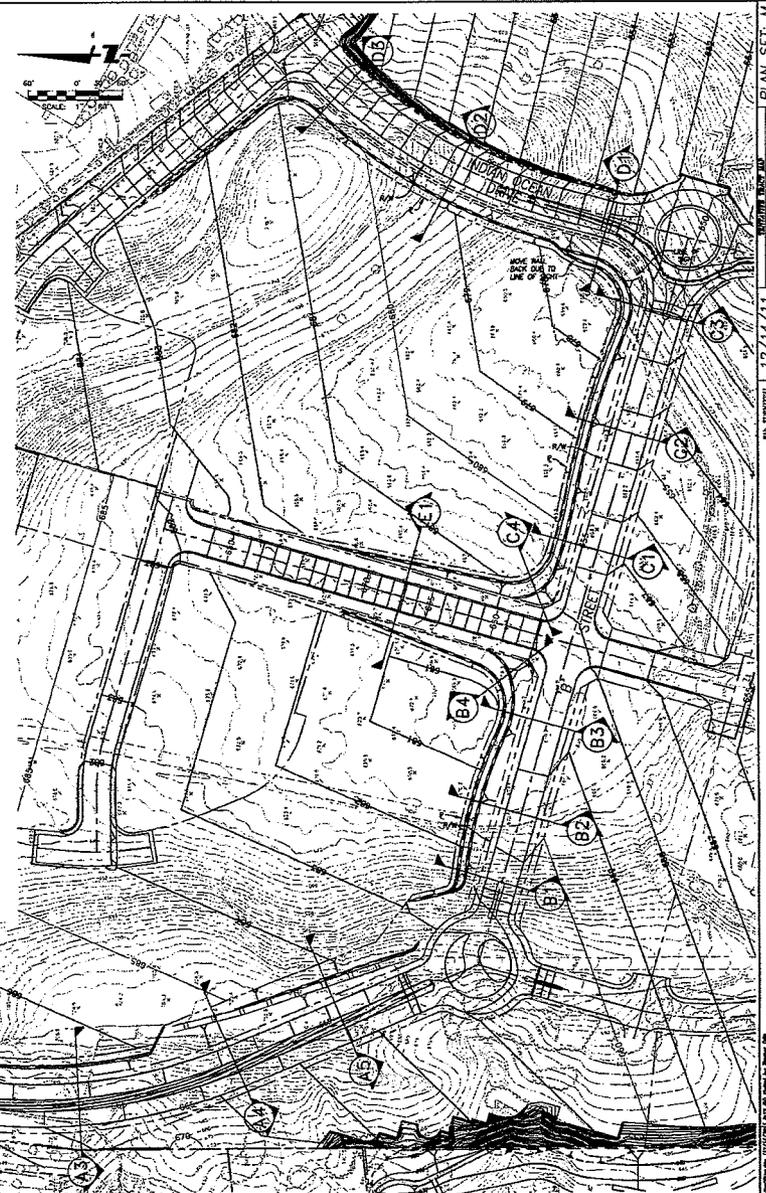
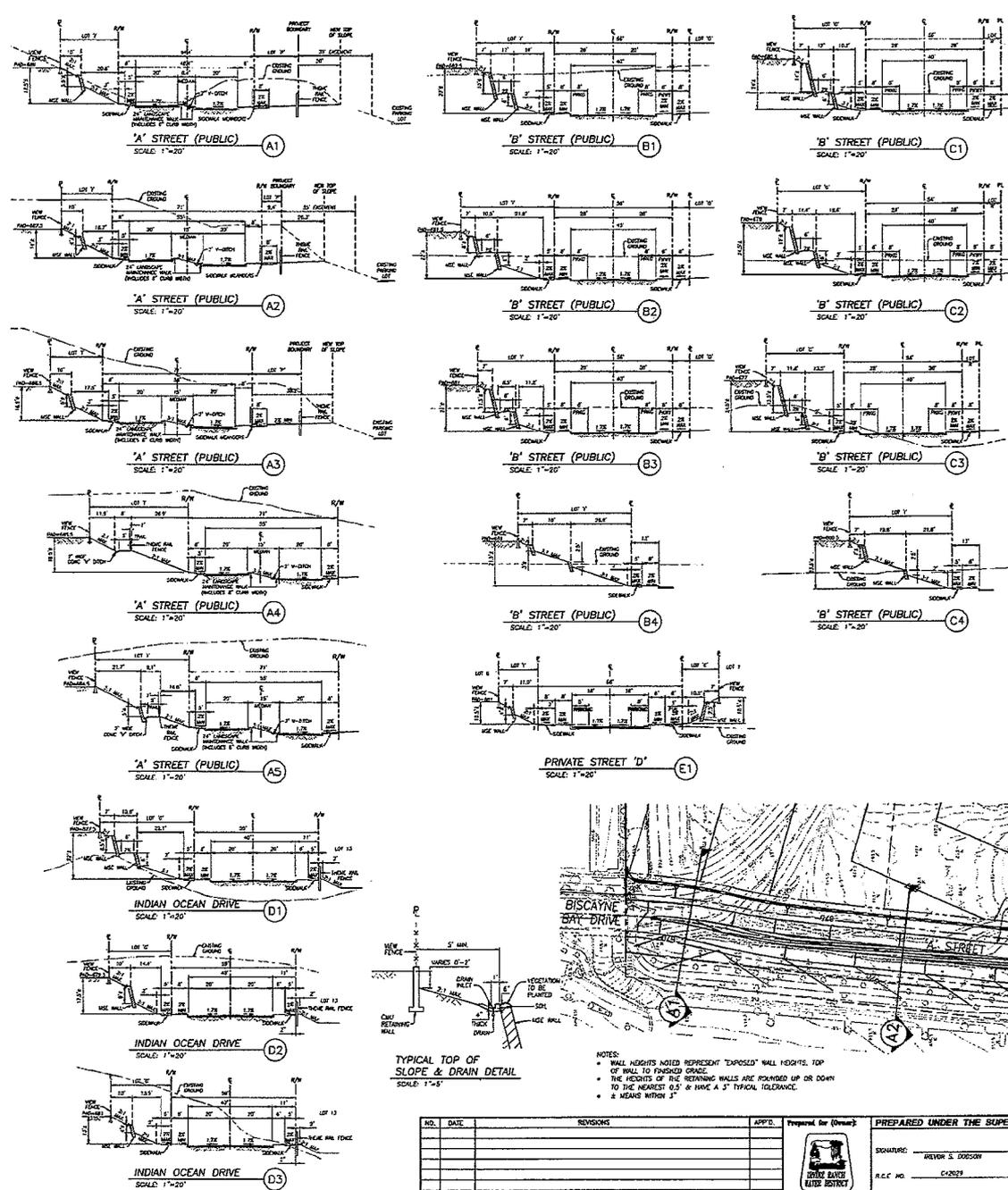


Prepared for (Owner):
 PREPARED UNDER THE SUPERVISION OF:
 SURVEYOR: RICHARD S. DODSON
 P.C.C. NO. 042935 EXP. DATE 03/31/11



TENTATIVE TRACT NO. 17331
 CITY OF LAKE FOREST, CALIFORNIA
 SHEET 3 of 5
 PLAT BOOK

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT - PROJECTS (2-10-11) 17331-1 Plotted by: Susan Goh

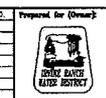


TYPICAL TOP OF SLOPE & DRAIN DETAIL
SCALE: 1"=5'

NOTES:

- WALL HEIGHTS NOTED REPRESENT "EXPOSED" WALL HEIGHTS, TOP OF WALL TO FINISHED GRADE.
- THE HEIGHTS OF THE RETAINING WALLS ARE FINISHED UP OR DOWN TO THE NEAREST 0.5' & HAVE A 3" TYPICAL TOLERANCE.
- ± MEANS WITHIN 3"

| NO. | DATE | REVISIONS | APP'D. |
|-----|------|-----------|--------|
| | | | |
| | | | |
| | | | |



Prepared for (Owner):
 PREPARED UNDER THE SUPERVISION OF:
 DRAWN BY: REVOR & DOSSON
 P.L.C. NO. C-2579 EXP. DATE 03/31/17



TENTATIVE TRACT NO. 17331
 CITY OF LAKE FOREST, CALIFORNIA

DESIGNED BY: [Signature]
 CHECKED BY: [Signature]
 DRAWN BY: [Signature]
 DATE: 08/22/16
 SHEET NO. 5 OF 5
 FIELD BOOK

EXHIBIT "C"
DEPICTION OF THE EASEMENT AREA

3/12/12 9088.23
#103071 v3

C-1

A-17

EXHIBIT "A"
LEGAL DESCRIPTION FOR FUEL MODIFICATION,
DRAINAGE AND CONSTRUCTION EASEMENT

That portion of Parcel 1 of Amending Map Parcel Map No. 89-128 in the City of Lake Forest, in the County of Orange, State of California, as shown on a map filed in Book 274 , Pages 27 through 29, inclusive, of Parcel Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Northeast corner of Lot 6 of Tract No. 10931 as shown on a map filed in Book 511, Pages 1 through 5 , inclusive, of Miscellaneous Maps in the office of the County Recorder of said County, said corner being on the Westerly boundary of said Parcel 1; thence South 0°18'41" West 638.15 feet along said boundary; thence South 9°28'43" East 170.00 feet along said boundary; thence leaving said boundary North 80°31'17" East 150.00 feet to a line that is parallel with and distant Easterly 150.00 feet from said boundary; thence North 9°28'43" West 157.15 feet along said parallel line; thence North 0°18'41" East 810.68 feet along said parallel line to the Easterly prolongation of a line that is parallel with and distant Northerly 170.00 feet from the Northerly line of said Lot 6; thence South 84°45'38" West 150.71 feet along said prolongation to said Westerly line; thence South 0°18'41" West 170.80 feet along said Westerly line to the Point of Beginning .

As more particularly shown on Exhibit "B" attached hereto and made a part hereof.

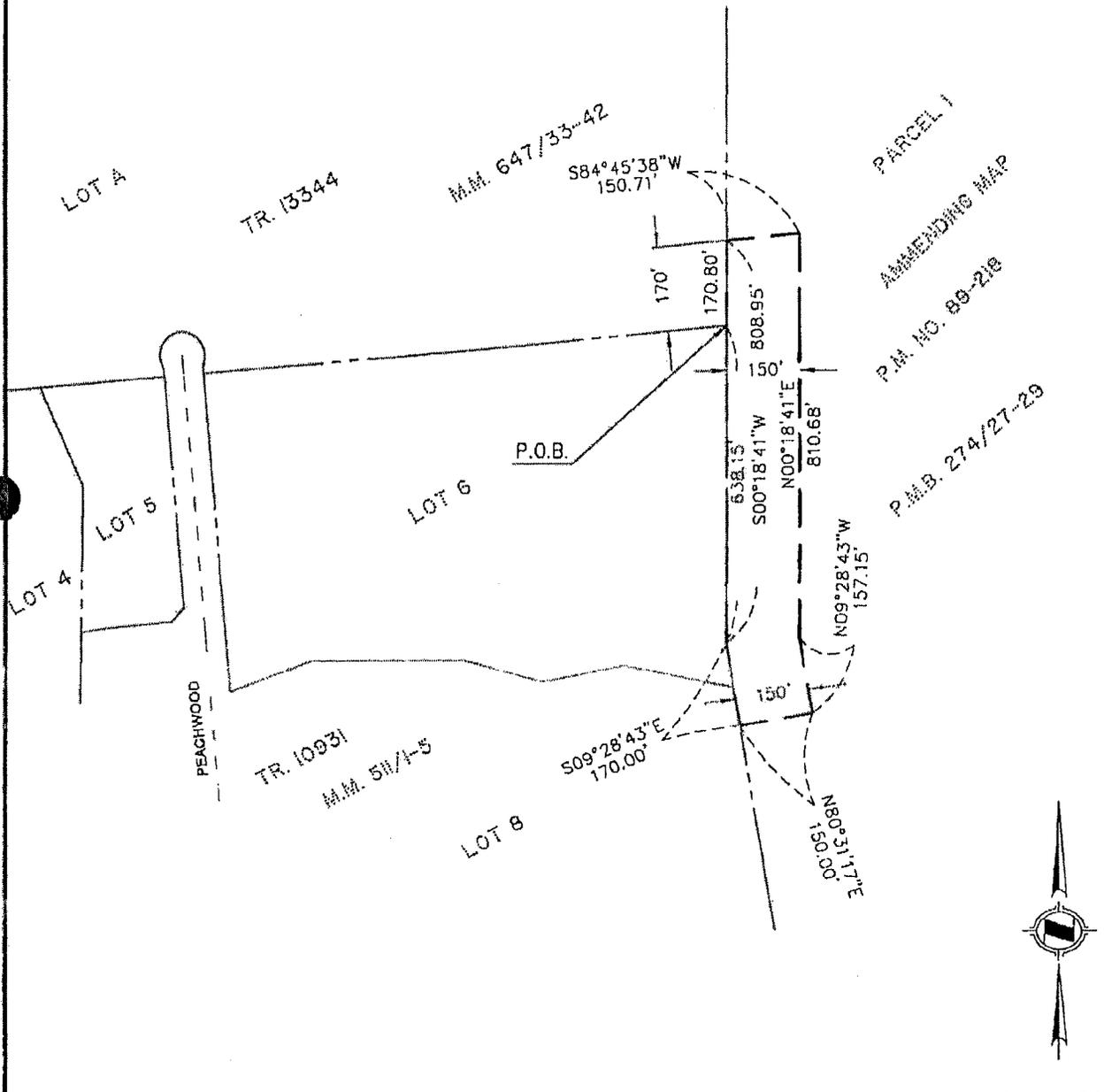
Tom R. McGannon
Tom R. McGannon, R.C.E. No. 23956
License Expires: December 31, 2001



April 13, 1998
Page 1 of 1
W.O. 245-9
H&A Legal No. 4523
Prepared By: V. Edge
Ck'd By: H Foss:tj

EXHIBIT "B"

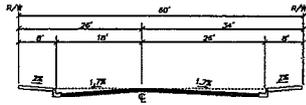
Sketch to Accompany Legal Description



| | | | | | |
|---|----------------|-----------------|---|--------------------|--------------|
|  HUNSAKER & ASSOCIATES IRVINE, INC. PLANNING • ENGINEERING • SURVEYING Three Hughes • Irvine, CA 92618 • PH: (714) 583-1010 • FX: (714) 583-0759 | | | EASEMENT FOR FUEL MODIFICATION, DRAINAGE AND CONSTRUCTION CITY OF LAKE FOREST, COUNTY OF ORANGE, STATE OF CALIFORNIA | | |
| DATE: 4-13-98 | REV DATE: None | DWG By: H. Foss | CK'd By: V. Edge | SCALE: 1"=300' | 245-9 |
| I: 15594\LD\4523\EXHIBITB.DWG | | | LOC IN: 278-38-15594 | H&A LEGAL No. 4523 | SHEET 1 OF 1 |

