

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

November 11, 2019

PLEDGE OF ALLEGIANCE

CALL TO ORDER

5:00 p.m., Board Room, District Office
15600 Sand Canyon Avenue, Irvine, California

ROLL CALL

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

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 three 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:

2. ITEMS RECEIVED TOO LATE TO BE AGENDIZED

Recommendation: Determine the need to discuss and/or take immediate action on item(s).

CONSENT CALENDAR

Resolution No. 2019-28

Items 3-8

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

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

4. MINUTES OF BOARD MEETING

Recommendation: That the minutes of the October 28, 2019 Regular Board meeting be approved as presented.

CONSENT CALENDAR

Resolution No. 2019-28

Items 3-8

5. ACWA 2019 MEMBERSHIP MEETING AND 2020-2021 ELECTION

Recommendation: That the Board support the candidates selected by the ACWA Nominating Committee and designate Vice President Mary Aileen Matheis as the IRWD voting delegate for the December 4, 2019 membership meeting.

6. CHANGES TO GENERAL MANAGER'S COMPENSATION

Recommendation: That the Board approve an increase to the annual salary of the General Manager to the amount of \$317,800, a one-time performance award in the amount of \$18,000, and maintain the General Manager's automobile allowance at \$725 per month, effective October 1, 2019.

7. ORANGE COUNTY TRANSPORTATION AUTHORITY PIPELINE CROSSING OC-276 LICENSE AGREEMENT

Recommendation: That the Board authorize the General Manager to execute the Orange County Transportation Authority License OC-276 for the 12-inch domestic water pipeline serving Innovation Park, subject to non-substantive changes.

8. 2020 INVESTMENT POLICY

Recommendation: That the Board adopt a resolution approving IRWD's 2020 Investment Policy and authorizing the Treasurer and Assistant Treasurer(s) to invest and reinvest funds of the District and of each of its Improvement Districts and to sell and exchange securities.

Reso. No. 2019-

ACTION CALENDAR

9. SAND CANYON PROFESSIONAL CENTER – PHASE II CONSTRUCTION UPDATE AND LISTING AGREEMENT

Recommendation: That the Board approve a new listing agreement with the existing brokerage team of Cushman & Wakefield and Colliers International under the same terms and commission rates as the previously executed listing agreement, with a time extension through February 29, 2020.

ACTION CALENDAR (continued)

10. CRYSTAL COVE IN-LIEU DOMESTIC WATER AGREEMENT

Recommendation: That the Board authorize the General Manager to execute an in-lieu domestic water agreement with Crystal Cove Homeowners Association for the temporary use of potable water for landscape irrigation during the construction of the San Joaquin Filtration Project and the Seawatch Recycled Pipeline Replacement Project for a period of 36 months or until both projects are complete, whichever is later.

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, and 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.

11. General Manager's Report
12. Directors' Comments
13. Receive oral update(s) from District liaison(s) regarding communities within IRWD's service area and provide information on relevant community events.
14. 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.

THIS PAGE WAS INTENTIONALLY LEFT BLANK

November 11, 2019
Prepared and
submitted by: K. Swan
Approved by: Paul A. Cook



CONSENT CALENDAR

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

SUMMARY:

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

Events/Meetings

Steven LaMar

October 8	Wildlife Corridor Study Presentation at UCI
October 28	Monthly Meeting with the General Manager
November 21	Tustin Mayor's Thanksgiving Breakfast

Mary Aileen Matheis

October 12	IRWD Resident Tour
November 6	Astounding Inventions Appreciation Reception, Irvine
November 21	38 th Annual Irvine Community Thanksgiving Breakfast

Douglas Reinhart

October 30	OCBC 25 th Annual Economic Forecast, Irvine
------------	--

Peer Swan

October 7	UCI Coastal Resilience Workshop
-----------	---------------------------------

John Withers

October 11	IRWD Resident Tour
November 20	Orange County Business Council's Turning Red Tape in Red Carpet Awards Ceremony
November 21	38 th Annual Irvine Community Thanksgiving Breakfast

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 HEREIN.

LIST OF EXHIBITS:

None.

THIS PAGE WAS INTENTIONALLY LEFT BLANK

November 11, 2019
Prepared and
submitted by: L. Bonkowski
Approved by: Paul A. Cook



CONSENT CALENDAR

MINUTES OF BOARD MEETING

SUMMARY:

Provided are the minutes of the October 28, 2019 Regular Board meeting for approval.

FISCAL IMPACTS:

None.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

Not applicable.

RECOMMENDATION:

THAT THE MINUTES OF THE OCTOBER 28, 2019 BOARD MEETING BE APPROVED
AS PRESENTED.

LIST OF EXHIBITS:

Exhibit "A" – October 28, 2019 Minutes

THIS PAGE WAS INTENTIONALLY LEFT BLANK

EXHIBIT "A"

MINUTES OF REGULAR MEETING – OCTOBER 28, 2019

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 LaMar on October 28, 2019 in the District office, 15600 Sand Canyon Avenue, Irvine, California.

Directors Present: Reinhart, Swan, Matheis, and LaMar.

Directors Absent: Withers.

Also Present: General Manager Cook, Executive Director of Technical Services Burton, Executive Director of Water Policy Weghorst, Executive Director of Finance and Administration Clary, Executive Director of Operations Chambers, General Counsel Collins, Director of Recycling Operations Zepeda, Director of Water Operations Roberts, Director of Water Quality and Regulatory Compliance Colston, Director of Treasury and Risk Management Jacobson, Government Relations Officer/Deputy General Counsel Compton, Secretary Bonkowski, Mr. Dean Kirk, and members of staff and the public.

WRITTEN AND ORAL COMMUNICATIONS: None.

ITEMS TOO LATE TO BE AGENDIZED: None.

CONSENT CALENDAR

On MOTION by Matheis, seconded by Swan, and unanimously carried, CONSENT CALENDAR ITEMS 3 THROUGH 13 WERE APPROVED AS FOLLOWS:

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

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

4. MINUTES OF BOARD MEETING

Recommendation: That the minutes of the September 23, 2019, Regular Board meeting and the October 14, 2019 Special Board meeting be approved as presented.

5. SETTLEMENT OF SUBROGATION LAWSUIT RECOVERING WORKERS' COMPENSATION COSTS FOR CERTAIN EMPLOYEES

Recommendation: That the Board authorize the General Manager to execute release in full of all claims and rights for George Sanchez, Rusty Harlow, and Gustavo Orozco.

CONSENT CALENDAR (Continued)

6. SEPTEMBER 2019 TREASURY REPORTS

Recommendation: That the Board receive and file the Treasurer's Investment Summary Report, the Summary of Fixed and Variable Rate Debt, and Disclosure Report of Reimbursements to Board members and staff; approve the September 2019 Summary of Payroll ACH payments in the total amount of \$2,075,946 and approve the September 2019 accounts payable Disbursement Summary of warrants 401771 through 402585 Workers' Compensation distributions, wire transfers, payroll withholding distributions and voided checks in the total amount of \$17,799,657.

7. IRVINE RANCH WATER DISTRICT STRATEGIC MEASURES

Recommendation: Receive and file.

8. THREE-YEAR CATHODIC PROTECTION SYSTEM MONITORING PROGRAM CONSULTANT SELECTION FOR FY 2019-20 THROUGH FY 2021-22

Recommendation: That the Board authorize the General Manager to execute a Professional Services Agreement in the amount of \$343,901 with HDR for the Three-Year Cathodic Protection Monitoring Program for Fiscal Year 2019-2020 through Fiscal Year 2021-2022.

9. ON-CALL PLAN CHECK SERVICES

Recommendation: That the Board authorize the General Manager to execute two Professional Services Agreements: one in the amount of \$100,000 with PacRim Engineering, Inc. and one in the amount of \$150,000 with Stantec Consulting Services, Inc. for on-call plan check services.

10. NEWPORT COAST ZONE 4 TO 2 PRESSURE REGULATING VALVE MODIFICATION FINAL ACCEPTANCE

Recommendation: That the Board accept construction of the Newport Coast Zone 4 to 2 Pressure Regulating Valve Modification, Project 05410; authorize the General Manager to file a Notice of Completion; and authorize the payment of the retention 35 days after the date of recording the Notice of Completion.

11. IRVINE INDUSTRIAL COMPLEX EAST ZONE A TO B RECYCLED WATER PUMP STATION UPGRADES FINAL ACCEPTANCE

Recommendation: That the Board accept construction of the Irvine Industrial Complex East Zone A to B Recycled Water Pump Station Upgrades, Project 06198; authorize the General Manager to file a Notice of Completion; and authorize the payment of the retention 35 Days after the date of recording the Notice of Completion.

CONSENT CALENDAR (Continued)

12. BONITA CANYON RECYCLED WATER ZONE D TO B PRESSURE REDUCING STATION SUPPLY LINE REPLACEMENT BUDGET INCREASE AND CONSTRUCTION AWARD

Recommendation: That the Board authorize a budget increase in the amount of \$86,400, from \$325,000 to \$411,400, for Project 10999; and authorize the General Manager to execute a construction contract with T.E. Roberts, Inc. in the amount of \$186,400 for the Bonita Canyon Recycled Water Zone D to B Pressure Reducing Station Supply Line Replacement, Project 10999.

13. MICHELSON WATER RECYCLING PLANT PAVING AT NORTH ODOR SCRUBBER AND DIVERTER CHUTES BUDGET INCREASE AND CONSTRUCTION AWARD

Recommendation: That the Board authorize budget increases in the amount of \$182,900, from \$195,000 to \$377,900, for Project 07890 and \$41,700, from \$180,500 to \$222,200, for Project 07891; and authorize the General Manager to execute a construction contract with SS Mechanical Corporation in the amount of \$289,553 for the Michelson Water Recycling Plant Paving at North Odor Scrubber and Diverter Chutes, Projects 07890 and 07891.

ACTION CALENDAR

LAKE FOREST ZONE B TO C RECYCLED WATER PUMP STATION CONSULTANT SELECTION

Executive Director of Technical Services Burton reported that the District is proceeding with the design of the Lake Forest Zone B to C Recycled Water Pump Station to improve water quality in the recycled water system. Mr. Burton said that the District's Lake Forest Zone C recycled water system receives its water supply from the Los Alisos Water Recycling Plant (LAWRP) and Santa Margarita Water District's (SMWD) Upper Oso Reservoir and that staff recently completed an evaluation to identify ways to increase operational flexibility and improve water quality in this recycled water system. He said that the evaluation resulted in a recommendation to cover the existing Zone B East Reservoir, establish a closed-loop Zone C distribution system with water supplied primarily from LAWRP, and construct a bi-directional metered interconnection with SMWD that can be used to transfer recycled water between IRWD and SMWD as needed. He said that the installation of the cover is complete, and staff is now proceeding with the design of a new interconnection with SMWD and a new pump station to establish the closed-loop Zone C system.

Mr. Burton said that the proposed pump station will be located at the site of the existing (non-operational) Lake Forest Well No. 5, with the proposed interconnection to be located near the intersection of Portola Parkway and El Toro Road. The existing Lake Forest Zone B to C recycled water pump station, an outdoor pump station constructed in 1998, will be demolished as part of the project utilizing replacement funds. He said that the proposed pump station will be enclosed within a building designed to be aesthetically compatible with the surrounding commercial buildings and designed to mitigate sounds from operating equipment as required by the City of Lake Forest's noise ordinance. In addition to the proposed pump station and

demolition of the existing outdoor pump station, the project includes the destruction of the existing Lake Forest Well No. 5; conceptual siting and reservation of space for a potential future well and well building located on the proposed pump station site; and construction of a metered interconnection between IRWD and SMWD to allow the transfer of recycled water between IRWD and SMWD as needed.

Mr. Burton said that staff received proposals for engineering design services from Dudek, Lee & Ro, and Stantec and that Woodard & Curran declined to submit a proposal due to schedule conflicts with its primary pump station design staff. He said that while each firm provided proposals, which generally met the project objectives, Stantec's approach to the project exceeded that presented by the other firms, which included an original design concept that maximized the use of the limited available site space. In addition, Stantec's proposed project manager has successfully managed several recent IRWD projects including the Orange Park Acres Well No. 1 Wellhead Facilities, Stockdale West Wellhead Equipping and Conveyance Facilities, and the Eastwood Recycled Water Pump Stations.

Director Reinhart said that this item was reviewed by the Engineering and Operations Committee on October 15, 2019. On MOTION by Reinhart, seconded by Matheis and unanimously carried, **THE BOARD AUTHORIZED THE GENERAL MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES, INC. IN THE AMOUNT OF \$735,378 FOR ENGINEERING DESIGN SERVICES FOR THE LAKE FOREST ZONE B TO C RECYCLED WATER PUMP STATION, PROJECT 11168.**

2019 POTABLE WATER, SEWER, AND RECYCLED WATER REGIONAL CAPITAL COST ALLOCATIONS

Principle Engineer Akiyoshi said that maps and the slides for tonight's meeting had been placed before each director. Using a PowerPoint presentation, Principle Engineer Akiyoshi provided an update on the 2019 Regional Capital Cost Allocations. Mr. Akiyoshi said that the regional cost allocations: 1) calculate an Improvement District's (ID)'s contribution towards regional capital projects; 2) provide benefit to all IRWD customers, "developed" and "developing" area (e.g., water or sewage treatment plant); and 3) are updated during major ID consolidations, significant changes to development projects, and water demand factor calibrations. He reviewed demand calculation methodology which include: 1) identifying land uses within IRWD's service area (by tabulating dwelling units or 1,000s of square feet for entire service areas); 2) developing water demand factors (for interior and exterior and common area irrigation demand); and 3) use IRWD's demand forecast tool to project demands.

Mr. Akiyoshi reviewed development updates noting the removal of both East Orange Area 1 and East Orange Lake Village and the reduction of Santiago Hills II areas; converted Irvine Lake Pipeline to recycled water along with several developments along Jamboree in Northern Irvine / East Orange; and intensified the Great Park and Tustin Legacy residential development. The major changes are as follows: 1) East Orange Area I / East Orange Lake Village / Santiago Hills II – These developments were planned for approximately 3,700 residential dwelling units (DUs). The Irvine Company significantly reduced the footprint of these developments and designated the remainder to permanent open space, changing future development to only include Santiago Hills II with 1,180 DUs resulting in a net reduction of approximately 2,500 DUs; 2) Portola Springs – This area increased residential units from 4,650 DUs to 6,180 DUs. Non-residential development has remained relatively the same; 3) Great Park Area – This area increased residential units from 10,700 DUs to 14,000 DUs, and increased non-residential

development from 7,830 thousand square feet (ksf) to 12,920 ksf; 4) Spectrum Area – This area increased residential development from approximately 850 DUs to approximately 1,300 DUs which is primarily comprised of apartment buildings; and 5) Tustin Legacy Area – The City of Tustin increased residential development from 4,820 DUs to 7,190 DUs. The net change in development results in a minor increase in overall demands for the Tustin Legacy Area. Using maps, he reviewed the potable water and sewer changes.