STREET SECTIONS

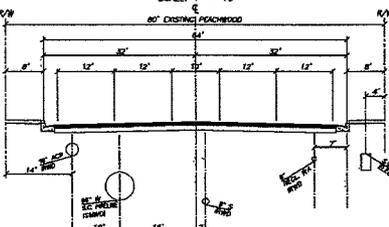
SCALE: 1" = 10'



PROPOSED PEACHWOOD SOUTH OF TAMARISK (100 FEET)

SECTION R-R (PUBLIC)

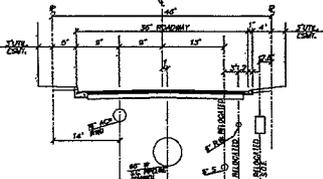
SCALE: 1" = 10'



EXISTING PEACHWOOD

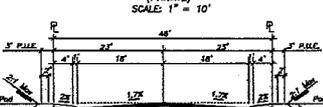
SECTION S-S (PUBLIC)

SCALE: 1" = 10'



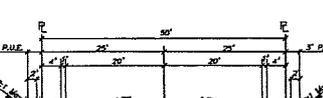
PROPOSED PEACHWOOD 'A' STREET (PRIVATE)

SCALE: 1" = 10'



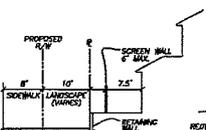
'B'-'E', 'C' & 'H' STREETS (PRIVATE)

SCALE: 1" = 10'



'I' STREET (PRIVATE)

SCALE: 1" = 10'



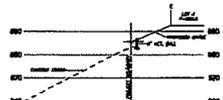
PEACHWOOD SECTION I-I

SCALE: 1" = 10'

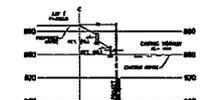
ACCESS ROAD SECTION J-J (FOR ALL UTILITY COMPANIES)

TYPICAL SCALE: 1" = 10'

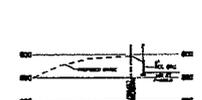
WALL AND DRAIN DETAILS



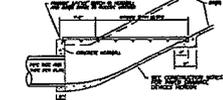
SECTION K SCALE: 1" = 10'



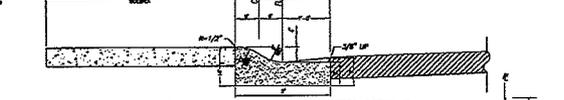
SECTION L SCALE: 1" = 10'



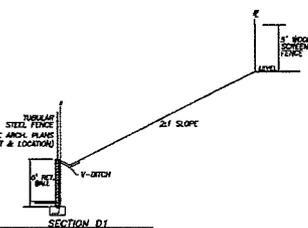
SECTION M SCALE: 1" = 10'



DOWN DRAIN DETAIL N SCALE: 1" = 2'



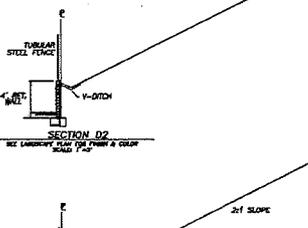
4" MODIFIED ROLLED CURB & GUTTER DETAIL I SCALE: 1" = 2'



SECTION D1

SEE LANDSCAPE PLAN FOR FINISH & COLOR

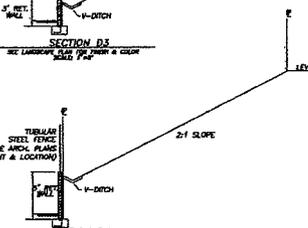
SCALE: 1" = 2'



SECTION D2

SEE LANDSCAPE PLAN FOR FINISH & COLOR

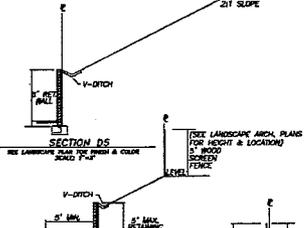
SCALE: 1" = 2'



SECTION D3

SEE LANDSCAPE PLAN FOR FINISH & COLOR

SCALE: 1" = 2'



SECTION D4

SEE LANDSCAPE PLAN FOR FINISH & COLOR

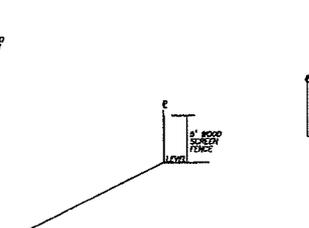
SCALE: 1" = 2'



SECTION D5

SEE LANDSCAPE PLAN FOR FINISH & COLOR

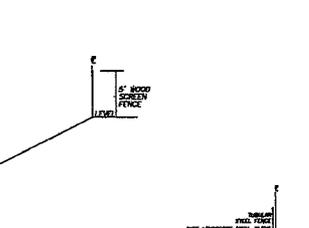
SCALE: 1" = 2'



SECTION D6

SEE LANDSCAPE PLAN FOR FINISH & COLOR

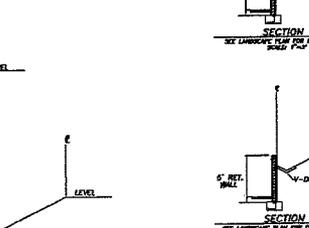
SCALE: 1" = 2'



SECTION D7

SEE LANDSCAPE PLAN FOR FINISH & COLOR

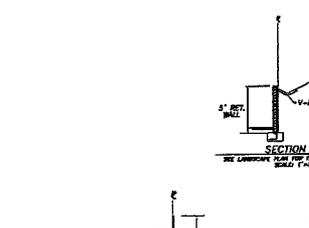
SCALE: 1" = 2'



SECTION D8

SEE LANDSCAPE PLAN FOR FINISH & COLOR

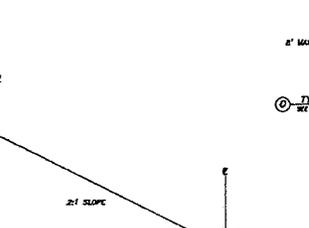
SCALE: 1" = 2'



SECTION D9

SEE LANDSCAPE PLAN FOR FINISH & COLOR

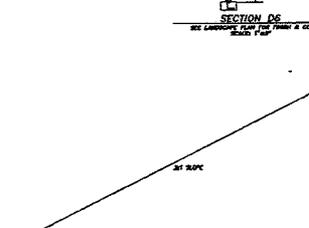
SCALE: 1" = 2'



TYP. REAR LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

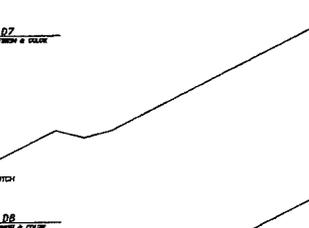
SCALE: 1" = 2'



TYP. SIDE LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

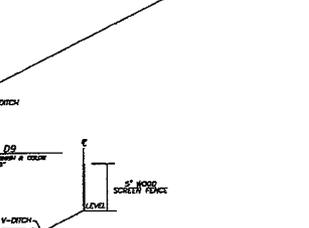
SCALE: 1" = 2'



TYP. SIDE LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

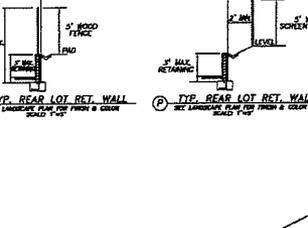
SCALE: 1" = 2'



TYP. SIDE LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

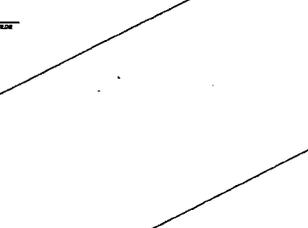
SCALE: 1" = 2'



TYP. REAR LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

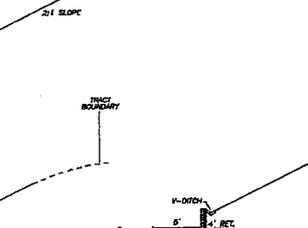
SCALE: 1" = 2'



TYP. REAR LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

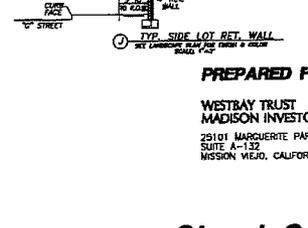
SCALE: 1" = 2'



TYP. SIDE LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

SCALE: 1" = 2'



TYP. SIDE LOT RET. WALL

SEE LANDSCAPE PLAN FOR FINISH & COLOR

SCALE: 1" = 2'

PREPARED FOR:

WESTRAY TRUST
MADISON INVESTORS LP
23101 MARGUERITE PARKWAY
SUITE A-132
MISSION VIEJO, CALIFORNIA 92691

PREPARED BY:



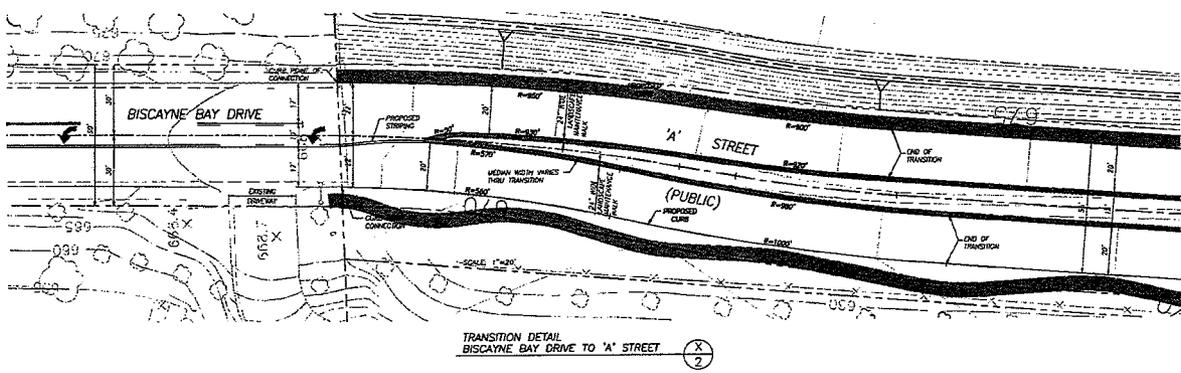
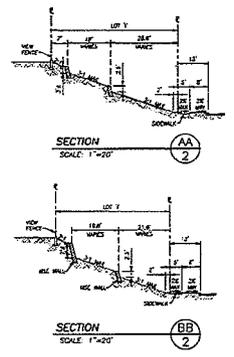
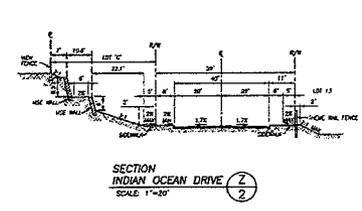
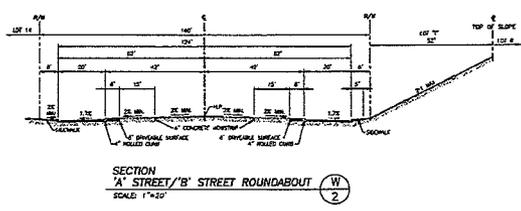
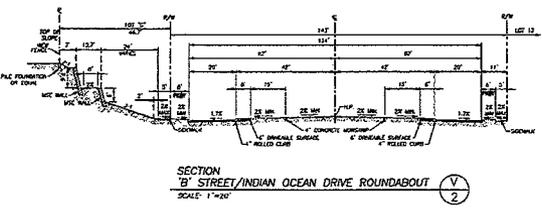
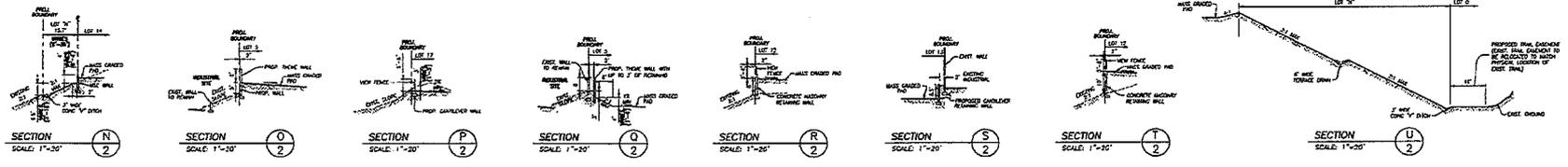
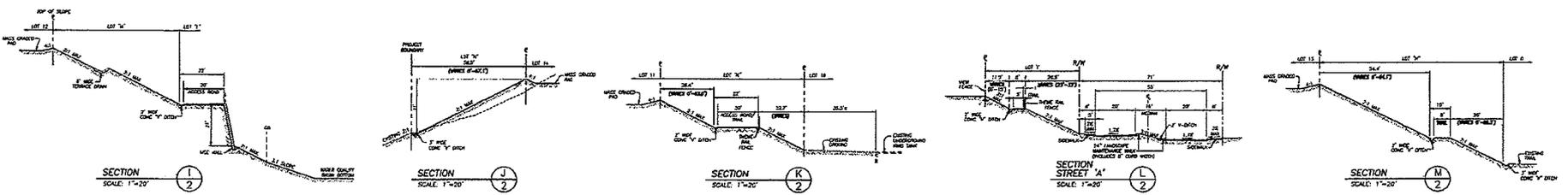
HUNZAKER & ASSOCIATES
128 W. 1ST ST. #100
LAKE FOREST, CALIFORNIA 92650
TEL: 949.261.1111 FAX: 949.261.1112

Street Sections and Retaining Wall Details
TENTATIVE TRACT NO. 15594
CITY OF LAKE FOREST

| | | | |
|----------------------------------|----------|----------|----|
| MAP DATE IDENTIFIER | DATE | REVISION | BY |
| USE OF THESE CHANGES TO THIS MAP | 11/28/11 | BY: JAM | |
| DATE OF THIS PLAN | 01/31/12 | | |

| | | |
|------|----------|----|
| DATE | REVISION | BY |
| | | |
| | | |

A-21



A-23

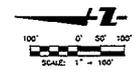
| NO. DATE | | REVISIONS | APP'D. | Prepared for (Owner): | PREPARED UNDER THE SUPERVISION OF: | Plan prepared by: |  TENTATIVE TRACT NO. 17331 CITY OF LAKE FOREST, CALIFORNIA | CHECKED BY: [] DATE PREPARED: 07/28/10 SHEET 2 of 5 FIELD BOOK |
|----------|--|-----------|--------|--|--|-------------------|---|--|
| | | | |  SIGNATURE: REYON S. OGDEN R.E. NO. C42095 DP DATE 01/11/12 |  FUSCOE ENGINEERS 10000 WILSON AVENUE SUITE 100 LAKE FOREST, CA 92650 | | | |