Mr. Akiyoshi then reviewed the regional potable water capital cost allocations for the Improvement Districts. In response to Director Swan's inquiry if low-income housing was allocated, Mr. Akiyoshi said that it was not included at this time. In response to Director Swan's inquiry if it is anticipated that there will be a decrease for Newport Coast, Mr. Akiyoshi will research this and provide an update to him. Director Swan then asked staff to provide data on current data versus projected build-out percentages. Mr. Dean Kirk of the Irvine Company reported that he and his staff have met on several occasions, and are satisfied with the allocations.

Mr. Akiyoshi further asked to correct the effective date on the staff recommendation to the Board, from December 1, 2019 to January 1, 2020.

Director Reinhart reported that this item was reviewed by the Engineering and Operations Committee on October 15, 2019. On MOTION by Reinhart, seconded by Matheis, **THE BOARD APPROVED THE PROPOSED REGIONAL CAPITAL COST ALLOCATIONS AND THEIR APPLICATION TO CAPITAL PROJECTS EFFECTIVE JANUARY 1, 2020 AS AMENDED.**

GENERAL MANAGER'S REPORT: None.

DIRECTORS' COMMENTS

Director Reinhart reported that he attended an ACWA Board Dinner, a MWDOC Board Meeting, a workshop with MWD Directors, an OCWD Board Meeting, a SOCWA Board Meeting, an OCWD Water Issues Committee Meeting, an OCWD Board Meeting, a MWDOC Administration and Finance Committee meeting, and a Southern California Water Coalition Dinner.

Director Swan reported on his attendance at a WACO meeting, an OCWA lunch meeting, a MWDOC meeting, Newport Chamber of Commerce meeting, an Orange County Conservation Corps 25th Anniversary Celebration, a Southern California Water Coalition Dinner, an OCS State of the District, and an NWRI Clarke Prize Award Ceremony. He also noted his concerns relative to PFAS contaminants, believes the OCWD should recharge the Santiago Pits, that a Coalition be established, and asked staff to agendaize an item for discussion at a future Board meeting.

Director Matheis reported on her attendance at an Inland Empire Utilities Agency Water Association Leadership Breakfast with DWR Director Karla Nemeth, an ACWA Board dinner, a Shadetree Partnership Board Meeting, the Loma Ridge Elementary School Dedication, a WACO Meeting, an IRWD Resident Tour, an ACWA Regulatory Summit in Sacramento, an NWRI Clarke Prize Award Ceremony, an ISDOC Quarterly Committee Meeting, a Southern California Water Coalition Dinner, and an OCS State of the District event. She further noted that the County of Orange is holding a seminar on November 13 relative to the housing issue.

Director LaMar reported on his attendance at an Inland Empire Utilities Agency Water Association Leadership breakfast, a monthly discussion of District activities with the General Manager, nine ACWA meetings, a California Environmental Dialogue Plenary Meeting, and a Southern California Water Coalition dinner.

ORAL UPDATES FROM DISTRICT LIAISONS: None.

CLOSED SESSIONS

At 6:06 p.m., Legal Counsel Collins said that the following Closed Sessions will be held tonight:

- 1) **CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION** - Pursuant to Government Code Section 54956.9(d)(1): *Irvine Ranch Water District v. Orange County Water District*, Case No. BS168278 [Lead Case] & Case No. BS175192 [Consolidated Case]

At 7:10 p.m., following the first Closed Session, President LaMar adjourned the meeting to the second floor Committee Room for the second Closed Session item.

- 2) **CLOSED SESSION:** Conference with Labor Negotiator pursuant to Government Code Section 54957.6:
Agency Designated Representative: President LaMar
Unrepresented Employee: Paul Cook

OPEN SESSION

Following the Closed Session, the meeting was reconvened with Directors LaMar, Matheis, Swan, and Reinhart present. No action was reported.

ADJOURNMENT

President LaMar adjourned in the Board meeting

APPROVED and SIGNED this 11th day of November, 2019.

President, IRVINE RANCH WATER DISTRICT

Secretary IRVINE RANCH WATER DISTRICT

APPROVED AS TO FORM:

Claire Hervey Collins, Legal Counsel
Lewis Brisbois

November 11, 2019
Prepared and
submitted by: C. Compton
Approved by: Paul A. Cook



CONSENT CALENDAR

ACWA 2019 MEMBERSHIP MEETING AND 2020-2021 ELECTION

SUMMARY:

The Association of California Water Agencies (ACWA) will be holding a general session membership meeting at the ACWA Fall Conference on December 4, 2019. At the meeting, ACWA members will elect the 2020-2021 ACWA President and Vice President. In order to participate in the membership meeting, each ACWA member must designate a voting delegate on the proxy designation form – a form that ACWA has requested be returned to the association by Monday, November 25.

Staff recommends that the Board support the slate of candidates selected by the ACWA Nominating Committee endorsing Steve LaMar for ACWA President and Sara Palmer for ACWA Vice President, and designate Vice President Mary Aileen Matheis as IRWD's voting delegate for the December 4 membership meeting.

BACKGROUND:

Every two years ACWA holds a membership meeting at its Fall Conference so that the association's membership can elect the ACWA President and Vice President, who will serve for the next two years. In addition to the election of officers, the membership meeting is the time when ACWA's members are asked to vote on proposed amendments to the association's bylaws, if any have been proposed. This year's membership meeting will be held on December 4, 2019.

On October 4, ACWA sent a memorandum to each of its members outlining the process for this year's membership meeting. The General Session Membership Meeting Memorandum is attached as Exhibit "A". The memorandum discusses the ACWA Nominating Committee's recommended slate of candidates and provided the process each ACWA member needs to follow in order to vote at the membership meeting. This year there are no bylaw revisions being considered at the meeting.

2020-2021 Recommended Slate of Officers:

As called for in the ACWA bylaws, the ACWA Nominating Committee has met and has recommended a slate of candidates for the 2020-2021 ACWA President and Vice President. The Committee is recommending that ACWA Vice President Steve LaMar be elected President for the 2020-2021 term and that Region 5 Vice Chair Sarah Palmer be elected Vice President. Pam Tobin, a director with San Juan Water District, is also running for Vice President and has indicated that she will be nominated from the floor at the General Session Membership Meeting.

Staff recommends that the Board support the slate of candidates recommended by the ACWA Nominating Committee.

ACWA Voting Process:

Each ACWA member wishing to participate in a membership meeting must designate a voting representative and submit a proxy designation form identifying that individual as its representative prior to the membership meeting. The designated voting representative is then required to register, sign in as the proxy holder, and obtain a proxy card prior to the membership meeting. This year designated representatives must register and obtain their proxy cards, which are required for voting, before 12:00 p.m. on Wednesday, December 4, at the ACWA General Session Desk.

To help expedite the sign-in process, ACWA has requested that its members indicate their voting delegate on the proxy designation form enclosed in the General Session Membership Meeting Memorandum. ACWA has requested that the proxy designation form be returned to the association by November 25. Staff recommends that the Board designate Vice President Mary Aileen Matheis as IRWD's voting delegate at the December 4 membership meeting.

FISCAL IMPACTS:

None.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

RECOMMENDATION:

THAT THE BOARD SUPPORT THE CANDIDATES SELECTED BY THE ACWA NOMINATING COMMITTEE; AND DESIGNATE VICE PRESIDENT MARY AILEEN MATHEIS AS THE IRWD VOTING DELEGATE FOR THE DECEMBER 4, 2019 MEMBERSHIP MEETING.

LIST OF EXHIBITS:

Exhibit "A" – ACWA General Session Membership Meeting Memorandum

Exhibit "A"

TO: ACWA Member Agency Board Presidents and General Managers
CC: ACWA Board of Directors
FROM: Dave Eggerton, ACWA Executive Director
DATE: October 4, 2019
SUBJECT: Notice of General Session Membership Meeting at ACWA 2019 Fall Conference

There will be a General Session Membership Meeting at the 2019 Fall Conference in San Diego, California, on **Wednesday, December 4**. The purpose of this meeting is to formally nominate and elect ACWA's President and Vice President for the 2020-2021 term. The General Session Membership Meeting will convene at 1:15 p.m., immediately following the Wednesday luncheon program, which will be located in the Harbor Ballroom A-F, Manchester Grand Hyatt.

Election / Voting Process

The ACWA Nominating Committee has announced a 2020-2021 slate that recommends current **Vice President Steven LaMar for ACWA President** and current **Region 5 Vice Chair Sarah Palmer for ACWA Vice President**.

As provided by ACWA's Bylaws (Article 9, Section 9) nominations from the floor will be accepted prior to the vote. The Bylaws require that floor nominations and seconds be made by a member of the Association and must be supported by a resolution of the governing body of the member making and seconding such nomination. The member agency on whose board the nominee serves shall submit a resolution of support if they are not the agency making the floor nomination or second. **(See attached for detailed General Session/Election Procedures.)**

ACWA will issue one proxy voting card to each member agency's designated voting representative (delegate) as identified by the member agency on the attached proxy designation form. The designated voting representative must be **present** at the General Session Membership Meeting and must sign-in as the delegate to receive the proxy voting card. Proxy voting cards will **only** be available for pick-up on **Wednesday, December 4**, between **9:00 a.m. and 12:00 p.m.** at the **ACWA General Session Desk** in the **Harbor Foyer**, Manchester Grand Hyatt. Proxy voting cards will not be issued before or after these hours.

To expedite the sign-in process at the **ACWA General Session Desk**, please indicate your voting delegate in advance on the enclosed proxy designation form and return it by email (**donnap@acwa.com**) or fax

(916-325-4857) by Monday, November 25. If there is a last minute change of delegate, please let us know by contacting ACWA's Clerk of the Board, Donna Pangborn at donnap@acwa.com.

If you have any questions regarding this process, please contact Clerk of the Board Donna Pangborn at the ACWA office at 916-441-4545 or donnap@acwa.com.

dgp

Enclosures:

1. General Session/Election Procedures
2. Proxy Designation Form

GENERAL SESSION/ELECTION PROCEDURES FOR ACWA 2019 FALL CONFERENCE

The following information is provided to inform the ACWA member agency delegates attending the 2019 Fall Conference of the procedures to be used pertaining to the nomination and election of ACWA officers during the General Session Membership Meeting.

PROXY VOTING CARDS – (REQUIRED FOR VOTING)

ACWA will issue one proxy voting card each member agency's designated voting representative (delegate) as officially identified by the member agency. In order to vote during the General Session Membership Meeting, the designated voting representative must be **present** at the General Session Membership Meeting and must sign-in as the delegate to receive the proxy voting card no later than **12:00 p.m. on Wednesday, December 4**. Upon sign-in, the voting delegate will receive the required proxy voting cards. Proxy voting cards will **only** be available for pick-up on **Wednesday, December 4, between 9:00 a.m. and 12:00 p.m.** at the **ACWA General Session Desk** in the **Harbor Foyer**, Manchester Grand Hyatt. Proxy voting cards will not be issued before or after these hours. The luncheon and General Session Membership Meeting will be held in the Harbor Ballroom A-F.


GENERAL SESSION MEMBERSHIP MEETING, WEDNESDAY, DEC. 4 (DOORS OPEN AT 1:05 P.M.)

1. The General Session Membership Meeting will be called to order at 1:15 p.m. and a quorum will be determined. The presence of 50 authorized voting representatives is required to establish a quorum for transacting business.
2. Legal Affairs Committee Chair Jennifer Buckman will provide an overview of the agenda and election procedures.
3. Nominating Committee Chair DeAna Verbeke will present the committee's report and announce the candidate for ACWA President.
4. President Brent Hastey will call for floor nominations for ACWA President.
5. If there are no floor nominations for President, the election will proceed. President Hastey will close the nominations and delegates will vote by holding up their "Yes" or "No" proxy voting cards.
6. If there **are** floor nominations for President, the nomination will follow the procedures established by Article 9 of ACWA's Bylaws, stating that floor nominations and seconds shall be made by a member of the Association and must be supported by a resolution of the governing body of the member making and seconding such nomination. The member agency on whose board the nominee serves shall submit a resolution of support if they are not the agency making the floor nomination or second.
 - a. Ballots will be distributed to the voting delegates.
 - b. Delegates will complete their ballots and place them in the ballot box, which will be centrally located in the Harbor Ballroom A-F meeting room.
 - c. Tellers' Committee will count the ballots. President Hastey has appointed the following staff members to serve as the Tellers' Committee: Clerk of the Board Donna Pangborn; Director of Business Development & Events Paula Currie; and Executive Assistant Lili Vogelsang.
 - d. Legal Affairs Committee Chair Jennifer Buckman will serve as the proctor to oversee the ballot counting process.
 - e. Candidates are welcome to designate an observer to be present during the ballot counting process.

- f. Results of the ballot count will be announced. Election of ACWA's officers will be determined by a majority of the members present and voting. If any one candidate does not receive a majority of the vote, successive ballot counts will be conducted until a candidate is elected, consistent with Robert's Rules of Order.
7. Nominating Committee Chair DeAna Verbeke will announce the candidate for ACWA Vice President.
8. President Brent Hastey will call for floor nominations for ACWA Vice President.
9. If there are no floor nominations for Vice President, the election will proceed. President Hastey will close the nominations and delegates will vote by holding up their "Yes" or "No" proxy voting cards.
10. If there **are** floor nominations for Vice President, the nominations will follow the procedures described in item 6 above, and the election will proceed according to the steps outlined in 6.a. through 6.f.



THIS PAGE WAS INTENTIONALLY LEFT BLANK

November 11, 2019
Prepared and
submitted by: Paul A. Cook 

CONSENT CALENDAR

CHANGES TO GENERAL MANAGER'S COMPENSATION

SUMMARY:

The annual performance review of the General Manager was conducted on October 28, 2019. This item presents the proposed changes to the annual compensation of the General Manager.

BACKGROUND:

The General Manager's annual performance evaluation was conducted in Closed Session during the October 28, 2019 IRWD Board meeting. After the discussion, President LaMar, as the designated representative for the Board of Directors, discussed potential changes in compensation with the General Manager. Based on this discussion, the recommendation is to:

- 1) Increase the base salary of the General Manager by 3.59% (\$11,000) resulting in an increase in annual base salary from \$306,800 to \$317,800 per year, effective October 1, 2019.
- 2) Provide a one-time performance award for the General Manager in the amount of \$18,500 as a taxable lump sum cash payment; and
- 3) Maintain the General Manager's monthly auto allowance at \$725 per month (no change).

All other aspects of the General Manager's compensation remain unchanged. The General Manager's annual salary is within the existing salary range per Resolution No. 2019-15 adopted by the Board on June 10, 2019, and is publicly available.

FISCAL IMPACTS:

Funds for the compensation of the General Manager are included in the District's annual Operating Budget.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

COMMITTEE STATUS:

Not applicable.


RECOMMENDATION:

THAT THE BOARD APPROVE AN INCREASE TO THE ANNUAL SALARY OF THE GENERAL MANAGER TO THE AMOUNT OF \$317,800, A ONE-TIME PERFORMANCE AWARD IN THE AMOUNT OF \$18,000, AND MAINTAIN THE GENERAL MANAGER'S AUTOMOBILE ALLOWANCE AT \$725 PER MONTH, EFFECTIVE OCTOBER 1, 2019.