HYDRATION/CONCRETE/PAVING AND FINISHING/02-11-11/020000 Printed by: Tatum 001

A-24

TRACT NO. 13344
M.M. 847 / 33 - 42
LOT 42

TRACT NO. 8737
M.M. 478 / 33 - 40



PROPOSED EASEMENTS:
① EASEMENT FOR PEOPLES AND ACCESS FOR LEASERS.
② EASEMENT FOR EMERGENCY ACCESS & PUBLIC SERVICES FOR THE CITY

TRACT NO. 14318
M.M. 878 / 15 - 23
LOT 11

PARCEL MAP NO. 88-201
P.M.B. 267 / 23 - 23
PCL. 2

PARCEL MAP NO. 85-108
P.M.B. 197 / 28 - 31
PARCEL 2

PARCEL MAP NO. 89-218
(AMENDING MAP)
PCL. 2

PARCEL 1
P.M.B. 274 / 27 - 28

TRACT NO. 11278
M.M. 488 / 14 - 21

TRACT NO. 34918
M.M. 878 / 15 - 23
LOT 8

TRACT NO. 13344
M.M. 847 / 33 - 42
LOT 4

TRACT NO. 12803
M.M. 832 / 7 - 8

TRACT NO. 10931
M.M. 811 / 1 - 5

| NO. | DATE | REVISIONS | APP'D. |
|-----|------|-----------|--------|
| | | | |
| | | | |
| | | | |

Prepared By (Name):

PREPARED UNDER THE SUPERVISION OF:
 SIGNATURE: David S. Doozon
 P.C.E. NO. C49239 EXP. DATE 02/31/12

Plan prepared by:

 FUSCOE CONSULTANTS
 10000 S. LAKE AVENUE, SUITE 100
 LAKE FOREST, CA 92650
 TEL: 949.261.1111 FAX: 949.261.1112



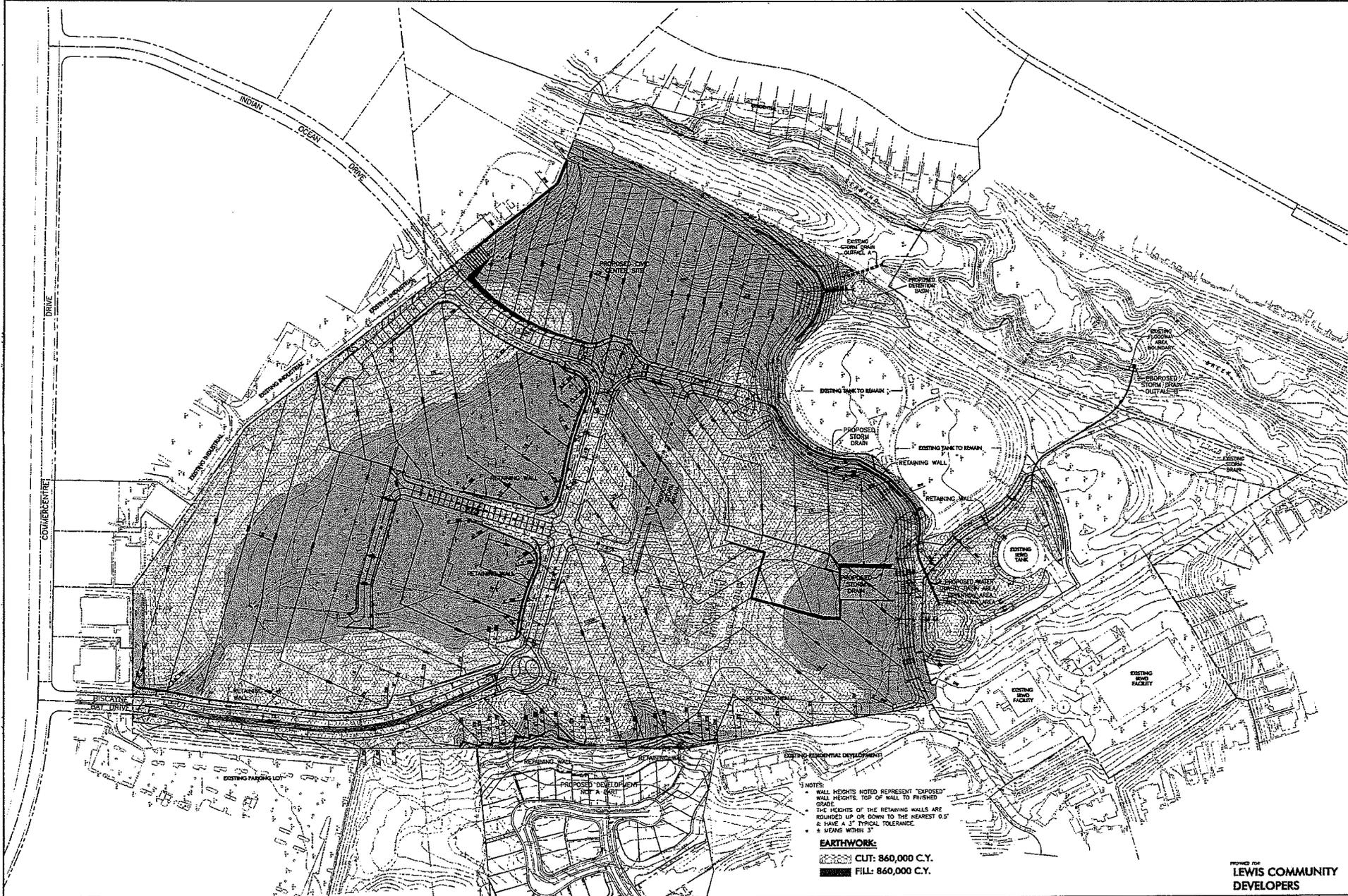
TENTATIVE TRACT NO. 17331
 CITY OF LAKE FOREST, CALIFORNIA
 SHEET 3 OF 5
 DATE PREPARED: 07/29/18
 DRAWN BY: [Name] CHECKED BY: [Name]
 DESIGNED BY: [Name]

PLAN SET: M
12/14/11

© 2018 FUSCOE CONSULTANTS, INC. ALL RIGHTS RESERVED. THIS DOCUMENT IS UNLAWFUL TO REPRODUCE OR TRANSMIT IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM FUSCOE CONSULTANTS, INC.

A-25

12/14/11 PLAN SET: M



NOTES:

- WALL HEIGHTS NOTED REPRESENT "EXPOSED" WALL HEIGHTS, TOP OF WALL TO FINISHED GRADE.
- THE HEIGHTS OF THE RETAINING WALLS ARE ROUNDED UP OR DOWN TO THE NEAREST 0.5' & HAVE A 3" TYPICAL TOLERANCE.
- & WEARS WIDTH 3'

EARTHWORK:

CUT: 860,000 C.Y.

FILL: 860,000 C.Y.



| NO. | DATE | REVISIONS | APP'D. | Prepared For (Owner): |
|-----|------|-----------|--------|-----------------------|
| | | | | |
| | | | | |
| | | | | |



PREPARED UNDER THE SUPERVISION OF:

SIGNATURE: TREVOR S. BOSSON

P.E. NO. CA2023 DP DWR 03/21/12

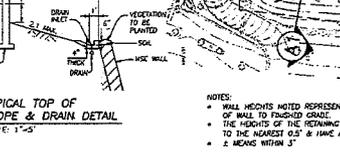
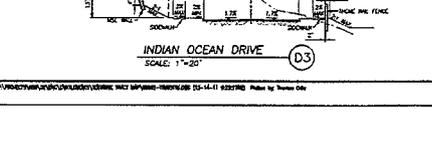
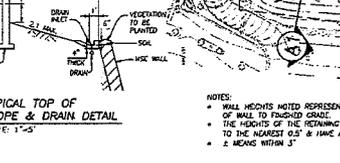
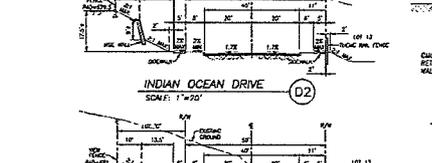
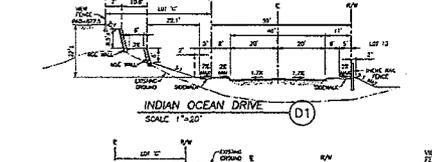
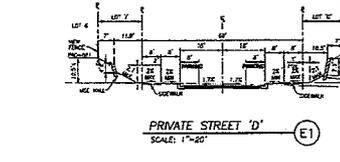
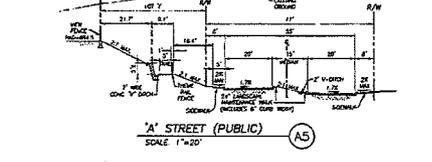
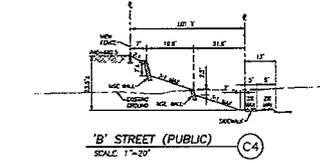
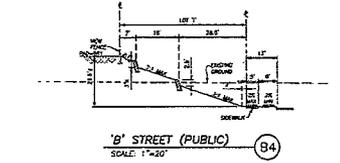
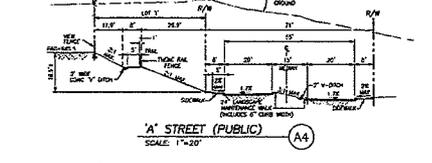
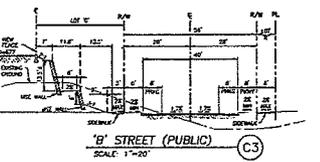
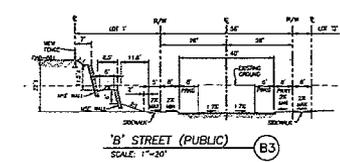
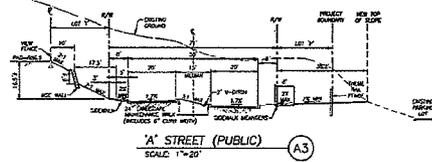
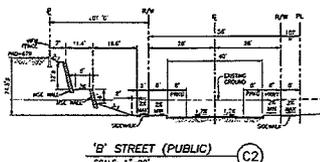
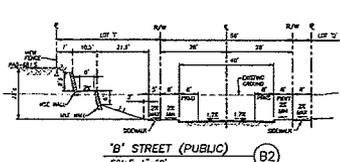
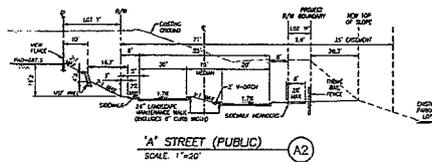
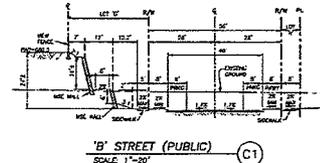
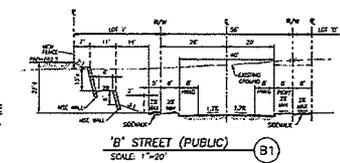
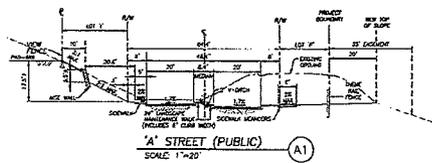


TENTATIVE TRACT NO. 17331

CITY OF LAKE FOREST, CALIFORNIA

| | |
|----------------------------|---------------|
| DESIGNED BY: | CHECKED BY: |
| DATE PREPARED: | DATE CHECKED: |
| SHEET 4 OF 5 | |

PLANNING AND ENGINEERING SERVICES, INC. 10000 WILSON AVENUE, SUITE 100, WESTLAKE, CA 91391-3400 TEL: (818) 499-1111 FAX: (818) 499-1112



- NOTES:
- WALL HEIGHTS NOTED REPRESENT "EXPOSED" WALL HEIGHTS TOP OF WALL TO FINISHED GRADE.
 - THE HEIGHTS OF THE RETAINING WALLS ARE ROUNDED UP OR DOWN TO THE NEAREST 0.5' & FINISH A 2" TYPICAL TOLERANCE.
 - & BEING WITHIN 3"

| NO. | DATE | REVISIONS | APP'D. |
|-----|------|-----------|--------|
| | | | |
| | | | |
| | | | |

Prepared for (Drawn):

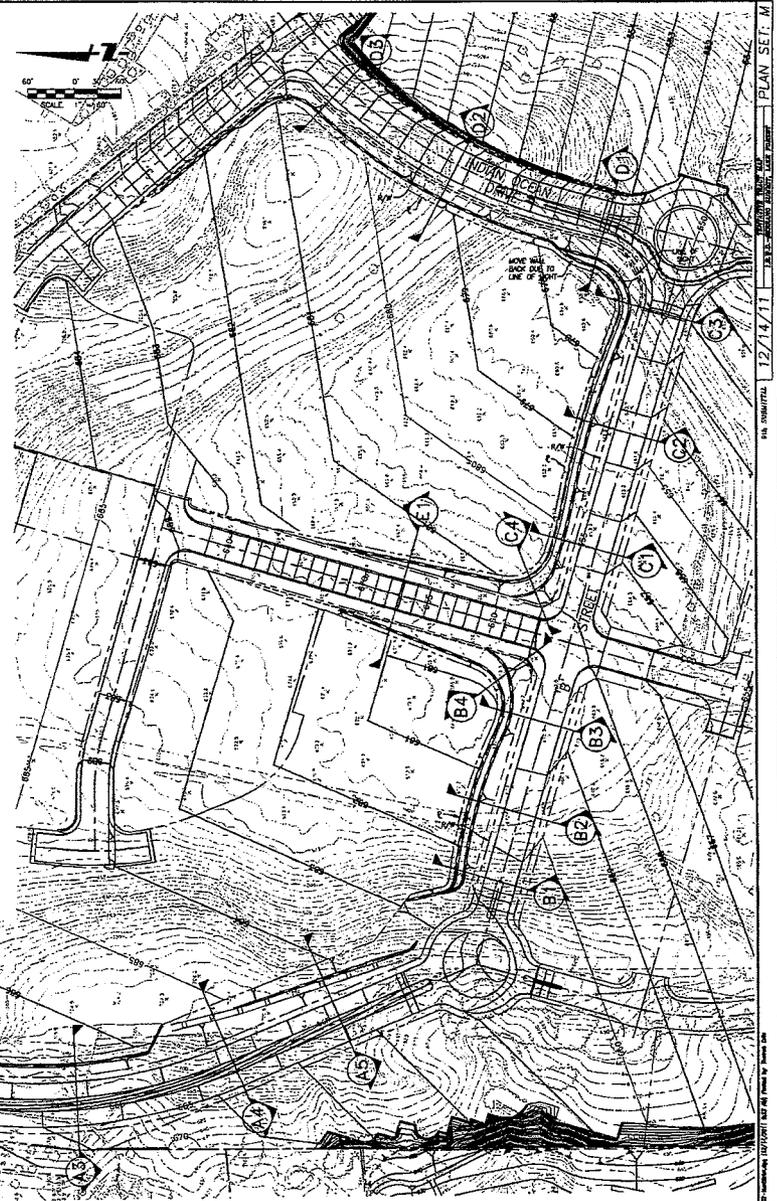

PREPARED UNDER THE SUPERVISION OF:
 DRAWN BY: TRENCH E. BROSWEN
 R.C.E. NO. 042929 EXP. DATE 03/31/12

Plan prepared by:




TENTATIVE TRACT NO. 17331
 CITY OF LAKE FOREST, CALIFORNIA

DESIGNED BY: [] CHECKED BY: []
 DRAWN BY: TRENCH E. BROSWEN DATE PREPARED: 01/09/12
 SHEET 5 OF 5
 FIELD BOOK

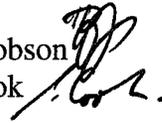


October 8, 2012

Prepared and

Submitted by: Rob Jacobson

Approved by: Paul Cook



ACTION CALENDAR

ASSET OPTIMIZATION – LAKE FOREST / SERRANO SUMMIT PROPERTY FINAL MAP BUDGET INCREASE AND CONSULTANT SELECTIONS

SUMMARY:

Staff and a representative from the District's entitlement consultant, Lewis Operating Corporation (Lewis), will provide the Board with details on the Final Map consultant selection process for the Serrano Summit project, recommend a budget increase to the FY 2012-13 Capital Budget and Expenditure Authorization for required fees and services, and provide an updated schedule for completion of the Final Map.