LIST OF EXHIBITS:

None.

THIS PAGE WAS INTENTIONALLY LEFT BLANK

November 11, 2019
Prepared by: R. Thatcher / E. Akiyoshi
Submitted by: K. Burton
Approved by: Paul A. Cook 

CONSENT CALENDAR

ORANGE COUNTY TRANSPORTATION AUTHORITY
PIPELINE CROSSING OC-276 LICENSE AGREEMENT

SUMMARY:

The Irvine Company is constructing IRWD facilities that cross the Orange County Transportation Authority (OCTA) railroad right-of-way. The 12-inch domestic water pipeline being constructed will serve the Irvine Company's Innovation Park office development located at the former Traveland Recreation Vehicle site. All railroad crossings require a license agreement since OCTA is unwilling to provide an easement for facilities that cross railroad rights-of-way. Staff recommends that the Board authorize the General Manager to execute the OCTA License Agreement for crossing OC-276, subject to non-substantive changes.

BACKGROUND:

Under a Reimbursement Agreement with IRWD, the Irvine Company is constructing a 12-inch domestic water pipeline to serve the proposed Innovation Park office development in Irvine Planning Area 12. A location map is attached as Exhibit "A". The pipeline construction is scheduled to begin in November 2019.

OCTA is only willing to execute license agreements for pipelines. It is a requirement of OCTA to grant the license prior to construction of the pipeline, regardless of whether IRWD is constructing the pipeline or accepts the facility after construction by the land developer. Additionally, the former Atchison, Topeka, and Santa Fe (ATSF) railroad required (and its successor maintains) similar licenses for all crossings in IRWD's service area. IRWD currently maintains eight similar license agreements with OCTA and more than two dozen with ATSF. Those licenses involved processing fees and similar conditions.

OCTA License Agreement:

The OCTA License Agreement, designated "OC-276" and attached as Exhibit "B", contains a one-time fee of \$1,500 plus the base license fee of \$1,000 required with the issuance of the license. The conditions of the license are materially the same as the previous licenses. One of the items is the "month-to-month" term with annual renewals. Although IRWD staff attempted to negotiate this out of the agreement, OCTA staff stated that this is a condition of all of its license agreements regardless of the utility and will not change. Based on internal research, the other OCTA and ATSF license agreements contain very similar terms dating back to the early 1970s. While OCTA understands that IRWD's facilities are considered permanent, it will not change the term of the agreement. Staff recommends execution of the license agreement.

FISCAL IMPACTS:

The initial license execution and subsequent renewals of the license will be paid through the operating budgets of the respective distribution systems.

ENVIRONMENTAL COMPLIANCE:

Construction of capital domestic water, sewer, and recycled water facilities for the Planning Area 12 Development is subject to CEQA. In conformance with the California Code of Regulations Title 14, Chapter 3, Article 7 an Environmental Impact Report was certified by the City of Irvine, the lead agency on April 14, 2008 (SCH# 2000071014).

COMMITTEE STATUS:

This item was not reviewed by a Committee.

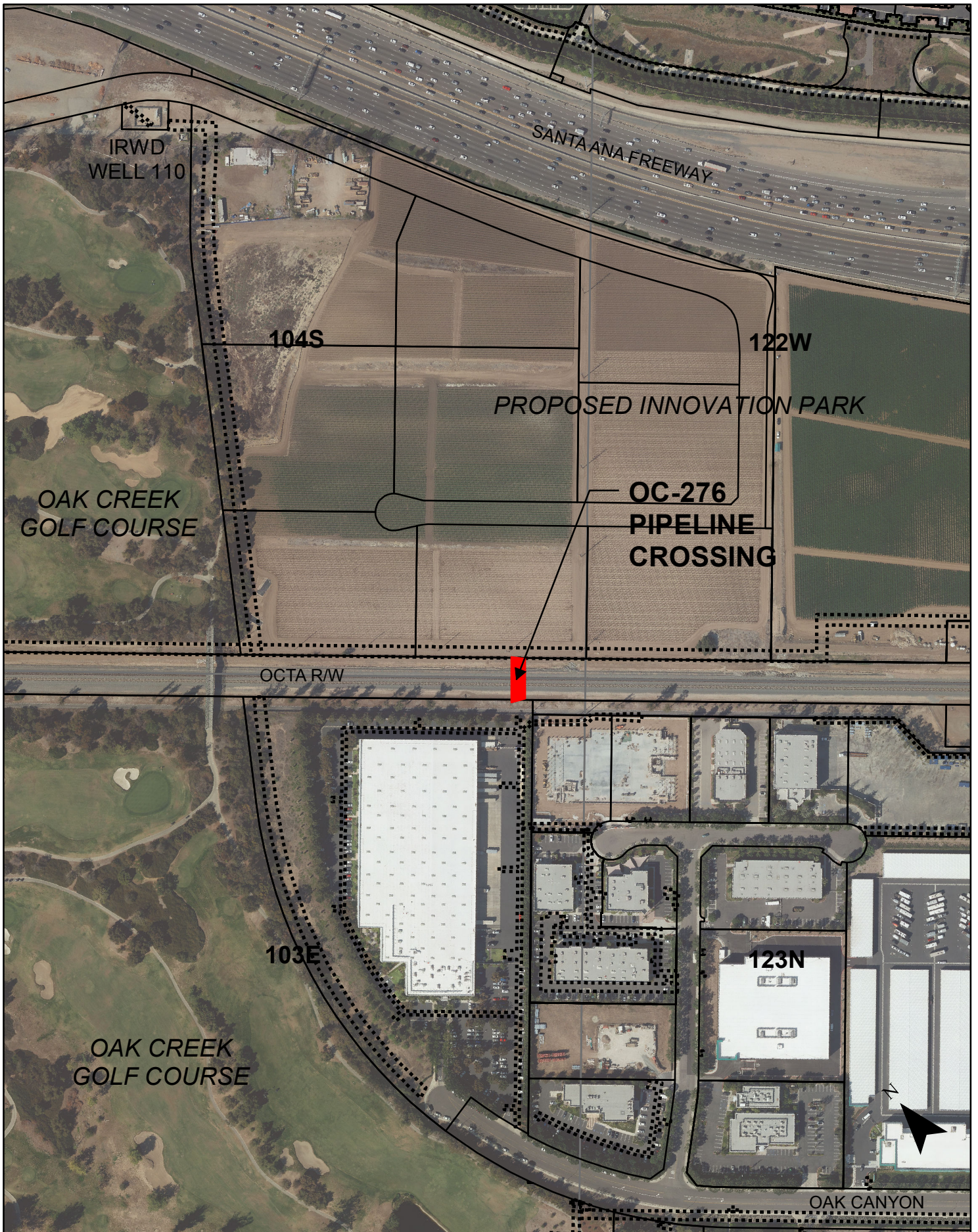
RECOMMENDATION:

THAT THE BOARD AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE ORANGE COUNTY TRANSPORTATION AUTHORITY LICENSE OC-276 FOR THE 12-INCH DOMESTIC WATER PIPELINE SERVING INNOVATION PARK, SUBJECT TO NON-SUBSTANTIVE CHANGES.

LIST OF EXHIBITS:

Exhibit "A" – Location Map
Exhibit "B" – OCTA OC-276 Pipeline License

EXHIBIT "A"



OCTA PIPELINE CROSSING OC-276

THIS PAGE WAS INTENTIONALLY LEFT BLANK

ORANGE COUNTY TRANSPORTATION AUTHORITY LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of October 8, 2019, by and between the ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity ("OCTA"), and IRVINE RANCH WATER DISTRICT, a California Water District organized under and existing pursuant to Section 34000 et seq. of the California Water Code ("Licensee"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I. - BASIC LICENSE PROVISIONS

1. Description of License Property: A portion of the OCTA railroad right of way located between Jeffrey Road, and Sand Canyon Avenue in the City of Irvine, CA as shown and described on Exhibit "A", attached.

Approximate area 500 +/- square feet.
2. Use of License Property: Installation of an underground 12" domestic water pipeline within a 24" steel casing subject to all the terms, conditions and limitations as set forth in Part II of this Agreement.
3. Commencement Date: Effective as of the date this Agreement is fully executed.
4. Term: Month-to-Month
5. License Fees:
 - A. Base License Fee: \$1,000.00 payable annually in advance
 - B. One Time Fee: \$1,500.00
 - C. Base License Fee Adjustment Dates: Annually based on CPI per Section 2.2.1 Annual CPI Adjustment, General License Provisions.
6. Insurance Requirements: Insurance requirements are detailed in Section 16, Insurance, page 8, attached hereto and incorporated herein by reference.
7. OCTA's Address:

ORANGE COUNTY TRANSPORTATION AUTHORITY
550 S. Main Street
P. O. Box 14184
Orange, CA 92863-1584

8. Licensee's Address:

Ray Thatcher, R/W Agent
 Irvine Ranch Water District
 15600 Sand Canyon Ave.
 Irvine, CA 92618

9. Facility: 12-inch PVC Domestic Water pipeline within a 24-inch PVC DW steel casing

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

PART II - GENERAL LICENSE PROVISIONS

1. License/Term.

License. OCTA hereby grants to Licensee a non-exclusive license to use the real property owned by OCTA described on the attached Exhibit "A" and incorporated herein by reference, and described in Item 1 of the Basic License Provisions (the "License Property"), for the limited purpose of construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Facility described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Facility"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Facility. In connection with this license, Licensee, its employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties"), subject to the provisions hereof, may have reasonable rights of entry and access onto the License Property. The License Property, adjoining real property (or any interest therein) of OCTA and personal property of OCTA located thereon shall hereinafter collectively be referred to as OCTA Property ("OCTA Property").

1.2 Term of Agreement. The term ("Term") of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. Unless a specific term of this Agreement is filled in at Item 4 of the Basic License Provisions, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4 of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4 of the Basic License Provisions provides for a specific term, then this Agreement shall be a license for the term specified in said Item 4; provided, however, that OCTA shall have the absolute right to terminate this Agreement prior to the date specified in Item 4 in its sole discretion by delivering thirty (30) days' prior written notice to Licensee.

1.3 Public Use. In addition to any and all other termination rights of OCTA described herein, Licensee hereby expressly recognizes and agrees that the Premises are located on OCTA property that may be developed for public projects and programs which may be implemented by OCTA or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually "Public Use"); and that Licensee's use of the Premises under this License is a temporary, interim use as to which Licensee has no right to nor expectation of use for any particular length of time that may be terminated by OCTA by thirty (30) days written notice to Licensee as set forth in Section 1.2 above. Accordingly, as a condition to entering into this License, Licensee expressly acknowledges and agrees that:

- (a) OCTA may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of OCTA's Executive Director, or designee;
- (b) Licensee waives any objection to, opposition, or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Premises;
- (c) If OCTA's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, Licensee shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by OCTA or any parties having operating rights over the Premises, at Licensee's sole cost and expense, within thirty (30) days after written notice from OCTA; and
- (d) Licensee expressly assumes all risk of any future Public Use as determined by OCTA and in the event OCTA terminates this License and requires Licensee to vacate the Premises for any Public Use, Licensee shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:
 - (i) relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and
 - (ii) compensation under any eminent domain or inverse condemnation law.

Licensee shall not be entitled to any damages under California's Eminent Domain Law in the event of such termination.

1.4 Condition of Premises. Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this license is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in a condition which is satisfactory to Licensee as of the Commencement Date.

2. Payments

2.1 License Fee. As consideration for the rights given hereunder, Licensee agrees to pay to OCTA the Base License Fee specified in Item 5 of the Basic License Provisions, as such amount may be adjusted as set forth in Section 2.2, and the Additional License Fee specified in Item 5 of the Basic License Provisions. The one-time Additional License Fee and the first year's Base License Fee are due and payable upon execution of this Agreement. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, on or before one year after the Commencement Date and in each year as the case may be thereafter. The Base License fee for any fractional period at the end of the Term shall be prorated on a daily basis and shall be due and payable without demand.

2.2 License Fee Adjustment.

2.2.1 Annual CPI Adjustment. The Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the Commencement Date occurs unless another date(s) is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the third month preceding the month during which the particular Adjustment Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month containing the prior Adjustment Date or, if none, the Commencement Date. As used in this section, the "CPI" means the Consumer Price Index for

Urban Wage Earners and Clerical Workers, Los Angeles/Anaheim/Riverside, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by OCTA.

2.2.2 Fair Market Adjustment. At intervals of not less than five (5) years, the Base License Fee (as such fee may be adjusted by Section 2.2.1, above) payable under this Section 2 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the License Property as determined by OCTA in good faith discretion. Such increases shall be effective on an anniversary date of the Commencement Date. OCTA shall give Licensee written notice of the date and amount of any such adjustment not less than thirty (30) days prior to the applicable anniversary date. If no adjustment is made on the third anniversary of the Commencement Date, an adjustment may nevertheless be made on subsequent anniversary date and thereafter at intervals of not less than five (5) years apart. Any such adjustment may take into consideration the increase in fair market rental value since the last adjustment.

2.3 Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to OCTA under this Agreement will cause OCTA to incur costs not contemplated by this Agreement. Therefore, if any payment due from Licensee is not received by OCTA within five (5) days of the date when due, Licensee shall pay to OCTA an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that OCTA will incur by reason of a late payment by Licensee. Acceptance of any late payment charge shall not constitute a waiver of Licensee's default with respect to the overdue payment and shall not prevent OCTA from exercising any of the other rights and remedies available to OCTA under this Agreement, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 24.5.

3. Taxes. Licensee shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Facility and its operations the License Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith, or (b) as a result of the Licensee's parties' use of the License Property, or the Facility.

4. Construction. All Construction work performed or caused to be performed by Licensee on the Facility or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the OCTA's rules and regulations), and (c) in a manner which (i) meets or exceeds the then applicable standards of the industry for such Construction work, and (ii) is satisfactory to OCTA. Prior to commencement of any construction, maintenance, reconstruction, installation, restoration, alteration, repair, replacement or removal (other than normal maintenance) (hereinafter, "Work") on the License Property, Licensee shall submit work plans to OCTA for review and approval. Any such Construction Work must be carried out pursuant to work plans approved in writing by OCTA. In addition, Licensee shall provide OCTA and all holders of underground utility facilities located within the License Property with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Facility, except in cases of emergency, in which event Licensee shall notify OCTA's representative personally or by phone prior to commencing any Construction Work. Unless otherwise requested by OCTA, upon completion

of any Construction Work, Licensee shall restore the OCTA Property to its condition immediately preceding the commencement of such Construction Work.

5. Contractors--Approval and Insurance. Any contractors of Licensee performing Work on the Facility or the License Property shall first be approved in writing by OCTA. With respect to such Work, Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect, throughout the term of such Work, insurance, as required by OCTA, in the amounts and coverages specified on, and issued by insurance companies as described Section 16, attached hereto and incorporated herein by reference. Additionally, Licensee shall cause any and all of its contractors and subcontractors which may (a) be involved with such Work, or (b) may, for any reason, need to enter onto the License Property, to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by OCTA, in the amounts and coverages specified on, and issued by insurance companies as described in Section 14, attached hereto and incorporated herein by reference. OCTA reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement on the Work to be performed on the License Property.