BACKGROUND:

Following many years of analyses, discussions and negotiations between certain landowners in the "Opportunity Study Area" (OSA) and the City of Lake Forest (City), the City approved an Environmental Impact Report (EIR), general plan amendment (GPA) and zone changes for the OSA projects. In July 2008, the IRWD Board approved the related Development Agreement (DA), which was subsequently approved by the City Council in August 2008.

On February 7, 2012, the City Council approved the Serrano Summit tentative tract map depicting the future planning areas and corresponding Area Plan for the property, as well as certification of a project-specific EIR. The Serrano Summit project will include up to 608 residential units, neighborhood and passive parks, a city hall and civic center complex, and IRWD operating facilities. On February 21, 2012, the City Council approved the intent to form a Community Facilities District (CFD) on the property, and the requisite public hearing process formally completed the CFD formation on April 17, 2012.

On April 23, 2012, the Board committed to proceeding with the final map process and approved the retention of Lewis Operating Corporation to continue as entitlement consultant for the project. At that time, staff also notified the Board that, following Lewis' sub-consultant selection process, a budget increase for the projected costs to obtain a final map would be required for the next phase of entitlement. Obtaining a recordable final map is an important entitlement milestone and is expected to add significant value to the property. The anticipated budget increase associated with this final map process is described in detail below.

Final Map Processing – Consultant Selection Evaluations:

An approved final map will provide prospective homebuilders with clearly defined project improvement cost estimates and offer a project ready for construction. Obtaining a final map on the property will result in a number of deliverables to the District that will provide a more marketable project compared with the current approved tentative map. Key deliverables expected from the final map process include:

Action Calendar: Asset Optimization – Lake Forest/Serrano Summit Property Final Map Budget Increase and Sub-Consultant Selections

October 8, 2012

Page 2

- Approved Final Map ready for recordation (prior to bonding requirements);
- Rough grading, street improvement, dry utility and landscape plans;
- Water and wastewater improvement plans and storm drain plans; and
- Environmental permits/requirements including SWPPP and WQMP.

The final map sub-consulting team is comprised of firms that were pre-qualified by Lewis. Lewis requested and evaluated the proposals using a value-based process and finalists for each service were interviewed by Lewis and District staff. To provide the deliverables identified above, Lewis will retain firms for civil engineering services, landscape architecture, environmental permitting, geotechnical engineering, dry utility planning and fuel modification analysis. Based on evaluation of the proposals and consultant interviews, Lewis has recommended the following sub-consultants:

| Services | Recommended Firm |
|--------------------------|-------------------------|
| Civil Engineering | RBF Consultants |
| Landscape Architecture | Architerra |
| Environmental Permitting | VCS |
| Dry Utility Planning | Utility Specialists |
| Fuel Modification | Firewise 2000 |

Additional details on the sub-consultant evaluation and selection process are included in the Consultant Selection Summary provided by Lewis and attached as Exhibit “A”. The summary includes additional information on the expected consultant deliverables, details on the selection criteria used to evaluate the sub-consultants and individual firm fees.

The project sub-consultants listed above will be contracted directly with Lewis to provide services for their stated amounts. Any requested variance to the services provided in their scope of work or the fee amounts stated in their respective proposals require prior approval by IRWD.

Project Budget for Final Map Services:

The estimated project cost for design and processing of the Final Map for the Serrano Summit property includes entitlement management fees for Lewis in the amount of \$257,000 (previously approved by the Board), individual sub-consultant service fees totaling \$865,000, plan check and related City/agency fees estimated to be \$195,000 as well as contingencies. Additional budget details, including a specific breakdown of individual sub-consultant fees, are included in the fee schedule attached as Exhibit “B”.

Based on the estimated costs to complete the Final Map process, staff recommends that the Committee and the Board approve an increase to the FY 2012-13 Capital Budget and corresponding Expenditure Authorization in the amount of \$1,590,000 for Project No. 1264, Asset Optimization – Lake Forest Property Development. Based on a market study completed by Moss-Adams for the Serrano Summit project, obtaining a recordable final map is an important entitlement milestone and is expected to add significant value to the property.

FISCAL IMPACTS:

The current approved Capital Budget amount for Project No. 1264 (11116), Asset Optimization – Lake Forest Property, is \$4,910,000. To provide funding for costs related to obtaining a recordable final map for the project, staff recommends an increase of \$1,590,000 to the FY 2012-13 Capital Budget resulting in a total project budget of \$6,500,000, and corresponding Expense Authorization for \$1,590,000. A copy of the proposed Expenditure Authorization is attached as Exhibit “B”.

| Project No. | Current Budget | Addition <Reduction> | Total Budget | Existing EA | Addition <Reduction> | Total EA Request |
|-------------|----------------|----------------------|--------------|-------------|----------------------|------------------|
| 1264 | \$4,910,000 | \$1,590,000 | \$6,500,000 | \$4,910,000 | \$1,590,000 | \$6,500,000 |

ENVIRONMENTAL COMPLIANCE:

This project is subject to the California Environmental Quality Act (CEQA) and in conformance with the California Code of Regulations Title 14, Chapter 3, Article 7, an EIR was certified by the City of Lake Forest on February 7, 2012.

COMMITTEE STATUS:

This item was reviewed by the Asset Management Committee on October 1, 2012.

RECOMMENDATION:

THAT THE BOARD APPROVE AN INCREASE TO THE FY 2012-13 CAPITAL BUDGET IN THE AMOUNT OF \$1,590,000 FOR PROJECT 1264, ASSET OPTIMIZATION – LAKE FOREST PROPERTY DEVELOPMENT FOR COSTS RELATED TO OBTAINING A FINAL MAP ON THE PROPERTY AND APPROVE AN EXPENDITURE AUTHORIZATION FOR \$1,590,000.

LIST OF EXHIBITS:

- Exhibit “A” – Sub-Consultant Selection Summary
- Exhibit “B” – Fee Schedule
- Exhibit “C” – Expenditure Authorization

Memorandum

SERRANO SUMMIT



Phase III Consultant Selection Process – September 17, 2012

TO: Rob Jacobson - Irvine Ranch Water District

CC: L. Swails, J. Young – Lewis Operating Corp.

FROM: Omar Dandashi – Lewis Operating Corp.

REGARDING: Phase III Consultant Selection Process

I. Serrano Summit Phase III Overview

As project complexities shift from the entitlement under the prior phases, Phase III provides not only opportunities but challenges to continue to reduce the project risk by developing a Final Map and Infrastructure Package that is positioned for maximizing the sale or development of the property. This phase is not simply a matter of addressing conditions of approval developed under Phase II, but it is an open opportunity to provide the necessary project uplift for ultimately maximizing the return on the District's investment.

Managing the complexities, opportunities, and challenges remains key to providing the maximum return on investment. As in Phase II, Phase III management requires not only an understanding of each project element, but how they all fit into a final product ready for a re-emerging market. Please find below a summary of the Serrano Summit Phase III Final Map and Infrastructure Design complexities required:

1. Integration of technical elements with a focus towards permitting, design, and construction to address the Final Map and associated Infrastructure. Below are examples of the integration required:
 - a. **Rough Grading** – detailed understanding of construction practices will play a critical role in the preparation of the plans and the geotechnical report. Options for more efficient retaining wall design and construction will heavily influence the development cost.
 - b. **Hydrology and Drainage** – detailed understanding of the local impacts to Serrano Creek coupled with the political aspects of the County Flood Control District and the local resident activist groups will assist in developing drainage solutions that can minimize the project costs while addressing the public / agency concerns.
 - c. **Sewer** – the project sewer outfall requires additional integration into the Baker Treatment Plant expansion as well as integration of both project and treatment plant EIR including a possible addendum to one or both.
 - d. **Construction Integration & Staging Planning** – constructing on a hill side development integrating aspects such as interface for the Baker Treatment Plant, the adjoining properties (existing and proposed), and

Memorandum

SERRANO SUMMIT



Phase III Consultant Selection Process – September 17, 2012

construction delivery of the project will assist the sale to homebuilders as well as the City for the Civic Center site.

2. Integration of environmental requirements into practical applications for project delivery is significant. Active management with a combination of technical expertise and the active management of relationships with regulatory agencies will provide the key to innovative solutions, minimizing risk and providing practical approaches addressing regulatory requirements and minimizes cost and marketing efforts for the project. Examples on Serrano Summit include:
 - a. Addressing **artificial wetlands** near Civic Center site to minimize mitigation impacts.
 - b. Understanding **habitat and biological impacts** assists in the development of a minimally intrusive design and thereby mitigation of impacts.
 - c. Understanding **land management** with technical impacts will create the most effective approach to fuel modification on site and minimize coastal sage habitat take and associated mitigation measures.
 - d. Detailed knowledge of the **MS4 Permit** allows working closely with the civil engineer and Regional Board to prepare an approvable WQMP that is cost effective and meets regulatory requirements.
 - e. **Effective working relationships** with Regional Board and the City will provide a practical solution to the Nitrogen and Selenium Working Group relationship required as part of Project Conditions.

3. Creation of the marketing face of the project begins with the development of the appropriate amenities with consideration of a more effective project marketing window to park and club house experiences. Examples of this aspect include:
 - a. Development of the **Biscayne Bay entry** and focusing on the vertical elements in the project to draw outside visibility to the site.
 - b. **Marketing window** into the site with the landscape entries including the integration of the retaining walls into a project asset rather than a liability.
 - c. **Community club house** including the right elements to provide the amenities for a current market demand without being burdensome to the future HOA.
 - d. **Integrating future public parks into the OC Parks regional trail system and the City park system** (addressing Commission concerns with effective solutions)

Memorandum

SERRANO SUMMIT



Phase III Consultant Selection Process – September 17, 2012

II. Phase III Scope of Work

The Phase III Scope of Work is based on delivering a final infrastructure package ready for inclusion into a Sales & Marketing Package in anticipation of IRWD's evaluation of property sales and development. The focus is providing a complete package on a value and risk minimization basis for the overall delivery of the site in a re-emerging market. Below outlines the final consultant deliverables to be included in the infrastructure package:

Consultant Services Deliverables

- Final Map (Technically Approved, Ready to Record)
- Rough Grading Plans
- Street Improvement Plans
- Sewer Improvement Plans
- Domestic Water Improvement Plans
- Recycled Water Improvement Plans
- Storm Drain Plans
- SWPPP (Draft)
- WQMP
- Dry Utility Planning
- Landscape Improvement Plans
- Recreation Plan Concept Development
- Geotechnical Report
- Final Fuel Modification Plan

III. Consultant Selection Approach

The Consultant Team selection was based on a Value Based Selection Process. The deliverables noted under Section II require the following technical experts to prepare an effective team to integrate the technical and regulatory aspects of the project:

- Civil Engineering Design
- Landscape Architecture Design
- Environmental and Regulatory Services
- Dry Utility Planning
- Geotechnical Engineering Services
- Fuel Modification Analysis Services

The Value Based Selection Process follows a three step sequential process in determining the final recommended consultant for each aspect outlined above. Due to the detailed nature of the Civil Engineering and Landscape Elements, Requests for Proposal (RFP) were developed for each of these packages. The remainder proposals were based on individual consultant meetings. Consistent responses are critical to the process of providing a fair and unbiased evaluation. In remaining consistent with this approach to selecting the most effective consultant team, each proposal and interview are evaluated based on the information



Memorandum

SERRANO SUMMIT



Phase III Consultant Selection Process – September 17, 2012

presented rather than individual Selection Team (IRWD and Lewis Staff) direct prior experience with the interested consultants.



1. **Proposal Evaluation Process** – the Proposals were evaluated based on the completeness of the response to the RFP with a weighted focus towards the elements listed below. The top three firms were invited to meet with the Selection Team in an informal interview.
 - a. Cover Letter (5%)
 - b. Introduction (10%)
 - c. Proposed Consultant Team (25%)
 - d. Scope of Work (25%)
 - e. Schedule (20%)
 - f. Related Experience (15%)
2. **Interview Evaluation Process** – The top three firms invited to meet with the Selection Team were requested to focus the discussion at the interview on the elements listed below. The focus on of the interview was towards the completeness of the consultant team, the potential opportunities and challenges of the project, and the keys to the project success. A similar weighted focus was used.
 - a. Team Background (35%)
 - b. Project Opportunities and Challenges (35%)
 - c. Key to Success (25%)
 - d. Supplemental Proposal Question Responses (5%)
3. **Fee Evaluation Process** – Both the Proposal Evaluation and Interview provide a composite consultant score with half of each score from the proposal and the interview equally distributed. The top three firm fees were evaluated for completeness evaluating task fees, the proposed hours, and sheet count where applicable. Additionally, staff rates and a comparative sample change order was evaluated as part of the overall fee evaluation.

The final selection of each firm is based on their composite Proposal/Interview score followed up with an evaluation of the proposed fees. The fee evaluation is based on reasonableness for the value of the firm's team services. Should the fees not be reflective of the estimated budget and top three firms proposed fees, supplemental discussion may be warranted prior to final recommended selection.