6. Reimbursement. Licensee agrees to reimburse OCTA for all reasonable costs and expenses incurred by OCTA in connection with Construction Work on or maintenance of the License Property or the Facility, including, but not limited to, costs incurred by OCTA in furnishing any materials or performing any labor, reviewing Licensee's Work plans and/or inspecting any Construction Work, installing or removing protection beneath or along OCTA's tracks, furnishing of watchmen, flagmen and inspectors as OCTA deems necessary and such other items or acts as OCTA in its sole discretion deems necessary to monitor or aid in compliance with this Agreement.

7. Liens. Licensee will fully and promptly pay for all materials joined or affixed to Facility or the Licensed Property, and fully and promptly pay all persons who perform labor upon said Facility or the Licensed Property. Licensee shall not suffer or permit to be filed or enforced against the Licensed Property or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or Construction Work, or out of any other claim or demand of any kind. Licensee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by OCTA with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend OCTA from all obligations and claims made against OCTA for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of OCTA. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to OCTA in compliance with applicable California law. If Licensee does not discharge any mechanic's liens or stop notice for works performed for Licensee, OCTA shall have the right to discharge same (including by paying the claimant), and Licensee shall reimburse OCTA for the cost of such discharge within ten (10) business days after billing. OCTA reserves the right at any time to post and maintain on the OCTA Property and on the Licensed Property such notices as may be necessary to protect OCTA against liability for all such liens and claims. The provisions of this Section shall survive the termination of this Agreement.

8. Maintenance and Repair. Licensee, at Licensee's sole expense, shall maintain the License Property and the Facility in a condition satisfactory to OCTA during the Term of this Agreement and shall perform all maintenance and clean-up of the License Property and the Facility as necessary to keep the License Property and the Facility in good order and condition, to OCTA's satisfaction and in accordance with applicable Licensee codes. Licensee shall be responsible for any citations issued by any agency having jurisdiction as a result of Licensee's failure to comply with local codes. If any portion of the OCTA Property, including improvements or fixtures, suffers damage by reason of the access to or

use of the License Property, by Licensee, Licensee's Parties or by Licensee's partners, officers or directors, including but not limited to damage arising from any test or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the OCTA Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by an excavation by Licensee or Licensee's Parties.

9. Landscaping and Protective Fencing. If required by OCTA, Licensee, at its sole cost and expense, shall install barrier fencing and/or landscaping to shield the railroad track area from public access and/or the Facility from public view. OCTA shall have the right to review and approve fencing and/or landscaping plans prior to installation. All fencing and/or landscaping work shall be done in accordance with the provisions of Sections 4 and 5 above and will be subject to the maintenance and repair provisions of Section 8 above.

10. Use. The License Property and the Facility shall be used only for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be made by Licensee in the use of the License Property or the Facility without OCTA's prior written approval.

11. Abandonment. Should Licensee at anytime abandon the use of the Facility or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, OCTA shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement. OCTA, at its option, may remove any improvements remaining on the abandoned property, at Licensee's expense.

12. Breach. Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, OCTA at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to OCTA upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee or any other person occupying the License Property, by any lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the rights and remedies that OCTA may have under this Agreement, at law or in equity by reason of Licensee's default or of such termination.

13. Surrender. Upon termination of this Agreement, unless otherwise requested in writing by OCTA prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove the Facility and restore the OCTA Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Facility. Should Licensee fail to comply with the requirements of the preceding sentence, OCTA may at its option (a) perform the same at Licensee's expense, which costs Licensee agrees to pay to OCTA on demand, or (b) assume title and ownership of said Facility. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility is removed and the OCTA Property is restored.

14. Indemnification. Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel reasonably satisfactory to OCTA, provided that such acceptance shall not

be unreasonably withheld), and hold harmless OCTA, Southern California Regional Rail Authority, and its subsidiaries, officers, commissioners, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against that portion of all loss (including, without limitation, damage to or loss of use of property; and bodily injury to or death of any person, including employees of Indemnitees), liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees) that are incurred by or asserted against Indemnitees for that portion of Licensee's negligence arising directly out of the acts, or omissions to act, of the Licensee, or its officers, directors, affiliates, Licensee's Parties, anyone directly or indirectly employed by Licensee, or anyone for whose acts Licensee is liable (collectively, "Personnel") in connection with Licensee's use of License Property. including those Claims and Expenses (a) for bodily injury or death of any person (including employees of Indemnitees) or damage to or loss of use of property or (b) in connection with the non-performance or breach by Licensee or its Personnel of any term of condition of this Agreement, in each case whether the Claims and Expenses and/or events giving rise thereto occur during the Term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of OCTA, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

15. Assumption of Risk and Waiver. To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including, without limitation, the Facility, the License Property and any other property of, or under the control or custody of, Licensee, which is on or near the License Property. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the OCTA Property, accident, fire or other casualty on the OCTA Property, or electrical discharge, noise or vibration resulting from OCTA's transit operations on or near the OCTA Property. The term "OCTA" as used in this section shall include: (a) any transit or rail-related company validly operating upon or over OCTA's tracks or other property, and (b) any other persons or companies employed, retained or engaged by OCTA. Licensee, on behalf of itself and its Personnel (as defined in Section 14) as a material part of the consideration for this Agreement, hereby waives all claims and demands against OCTA for any such loss, damage or injury of Licensee and/or its Personnel. **In that connection, Licensee waives the benefit of California Civil Code Section 1542, which provides as follows:**

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Licensee accepts the risk that the facts or the law may later turn out to be different than Licensee understands them to be at this time and acknowledges that this assumption of risk and waiver will not be affected by such different state of facts or law. The provisions of this Section shall survive the termination of this Agreement.

16. Insurance.

- A. Licensee shall procure and maintain insurance coverage or evidence of self-insurance during the entire term of this Agreement. Licensee shall provide the following coverage:
1. Commercial General Liability [CGL], to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum of \$1,000,000.00 of coverage. , with:
 1. Removal of the CGL exclusion for pollution liability, or
 2. A Pollution Liability policy with minimum limits of \$1,000,000.00; and
 3. Automobile Liability Insurance with combined single limits of a minimum of \$1,000,000.00;
 4. Workers' Compensation with limits as required by the State of California; with a waiver of subrogation rights;
 5. Employers' Liability with limits of a minimum of \$1,000,000.00; and
- B. Subject to prior approval by OCTA, Licensee may meet the requirements through (i) self-insurance, (ii) coverage through a joint powers insurance authority (JPIA) which is duly formed under the laws of the State of California, or (iii) utilize a combination of self-insurance and JPIA coverage, or (iiii) commercial insurance policies.
- C. OCTA, its officers, directors, employees and agents must be designated as additional insured on the Licensee's Comprehensive General and Automobile Liability Insurance policies. Licensee shall furnish OCTA with insurance endorsements and certificates, evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder.
- D. The coverage shall be primary and any insurance or self-insurance maintained by OCTA shall be excess of the Licensee's insurance and shall not contribute to it.
- E. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits, except only after thirty (30) days prior written notice has been given to OCTA. In the event OCTA learns that Licensee's insurance coverage is terminated and Licensee fails to provide adequate assurances that continuous coverage is being provided, OCTA, at its sole discretion, may obtain such coverage at Licensee's expense.
- F. OCTA retains the right to increase the amounts of coverage required by this Agreement as it determines are reasonably necessary to protect itself against potential liability caused by entering into this Agreement. OCTA shall give licensee 60 days' notice of the need for it to increase its coverage. By the end of the 60 days, Licensee shall provide proof of such coverage in the manner set forth in this section.

17. Tests and Inspection. OCTA shall have the right at any time to inspect the License Property and the Facility so as to monitor compliance with the terms of this Agreement. OCTA shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary in its sole judgment or useful to evaluate the condition of the License Property. Licensee shall cooperate with OCTA and its agents in any tests or inspections deemed necessary by OCTA. Licensee shall pay or reimburse OCTA and appropriate regulatory agencies, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

18. Hazardous/Toxic Materials Use and Indemnity. Licensee shall operate and maintain the License Property in compliance with all applicable federal, state and local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Licensee or the License Property ("Environmental Laws"). Licensee shall not cause or permit or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the brought upon, stored, used, generated, treated or disposed of on the License Property or the OCTA Property. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Licensee shall indemnify, defend (by counsel acceptable to OCTA) and hold harmless the Indemnitees (as defined in Section 14) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this Section or (b) any release of Hazardous Materials upon or from the Facility or the License Property or contamination of the Licensed Property or adjacent property (i) which occurs due to the use and occupancy of the Facility or the Licensed Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

In addition, in the event of any release on or contamination of the License Property, the OCTA Property and/or any adjacent property, whether or not owned by OCTA, Licensee, at its sole expense, shall promptly take all actions necessary to clean up all such affected property and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of OCTA and any governmental authorities having jurisdiction thereover.

Upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, clean up and remove all Hazardous Materials in, on, under and/or about the License Property or OCTA Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of OCTA and any governmental authorities having jurisdiction thereover.

19. Underground Storage Tanks. NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY.

20. Subordinate Rights. This Agreement is subject and subordinate to the prior and continuing right and/or obligation of OCTA, its successors and assigns, to use the OCTA Property in the exercise of its powers and in the performance of its duties, or for any other purpose including but not limited to those as a public transportation body. Accordingly, there is reserved and retained unto OCTA, its successors, assigns and permittees, the right to construct, reconstruct, maintain and use existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the OCTA Property, and to otherwise use the OCTA Property, and in connection therewith the right of OCTA, its successors and assigns, to grant and convey to others, rights to and interests in the OCTA Property on the License Property and in the vicinity of the Facility. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title

exceptions") which may affect the OCTA Property now or hereafter, and no provision of this Agreement shall be construed as a covenant or warranty against the existence of any such present or future title exceptions, whether or not arising out of the actions of OCTA, its successors or assigns. OCTA makes no representations or warranties of any kind with regard to title to the License Property.

21. Compliance with Laws. Licensee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Facility and the License Property. OCTA may enter the License Property to inspect the Facility at any time, upon provision of reasonable notice of inspection to Licensee. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Facility, at its sole cost and expense.

22. Condemnation. In the event all or any portion of the License Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) from the Condemnor only for the taking and damage to the Facility. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to OCTA.

23. Markers. Project markers in form and size satisfactory to OCTA, identifying the Facility and its owners, will be installed and constantly maintained by and at the expense of Licensee at such locations as OCTA shall designate. Such markers shall be relocated or removed upon request of OCTA without expense to OCTA. Absence of markers in or about the License Property and OCTA Property does not constitute a warranty by OCTA of the absence of subsurface installations.

24. General Provisions.

24.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by certified mail, return receipt requested, postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective on the date delivered to custody of U.S. Postal Service.

24.2 Non-Exclusive License. The license granted hereunder is not exclusive and OCTA specifically reserves the right to grant other licenses within the License Property.

24.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

24.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.5 Interest on Past-Due Obligations. Except as expressly herein provided, any amount due to OCTA which is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due OCTA as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement. Interest shall not be payable on late charges incurred by Licensee.

24.6 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier

termination of this Agreement, including without limitation, all payment obligations with respect to License Fees and all obligations concerning the condition of the License Property and the Facility.

24.7 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

24.8 Amendment. This Agreement may be amended at any time by the written agreement of OCTA and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties, so long as the same shall be in writing and executed by the parties hereto.

24.9 Assignment. This Agreement and the license granted hereunder are personal to the Licensee. Licensee shall not assign or transfer (whether voluntarily or involuntarily) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges granted hereunder, without the prior written consent of OCTA, which may be withheld in OCTA's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and grant OCTA the right to immediately terminate this Agreement.

24.10 Attorney's Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

24.11 Nondiscrimination. Licensee certifies and agrees that all persons employed and any contractors retained, by either Licensee or Licensee's affiliates, subsidiaries, or holding companies, with respect to the License Property, are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, disability or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

24.12 Further Acts. At OCTA's sole discretion but at the sole expense of Licensee and without a Licensee claim for reimbursement, Licensee agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement, including the relocation of the Facility and the license granted hereunder.

24.13 Waiver of Relocation Rights. Licensee hereby acknowledges that if OCTA asks licensee to vacate the property, then licensee is not entitled to any relocation benefits under this agreement or by virtue of state or federal law. Further, licensee agrees it is not entitled to loss of good will or moving expenses from OCTA.

24.14 Time of Essence. Time is of the essence in the performance of this Agreement.

24.15 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereunder.

24.16 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted hereunder is revocable by OCTA in accordance with the terms of this Agreement.

24.17 Entire Agreement. This Agreement and Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein.

24.18 Captions. The Captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provisions hereof, or in any way affect the interpretation of this Agreement.

24.19 Additional Provisions. Those additional provisions set forth in Exhibit "C" are hereby incorporated by this reference as if fully set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
James G. Beil, P.E.
Executive Director, Capital Programs

Date: _____

APPROVED AS TO FORM:

By: _____
James M. Donich
General Counsel

LICENSEE

IRVINE RANCH WATER DISTRICT

By: _____

Date: _____

Name: Paul Cook

Title: General Manager

APPROVED AS TO FORM:

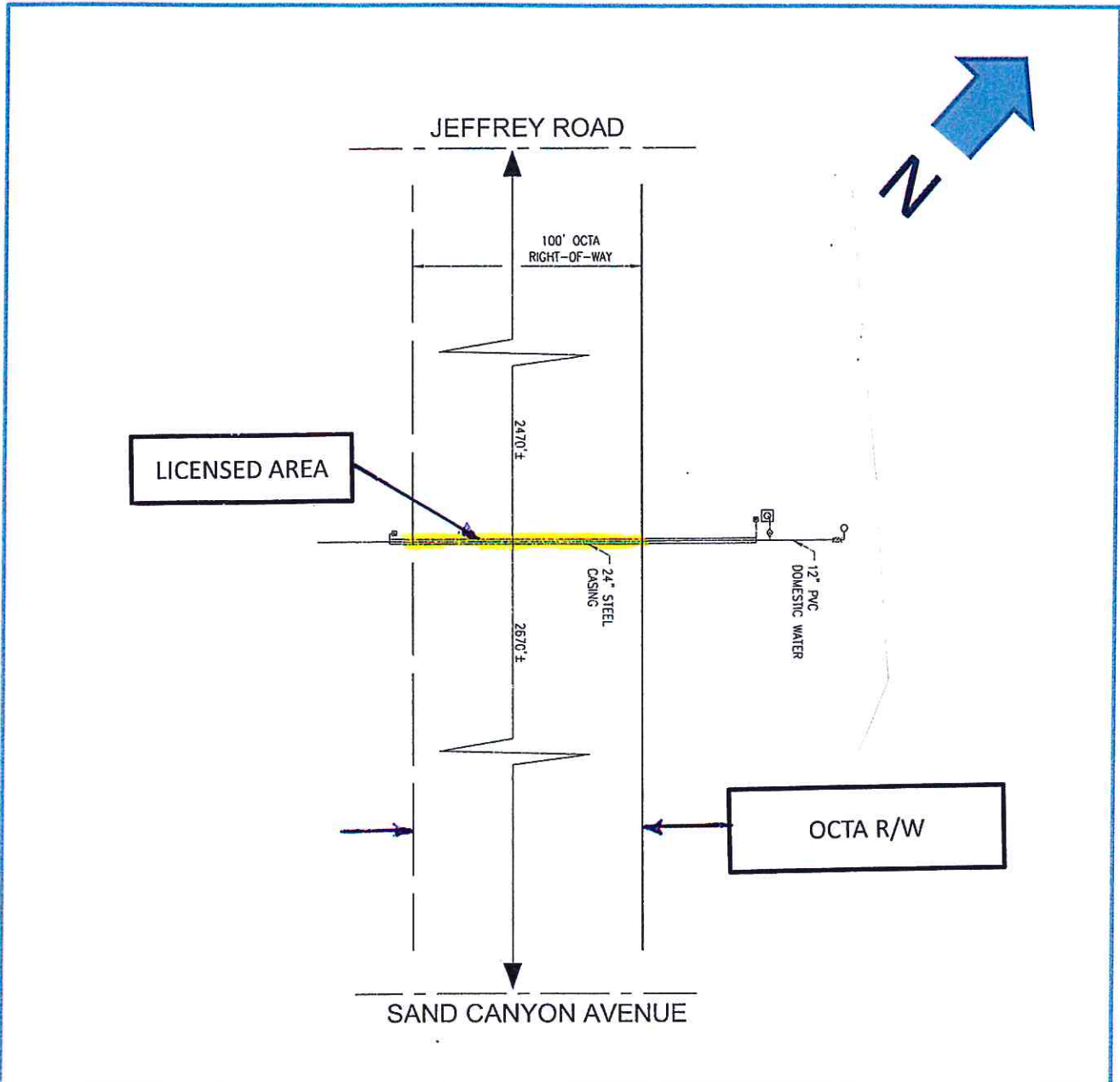
By: _____


Name: Claire H. Collins

Title: General Counsel

EXHIBIT "A"
(To be Attached)

EXHIBIT "A"



LINE/BRANCH: ORANGE-OLIVE	COUNTY: ORANGE	MILE POST 182.90		IRVINE RANCH WATER DISTRICT	
LOCATION: CITY OF IRVINE	LICENSE AREA [IN SQUARE FEET]: 500 +/- SQ. FT.				
NEAREST CROSS STREETS: JEFFREY ROAD AND SAND CANYON AVENUE			ORANGE COUNTY TRANSPORTATION AUTHORITY P.O. BOX 14184 550 SOUTH MAIN STREET ORANGE, CA 92863-1584 TEL. NO. (714) 560-6282	CONTRACT NO.: OC-276	
USE: 12" DOMESTIC WATER PIPELINE WITHIN A 24" STEEL CASING			SCALE: N-T-S	DATE: 10/1/19	

This sketch is not a representation or warranty of the extent of, or boundaries of OCTA property right

EXHIBIT "C"

This License is subject to the following additional terms and conditions:

1. The Licensee agrees to execute and deliver to SCRRA, prior to commencing any work within the rail right-of-way, SCRRA Temporary Right-of-Entry agreement (Form No. 6) and deliver and secure approval of the insurance required by the two exhibits attached to SCRRA Form No. 6. If the Licensee retains a contractor to perform any of work within the rail right-of-way, then the Licensee shall incorporate in its contract documents SCRRA Form No. 6 and Rules and Requirements for Construction on Railway Property (SCRRA Form No. 37 https://www.metroinktrains.com/globalassets/about/engineering/scrra_form_no_37.pdf). Mr. Christos Sourmelis with SCRRA's Right-of-Way Encroachments Office can be reached at (909) 392-8463. These forms can be accessed through SCRRA's website www.metroinktrains.com, ("About Us", "Engineering and Capital MGMT", and "Manuals").
2. Licensee's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SCRRA during the entire construction period. The contractor shall furnish copies of the insurance certificates to all affected operating railroads.
3. If the personnel working on this project do not have CURRENT, SCRRA Safety Training Certification, contact Mr. Trevor Williams with JACOBS to schedule your 1- (up to 20 people) SCRRA Safety Training at (714) 659-1141 or via e-mail at, Trevor.Williams@jacobs.com Allow 24 to 72 hours from the request for safety training to arrange the training. No work may commence on the railroad right of way until this training has been completed. The contractor will need a valid SCRRA project number, located in the upper right-hand corner of the executed SCRRA Right-of-Entry Permit.
4. Flagging services are limited due to projects SCRRA has going on within the SCRRA Right-of Way. Jacobs Engineering requests the contractor to arrange flagging services a minimum of fifteen working days prior to beginning work. Although every effort is made to accommodate the contractor's schedule, prior notification does not guarantee the availability of protective services for the proposed date of work. Contractor shall contact Mr. Dale Stuart Jr. with Jacobs Engineering at 1-213- 305-8424 to schedule (EIC) Flagging Services. The contractor will need a valid SCRRA project number, located in the upper right-hand corner of the Right-of-Entry.
5. Licensee or Licensee's contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines and structures.
6. The applicant and/or the contractor shall follow SCRRA rules and regulations, addressed in "Rules and Requirements for Construction on Railway Property" (SCRRA Form 37)." Form 37 can be found on our website at: https://www.metroinktrains.com/globalassets/about/engineering/scrra_form_no_37.pdf
7. Any and all excavation will adhere to SCRRA's Excavation Support Guidelines." SCRRA's Excavation Support Guidelines can be found on our website at: https://www.metroinktrains.com/globalassets/about/engineering/scrra_excavation_support_guidelines.pdf
8. For any pipeline that is bored or jacked under the track, the Contractor must guarantee the work against settlement for two years after the completion of the work and must furnish a performance bond against failure or settlement of the soil around the jacked pipe or casing in the amount of \$180,000.00 as per SCRRA requirements shown in Form 37. PLEASE NOTE: More information on SCRRA's Performance Bond Requirements may be found in SECTION 5.11 Page 32 of SCRRA's Form 37.
9. The boring, tunneling or jacking operation shall be progressed on a 24-hour basis without stoppage when the casing is 20 feet from the centerline of the nearest track.

10. The face of all jacking and receiving pits shall be located outside of Right-of-Way, or a minimum of 25 feet from the center line of the nearest track, measured at right angle to the track, whichever is greater unless otherwise approved by SCRRA. The use of trench boxes may be permitted for jacking and receiving pits, however, trench boxes, shields, and hydraulic shores are not acceptable inside the zone of influence from railroad loading. Design of the temporary supports for the jacking and receiving pits must be conform to the requirements of SCRRA "Excavation Support Guidelines."
11. Water pipeline installation will adhere to SCRRA Engineering Standard ES 5001
12. Boring and jacking of casings and other conduits must conform to the requirements of SCRRA Engineering Standard Plans ES 5001.
13. Carrier pipe and Steel Casing shall conform to the requirements of SCRRA ES 5001.
14. Casing pipe must have a minimum yield strength of 35,000 psi
15. No equipment, trucks or materials are allowed to be stored on the railroad right-of-way
16. **Please Note: Once the project has gone out to bid and a contractor selected, they will need to provide (in one complete submittal):**
 1. **A completed Site Specific Work Plan (SSWP) that can be found on our website at: https://www.metroinktrains.com/globalassets/about/engineering/site_specific_work_plan.pdf**
 2. **Shoring and Excavation Plans (meeting SCRRA requirements/standards)**
 3. **Daily Schedule of Activities**
 4. **Completed SCRRA Form 6 along with Insurance Certificates meeting SCRRA Parameters of Coverage as outlined on pages 9-13 of the Form 6 + Performance Bond. SCRRA's Form 6 may be found on our website at: https://www.metroinktrains.com/globalassets/about/engineering/scrra_form_no_6.pdf**
 5. **Monies to cover; continued plan review, continued administration fee, contingency, (EIC) Flagging Services, 3rd Party Safety Training, Cable Signal Marking. These costs are outlined on our ROE Schedule of Fees that may be found on our website at: https://www.metroinktrains.com/globalassets/about/engineering/scrra_schedule_of_fees_for_third_party_construction.pdf**

Finally, PLEASE ADVISE THE CONTRACTOR TO REACH OUT TO ME (Christos Sourmelis, sourmelisc@scrra.net or 909-392-8463) REFERENCING SCRRA PROJECT #: 881696 PRIOR TO SUBMITTAL AND I WILL GLADLY WALK THEM THROUGH THE PROCESS AND ANSWER ANY QUESTIONS THEY MAY HAVE.
17. The Licensee agrees to comply and to ensure that its contractor complies with instructions of SCRRA's Employee-In-Charge (EIC) and representatives, in relation to the proper manner of protection of the tracks and the traffic moving thereon, pole lines, signals and other property of SCRRA or its member agency tenants or licensees at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operation of SCRRA's track and other facilities.
18. The Licensee shall obtain permission from any fiber optic, gas or oil lines that may be located along or across the right-of-way.
19. If there will be ANY excavation on RR ROW, Licensee's contractor shall call SCRRA's Signal Department at (909) 592-1346 to mark signal and communication cables and conduits. In case of signal emergencies or

grade crossing problems, the contractor shall call SCRRA's 24-hour signal emergency number 1-888-446-9721.

20. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems, are present and located within the Project work area by calling the Southern California Underground Service Alert at 811.
21. No work may commence, and no direct services may be scheduled until SCRRA (Metrolink) issues an executed Right-of-Entry (ROE) Agreement, Form 6 in support of this project.
22. If SCRRA shall deem it necessary in the future, to build additional track, tracks or other facilities in connection with the operation of its railroad, at the request of SCRRA, the Licensee shall modify, at its own expense, the proposed utility and/or roadway to conform to the rail line.

Note: This page is intentionally left blank.

November 11, 2019
Prepared by: J. Davis / T. Fournier
Submitted by: R. Jacobson / C. Clary
Approved by: Paul A. Cook



CONSENT CALENDAR

2020 INVESTMENT POLICY

SUMMARY:

Each year, IRWD is required to adopt an Investment Policy. Changes to the policy from year-to-year are required to conform to any amendments to the California Government Code governing investment of public funds. During 2019, there were no significant changes to the Government Code and the proposed policy for 2020 has no significant changes from the policy adopted for 2019. Staff recommends the Board adopt a resolution approving IRWD's 2020 Investment Policy and authorizing the Treasurer and Assistant Treasurer(s) to invest and reinvest funds of the District and each of its Improvement Districts and to sell and exchange securities.

BACKGROUND:

Staff annually submits an Investment Policy to the Board of Directors for approval. The annual submittal generally incorporates amendments to investment-related Government Code sections, policy objectives, delegation of authority and a detailed schedule of authorized investments. The proposed 2020 Investment Policy and related resolution are attached as Exhibits "A" and "B", respectively. During 2019, there were no significant amendments to the Government Code section relating to authorized investments for local agencies, and therefore the 2020 proposed policy is generally the same as the 2019 Investment Policy.

As specified in the Government Code, the Board's delegation of authority to the Treasurer and Assistant Treasurer(s) to manage the District's investment program is limited to a one-year period, renewable annually. The recommended 2020 Investment Policy includes continuation of this annual delegation of authority to the Treasurer and Assistant Treasurer(s).

Given the conservative nature of the State codes and the Board's additional restrictions, staff believes the authorized investments in the recommended 2020 Investment Policy are sufficiently limited to ensure appropriate investment security while retaining some degree of flexibility to take advantage of changing market opportunities. Additionally, the recommended policy provides authority for the Finance and Personnel Committee to further restrict, but not liberalize, authorized investments. Any liberalization of authorized investments would first require the approval of the Board of Directors.

FISCAL IMPACTS:

None.

ENVIRONMENTAL COMPLIANCE:

This activity is categorically exempt from the California Environmental Quality Act (CEQA) as authorized under the California Code of Regulations, Title 14, Chapter 3, Sections 15301 and 15302.

COMMITTEE STATUS:

This item was reviewed by the Finance and Personnel Committee on November 5, 2019.

RECOMMENDATION:

THAT THE BOARD ADOPT THE FOLLOWING RESOLUTION BY TITLE:

RESOLUTION NO. 2019-____
RESOLUTION OF THE BOARD OF DIRECTORS OF THE
IRVINE RANCH WATER DISTRICT APPROVING AN INVESTMENT
POLICY AND AUTHORIZING THE TREASURER AND ASSISTANT
TREASURER(S) TO INVEST AND REINVEST FUNDS OF THE
DISTRICT AND OF EACH OF ITS IMPROVEMENT DISTRICTS
AND TO SELL AND EXCHANGE SECURITIES

LIST OF EXHIBITS:

Exhibit "A" – 2020 Investment Policy

Exhibit "B" – Resolution Adopting the 2020 Investment Policy

IRVINE RANCH WATER DISTRICT

2019-2020 INVESTMENT POLICY

Introduction:

This investment policy is intended to establish a clear understanding of the District's authorized investment activities for members of the public, the Board of Directors of the Irvine Ranch Water District (the "District"), District management, and outside investment professionals.

Policy:

It is the policy of the District to invest its funds in a prudent and professional manner which will provide maximum security of principal while meeting required cash flow demands and conforming to all State statutes governing the investment of public funds, the District's investment policies, and prudent cash management principles.

Scope:

This investment policy applies to all District funds that are under the direct oversight of the Board of Directors. The investment of any bond proceeds or related funds will also be made in accordance with this investment policy.

Standard of Care:

The Board of Directors and those persons authorized to make investment decisions on behalf of the District are trustees of public funds. The standard of care to be used in all investment transactions shall be the "prudent investor" standard set forth in California Government Code Section 53600.3, which states:

"When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency."

Officers and employees of the District involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program or could impair their ability to make impartial investment decisions. "Designated employees" of the District involved in the investment of District funds, which includes the Treasurer and Assistant

Treasurer(s), shall disclose all information at the times and in the manner required by the District's Conflict of Interest Code.

Objectives:

The primary objectives of the District's investment activities, in priority order, are as follows:

1. **Safety:** Safety of principal is the foremost objective of the investment program. Investments of the District shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. Accordingly, diversification by issuer, type, and maturity of securities will be made to avoid or minimize potential losses on individual securities.
2. **Liquidity:** The District's investment portfolio will remain sufficiently liquid to enable the District to meet all operating and capital cash requirements. To the extent required, this liquidity will be maintained through the purchase of securities with active secondary or resale markets and with short-term maturities so as to minimize market risk on the market price of the securities.
3. **Yield:** The District's investment portfolio shall be designed with the objective of attaining the highest rate of return commensurate with the above requirements for the preservation of capital and the maintenance of adequate liquidity.