Memorandum

SERRANO SUMMIT



Phase III Consultant Selection Process – September 17, 2012

IV. Phase III Consultant Team

Lewis provided the project details and RFP to a select group of consultants from the consultant pool utilized by the company on internal projects. All consultants have successfully provided services to Lewis and provide preferred pricing in their staff rates. The consultants proposing on the various areas of work are outlined below. Seventeen consultants expressed interest in the project and provided proposals.

| Category of Services | Number of Firms | Consultants |
|--------------------------|-----------------|--|
| Civil Engineering | 6 | C&S, Fuscoe, Hunsaker, LD King, RBF, TTG |
| Landscape Architecture | 3 | Architerra, RBF, RJM, SITESCAPES |
| Environmental Permitting | 3 | PCR, RBF, VCS |
| Geotechnical Engineering | 2 | GMU, Leighton |
| Dry Utility Planning | 1 | Utility Specialists |
| Fuel Modification | 1 | Firewise 2000 |

The final Consultant Team selection is listed below. The details of the Civil Engineering, Landscape Architecture, and Environmental Permitting selection process is attached to provide the supplemental details of the evaluation noted in Section III.

All firms were provided an opportunity to have a de-brief discussing the selection process and their individual evaluation from the Selection Team. Most firms, including recommended firms for selection, requested and have been provided a de-brief and requested to be considered for future opportunities with IRWD.

| Category of Services | Firm | Project Manager |
|--------------------------|---------------------|-------------------|
| Civil Engineering | RBF Consulting | Tom Carmody |
| Landscape Architecture | Architerra | Richard Krumweide |
| Environmental Permitting | VCS | Peter Carlson |
| Geotechnical Engineering | TBD | TBD |
| Dry Utility Planning | Utility Specialists | Jeff Hamen |
| Fuel Modification | Firewise 2000 | David Bacon |



Memorandum

SERRANO SUMMIT



Phase III Consultant Selection Process – September 17, 2012

V. Recommended Budget & Schedule

Following the selection process outlined in Sections III and IV, the following budget is recommended. Included in the budget are the Lewis Program Management Fees, estimated plan checking fees, and deposits for regulatory and other agencies. Additionally, a 20 percent contingency is recommended in the event that unforeseen conditions may require additional services in the preparation of the infrastructure package.

| Category of Services | Firm | Professional Services Fees |
|----------------------------------|---------------------|----------------------------|
| Program Management | Lewis | \$257,000 |
| Civil Engineering | RBF Consulting | \$350,000 |
| Landscape Architecture | Architerra | \$200,000 |
| Environmental Permitting | VCS | \$100,000 |
| Geotechnical Engineering | TBD | \$120,000 |
| Dry Utility Planning | Utility Specialists | \$85,000 |
| Fuel Modification | Firewise 2000 | \$10,000 |
| Lake Forest Plan Checking Fees | | \$100,000 |
| Orange County Flood Control Fees | | \$20,000 |
| Resource Agencies Fees | | \$30,000 |
| SCE Engineering Deposit | | \$45,000 |
| Subtotal | | \$1,317,000 |
| Contingency (20%) | | \$263,400 |
| Total Phase III Budget | | \$1,580,400 |

A composite schedule for the project disciplines is attached reflecting each element of the Scope of Work and the task interdependency. The overall Phase III infrastructure package development is anticipated to be 12-16 months. An initial project kick off meeting is tentatively scheduled for October 10, 2012 to begin the design process. Agency review turnaround times are estimated based on both consultant and Lewis prior experience.



IRVINE RANCH WATER DISTRICT

Expenditure Authorization

Project Name: ASSET OPTIMIZATION - LAKE FOREST DEVELOPMENT
 EPMS Project No: 11116 EA No: 7
 Oracle Project No: 1264
 Project Manager: JACOBSON, ROBERT
 Project Engineer: FOURNIER, TANJA
 Request Date: October 2, 2012

ID Split: Miscellaneous

Improvement District (ID) Allocations

| ID No. | Allocation % | Source of Funds |
|--------------|---------------|------------------|
| 101 | 100.0 | REPLACEMENT FUND |
| Total | 100.0% | |

Summary of Direct Cost Authorizations

| | |
|---------------------------------------|--------------------|
| Previously Approved EA Requests: | \$4,910,000 |
| This Request: | \$1,590,000 |
| Total EA Requests: | \$6,500,000 |
| Previously Approved Budget: | \$4,910,000 |
| Budget Adjustment Requested this EA: | \$1,590,000 |
| Updated Budget: | \$6,500,000 |
| Budget Remaining After This EA | \$0 |

Comments:

| Phase | This EA Request | Previous EA Requests | EA Requests to Date | This Budget Request | Previous Budget | Updated Budget | Start | Finish |
|--|--------------------|----------------------|---------------------|---------------------|--------------------|--------------------|-------|--------|
| ENGINEERING - PLANNING IRWD | 0 | 100,000 | 100,000 | 0 | 100,000 | 100,000 | 7/06 | 6/10 |
| ENGINEERING - PLANNING OUTSIDE | 1,445,400 | 3,453,200 | 4,898,600 | 1,445,400 | 3,453,200 | 4,898,600 | 7/11 | 6/15 |
| ENGINEERING DESIGN - IRWD | 0 | 0 | 0 | 0 | 0 | 0 | 12/07 | 6/10 |
| ENGINEERING DESIGN - OUTSIDE | 0 | 607,900 | 607,900 | 0 | 607,900 | 607,900 | 12/07 | 6/10 |
| ENGINEERING - CA&I IRWD | 0 | 0 | 0 | 0 | 0 | 0 | 1/09 | 6/10 |
| ENGINEERING - CA&I OUTSIDE | 0 | 162,500 | 162,500 | 0 | 162,500 | 162,500 | 1/09 | 6/10 |
| CONSTRUCTION | 0 | 0 | 0 | 0 | 0 | 0 | 1/09 | 6/10 |
| LEGAL | 0 | 75,000 | 75,000 | 0 | 75,000 | 75,000 | 7/06 | 6/10 |
| ENGINEERING ENVIRONMENTAL-OUTS | 0 | 65,000 | 65,000 | 0 | 65,000 | 65,000 | 7/06 | 12/08 |
| Contingency - 10.00% Subtotal | \$144,600 | \$446,400 | \$591,000 | \$144,600 | \$446,400 | \$591,000 | | |
| Subtotal (Direct Costs) | \$1,590,000 | \$4,910,000 | \$6,500,000 | \$1,590,000 | \$4,910,000 | \$6,500,000 | | |
| Estimated G/A - 180.00% of direct labor* | (\$5,000) | \$185,000 | \$180,000 | \$0 | \$180,000 | \$180,000 | | |
| Total | \$1,585,000 | \$5,095,000 | \$6,680,000 | \$1,590,000 | \$5,090,000 | \$6,680,000 | | |
| Direct Labor | \$0 | \$100,000 | \$100,000 | \$0 | \$100,000 | \$100,000 | | |

*EA includes estimated G&A. Actual G&A will be applied based on the current ratio of direct labor to general and administrative costs.

EA Originator: _____

Department Director: _____

Finance: _____

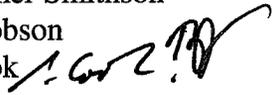
Board/General Manager: _____

** IRWD hereby declares that it reasonably expects those expenditures marked with two asterisks to be reimbursed with proceeds of future debt to be incurred by IRWD in a maximum principal amount of \$6,814,000. The above-captioned project is further described in the attached staff report and additional documents, if any, which are hereby incorporated by reference. This declaration of official intent to reimburse costs of the above-captioned project is made under Treasury Regulation Section 1.150-2.

October 8, 2012

Prepared by: Christopher Smithson

Submitted by: Rob Jacobson

Approved by: Paul Cook 

ACTION CALENDAR

ESTABLISHING CONNECTION FEES IN IMPROVEMENT DISTRICTS 184/284

SUMMARY:

The District will need to establish and adopt connection fees for redevelopment in Improvement Districts (IDs) 184/284 for a commercial development considering conversion to residential use. These IDs were for commercial development of the Foothill Ranch area (Project) which included residential IDs 182/282. This item was previously brought to the Finance and Personnel Committee, and additional information was requested from staff regarding demand factors. The demand information is addressed in the write-up with details, which is provided in Exhibit "A", and staff will provide additional details at the meeting.

Staff recommends that the Board approve establishing residential connection fees in IDs 184/284, and adopt a resolution adopting changes to connection fees for redevelopment in this area for inclusion in the District's Rates and Charges as provided in Exhibit "B".

BACKGROUND:

A property owner within IDs 184/284 is considering converting his commercial property to a residential development and has requested a connection fee associated with this change in use. The new connection fees would include a credit for the initial connection fee paid and would also address the increased residential demands identified in the development.

Background on Development of the Foothill Ranch:

The Foothill Ranch development is unique in that an agreement was executed in 1988 with the District that provided for the developer to pay 50% of the cost for the Project as identified in the Plan of Works. The agreement also called for 50% of any remaining funds to be returned to the developer 30 days after acceptance by IRWD of all components of the Project.

In February 2002, a Memorandum of Understanding (MOU) was reached with the Foothill Ranch Company (attached as Exhibit "C") that reimbursed the developer \$800,000 and entitled the District to utilize the collection of connection fees, user rates, standby or acreage assessments and any other fees or charges permitted by law to provide funding for future capital costs. The reimbursement utilized the cash runs to identify fund balances at ultimate development to determine a sharing of the remaining balance.

The District has previously had redevelopment conversions from commercial to residential in other IDs. When proof of the initial connection fee was available, credit for the demands already funded was taken into consideration. Because these IDs are unique, staff recommends establishing a residential connection fee for the commercial IDs of the Foothill Ranch development.

Factors Influencing Rate Setting:

The following factors that play a significant role in the generation of the proposed residential redevelopment rate in IDs 184/284 as identified in Exhibit “D” are:

- An equal allocation of the developer’s connection fee contribution to the parcels based on the demands identified by the type of development;
- A change in demand as identified in the 1988 Sub-Area Master Plan and the 2007 Water Resources Master Plan; and
- The increase in system demands from a conversion from commercial to residential.

Because the connection fee was for the entire Project, the contribution will be allocated to all parcels based on their individual demand requirements.

While not fully consistent with the historical demand for the IDs to date, the 2007 Water Resources Master Plan reflected an increase in demand requirements of 33% from the 1988 Sub-Area Master Plan:

| <u>Plan</u> | <u>Demand (AF per year)</u> | <u>Change</u> |
|------------------------------------|---------------------------------|---------------|
| FHR-1 - Master Plan 2025 | 3,783 | |
| 1988 Sub-Area Master Plan | 2,845 | |
| Water Resources Master Plan Change | 938 | 33% |

This change in overall projected demand would be shared by all new development occurring within the Project.

The third factor compares the demands on the system by a commercial development and a residential development. In order to make this comparison, the commercial development was converted to estimated dwelling units (EDU). The residential demand per EDU is 0.269 per unit while the same for the commercial development is 0.233 per unit, resulting in an increase in demand of 13%.

Historic Allocations and Connection Fees in the Foothill Ranch Area:

The Committee inquired about the reported shift in demand from the 1988 Sub-Area Master Plan to the 2007 Water Resources Master Plan. It asked specifically if the connection fees paid by the developer fairly represent 50% of the costs for capital facilities, assuming this shift in demand was accurate.

To determine if the developer paid for its respective share of the capital facilities, staff evaluated whether the appropriate capital projects were fairly allocated to these improvement districts. The Foothill Water IDs (182 and 184) were allocated approximately 7% of regional water facilities in 1998. In 2002, regional splits were added to include Los Alisos, and by 2008 the allocation for the Foothill Water IDs had shifted to approximately 6% where it has remained. This 6%

the Foothill Water IDs had shifted to approximately 6% where it has remained. This 6% allocation rate is calculated by quantifying the demands associated with these IDs along with a funding share for other IDs in the District that do not have a funding source. Exhibit "A" identifies actual demands in the Foothill IDs for fiscal years 2009, 2010, and 2011. The average actual demand is 3.1% over this time period, compared to the 2007 Sub Area Master Plan which anticipated a demand of 3.5%. The balance of the 6% allocation is attributable to the Foothill IDs' share for the unfunded District IDs. When all regional projects were allocated in 2002 and the allocation rates were applied, the developer was refunded \$800,000 in accordance with the February 2002 MOU (provided as Exhibit "C"). At that point the developer had paid for 50% of the capital facilities for the IDs.

Establishing Rates for IDs 184/284:

Over the last eight years the District has experienced an increase in regional capital costs. Available bond authorization will fund the increase, but this alone would shift a greater portion of the burden to the homeowner. Establishing a connection fee for ID 184/284 that provides a credit for the initial connection fee paid and also provides an additional funding source to share the cost of the recent increase in annual debt will help to realize the District's goal of sharing new capital costs equally between the developer and the homeowner.

The change in demands from the 1988 Sub-Area Master Plan to the 2007 Master Plan result in a reported increase in demand of 33%, and converting development from commercial to residential would add an additional 13% demand, for a combined total addition of 46%.

Currently, all IDs not identified specifically in the rates and charges pay the connection fees for IDs 101/210. Factoring these rates by 46% provides the property credit for fees paid and recognizes changes to demands that have not been met.

The resulting residential water/sewer connection fee for 184/284 will fall between \$2,535 and \$4,246 per dwelling unit based on density.

The current connection fee for 101/210 and the proposed connection fees for IDS 184/284 are identified below by density:

Residential Connection Fees:

| All Others: | ID | 0-5.8 | 5.9-10.8 | 10.9-25.8 | 25.9-40.0 |
|-------------|-----|--------------|--------------|--------------|--------------|
| | | DUs per acre | DUs per acre | DUs per Acre | DUs per Acre |
| Water | 101 | \$3,338 | \$2,945 | \$2,494 | \$2,106 |
| Sewer | 210 | \$5,926 | \$5,274 | \$4,341 | \$3,425 |
| Total | | \$9,264 | \$8,219 | \$6,835 | \$5,531 |
| Water | 184 | \$1,530 | \$1,350 | \$1,143 | \$965 |
| Sewer | 284 | \$2,716 | \$2,417 | \$1,990 | \$1,570 |
| Total | | \$4,246 | \$3,767 | \$3,133 | \$2,535 |

Staff recommends establishing connection fees in IDs 184/284 as identified above for residential development.

FISCAL IMPACTS:

The fiscal impacts of changes will be determined by the connection fees established by the Board.

ENVIRONMENTAL COMPLIANCE:

This item is not a project as defined in the California Environmental Quality Act Code of Regulations, Title 14, Chapter 3, Section 15378.

COMMITTEE STATUS:

This item was reviewed by the Finance and Personnel Committee on September 4, 2012, and October 2, 2012.