Delegation of Authority:

In accordance with Government Code Sections 53607 and 53608, the Board of Directors hereby delegates to the District's Treasurer and Assistant Treasurer(s) the authority to manage the District's investment program and to provide for the safekeeping of securities. This delegated authority is effective for the 2019-2020 calendar year (Resolution 2019-6 _____)

Authorized Investments:

The District is authorized to invest its funds pursuant to the following laws:

California Government Code:

- Section 53600 et seq. - General investments
- Section 16429.1 - Local Agency Investment Fund (LAIF)
- Section 53684 - Orange County Treasury Pool (not currently authorized by the Board of Directors)
- Section 5920 et seq. - Public finance contracts

California Water Code:

- Section 35912 - Real estate

The Treasurer and Assistant Treasurer(s) are authorized to invest District funds in accordance with these laws, subject to certain restrictions imposed by the District's Board of Directors. These authorized investments and restrictions are shown in Exhibit "A".

Whenever practical, a competitive process shall be used for the purchase and sale of securities.

The Treasurer and Assistant Treasurer(s) are authorized to invest in securities with terms or remaining maturities in excess of five years as part of the District's investment program, but no such investments are to be made without the concurrence of the Finance and Personnel Committee.

Authorized Financial Institutions:

Only financial institutions designated as "primary dealers" by the Federal Reserve Bank of New York, or other dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule), are authorized to provide investment services to the District. The Treasurer may limit the number of dealers authorized to provide such services.

A copy of the District's annual investment policy shall be provided to each institution authorized by the Treasurer to provide services to the District. Prior to providing investment services, such financial institution shall acknowledge in writing that it has received the District's investment policy and that all persons handling the District's account have reviewed the policy.

All authorized financial institutions are required to send the District unaudited quarterly and audited annual financial statements or provide electronic access to the financial statements.

Safekeeping and Custody:

All security transactions entered into by the District shall be conducted on a delivery-versus-payment (DVP) basis. All securities owned by the District shall be delivered to the District by book entry, physical delivery, or a third party custodial agreement. Any third party custodian shall be designated by the Treasurer, and all securities held by such custodian, including book entry and physical securities, shall be held in a manner that clearly establishes the District's right of ownership. The District's custodial agent shall meet the requirements of Government Code Section 53608. The District's deposits with LAIF or any other authorized investment pool shall be evidenced by the standard reporting requirements of LAIF or the investment pool.

Reporting:

The Treasurer shall file a monthly report with the Board of Directors at a public meeting that shows the status of the District's cash and securities, and all related investment transactions that occurred during the month. The status report shall also be filed with the District's General Manager and will include at least the following information:

- Type of investment
- Original cost
- Issuing institution
- Market value, including source
- Par amount
- Maturity date
- Coupon and/or yield

In addition, the status report shall include the portfolio's rate of return for the month, the average weighted life of the portfolio, a statement regarding the portfolio's compliance with the District's investment policy, and a statement regarding the District's ability to meet expenditure requirements over the following six months. (California Government Code Sections 53607 and 53646)

The Treasurer shall also file a quarterly report with the Board of Directors at a public meeting with respect to the District's real estate investments and any related transactions which occurred during such quarter. The real estate report will be structured to comply as closely as possible with the information requirements of California Government Code Section 53646.

Investment Policy Adoption and Amendments:

The Treasurer shall submit an investment policy at least annually to the Board of Directors at a public meeting (California Government Code Section 53646). The policy shall be effective for the calendar year specified. If the Board of Directors does not approve an investment policy for any calendar year, then the investment policy for the previous calendar year shall remain in effect until a new policy is approved.

The District's Finance and Personnel Committee is authorized to make changes in the investment policy from time to time as may be necessary, provided that such changes may only be more restrictive in nature. Any changes that would liberalize the investment policy shall be approved by the Board of Directors before becoming effective. Any changes in the investment policy by the Finance and Personnel Committee shall be reported to the Board of Directors at its next regular meeting.

Exhibit A
Authorized Investments and Restrictions

<u>INVESTMENT TYPE</u>	<u>DESCRIPTION</u>	<u>RESTRICTIONS</u>
California State and Local Agency Bonds, Notes and Warrants	Registered state warrants, treasury notes or bonds. Any bonds, notes, warrants or other evidences of indebtedness of any local agency in California.	Limited to securities approved by the Finance and Personnel Committee.
U.S. Treasury and Agency Obligations	U.S. Treasury notes, bonds, bills or certificates of indebtedness, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest. Also federal agency or U.S. government sponsored enterprise obligations, participations, or other instruments.	No additional restrictions.
Registered treasury notes or bonds of California or other 49 United States	Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.	Limited to states and/or agencies approved by the Finance and Personnel Committee.
Banker's Acceptances	Must be eligible for discount at the Federal Reserve Bank. May not exceed 180 days maturity or 40% of local agency funds. No more than 30% of local agency funds may be invested in banker's acceptances of any one commercial bank.	Limited to domestic and foreign banks approved by the Finance and Personnel Committee.
U.S. Dollar Denominated Senior Unsecured Unsubordinated Obligations	Permits United States dollar-denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Must be rated "AA" or its equivalent or better by a nationally recognized statistical rating organization ("NRSRO"). Limited to 30% of local agency funds.	Limited to securities approved by the Finance and Personnel Committee.

Commercial Paper	Must be of “prime” quality of the highest ranking or of the highest letter and number rating as provided for by an NRSRO. Issuers must be organized and operating in the United States as a general corporation, have assets exceeding \$500 million, and has debt other than commercial paper, if any, that is rated “A” or its equivalent or better by an NRSRO. May not exceed 270 days maturity. Limited to 25% of local agency funds, and no more than 10% in any single issuer.	Limited to corporations approved by the Finance and Personnel Committee.
Negotiable Certificates of Deposit	Issued by national or state-chartered banks, savings associations, federal associations, state or federal credit unions, or state-licensed branches of a foreign bank. Specified restrictions on credit unions for conflicts of interest. Limited to 30% of local agency funds.	Limited to domestic and foreign banks and thrift institutions approved by the Finance and Personnel Committee.
Repurchase and Reverse Repurchase Agreements	Repurchase agreements are limited to a term of one year or less, and securities underlying the agreement shall be valued at 102% or greater of the funds borrowed against the securities, with the value adjusted at least quarterly. Reverse repurchase agreements, including securities lending agreements, are limited to 20% of the base portfolio value and to terms of 92 days or less unless a minimum earning or spread for the entire term is guaranteed in writing. Securities being sold on reverse must be owned by the agency for at least 30 days prior to sale. Reverse repurchase agreements shall be made with primary dealers of the Federal Reserve Bank of New York, or nationally and state chartered banks with a significant banking relationship with the local agency.	All reverse repurchase agreements must have the prior approval of the Finance and Personnel Committee.

Medium Term Notes	All debt securities issued by U.S. organized and operating corporations or depository institutions licensed by the U.S. or any state and operating within the U.S. Notes must be rated "A" or its equivalent or better by an NRSRO. May not exceed five years maturity, or 30% of local agency funds.	For depository institutions, same as shown under Negotiable Certificates of Deposit. For corporations, limited to those approved by the Finance and Personnel Committee.
Shares of Beneficial Interest	Issued by diversified management companies investing in securities and obligations as authorized by Cal. Gov. Code §5363553601(1). Companies shall have the highest ranking or highest letter and numerical rating assigned by not less than two NRSROs, or shall have a registered and experienced investment advisor. Purchase price shall not include any commissions. Limited to 20% of funds of which no more than 10% may be with any one fund.	No additional restrictions.
Collateralized Negotiable Securities	Notes, bonds or obligations secured by a valid first priority security interest in securities specified in Cal. Gov. Code §53651. Collateral to be placed by delivery or book-entry into the custody of a trust company or trust department of a bank not affiliated with the issuer. Security interest perfected in accordance with Uniform Commercial Code or applicable federal regulations. Collateral requirements are the same as required to secure bank deposits made by local agencies as specified in Cal. Gov. Code §53652.	No investment in collateralized negotiable securities shall be made without the prior approval of the Finance and Personnel Committee.
Collateralized Mortgage Obligations and Asset-Backed Securities	Mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond. Securities must have an "AA" rating or its equivalent as rated by an NRSRO, must have a maximum remaining maturity of five years or less, and may not exceed 20% of surplus funds.	No investment in collateralized mortgage obligations or asset-backed securities shall be made without the prior approval of the Finance and Personnel Committee.
Financial Futures and Options	Authorizes the investment in financial futures and financial option contracts in	No investments in financial futures and financial option contracts are to be made

	any of the investment categories contained in Cal. Gov. Code §53601.1	without the prior approval of the Finance and Personnel Committee.
Prohibited Investments	A local agency shall not invest any funds in inverse floaters, range notes, and mortgage derived interest-only strips, or any security that could result in zero interest accrual if held to maturity. (Cal. Gov. Code §53601.6)	No additional restrictions.
Local Agency Investment Fund	Permits a local agency to deposit funds with the State Treasurer for the purpose of investment in securities prescribed in Cal. Gov. Code §§16429.1 et seq.	No additional restrictions.
Orange County Treasury Pool	Permits a local agency to deposit funds with the County Treasurer for investment in securities prescribed in Cal. Gov. Code §53635 or 53684	No investments are to be made with the Orange County Treasury Pool without the prior approval of the Board.
Inactive Public Deposits	Deposits or contracts with Federal Reserve System banks insured by FDIC, savings associations or federal associations which are home loan bank members or insured by FSLIC, and state or federal credit unions. Specified restrictions on credit unions.	No inactive public deposits are to be made without the prior approval of the Finance and Personnel Committee.
Public Finance Contracts	Includes interest rate swap agreements, currency swap agreements, forward payment conversion agreements, futures, or index-based agreements to hedge payment, currency, rate, spread or similar exposure. Requires certain determinations by governing body. (Cal. Gov. Code §§5920 et seq.)	The Board is authorized to approve the general parameters for swap transaction types, maximum notional amount(s) and maximum duration(s). The Finance and Personnel Committee shall structure specific parameters for individual transactions including notional amount, transaction timing, counterparty selection, index to be used and ISDA agreement approval. (Resolution 2003-36)
Real Estate Investments	Authorized to invest no more than 30% of the District's Replacement Fund in real estate located in Orange County. (Cal. Wat. Code §35912)	Real estate investments shall be made in accordance with existing Board policies (Resolution 1990-30). All real estate investments must be individually approved by the Board.

RESOLUTION NO. 2019-__

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
IRVINE RANCH WATER DISTRICT APPROVING AN INVESTMENT
POLICY AND AUTHORIZING THE TREASURER AND ASSISTANT
TREASURERS TO INVEST AND REINVEST FUNDS OF THE
DISTRICT AND OF EACH OF ITS IMPROVEMENT DISTRICTS
AND TO SELL AND EXCHANGE SECURITIES

The Treasurer of the Irvine Ranch Water District (“District”) is permitted by Section 53646 of the California Government Code to annually render to the Board of Directors (the “Board”) a statement of investment policy, which the Board shall consider at a public meeting.

The Treasurer has presented an investment policy to the Board at a public meeting, in the form attached as Exhibit A (“2020 Investment Policy”).

Section 53607 of the California Government Code permits the Board to annually delegate to the Treasurer of the District the Board’s authority to invest or reinvest funds of the District or sell or exchange securities so purchased, allows renewal of the delegation of authority to the Treasurer by the Board on an annual basis, and establishes a requirement for monthly reporting of the transactions by the Treasurer to the Board.

Section 53608 of the California Government Code permits the Board to delegate to the Treasurer of the District the Board’s authority to deposit for safekeeping the bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants or other evidences of indebtedness in which money of the District is invested.

Under Section 53635.2 of the California Government Code, funds of the District may be deposited with certain financial institutions.

Pursuant to Section V, Paragraph 8 of the District’s Bylaws, the Board has appointed one or more Assistant Treasurers.

Resolution No. 2019-6 contains the Board’s previous delegation of authority to the Treasurer and Assistant Treasurer(s) to invest or reinvest funds, sell or exchange securities, deposit investments for safekeeping, and deposit funds, and the Board intends by this resolution to renew that delegation of authority.

The Board of Directors of Irvine Ranch Water District therefore resolves as follows:

Section 1. The 2020 Investment Policy of the District is approved in the form attached as Exhibit A, effective January 1, 2020, and will remain in effect until it is revoked or is superseded.

Exhibit "B"

Section 2. The authority of the Board to invest or reinvest funds of the District and its improvement districts or to sell or exchange securities so purchased, subject to the requirements of the 2020 Investment Policy, is hereby delegated to each of the Treasurer and the Assistant Treasurer(s). Pursuant to California Government Code Section 53607, the Treasurer shall assume full responsibility for those transactions until this delegation is revoked or expires. This delegation is effective as of January 1, 2020, and will remain in effect until it is revoked or is superseded by a subsequent delegation.

Section 3. The authority of the Board to deposit for safekeeping the bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants or other evidences of instruments in which money of the District and its improvement districts is invested, subject to the requirements of the 2020 Investment Policy, is hereby delegated to each of the Treasurer and the Assistant Treasurer(s). This delegation is effective as of January 1, 2020, and will remain in effect until it is revoked or is superseded by a subsequent delegation.

Section 4. This resolution supersedes Resolution No. 2019-6.

ADOPTED, SIGNED AND APPROVED this ____ day of _____, 20_____.

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:
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
District Counsel

November 11, 2019
Prepared by: R. Jacobson / T. Fournier
Submitted by: C. Clary
Approved by: Paul A. Cook



ACTION CALENDAR

SAND CANYON PROFESSIONAL CENTER – PHASE II CONSTRUCTION UPDATE AND LISTING AGREEMENT EXTENSION

SUMMARY:

Staff will provide an update on Sand Canyon Professional Center office construction activities. Staff recommends that the Board approve a new listing agreement with the existing brokerage team, under the same terms as the previously executed listing agreement, with a time extension through February 29, 2020.

BACKGROUND:

Phase II of the Sand Canyon Professional Center includes construction of an approximate 70,000 square foot professional office building, related site work, and completion of a central outdoor area on land adjacent to the District's headquarters facility.

Construction Activity:

Recent construction activities at the Sand Canyon Professional Center included framing the upstairs and downstairs restrooms, HVAC ductwork, fire sprinkler and rough plumbing installation, and forming and pouring the parking area bio-swales and property line curb and gutters. Scheduled activities in the coming weeks include rough interior electrical work, completion of the roofing, exterior stonework, and forming and pouring parking lot light pole bases. Completion of the building shell and related site work is scheduled for March 2020.

Listing Agreement Extension:

The current listing agreement with Kevin Turner of Cushman & Wakefield and Michael Hartel of Colliers International was executed in December 2018. That agreement recently expired and staff recommends executing a new agreement with the time extended to February 29, 2020, and all other terms remaining the same. The general terms of the proposed listing agreement include:

Brokers:	Kevin Turner (Cushman & Wakefield) and Michael Hartel (Colliers International)
Proposed Extension Term:	Through February 29, 2020
Early Termination:	Upon 30-day Notice
Commission Rates:	
Years 1-5	4% to the procuring broker and 2.50% to the listing brokers
Years 6-10	2% to the procuring broker and 1.25% to the listing brokers

The new listing agreement is attached as Exhibit "A".

FISCAL IMPACTS:

The total lease commission rates are 6.5% of gross lease revenue for years one through five, and 3.25% for years six through 10. The total commission amount will be determined based on the final lease terms.

ENVIRONMENTAL COMPLIANCE:

A Final Environmental Impact Report has been prepared, certified and the project approved by the County of Orange Environmental Management Agency in compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended), codified at California Public Resources Code Sections 21000 et. seq., and the State CEQA Guidelines in the Code of Regulations, Title 14, Division 6, Chapter 3.

COMMITTEE STATUS:

This item was reviewed by the Finance and Personnel Committee on November 5, 2019.

RECOMMENDATION:

THAT THE BOARD APPROVE A NEW LISTING AGREEMENT WITH THE EXISTING BROKERAGE TEAM OF CUSHMAN & WAKEFIELD AND COLLIERS INTERNATIONAL UNDER THE SAME TERMS AND COMMISSION RATES AS THE PREVIOUSLY EXECUTED LISTING AGREEMENT, WITH A TIME EXTENSION THROUGH FEBRUARY 29, 2020.

LIST OF EXHIBITS:

Exhibit “A” – Proposed Listing Agreement



**EXCLUSIVE RIGHT TO REPRESENT OWNER
FOR SALE OR LEASE OF REAL PROPERTY**

(Non-Residential)

1. BASIC PROVISIONS ("BASIC PROVISIONS").

1.1 **Parties:** This agency Agreement ("**Agreement**"), dated for reference purposes only September 1, 2019, is made by and between Irvine Ranch Water District, whose address is 15600 Sand Canyon, Irvine, CA 92618, telephone number (949) 453-5358, Fax No. (949) 453-0128 ("**Owner**"), and Cushman & Wakefield of California, Inc., whose address is 18111 Von Karman Avenue, Suite 1000, Irvine, CA 92612, telephone number (949) 474-4004, Fax No. (949) 474-0405 ("**Agent**").

1.2 **Property/Premises:** The real property, or a portion thereof, which is the subject of this Agreement is commonly known as (street address, city, state, zip) The Source H2O, Building B (TBD), located in the County of Orange, and generally described as (describe briefly the nature of the property): an approximate 71,000 square foot, ready to be constructed, planned office project. ("**Property**"). (See also Paragraph 3).

1.3 **Term of Agreement:** The term of this Agreement shall commence on September 1, 2019 and expire at 5:00 p.m. on February 29, 2020, except as it may be extended ("**Term**"). (See also paragraph 4)

1.4 **Transaction:** The nature of the transaction concerning the Property for which Agent is employed ("**Transaction**") is (check the appropriate box(es)):

(a) A sale for the following sale price and terms: _____ and other additional standard terms reasonably similar to those contained in the "STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE" published BY AIR CRE ("**AIR**"), or for such other price and terms agreeable to Owner;

(b) A lease or other tenancy for the following rent and terms: _____ and other additional standard terms reasonably similar to those contained in the appropriate AIR lease form or for such other rent and terms agreeable to Owner.

2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Owner hereby employs Agent as Owner's sole and exclusive agent to represent Owner in the Transaction and to find buyers or lessees/tenants ("**lessees**"), as the case may be, for the Property. Agent shall use reasonably diligent efforts to find such buyers or lessees. All negotiations and discussions for a Transaction shall be conducted by Agent on behalf of Owner. Owner shall promptly disclose and refer to Agent all written or oral inquiries or contacts received by Owner from any source regarding a possible Transaction.

2.2 Owner authorizes Agent to:

- (a) Place advertising signs on the Property;
- (b) Place a lock box on the Property if vacant;
- (c) Accept deposits from potential buyers or lessees; and
- (d) Distribute information regarding the Property to participants in THE MULTIPLE ("**MULTIPLE**") of the AIR and/or any other appropriate

local commercial multiple listing service, to other brokers, and to potential buyers or lessees of the Property. Owner shall identify as "confidential" any information provided to Agent that Owner considers confidential and does not want disclosed. All other information provided by Owner may be disclosed as Agent may deem appropriate or necessary. After consummation of a Transaction, Agent may publicize the terms of such Transaction.

2.3 Agent shall comply with the Rules of Professional Conduct of the AIR, if a member or if not, the Rules of Professional Conduct of the Society of Industrial and Office Realtors, and shall submit the Property to the MULTIPLE. Agent shall cooperate with participants in the MULTIPLE and may, at Agent's election, cooperate with other real estate brokers (collectively "**Cooperating Broker**").

2.4 If the Transaction is a sale and Agent finds a prospective buyer for the Property, or if the Transaction is a lease and Agent finds a prospective lessee for the Property, Owner hereby authorizes Agent also to represent and act as the agent for such buyer or lessee, and Owner consents to such dual agency. If a Cooperating Broker finds such a buyer or lessee, then Agent shall act as agent for Owner only, the Cooperating Broker shall act as agent for the buyer or lessee only, and the Cooperating Broker shall not be Owner's agent, even though the Cooperating Broker may share in the commission paid by Owner to Agent. A Cooperating Broker shall not be an agent or subagent of Owner or Agent.

2.5 Owner agrees that Agent may, during the ordinary and normal course of marketing the Property, respond to inquiries on the Property by showing and providing information on the Property, as well as on other competing properties, to prospective buyers and lessees and that such activities may result in the payment of a commission to Agent by a third party.

3. PROPERTY.

3.1 The term "Property" shall include all of the following which are currently located on the Property and owned by Owner: permanent improvements, electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures, etc.), ~~telephone distribution systems (lines, jacks and connections), space heaters,~~ air conditioning equipment, air lines, carpets, window coverings, wall coverings, partitions, doors, suspended ceilings, built-ins such as cabinets, and _____ (if there are no additional items write "NONE"). If the Transaction is a sale,

INITIALS

INITIALS

the term "Property" shall additionally include, to the extent owned by Owner, oil and mineral rights, leases and other agreements which will continue in effect after Owner's transfer of title to the Property.

3.2 Within five business days after the commencement of the Term hereof, Owner shall provide Agent with the following:

(a) ~~A duly completed and fully executed Property Information Sheet on the most current form published by the AIR;~~

(b) Copies of all leases, subleases, rental agreements, option rights, rights of first refusal, rights of first offer, or other documents containing any other limitations on Owner's right, ability and capacity to consummate a Transaction, and

(c) If available to Owner, copies of building plans, and if the Transaction is a sale, title reports, boundary surveys, and existing notes and trust deeds which will continue to affect the Property after consummation of a sale.

3.3 Agent shall have no responsibility for maintenance, repair, replacement, operation, or security of the Property, all of which shall be Owner's sole responsibility. Unless caused by Agent's gross negligence, Agent shall not be liable for any loss, damage, or injury to the person or property of Owner, any lessees of the Property, any buyer, prospective buyer, lessee, or prospective lessee, including, but not limited to, those which may occur as a result of Agent's use of a lock box.

4. **EXTENSION OF TERM.** If the Transaction is a sale, and a sale is not consummated for any reason after Owner accepts an offer to purchase the Property ("**Sale Agreement**"), then the expiration date of the Term of this Agreement shall be extended by the number of days that elapsed between the date Owner entered into the Sale Agreement and the later of the date on which the Sale Agreement is terminated or the date Owner is able to convey title to a new buyer free and clear of any claims by the prior buyer of the Property; provided, however, in no event shall the Term be so extended beyond one year from the date the Term would have otherwise expired.

5. COMMISSION.

5.1 Owner shall pay Agent a commission in the amount of _____ in accordance with the commission schedule attached hereto ("**Agreed Commission**"), for a Transaction, whether such Transaction is consummated as a result of the efforts of Agent, Owner, or some other person or entity. Agent shall also be entitled to the Agreed Commission if any of the Owner's representations and warranties described in paragraph 8 are shown to be false. Such Agreed Commission is payable:

(a) If the Transaction is a sale, (i) the Property is sold; (ii) Owner breaches or repudiates any Sale Agreement, escrow instructions or other documents executed by Owner regarding the sale of the Property; (iii) the Property or any interest therein is voluntarily or involuntarily sold, conveyed, contributed or transferred; (iv) the Property or any interest therein is taken under the power of Eminent Domain or sold under threat of condemnation, or (v) if Owner is a partnership, joint venture, limited liability company, corporation, trust or other entity, and any interest in Owner is voluntarily or involuntarily sold, contributed, conveyed or transferred to another person or entity that, as of the date hereof, does not have any ownership interest in Owner;

(b) If the Transaction is a lease and a lease of the Property, or a portion thereof is executed; or

(c) If Owner (i) removes or withdraws the Property from a Transaction or the market; (ii) acts as if the Property is not available for a Transaction; (iii) treats the Property as not available for a Transaction; (iv) breaches, terminates, cancels or repudiates this Agreement; (v) renders the Property unmarketable; or (vi) changes the status of the Property's title, leases, agreements, physical condition or other aspects thereof, which such change adversely impacts the value, use, desirability or marketability of the Property.

(d) If earnest money or similar deposits made by a prospective purchaser or tenant are forfeited Agent shall be entitled to one-half (½) thereof, but not to exceed the total amount of the commission that would have been payable had the sale or lease transaction been consummated.

5.2 If the Transaction is a sale, the purchase agreement and/or escrow instructions to be entered into by and between Owner and a buyer of the Property shall provide that:

(a) Owner irrevocably instructs the escrow holder to pay from Owner's proceeds accruing to the account of Owner at the close of escrow the Agreed Commission to Agent;

(b) A contingency to the consummation of the sale shall be the payment of the Agreed Commission to Agent at or prior to close of the escrow; and

(c) No change shall be made by Owner or buyer with respect to the time of, amount of, or the conditions to payment of the Agreed Commission, without Agent's written consent.

6. **ALTERNATIVE TRANSACTION.** If the Transaction changes to any other transaction, including, but not limited to, a sale, exchange, option to buy, right of first refusal, ground lease, lease, sublease or assignment of lease (collectively "**Alternative Transaction**"), then Agent shall automatically be Owner's sole and exclusive Agent for such Alternative Transaction and represent Owner in such Alternative Transaction, under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is entered into, then Owner shall pay Agent the Agreed Commission.

7. EXCLUDED AND REGISTERED PERSONS.

7.1 Owner shall, within 5 business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with Owner by any other broker under any prior agreement concerning the Property ("**Excluded Persons**", see paragraph 7.5). Owner shall also specify for each Excluded Person the type of transaction the consummation of which during the Term of this Agreement entitles such other broker to any compensation ("**Excluded Transaction**"). Agent may within 10 days of receiving such written list, either (a) accept the Excluded Persons and Excluded Transactions, (b) cancel this Agreement, or (c) attempt to renegotiate this portion of the Agreement with Owner. Once accepted by Agent, the written list shall automatically become an exhibit to this Agreement. If Owner timely provides Agent with the names of the Excluded Persons and specifies the Excluded Transaction for each Excluded Person, then the Agreed Commission paid to Agent with respect to consummation of such an Excluded Transaction with an Excluded Person shall be limited as follows: if such Excluded Transaction is concluded within the first 30 days of the commencement of the Term hereof, then Agent shall be paid a commission equal to the reasonable out-of-pocket expenses incurred by Agent in

INITIALS

INITIALS

the marketing of the Property during said 30 days; or if such Excluded Transaction is concluded during the remainder of the Term hereof, then Agent shall be entitled to a commission equal to one-half of the Agreed Commission. If the specified information concerning Excluded Persons and Transactions is not provided as set forth herein, then it shall be conclusively deemed that there are no Excluded Persons.

7.2 Agent shall, within 5 business days after the expiration of the Term hereof, provide Owner, in writing, with the name of those persons or entities with whom Agent either directly or through another broker had negotiated during the Term hereof ("Registered Persons", see paragraph 7.5), and specify the type of transaction of the Property for which such negotiations were conducted ("Registered Transaction"). Those persons or entities who submitted written offers or letters of intent shall, however, automatically be deemed to be Registered Persons for the type of transaction which was the subject of such offer or letter of intent. If Agent fails to timely notify Owner of the existence of any other Registered Persons, then it shall be conclusively deemed that there are no other Registered Persons. A person or entity shall not be a Registered Person if Agent fails to timely specify a Registered Transaction for such person or entity. The parties are aware that the registration of certain individuals and/or entities might create a Dual Agency, and Owner hereby consents to any such Dual Agency.

7.3 If, within 180 days after the expiration of the Term hereof, Owner enters into a contract with a Registered Person for consummation of a Registered Transaction, then Owner shall, upon consummation of such Registered Transaction, pay Agent the Agreed Commission for the Registered Transaction.

7.4 If, within 180 days after the expiration of the Term hereof, Owner enters into another owner-agency or listing agreement with a broker other than Agent for any transaction concerning the Property, then Owner shall provide to Owner's new broker the names of the Registered Persons and the Registered Transaction for each Registered Person, and provide in such new agreement that the new broker shall not be entitled to receive any of the compensation payable to Agent hereunder for consummation of a Registered Transaction with a Registered Person.

7.5 In order to qualify to be an Excluded Person or a Registered Person the individual or entity must have: toured the Property, submitted a letter of interest or intent, and/or made an offer to buy or lease the Property. ~~In addition, Excluded Persons may only be registered by a broker who previously had a valid listing agreement covering the Property, and such broker may only register individuals and entities actually procured by such listing broker.~~

8. OWNER'S REPRESENTATIONS.

Owner represents and warrants that:

- (a) Each person executing this Agreement on behalf of Owner has the full right, power and authority to execute this Agreement as or on behalf of Owner;
- (b) Owner owns the Property and/or has the full right, power and authority to execute this Agreement and to consummate a Transaction as provided herein, and to perform Owner's obligations hereunder;
- (c) Neither Owner nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding;
- (d) Owner has no notice or knowledge that any lessee or sublessee of the Property, if any, is the subject of a bankruptcy or insolvency proceeding;
- (e) There are no effective, valid or enforceable option rights, rights of first refusal, rights of first offer or any other restrictions, impediments or limitations on Owner's right, ability and capacity to consummate a Transaction, except as disclosed in writing pursuant to Paragraph 3.2(b).
- (f) That as of the date of this Agreement the asking sales price is not less than the total of all monetary encumbrances on the Property.

9. **OWNER'S ACKNOWLEDGMENTS.** Owner acknowledges that it has been advised by Agent to consult and retain experts to advise and represent it concerning the legal and tax effects of this Agreement and consummation of a Transaction or Alternative Transaction, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title and environmental aspects. Agent shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Agent. Owner further acknowledges that in determining the financial soundness of any prospective buyer, lessee or security offered, Owner will rely solely upon Owner's own investigation, notwithstanding Agent's assistance in gathering such information.

10. MISCELLANEOUS.

10.1 This Agreement shall not be construed either for or against Owner or Agent, but shall be interpreted, construed and enforced in accordance with the mutual intent of the parties ascertainable from the language of this Agreement.

10.2 All payments by Owner to Agent shall be made in lawful United States currency. If Owner fails to pay to Agent any amount when due under this Agreement, then such amount shall bear interest at the rate of 15% per annum or the maximum rate allowed by law, whichever is less.

10.3 In the event of litigation or arbitration between Owner and Agent arising under or relating to this Agreement or the Property, the prevailing party shall be paid its attorney's fees and costs by the losing party. The term, "Prevailing Party" shall include, without limitation, one who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all attorney's fees reasonably incurred in good faith.