RECOMMENDATION:

THAT THE BOARD APPROVE ESTABLISHING RESIDENTIAL CONNECTION FEES IN IMPROVEMENT DISTRICTS 184/284 AND ADOPT THE FOLLOWING RESOLUTION BY TITLE:

RESOLUTION NO 2012-____

RESOLUTION OF THE BOARD OF DIRECTORS OF IRVINE
RANCH WATER DISTRICT, ORANGE COUNTY, CALIFORNIA
ADOPTING CHANGES TO CONNECTION FEES AS SET FORTH IN
THE SCHEDULE OF RATES AND CHARGES IN EXHIBIT "B" TO THE
RULES AND REGULATIONS OF IRVINE RANCH WATER DISTRICT
FOR WATER, SEWER, RECYCLED WATER AND NATURAL
TREATMENT SYSTEM SERVICE

LIST OF EXHIBITS:

- Exhibit "A" – Potable Water Demands and Associated Regional Allocations
- Exhibit "B" – Resolution Adopting Changes to Rates and Charges
- Exhibit "C" – Memorandum of Agreement to Terminate Whiting Ranch Sewer Plan Agreement
- Exhibit "D" – Connection Fee Formula for Foothill Ranch Commercial Development
- Exhibit "E" – Proposed Changes to the Schedule of Rates and Charges

EXHIBIT "B"

RESOLUTION NO. 2012-

**RESOLUTION OF THE BOARD OF DIRECTORS OF IRVINE
RANCH WATER DISTRICT, ORANGE COUNTY, CALIFORNIA
ADOPTING CHANGES TO CONNECTION FEES AS SET FORTH IN
THE SCHEDULE OF RATES AND CHARGES
IN EXHIBIT "B" TO THE RULES AND
REGULATIONS OF IRVINE RANCH WATER DISTRICT
FOR WATER, SEWER, RECYCLED WATER, AND NATURAL
TREATMENT SYSTEM SERVICE**

WHEREAS, the Irvine Ranch Water District (IRWD) is a California Water District organized and existing under the California Water District Law, and all of the lands within the boundaries of said District are located in the County of Orange, State of California; and

WHEREAS, Section 35423, 35470, and Section 35501 of the California Water Code empower the District to establish, print and distribute equitable rules and regulations and prescribe and collect rates or other charges for water and sewer service, and such authority to prescribe and collect rates or other charges for water and sewer service includes connection fees for connection and service capacity; and

WHEREAS, the Board of Directors of IRWD, by adoption of Resolution No. 2009-4 approved and adopted amended "Rules and Regulations of Irvine Ranch Water District for Water, Sewer, Recycled Water, and Natural Treatment System Service effective February 9, 2009"; and

WHEREAS, Exhibit "B" of said Rules and Regulations sets forth Rates and Charges, which Exhibit "B" may be changed from time to time by adoption of changes to any of the rates and charges or any new rates and charges as may be established and set forth therein; and

WHEREAS, Section 21080(b) (8) of the Public Resources Code provides that the establishment, modification, structuring, restructuring or approval of rates, tolls, fares, or other charges by public agencies are exempt from the requirements of the California Environmental Quality Act (CEQA) provided that certain findings are made specifying the basis for the claim of exemption; and

WHEREAS, Article XIII B of the Constitution of the State of California, limiting local agencies' appropriations of proceeds of taxes, excludes user charges or fees or regulatory fees from the definition of proceeds of taxes, as long as such fees and charges do not produce revenue exceeding the costs reasonably borne in providing the regulation, product or service, and further excludes appropriations for debt service and appropriations for qualified capital outlay projects from appropriations subject to limitation; and

WHEREAS, the Board of Directors of IRWD deems it advisable and finds that it would be in the best interest of the District to amend or establish connection fees, consistent with applicable constitutional and statutory requirements; and

WHEREAS, the proposed revisions to the connection fees, as set forth in Exhibit "A" to this resolution, do not modify or establish any property-related fees or charges subject to the notice and hearing procedures of Article XIID of the Constitution of the State of California; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of IRWD as follows:

Section 1. It is hereby found and determined that the proposed changes to the Schedule of Rates and Charges are within the purposes set forth in Section 21080(b) of the Public Resources Code including but not by way of limitation, the purposes of (1) meeting operating expenses, (2) purchasing or leasing supplies, equipment or materials, (3) meeting financial reserve needs and requirements, and (4) obtaining funds for capital projects necessary to maintain service within existing areas, and therefore, that such changes are exempt from CEQA.

Section 2. It is hereby found and determined that relative to Article XIII B of the Constitution of the State of California, the charges or fees or regulatory fees established or increased hereby do not produce revenues exceeding the costs reasonably borne in providing the regulation, product or service and/or are used for debt service or qualified capital outlay projects and accordingly do not constitute proceeds of taxes, the appropriation of which is limited under Article XIII B, and that the documentation used in making such determinations has been on file in the office of IRWD for not less than 15 days prior to the date hereof, pursuant to Section 7910 of the Government Code of the State of California. It is hereby further found and determined that relative to the requirements of Sections 66013 and 66016 of the Government Code of the State of California, the availability of such documentation also satisfies the requirement to make publicly available the data indicating the estimated cost and revenue sources to provide the service for which the fee is imposed at least 10 days prior to the meeting at which this resolution is adopted, and that the connection fees established or increased hereby do not exceed the estimated reasonable cost of providing the service for which they are imposed.

Section 3. The new and/or revised connection fees as set forth in Exhibit "A" attached to this resolution and by this reference incorporated herein are hereby adopted, and the corresponding rate(s), fee(s) or charge(s), if any, as set forth in Rules and Regulations Exhibit "B" currently in effect, are hereby superseded. Staff is directed to incorporate the hereby adopted new and/or revised connection fee(s) into Exhibit "B" to the Rules and Regulations.

Section 4. That the provisions of this Resolution shall be effective upon adoption.

///
///

Section 5. That the Secretary is hereby ordered and directed to post a certified copy of this Resolution in a public place within the Irvine Ranch Water District.

ADOPTED, SIGNED and APPROVED this ___ day of _____, 2012.

President, IRVINE RANCH WATER DISTRICT
and of the Board of Directors thereof

Secretary, IRVINE RANCH WATER DISTRICT
and of the Board of Directors thereof

APPROVED AS TO FORM:
BOWIE, ARNESON, WILES & GIANNONE
Legal Counsel - IRWD

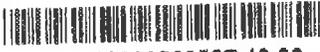
By: _____

EXHIBIT "C"

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

IRVINE RANCH WATER DISTRICT
15600 Sand Canyon Avenue
P.O. Box 57000
Irvine, California 92619-7000
Attention: Leslie A. Bonkowski, Secretary

Recorded in Official Records, County of Orange
Gary Granville, Clerk-Recorder

 NO FEE
20020220507 10:09am 03/18/02
115 33 T02 9
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

MAIL TAX STATEMENTS TO ADDRESS ABOVE

(Space Above For Recorder's Use)

DOCUMENTARY TRANSFER TAX \$ None - Tax Exempt

____ Computed on full value of property conveyed:
____ Computed on full value less the value of liens or
encumbrances thereon remaining at time of sale

FREE RECORDING REQUESTED -- Essential to acquisition by Irvine Ranch
Water District (Government Code §6103)

J
GP
CF
NF

**MEMORANDUM OF AGREEMENT TO TERMINATE
WHITING RANCH SEWER PLAN AGREEMENT**

THIS MEMORANDUM OF AGREEMENT is made and entered into as of this 25th day
of February, 2002, by and between IRVINE RANCH WATER DISTRICT, a California water
distiet ("IRWD") and FOOTHILL RANCH COMPANY, a California general partnership
("FRC").

RECITALS

A. IRWD and FRC's predecessor in interest, JC/RG Corporation, have entered into
an agreement entitled "WHITING RANCH SEWER PLAN AGREEMENT," dated February 10,
1986, as amended by the First Amendment dated June 2, 1986 (the "Sewer Plan Agreement"). A
memorandum of the Sewer Plan Agreement was recorded in the Official Records of Orange
County on January 6, 1987, as Instrument No. 87-005952. An Agreement Regarding Correction

EXHIBIT B to Master Agreement

to said memorandum was recorded in the Official Records of Orange County on October 11, 1991, as Instrument No. 91-554287 (excluding a parcel that was included in the recorded memorandum in error).

B. The parties have agreed to terminate the Sewer Plan Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

Section 1. The parties hereto agree that IRWD shall record a copy hereof in the Official Records of Orange County.

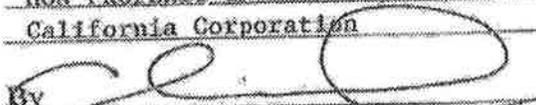
Section 2. By recording this Agreement, the parties acknowledge and agree that the Memorandum of Sewer Plan Agreement, recorded in the Official Records of Orange County on January 6, 1987, as Instrument No. 87-005952, as corrected by Agreement Regarding Correction to Memorandum of Whiting Ranch Sewer Plan Agreement, recorded in the Official Records of Orange County on October 11, 1991, as Instrument No. 91-554287, is hereby terminated and released with respect to all property described in Exhibit A hereto. The parties further acknowledge and agree that the Sewer Plan Agreement has been terminated with respect to all property described in Exhibit A hereto.

IN WITNESS WHEREOF, this Memorandum of Agreement has been executed in the names of the respective parties by their duly authorized officers, effective as of the day and year

first above written.

FOOTHILL RANCH COMPANY,
a California general partnership

By: HON PROPERTY INVESTMENTS, INC., a
California Corporation

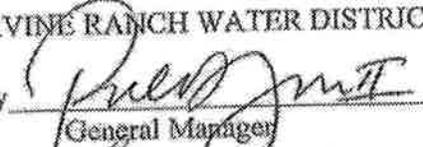
By 
Its: CFO Chris A. Downey

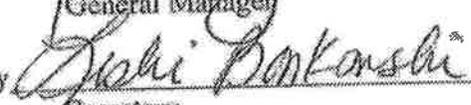
By 
Its: Secretary Evelyn J. Flanary

APPROVED AS TO FORM:
COUNSEL FOR FRC

By 

IRVINE RANCH WATER DISTRICT

By 
General Manager

By 
Secretary

APPROVED AS TO FORM:
BOWIE, ARNESON,
WILES & GIANNONE

By 



I.R.W.D.

S.A.M.C.W.D.

PARCEL #1
1481.42 acres

PARCEL #2
1132.34 acres

PARCEL #3
52.00 acres
NOT A PART

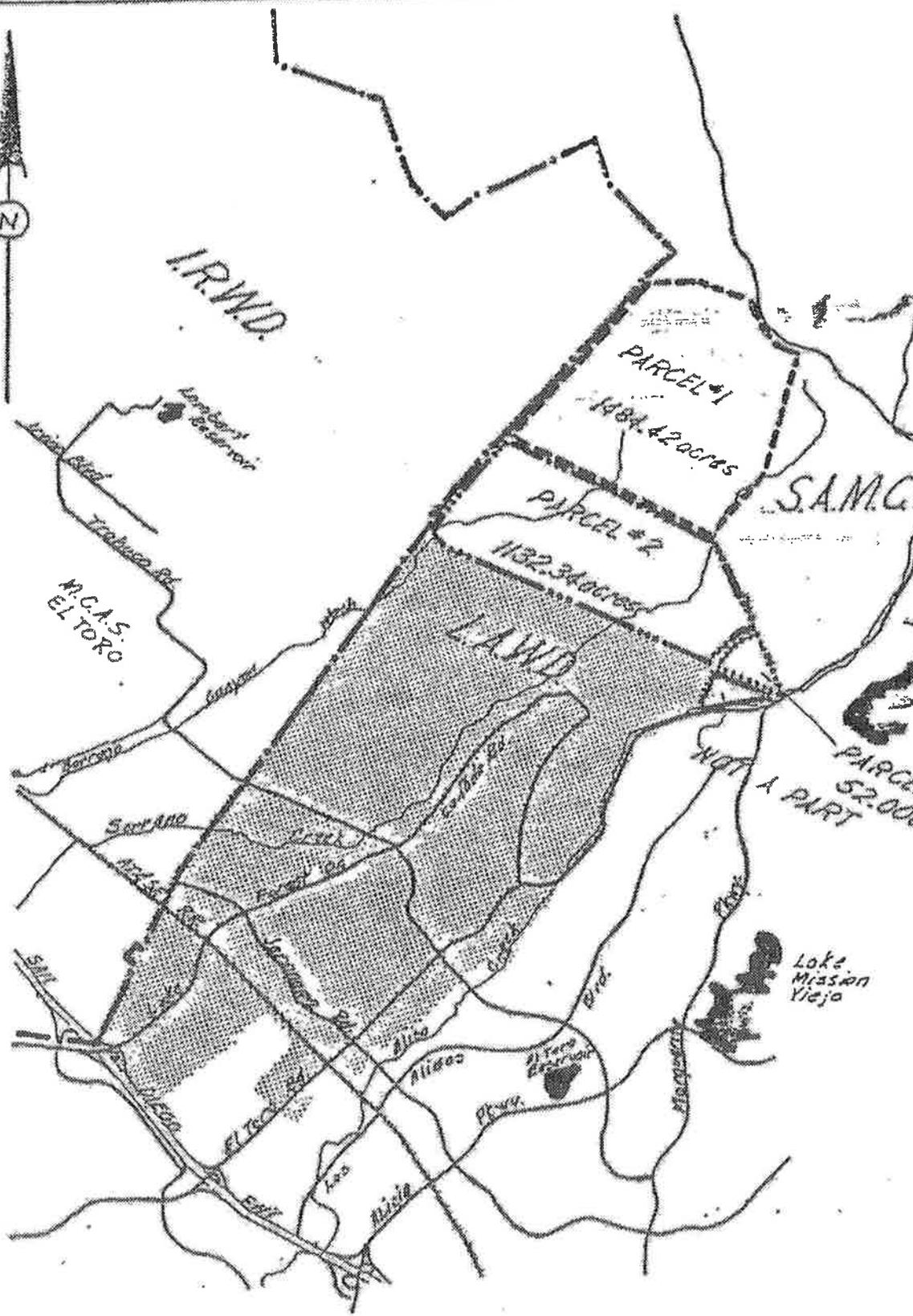
L.A.W.D.

Lombard's
Distraction

M.C.A.S.
EL TORO

Upper
060
Reservoir

Lake
Mission
Vieja



DRAWN W.M.T.
DATE Aug. 4, 1981
APPROVED S.P.M.

IRVINE RANCH WATER DISTRICT
ANNEXATION No. 21 (WHITING RANCH) TO I.R.W.D.
ORANGE COUNTY REORGANIZATION No. 56
C-4

5A

August 4, 1981
JN 20451

LEGAL DESCRIPTION

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE IRVINE RANCH WATER DISTRICT
REQUESTING APPROVAL BY THE ORANGE COUNTY
LOCAL AGENCY FORMATION COMMISSION OF
PROPOSED REORGANIZATION NO. 56

PARCEL 1

That portion of Lots 8, 9 and 10 of the Rancho Canada De Los Alisos as shown on a map filed in Book 3, Pages 290 and 291 of Miscellaneous Records, Records of Los Angeles County, California, situated in the unincorporated territory of the County of Orange, State of California, described as follows:

Beginning at a point in the boundary line of the Santa Ana Mountains County Water District (S.A.M.C.W.D.) as adopted by the Board of Directors thereof per Resolution No. 52-86, said point being the southerly corner of Block 177 of Irvine's Subdivision as shown on a map filed in Book 1, Page 88 of Miscellaneous Record Maps, Records of said Orange County and a point in the southeasterly line of said Irvine's Subdivision as established by agreement recorded in Book 210, Page 218 of Deeds, Records of said Los Angeles County; thence along said S.A.M.C.W.D. boundary line and said southeasterly line North 42°52'10" East, 7885.78 feet to the southerly line of the land included within Modjeska Home, Sheet "D" as shown on a map recorded in Book 9, Pages 41 through 43 of Miscellaneous Maps, Records of said Orange County; thence along said S.A.M.C.W.D. boundary line and southerly line South 84°17'53" East 2109.36 feet and South 63°48'25" East, 1873.73 feet to the southwesterly line of Santiago Canyon Road as described in a deed to the County of Orange recorded in Book 8241, Page 61 of Official Records of said Orange County; thence leaving said S.A.M.C.W.D. boundary line along said southwesterly line through the following courses: South 4°38'42" West, 271.96 feet; thence South 27°36'22" East, 241.24 feet; thence South 15°06'31" West, 210.13 feet; thence South 1°13'38" East, 105.53 feet; thence South 39°14'09" East, 107.54 feet; thence South 64°40'27" East 235.64 feet; thence South 17°28'24" East 243.46 feet; thence South 82°15'29" East, 117.16 feet; thence South 66°52'41" East, 99.12 feet; thence South 0°07'20" West, 149.58 feet; thence South 45°15'42" East, 73.86 feet; thence South 58°29'24" East 98.35 feet; thence South 54°52'48" East, 318.38 feet; thence South 49°50'46" East, 103.52 feet; thence South 52°19'09" East, 104.37 feet; thence South 53°15'25" East, 214.87 feet; thence South 86°14'49" East, 216.87 feet; thence South 74°47'21" East, 160.94 feet; thence South 37°01'11" East, 148.99 feet; and thence South 77°45'00" East, 28.36 feet to the westerly line of Parcel 2 as described in a deed to Southern California Edison Company recorded in Book 7310, Page 373 of Official Records of said Orange County; thence leaving said southwesterly line of Santiago Canyon Road along said westerly line of Parcel 2 South 16°47'23" West, 2070.04 feet and South 16°50'54" West, 3176.20 feet to the southeasterly line of said Lot 9 of the Rancho Canada De Los Alisos; thence along said southeasterly line South 40°31'17" West, 2598.98 feet to the northerly corner of Lot 5 of said Rancho Canada De Los Alisos and a point in said S.A.M.C.W.D. boundary line; thence along said S.A.M.C.W.D. boundary line North 60°35'24" West, 8937.56 feet to the POINT OF BEGINNING.

CONTAINING: 1484.42 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "D" attached and by this reference made a part hereof.


William J. Frost, Land Surveyor

August 4, 1981
JN 20451

LEGAL DESCRIPTION

RESOLUTION OF THE BOARD OF DIRECTORS
OF IRVINE RANCH WATER DISTRICT
REQUESTING APPROVAL BY THE ORANGE COUNTY
LOCAL AGENCY FORMATION COMMISSION OF
PROPOSED REORGANIZATION NO. 38

PARCEL 2

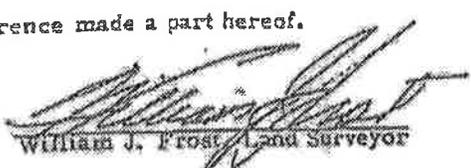
That portion of Lots 5 and 10 of the Rancho Canada De Los Allses as shown on a map filed in Book 3, Pages 290 and 291 of Miscellaneous Records, Records of Los Angeles County, California; together with that portion of Lot "A" of Tract No. 695 as shown on a map filed in Book 25, Page 1 of Miscellaneous Maps, Records of Orange County, California, all situated in the unincorporated territory of the County of Orange, State of California, described as follows:

Beginning at a point in the existing boundary line of the Irvine Ranch Water District (I.R.W.D.) as adopted by the Board of Directors thereof per Resolution No. 1968-25, said point being the northerly corner of Parcel 1 of Parcel Map 79-132 as shown on a map filed in Book 143, Pages 11 through 16 of Parcel Maps, Records of said Orange County, said corner being a point in the northwesterly line of said Rancho Canada De Los Allses as established by agreement recorded in Book 210, Page 218 of Deeds, Records of said Los Angeles County; thence along said northwesterly line and said I.R.W.D. boundary line North 35°54'42" East, 2083.27 feet and North 42°52'10" East, 2195.19 feet to the most southerly corner of Block 177 of Irvine's Subdivision as shown on a map filed in Book 1, Page 88 of Miscellaneous Record Maps, Records of said Orange County, being also a point in the existing boundary line of the Santa Ana Mountains County Water District (S.A.M.C.W.D.) as adopted by the Board of Directors thereof per Resolution No. 62-95; thence leaving said I.R.W.D. boundary line, along said S.A.M.C.W.D. boundary line South 50°35'24" East, 8937.55 feet to the northerly corner of Lot 5 of said Rancho Canada De Los Allses and a point in the northeasterly line of said Lot 9 as established by agreement recorded in Book 1411, Page 598 of Official Records of said Orange County; thence along said northeasterly line and said S.A.M.C.W.D. boundary line South 22°12'21" East, 1658.44 feet to the northerly corner of Parcel 1 as described in a deed to Southern California Edison Company recorded in Book 7310, Page 373 of Official Records of said Orange County; thence leaving said S.A.M.C.W.D. boundary line along the boundary line of said Parcel 1 South 15°50'25" West, 144.74 feet and South 22°33'46" East, 2221.89 feet; thence leaving said boundary line North 83°53'04" West, 145.50 feet; thence South 55°34'31" West, 599.08 feet; thence South 71°33'54" West, 347.85 feet; thence South 73°07'28" West, 681.32 feet; thence South 26°23'32" West, 245.80 feet to the easterly corner of Parcel 3 of said Parcel Map 79-132, said point being in the boundary line of the Los Allses Water District (L.A.W.D.) per the Formation thereof; thence along said L.A.W.D. boundary line and the northeasterly line of said Parcel 3 and the northeasterly line of Parcels 2 and 1 of said Parcel Map 79-132 North 53°35'01" West, 10488.43 feet to an angle point in said northeasterly line of Parcel 1; thence continuing along said L.A.W.D. boundary line and said northeasterly line of Parcel 1 North 40°22'21" West, 1266.54 feet to the POINT OF BEGINNING.

CONTAINING: 1132.34 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "D" attached and by this reference made a part hereof.


William J. Frost, Land Surveyor

50

August 4, 1981
JN 20451

LEGAL DESCRIPTION

RESOLUTION OF THE BOARD OF DIRECTORS
OF IRVINE RANCH WATER DISTRICT
REQUESTING APPROVAL BY THE ORANGE COUNTY
LOCAL AGENCY FORMATION COMMISSION OF
PROPOSED REORGANIZATION NO. 58

PARCEL 3

That portion of Lot 5 of the Rancho Canada De Los Alisos as shown on a map filed in Book 3, Pages 290 and 291 of Miscellaneous Records, Records of Los Angeles County, California, situated in the unincorporated territory of the County of Orange, State of California, described as follows:

BEGINNING at a point in the boundary line of the Los Aliso Water District (L.A.W.D.) as created by the Formation thereof, said point being the easterly corner of Parcel 3 of Parcel Map 79-132 as shown on a map filed in Book 143, Pages 11 through 16 of Parcel Maps, Records of said Orange County; thence along said L.A.W.D. boundary line and the southeasterly prolongation of the northeasterly line of said Parcel 3 South 83°35'01" East 2856.79 feet to the southwesterly line of Parcel 1 as described in a deed to Southern California Edison Company recorded in Book 7310, Page 373 of Official Records of said Orange County; thence leaving said L.A.W.D. boundary line along said southwesterly line North 20°01'51" West 671.09 feet and North 22°33'46" West 1575.35 feet; thence leaving said southwesterly line North 83°53'04" West 146.60 feet; thence South 56°34'31" West 599.08 feet; thence South 71°33'54" West 347.85 feet; thence South 75°07'28" West 661.32 feet; thence South 28°23'32" West 245.80 feet to the POINT OF BEGINNING.

CONTAINING: 52.00 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "D" attached and by this reference made a part hereof.


William J. Cross, Land Surveyor

EXHIBIT "A"

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of ORANGE

On MARCH 13, 2002 before me, Sylvia M. Mumenthaler
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Paul D. Jones II and Leslie Bankowski
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in his/~~her~~ their authorized capacity(ies), and that by his/~~her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sylvia M. Mumenthaler
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT "D"

IRVINE RANCH WATER DISTRICT

Connection Fee formula for Foothill Ranch Redevelopment

| Land Use | Net Acres | Gross Acres | Total CFS | Max Day | Demands | | Acre Feet / Year (Total*Gln Fctr/1,120) |
|----------------------------------|-----------------|-----------------|-------------|-------------------|-------------------|--------------|--|
| | | | | | Peak Hour | Peak Hour | |
| 1988 Sub-Area Master Plan | | | | | | | |
| Residential | 421.20 | 520.70 | 1.81 | (Total*2) 3.62 | (Total*3) 5.43 | | 1,044 |
| Comm.\Ind. | 602.20 | 676.80 | 2.05 | 4.10 | 6.15 | | 1,183 |
| Parks | 16.00 | 16.00 | 0.09 | 0.18 | 0.27 | | 52 |
| Schools | 10.00 | 10.00 | 0.02 | 0.04 | 0.06 | | 12 |
| Open Space | 138.00 | 138.00 | 0.96 | 1.92 | 2.88 | | 554 |
| Total | 1,187.40 | 1,361.50 | 4.93 | 9.86 | 14.79 | | 2,845 |

| 2007 Water Resources Master Plan | | Acre Feet / Year | Change |
|---|---|---------------------|------------|
| Total | FHR-1 - Master Plan 2025 | 3,783 | |
| | 1988 Sub-Area Master Plan | (2,845) | |
| | Water Resources Master Plan Change | 938 | 33% |

| Customer Type | Net Acres | Gross Acres | Total CFS | Units | EDU Factor | EDU's | Demands / EDU | Change |
|---------------|--------------------------------|-------------|-----------|-------|---------------|-------|------------------|------------|
| Residential | 421.20 | 520.70 | 1.81 | 3,900 | 7.49 | 3,900 | 0.268 | |
| Comm.\Ind. | 602.20 | 676.80 | 2.05 | | | 5,069 | 0.233 | |
| | Change in Customer Type | | | | | | 0.03 | 13% |

| Residential Connection Fee: | | | | | |
|--|-----|----------------|----------------|----------------|----------------|
| All Others | ID | 0-5.8 | 5.9-10.8 | 10.9-25.8 | 25.9-40.0 |
| | | DU's/Acre | DU's/Acre | DU's/Acre | DU's/Acre |
| Water | 101 | \$3,338 | \$2,945 | \$2,494 | \$2,106 |
| Sewer | 210 | \$5,926 | \$5,274 | \$4,341 | \$3,425 |
| Total | | \$9,264 | \$8,219 | \$6,835 | \$5,531 |
| Adjusted | | | | | |
| Current fee increased for Water Resources Master Plan Growth Projection + Current fee increased for Customer Type Change | | | | | |
| Water | 184 | \$1,530 | \$1,350 | \$1,143 | \$965 |
| Sewer | 284 | \$2,716 | \$2,417 | \$1,990 | \$1,570 |
| Total | | \$4,246 | \$3,767 | \$3,133 | \$2,535 |

Section

3

Developer Services

Water Connection Fees

Residential

| | IMPROVEMENT DISTRICT | 0-5.8 <u>DUs/acre</u> | 5.9-10.8 <u>DUs/acre</u> | 10.9-25.8 <u>DUs/acre</u> | 25.9-40.0 <u>DUs/acre</u> |
|--------------------------------|-------------------------|--------------------------|-----------------------------|------------------------------|------------------------------|
| Connection Fees Per Dwelling | 101* | \$3,338 | \$2,945 | \$2,494 | \$2,106 |
| Unit | 113 | \$2,415 | \$2,415 | \$2,415 | \$2,415 |
| | 102 (120), 121 | \$1,154 | \$1,154 | \$1,154 | \$1,154 |
| | 103 (130) | \$1,741 | \$1,741 | \$1,741 | \$1,741 |
| Total acreage for any given | 140 | \$2,072 | \$2,072 | \$2,072 | \$2,072 |
| development shall be gross | 105 (150) | \$1,741 | \$1,741 | \$1,741 | \$1,741 |
| acres excluding private parks. | 106 (160), 161 | \$1,741 | \$1,741 | \$1,741 | \$1,741 |
| | <u>184</u> | <u>\$1,530</u> | <u>\$1,350</u> | <u>\$1,143</u> | <u>\$965</u> |
| | 186 | \$9,555 | \$9,555 | \$9,555 | \$9,555 |
| | LC/LCS PA | \$2,164 | \$2,164 | \$2,164 | \$2,164 |
| | Lambert Ranch | \$2,826 | \$2,826 | \$2,826 | \$2,826 |
| | Los Alisos 135 | \$3,270 | \$3,270 | \$3,270 | \$3,270 |
| | All others* | | | | |

Commercial, Industrial and Public Authority – Office Building

| | IMPROVEMENT DISTRICT | <u>Commercial</u> | <u>Industrial</u> | <u>Public Authority</u> |
|--------------------------------|-------------------------|-------------------|-------------------|-------------------------|
| Connection Fees Per Gross Acre | 101* | \$18,520 | \$28,207 | \$18,520 |
| | 113 | \$17,644 | \$0 | \$8,822 |
| | 102 (120), 121 | \$5,774 | \$5,865 | \$5,774 |
| | 103 (130) | \$3,528 | \$3,528 | \$3,528 |
| | 140 | \$10,645 | \$0 | \$10,645 |
| | 105 (150) | \$9,149 | \$12,986 | \$9,149 |
| | 106 (160), 161 | \$9,149 | \$12,986 | \$9,149 |
| | 186 | \$19,476 | \$19,476 | \$19,476 |
| | 188 | \$30,390 | \$30,390 | \$30,390 |
| | Los Alisos 135 | \$10,984 | \$10,984 | \$10,984 |
| | All others* | | | |

Parks, Churches and Commercial Recreational Facilities

| | IMPROVEMENT DISTRICT | Indoor <u>Water Use</u> | Outdoor ⁽¹⁾ <u>Water Use</u> |
|---------------------------------------|-------------------------|----------------------------|--|
| Connection Fees Per Fixture Unit | 101* | \$58.00 | \$204.11 |
| | 102 (120), 121 | 9.57 | 33.81 |
| (1) As calculated per UPC as revised. | 103 (130) | 6.96 | 20.90 |
| | 140 | 40.16 | 141.30 |
| | 105 (150) | 29.31 | 102.71 |
| | 106 (160), 161 | 30.43 | 106.65 |
| | 186 | 63.18 | 221.92 |
| | 188 | 151.89 | 534.39 |
| | All others* | | |

*Connection fees will be set by the Board of Directors upon request for initial service for each such improvement district.