10.4 Owner agrees to indemnify, defend (with counsel reasonably acceptable to Agent), and hold Agent harmless from and against any claim or liability asserted against Agent as a result of the failure of Owner to make a full and complete disclosure pursuant to law and paragraph 3.2(a) or as a result of the fact that any of the representations made by Owner (see paragraph 8) were not true at the time that this Agreement was signed.

10.5 Owner hereby releases and relieves Agent, and waives Owner's entire right of recovery against Agent, for direct or consequential loss or damage arising out of or incident to the perils covered by insurance carried by Owner, whether or not due to the negligence of Agent.

10.6 In the event that the Transaction is not an outright sale, Owner agrees that if Agent is not paid the Agreed Commission provided for herein within thirty days of the date due, that Agent shall have a lien in the amount of such commission, and may record a notice of such lien, against the Property.

INITIALS

INITIALS

10.7 Owner agrees that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to the services to be performed by Agent pursuant to this Agreement may be brought against Agent more than one year after the expiration of the Term of this Agreement (see paragraph 1.3) and that the liability (including court costs and attorney's fees) of Agent with respect to any such lawsuit and/or legal proceeding shall not exceed any fee received by Agent pursuant to this Agreement; provided, however, that the foregoing limitation on liability shall not be applicable to any gross negligence or willful misconduct of Agent.

11. ARBITRATION OF DISPUTES.

11.1 ANY CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE DETERMINED BY BINDING ARBITRATION TO BE CONDUCTED BY: THE AMERICAN ARBITRATION ASSOCIATION OR _____ USING THE COMMERCIAL RULES ESTABLISHED BY SUCH ORGANIZATION OR IF NONE THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL RULES. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

11.2 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 THOSE 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.

11.3 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.

Owner's Initials

Agent's Initials

11.4 THE PROVISIONS OF THE ABOVE ARBITRATION CLAUSE SHALL NOT BE BINDING ON EITHER PARTY UNLESS BOTH PARTIES HAVE PLACED THEIR INITIALS UNDER PARAGRAPH 11.3.

12. **Additional Provisions:** Additional provisions of this Agreement are set forth in the following blank lines or in an addendum attached hereto and made a part hereof consisting of paragraphs None through None (if there are no additional provisions write "NONE"):

13. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.** When entering into an agreement with a real estate agent an Owner should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction.

(i) *Owner's Agent.* An Owner's agent may act as an agent for the Owner only. An Owner's agent or subagent has the following affirmative obligations: To the Owner: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings. To a potential buyer/lessee and the Owner: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Agent Representing Both Parties.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both Parties in a transaction, but only with the knowledge and consent of the Parties. In a dual agency situation, the agent has the following affirmative obligations to both Parties: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Party. b. Other duties to the Owner as stated above in subparagraph (i). When representing both Parties, an agent may not without the express permission of the respective Party, disclose to the other Party that the Owner will accept rent/purchase price in an amount less than that indicated in the listing or that the buyer/lessee is willing to pay a higher rent/purchase price than that offered.

The above duties of the Agent do not relieve Owner from the responsibility to protect its own interests. Owner should carefully read all agreements to assure that they adequately express its understanding of the transaction.

Date: _____

Date: _____

OWNER

AGENT

Irvine Ranch Water District

Cushman & Wakefield of California, Inc.

By: _____

By: _____

Name Printed: _____

Name Printed: _____

Title: _____

Title: _____

Agent BRE License #: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

AIR CRE. 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email contracts@aircre.com

INITIALS

INITIALS

NOTICE: No part of these works may be reproduced in any form without permission in writing.

INITIALS

© 2017 AIR CRE. All Rights Reserved.

Page 5 of 5
Last Edited: 9/3/2019 3:34 PM

INITIALS

OA-8.00, Revised 01-03-2017

Proposed Commission Structure – Exhibit “A”

BUILDING LEASING

Marketing Team: Kevin Turner and John Gallivan (Cushman & Wakefield) and Michael Hartel and Nick Velasquez (Colliers International)

New Lease – Marketing Team represents both sides of the lease:	
Years 1-5	(5%) = Five percent of NNN Base Rental for years 1-5.
Years 6-10	(2.5%) = Two and one-half percent of NNN Base Rental for years 6-10.

New Lease – Tenant is represented by a broker other than the Marketing Team:	
Years 1-5	(4.0%) = Four percent of NNN Base Rental for years 1-5 to the procuring Broker. (2.50%) = Two and one-half percent of NNN Base Rental for years 1-5 to Marketing Team.
Years 6-10	(2.0%) = Two percent of NNN Base Rental for years 6-10 to the procuring Broker. (1.25%) = One and one-quarter percent of NNN Base Rental for years 6-10 to Marketing Team.

AGREED & ACCEPTED

IRVINE RANCH WATER DISTRICT

CUSHMAN & WAKEFIELD OF CALIFORNIA, INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

November 11, 2019
Prepared by: T. Roberts
Submitted by: W. Chambers
Approved by: Paul A. Cook



ACTION CALENDAR

CRYSTAL COVE IN-LIEU DOMESTIC WATER AGREEMENT

SUMMARY:

The Crystal Cove Homeowners Association (HOA) has used recycled water for most of the irrigation needs of the Crystal Cove community. In recent years, the HOA reported to IRWD that irrigation equipment has become increasingly blocked with algae and debris, resulting in increased landscape maintenance costs. To address this water quality issue and to improve reliability of recycled water deliveries to Crystal Cove, IRWD has undertaken the San Joaquin Filtration Project and the Seawatch Recycled Pipeline Replacement Project.

To address the Homeowners Association's irrigation needs until these projects are complete, staff recommends the Board authorize the General Manager to execute an agreement with the Crystal Cove HOA for the temporary use of potable water for landscape irrigation during the construction of the San Joaquin Filtration Project and the Seawatch Recycled Pipeline Replacement Project for a period of 36 months or until both projects are complete, whichever is later.

BACKGROUND:

IRWD has provided approximately 700 acre-feet per year of recycled water to the Crystal Cove community, primarily from the San Joaquin Reservoir. The San Joaquin Reservoir is a large, open storage reservoir and particulates such as algae and debris can be found in the recycled water at this reservoir, especially during the summer months. Algae and debris from the San Joaquin Reservoir appear to be clogging the irrigation equipment owned and operated by the Crystal Cove HOA, resulting in increased landscape maintenance costs.

To reduce the amount of algae and debris in the recycled water distribution system, IRWD retained Carollo Engineers to design filtration and disinfection systems at the San Joaquin Reservoir to prevent or remove particulates before they enter the recycled water distribution system. Design of the filtration and disinfection improvements at this reservoir is now underway. The construction of these improvements will require multiple shutdowns, impacting the supply of recycled water to the area.

Recycled water is conveyed to the Crystal Cove community through a 10-inch pipeline (constructed of PVC and ductile iron) located on Seawatch. It is the sole source of supply for the upper elevations of this community. Many leaks have been repaired on the pipeline since its installation in 2003, with several failures originating from cracks on the pipe bells. The pipeline was slip-lined but continues to fail. Staff recommends replacing this pipeline. While the pipeline replacement project is being installed, a temporary alternative supply of irrigation water to Crystal Cove will be required.

Temporary Conversion to Domestic Water:

While the filtration and disinfection improvements at San Joaquin Reservoir and the Seawatch Recycled Water Pipeline Replacement are under construction, staff recommends temporarily converting the Crystal Cove irrigation system to potable water. The approximate cost of the temporary conversion piping and installation is \$40,000.

Staff and legal counsel worked with the Crystal Cove HOA to develop an agreement detailing the terms under which Crystal Cove will temporarily switch from recycled water to domestic water for irrigation purposes. A copy of the proposed agreement between IRWD and the HOA is attached as Exhibit "A". Staff recommends that the Board authorize the General Manager to execute an agreement with Crystal Cove HOA for the temporary use of potable water for landscape irrigation during the construction of the San Joaquin Filtration Project and the Seawatch Recycled Pipeline Replacement Project for a period of 36 months or until both projects are complete, whichever is later.

FISCAL IMPACTS:

San Joaquin Reservoir Filtration, Project 10379, is included in the FY 2019-20 Capital Budget. The existing budget is sufficient to fund the temporary conversion piping and installation.

ENVIRONMENTAL COMPLIANCE:

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

COMMITTEE STATUS:

This item was not reviewed by a Committee.

RECOMMENDATION:

THAT THE BOARD AUTHORIZE THE GENERAL MANAGER TO EXECUTE AN IN-LIEU DOMESTIC WATER AGREEMENT WITH CRYSTAL COVE HOMEOWNERS ASSOCIATION FOR THE TEMPORARY USE OF POTABLE WATER FOR LANDSCAPE IRRIGATION DURING THE CONSTRUCTION OF THE SAN JOAQUIN FILTRATION PROJECT AND THE SEAWATCH RECYCLED PIPELINE REPLACEMENT PROJECT FOR A PERIOD OF 36 MONTHS OR UNTIL BOTH PROJECTS ARE COMPLETE, WHICHEVER IS LATER.

LIST OF EXHIBITS:

Exhibit "A" – In-Lieu Domestic Water Agreement

IN LIEU DOMESTIC WATER AGREEMENT

This In Lieu Domestic Water Agreement (“**Agreement**”) is dated October 28, 2019, (“**Effective Date**”) and is between CRYSTAL COVE COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation (“**Crystal Cove**”) and IRVINE RANCH WATER DISTRICT, a California Water District (“**IRWD**”). Crystal Cove and IRWD are referred to individually as a “**Party,**” and collectively as the “**Parties.**”

A. IRWD provides recycled water to Crystal Cove for landscaping irrigation purposes on real property over which Crystal Cove is either fee owner or easement holder (“**Subject Property**”).

B. IRWD is currently undertaking an improvement project at the San Joaquin Reservoir (“**Filtration Project**”) and a pipeline replacement project on a pipeline carrying recycled water from the San Joaquin Reservoir to Crystal Cove (“**Pipeline Project**”). Together the Filtration Project and the Pipeline Project are the “**Projects.**” The period from the Effective Date until the completion of the Projects will be referred to in this Agreement as the “**Interim Period.**”

C. In the past, IRWD work on recycled water pipeline projects has required intermittent multi-month shutdowns of recycled water pipelines to Crystal Cove. During these shutdowns, IRWD provided Crystal Cove with potable water in lieu of recycled water in order to ensure a reliable water supply. Work on the Projects could lead to numerous interruptions to the recycled water supply to Crystal Cove over the Interim Period.

D. Crystal Cove alleges and IRWD disputes that recycled water provided by IRWD has caused adverse impacts to landscaping soil structure, plant material, and irrigation equipment on the Subject Property. Crystal Cove acknowledges that under Section 4.3.4. of IRWD’s Rules and Regulations, IRWD is not liable for any damage “resulting from any condition of the water or recycled water itself, or any substance that may be mixed with or be in the water or recycled water as delivered to any customer.”

E. Crystal Cove is concerned that following the completion of the Projects, the recycled water may have impacts on its landscaping. During the Interim Period, Crystal Cove intends to study the benefits and costs of installing a private fertigation system on the Subject Property to mitigate solutes present in recycled water, and possibly install such a system.

F. The Parties intend by this Agreement to minimize the impacts of the Projects on Crystal Cove, and resolve and settle any disputes, controversies, claims, debts, liabilities and actions of whatever nature, known or unknown, existing between them arising out of IRWD’s provision of recycled water to Crystal Cove prior to the first date on which potable water temporarily replaces the recycled water provided to Crystal Cove by IRWD pursuant to the terms of this Agreement (“**Release Date**”).

The Parties therefore agree as follows:

1. IRWD Potable Water Obligations. IRWD shall furnish Crystal Cove with potable (domestic) water in lieu of recycled water at IRWD’s recycled water rate for a period of thirty-

six (36) full calendar months following full execution of this Agreement or until the Projects are complete, whichever is later.

2. Crystal Cove Release. Subject to and without waiver or release of the executory obligations and promises made in this Agreement and subject to Crystal Cove's right to enforce the terms of this Agreement, Crystal Cove hereby releases and forever discharges IRWD and its officers, directors, employees, subsidiaries, successors, agents, and representatives from any and all claims, demands, damages, debts, liabilities, losses, obligations, causes of action, suits and costs of whatever nature, character, or description, whether known or unknown, anticipated or unanticipated, which Crystal Cove may have or claim to have against IRWD by reason of any matter or omission arising from IRWD's provision of recycled water to Crystal Cove.

3. Intention of Crystal Cove Regarding Its Release.

a. With respect to the release provided by Crystal Cove in Paragraph 2, above, it is Crystal Cove's intention that this Agreement will be effective as a full and final accord and satisfactory release of each and every matter specifically or generally referenced between Crystal Cove and IRWD. In furtherance of this intention, Crystal Cove acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California ("**Section 1542**"), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

b. Crystal Cove hereby waives and relinquishes any rights and benefits it may have under Section 1542. Crystal Cove acknowledges that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to each and every matter specifically or generally referenced between Crystal Cove and IRWD. In furtherance of this intention, the release above is effective as a full and complete general release despite the future discovery or existence of any additional or different facts.

c. The Parties warrant and represent to one another that the effect and importance of the provisions of Section 1542 have been fully explained to them by their attorneys.

4. No Admission. This Agreement effects a settlement of claims which are contested and denied. Nothing in this Agreement shall be construed as an admission by any party of any liability of any kind to the other party or parties except as created or referred to in this Agreement.

5. Entire Agreement. This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to herein. No other

representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated into this Agreement, may be deemed in any way to exist or bind the Parties. This is an integrated agreement.

6. Warranty of Authority. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

7. Binding on Successors. This Agreement and the covenants and conditions contained herein apply to, and will be binding upon, and inure to the benefit of administrators, executors, legal representatives, assignees, successors, agents, and assigns of the Parties.

8. Construction. This Agreement may not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one party.

9. Modification. This Agreement may not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the parties or their successors in interest at the time of modification.

10. Enforcement. This Agreement may be enforced by any Party hereto. The venue for any such enforcement of this Agreement shall be Orange County, California.

11. Further Documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

12. Advice of Counsel. The Parties acknowledge that they have been represented by counsel of their own choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had it fully explained to them by their counsel.

13. Free and Voluntary Agreement of Parties. Each Party acknowledges and warrants that such Party's execution of this Agreement is free and voluntary.

14. Governing Law. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

15. Attorneys' Fees. Each Party to this Agreement shall bear all attorneys' fees and costs arising from that Party's own counsel in connection with the matters referred to in this Agreement.

[Signatures appear on following page.]

CRYSTAL COVE COMMUNITY ASSOCIATION,

a California nonprofit mutual benefit corporation

Date: 10/28/19

By: Alan Norton

Name: Alan Norton

Title: President

Date: 10/24/19

By: Steven Speach

Name: Steven Speach

Title: Vice President

IRVINE RANCH WATER DISTRICT

By: _____
Paul A. Cook
General Manager

APPROVED AS TO FORM:
Lewis Brisbois Bisgaard & Smith, LLP

By: _____
District Counsel