Sewer Connection Fees

Residential

| | IMPROVEMENT DISTRICT | 0-5.8 <u>DUs/acre</u> | 5.9-10.8 <u>DUs/acre</u> | 10.9-25.8 <u>DUs/acre</u> | 25.9-40.0 <u>DUs/acre</u> |
|---|-------------------------|--------------------------|-----------------------------|------------------------------|------------------------------|
| Connection Fees Per Dwelling Unit | 1 (201)* | \$5,926 | \$5,274 | \$4,341 | \$3,425 |
| | 213 | 4,226 | 4,226 | 4,226 | 4,226 |
| | 2 (220), 221 | 816 | 816 | 816 | 816 |
| | 2 (230) | 1,966 | 1,966 | 1,966 | 1,966 |
| Total acreage for any given development shall be gross acres excluding private Parks. | 240 | 3,270 | 3,270 | 3,270 | 3,270 |
| | 205 (250) | 1,966 | 1,966 | 1,966 | 1,966 |
| | 206 (260), 261 | 1,966 | 1,966 | 1,966 | 1,966 |
| | 256 | 24,500 | 24,500 | 24,500 | 24,500 |
| | <u>284</u> | <u>\$2,716</u> | <u>\$2,417</u> | <u>\$1,990</u> | <u>\$1,570</u> |
| | 286 | 2,642 | 2,642 | 2,642 | 2,642 |
| | LC/LCS PA | 2,493 | 2,493 | 2,493 | 2,493 |
| | Lambert Ranch | 3,320 | 3,320 | 3,320 | 3,320 |
| | Los Alisos 235 | 2,302 | 2,302 | 2,302 | 2,302 |
| | OPA1 (Ridgeline) | 4,200 | 4,200 | 4,200 | 4,200 |
| | All others* | | | | |

Commercial, Industrial and Public Authority – Office Building

| | IMPROVEMENT DISTRICT | <u>Commercial</u> | <u>Industrial</u> | <u>Public Authority</u> |
|--------------------------------|-------------------------|-------------------|-------------------|-------------------------|
| Connection Fees Per Gross Acre | 1 (201)* | \$33,214 | \$57,947 | \$33,214 |
| | 213 | 25,180 | - | 12,498 |
| | 2 (220), 221 | 6,722 | 10,151 | 6,722 |
| | 2 (230) | 746 | 746 | 746 |
| | 240 | 14,931 | - | 14,931 |
| | 205 (250) | 8,962 | 14,871 | 8,962 |
| | 206 (260), 261 | 8,962 | 14,871 | 8,962 |
| | 286 | 5,494 | 5,494 | 5,494 |
| | 288 | 5,494 | 5,494 | 5,494 |
| | Los Alisos 235 | 8,411 | 8,411 | 8,411 |
| | All others* | | | |

Parks, Churches and Commercial Recreational Facilities

| | IMPROVEMENT DISTRICT | <u>Fee</u> |
|----------------------------------|-------------------------|------------|
| Connection Fees Per Fixture Unit | 1 (201)* | \$367.47 |
| | 2 (220), 221 | 106.00 |
| | 2 (230) | 25.50 |
| | 240 | 222.14 |
| | 205 (250) | 140.46 |
| | 206 (260), 261 | 135.61 |
| | 286 | 59.87 |
| | 288 | 59.87 |
| | All others* | |

*Connection fees will be set by the Board of Directors upon request for initial service for each such improvement district.

October 8, 2012

Prepared by: Gretchen Maswadeh

Submitted by: Janet Wells

Approved by: Paul Cook 

ACTION CALENDAR

DENTAL AND VISION INSURANCE COVERAGE FOR CALENDAR YEAR 2013

SUMMARY:

ACWA/JPIA has negotiated rates with Delta Dental for the plan year beginning January 1, 2013 which include a 2.01% increase in the premiums for IRWD's current dental plan, Plan A. IRWD has a two-year rate guarantee from EyeMed Vision Care for the District's vision coverage through December 31, 2013.

IRWD has retained a consultant team to review the District's overall retirement and health benefits package to maximize value to the employees and develop an equitable cost sharing method to minimize increasing exposure to rising costs in the future. The results of that study are still being developed and will not affect recommendations for adjustments to the 2013 dental and vision insurance benefits. As such, staff recommends that the Board:

- Continue IRWD's existing coverage with ACWA/JPIA for Delta Dental Plan A coverage for calendar year 2013;
- Continue IRWD's existing coverage with EyeMed for vision coverage for calendar year 2013; and
- Make a discretionary change to the maximum age for dependents in each of these plans to age 26. This change is allowed under the Federal Health Care Reform Act and will result in an increase in employee benefits.

BACKGROUND:

Dental Insurance Coverage:

IRWD's current dental coverage is provided by Delta Dental Plan of California through ACWA/JPIA. Delta Dental offers two different Delta Preferred Option (DPO) plans which are summarized in Exhibit "A." The major coverage differences between Plan A and Plan B include a higher level of diagnostic and preventive benefits and a higher annual maximum benefit under Plan B. IRWD currently contracts through ACWA/JPIA for DPO Plan A with child and adult orthodontic coverage added on.

ACWA/JPIA has negotiated rates with Delta Dental for calendar year 2013. Premiums for Plan A with child and adult orthodontic coverage, in which the District is currently enrolled, will increase 2.01%. Exhibit "B" details the estimated costs for the two dental plan options available to the District. Premiums last increased in January 2012 by 4.23%. ACWA/JPIA will renew coverage for the District's current plan at the monthly rates of \$37.74 for employee only, \$76.18 for employee plus one, and \$143.10 for family coverage. Monthly rates for the upgraded DPO Plan B are \$51.01 for employee only, \$103.25 for employee plus one, and \$192.77 for family coverage. These rates are 37.9% higher than the rates for the current coverage. ACWA/JPIA's

administration fee was last increased in July 2008 from \$1.65 to \$1.72 per enrollee per month. There will be no change to the administration fee for calendar year 2013. The administration fee is included in the premiums shown above and in Exhibit "B."

Under the federal Health Care Reform Act enacted in 2010, adult children up to age 26 must be eligible to enroll in coverage under their parents' health plans. This eligibility is mandatory for medical coverage, but is not clearly mandated for other health care coverage such as dental and vision. ACWA/JPIA and EyeMed have informed the District that they will extend this provision to plan participants to correspond with the age at which medical coverage ends. Adult children do not need to be students or IRS dependents. Married adult children are eligible to enroll but not the spouses or children of adult children of employees. ACWA/JPIA and EyeMed are not mandating that employers extend coverage to adult children to age 26 but will allow the extension at the District's discretion. Currently, for dental coverage, adult children of IRWD employees are covered from age 19 to age 25 if being claimed as dependents for IRS purposes. Because ACWA/JPIA no longer requires that adult children be claimed as dependents, they no longer verify this information and do not automatically cancel coverage until a dependent reaches age 26.

For vision coverage, adult children of IRWD employees are covered from age 19 to age 23 if they are full-time students. Because EyeMed no longer requires that adult children be full-time students, they no longer verify this information and do not automatically cancel coverage until a dependent reaches age 26.

Tracking information for dependents aging out of the three coverages at three different ages and sending COBRA notification three times and tracking COBRA enrollments for three different periods for every single adult child has placed an additional burden on District staff. Extending coverage to age 26 for dental and vision coverage would allow the same eligibility requirements for the District's medical, dental, and vision coverage, thereby eliminating the on-going confusion among employees about which eligibility requirements apply to which types of coverage and eliminating the need to send multiple COBRA notifications to adult children as they age out of each type of coverage. The estimated annual cost to extend dependent coverage to age 26 for dental and vision care consistent with the age requirement for medical coverage is \$1,650. Staff expects that the savings in administrative time will more than offset the increased cost.

Staff recommends that the Board extend the District's existing contracts with ACWA/JPIA for Dental Plan A and change the maximum age for dependents in the dental coverage plan to age 26, as allowed under the federal Health Care Reform Act.

Vision Insurance Coverage:

Commencing in 2012, the District entered into a two-year rate guarantee with EyeMed Vision Care to provide the District's vision insurance coverage; this rate guarantee expires on January 1, 2014. Monthly rates are \$8.44 for employee only, \$16.04 for employee plus one, and \$23.52 for family coverage. These rates have now been in place for the five years the District has contracted with EyeMed. The EyeMed plan provides for a \$140 frame allowance every 12 months, with additional discounts for amounts exceeding the frame allowance, coverage for

routine lenses, and discounts for specialized treatments for lenses. EyeMed alternatively provides coverage for contact lenses in lieu of frames and lenses. Staff recommends that the Board extend the existing contract and coverage with EyeMed for calendar year 2013 and change the maximum age for dependents in the vision coverage plan to age 26, as allowed under the federal Health Care Reform Act.

FISCAL IMPACTS:

Staff budgeted \$381,300 for FY 2012-13 dental premiums. Renewal of the District's current dental insurance coverage with the 2.01% increase in premiums based on current enrollment would result in total projected expenses for FY 2012-13 of \$361,728 or \$19,572 (5.1%) under budget. The estimated cost associated with extending dependent coverage which currently ends at age 25 to age 26 is \$1,000 for FY 2012-13.

Staff budgeted \$69,600 for FY 2012-13 vision premiums. Renewal of the District's current vision insurance coverage with no increase in premiums based on current enrollment would result in total projected expenses for FY 2012-13 of \$67,600 or \$2,000 (2.9%) under budget. The estimated cost associated with extending dependent coverage which currently ends at age 23 to age 26 is \$650 for FY 2012-13.

ENVIRONMENTAL IMPACTS:

This item is not a project as defined in the California Environmental Quality Act Code of Regulations, Title 14, Chapter 3, Section 15378.

COMMITTEE STATUS:

This item was reviewed by the Finance and Personnel Committee on October 2, 2012.

RECOMMENDATION:

THAT THE BOARD AUTHORIZE THE GENERAL MANAGER TO CONTINUE COVERAGE FOR IRWD WITH ACWA/JPIA FOR DELTA DPO PLAN A WITH CHILD AND ADULT ORTHODONTIC COVERAGE, AND WITH EYEMED VISION CARE FOR THE 2013 CALENDAR YEAR; AND TO CHANGE THE MAXIMUM AGE FOR DEPENDENTS IN EACH OF THESE PLANS TO AGE 26, AS ALLOWED UNDER THE FEDERAL HEALTH CARE REFORM ACT.

LIST OF EXHIBITS:

Exhibit "A" – Dental Plan Benefits Comparison
Exhibit "B" – Dental Plan Premiums Comparison

Exhibit "A"
IRVINE RANCH WATER DISTRICT
JANUARY 2013
DENTAL PLAN RENEWAL COMPARISON

| IRVINE RANCH WATER DISTRICT DENTAL PLAN BENEFITS | ACWA DELTA PREFERRED PLAN A | | ACWA DELTA PREFERRED PLAN B | |
|---|--|--------------------------|--|---------------------------|
| | In Network | Out of Network | In Network | Out of Network |
| Individual Deductible | \$25 | | \$25 | |
| Family Deductible | \$50 | | \$50 | |
| Dependent Coverage Maximum Age If qualified dependent for tax purposes | 19 years 25 years No student requirement | | 19 years 25 years No student requirement | |
| Calendar Year Maximum | \$1,500 | | \$2,000 | |
| Diagnostic & Preventive Treatments | 85% Deductible waived | 80% Deductible waived | 100% Deductible waived | 100% Deductible waived |
| Basic Treatments | 80% after deductible | 80% after deductible | 85% after deductible | 80% after deductible |
| Crowns, Jackets, & Casts | 50% after deductible | 50% after deductible | 50% after deductible | 50% after deductible |
| Prosthetic Treatments* | 50% after deductible | 50% after deductible | 50% after deductible | 50% after deductible |
| Orthodontic Treatments* | 50% | 50% | 50% | 50% |
| Orthodontia Lifetime Maximum | \$2,000 | \$2,000 | \$2,000 | \$2,000 |

* 12 month waiting period from date of eligibility

**IRVINE RANCH WATER DISTRICT
2013 DENTAL RENEWAL -- FINANCIAL COMPARISON
CURRENT AND RENEWAL OPTION RATES**

Exhibit "B"

| | <i>Current Plan A w/ Child & Adult Ortho</i> | | <i>Option 1 Calendar Year 2013 Plan A w/ Child & Adult Ortho</i> | | | <i>Option 2 Calendar Year 2013 Plan B w/ Child & Adult Ortho</i> | | |
|---|--|-------------------------|--|-------------------------|-------------------|--|-------------------------|-------------------|
| | <i>Enrollment</i> | <i>Premium</i> | <i>Enrollment</i> | <i>Premiums</i> | <i>% Increase</i> | <i>Enrollment</i> | <i>Premiums</i> | <i>% Increase</i> |
| <u>ACWA Delta Dental</u> | | | | | | | | |
| Single | 68 | \$37.04 | 68 | \$37.74 | 1.89% | 68 | \$51.01 | 37.72% |
| Two Party | 79 | \$74.72 | 79 | \$76.18 | 1.95% | 79 | \$103.25 | 38.18% |
| Family | 153 | <u>\$139.79</u> | 153 | <u>\$143.10</u> | 2.37% | 153 | <u>\$192.77</u> | 37.90% |
| Monthly Dental Premium | | <u>\$29,809</u> | | <u>\$30,479</u> | | | <u>\$41,119</u> | |
| % Change to Current Monthly Premium | | | | 2.25% | | | 37.94% | |
| NET ANNUAL PREMIUM | | <u>\$357,714</u> | | <u>\$365,746</u> | | | <u>\$493,431</u> | |
| % Change to Current Annual Premium | | | | 2.25% | | | 37.94% | |

Note: Costs for FY2012-13 for Plan A consist of 6 months at current premiums (\$29,809/month) and 6 months at new premium levels (\$30,479/month) for a total projected expense of \$361,728.

Note: Costs for FY2012-13 for Plan B consist of 6 months at current premiums (\$29,809/month) and 6 months at new premium levels (\$41,119/month) for a total projected expense of \$425,568.