

ORIGINAL



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COOPERATIVE  
AGREEMENT IN  
SUPPORT OF PURE  
WATER SAN DIEGO

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City of San Diego  
San Diego Coastkeeper  
San Diego County Surfrider  
CERF  
San Diego Audubon Society

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October 2014

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Office of the City Clerk  
San Diego, California

**COOPERATIVE AGREEMENT  
IN SUPPORT OF  
PURE WATER SAN DIEGO**

This Cooperative Agreement (Agreement) is entered into this 9th day of December 2014, by and between San Diego Coastkeeper (Coastkeeper), the San Diego Chapter of Surfrider Foundation (Surfrider), the Coastal Environmental Rights Foundation (CERF), and the San Diego Audubon Society (Audubon), collectively referred to as Stakeholders, and the City of San Diego (City), a municipal corporation, for purposes of supporting and implementing potable reuse of wastewater and secondary equivalency at the Point Loma Wastewater Treatment Plant, known as the Pure Water San Diego program.

**RECITALS**

- A. The City's Point Loma Wastewater Treatment plant operates under a National Pollutant Discharge Elimination System (NPDES) permit which allows for a variance from secondary treatment requirements pursuant to sections 301(h) and 301(j)(5) of the Clean Water Act.
- B. On March 18, 2005, the City entered into a settlement agreement with Surfrider, Coastkeeper (then known as San Diego Baykeeper), and the San Diego Chapter of the Sierra Club wherein pending litigation over the City's NPDES permit was dismissed in return for the City evaluating an improved ocean monitoring program, testing new treatment technology at the Point Loma Wastewater Treatment Plant, and studying and evaluating an expanded water reuse program.
- C. On February 17, 2009, the City entered into a cooperative agreement with Surfrider and Coastkeeper wherein they agreed not to oppose the renewal of the City's NPDES permit in return for the City conducting a study of ways to offload wastewater from the Point Loma Wastewater Treatment Plant through increased water reuse, which later became known as the Recycled Water Study.
- D. On July 17, 2012, the City Council received the Recycled Water Study, which concludes that potable reuse achieves favorable water costs, provides reliability and local control of the water supply, enhances environmental sustainability, improves water quality, and empowers long-term cost control, pursuant to Resolution No. R-307585.
- E. Stakeholders have expressed continuing concern over the City's NPDES permit for the Point Loma Wastewater Treatment Plant while supporting water reuse strategies described in the Recycled Water Study.
- F. The City has determined that instead of converting the Point Loma Wastewater Treatment Plant to a secondary treatment plant, equivalent results can be achieved by offloading wastewater flow from the Plant to other existing and new facilities (secondary equivalency).

G. The strategy of achieving secondary equivalency at the Point Loma Wastewater Treatment Plant through potable reuse of wastewater has been named the Pure Water San Diego program.

H. On April 29, 2014, the City Council gave its approval and support for the Pure Water San Diego program, pursuant to Resolution No. R-308906.

NOW, THEREFORE, in consideration of these recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Stakeholders and the City hereby agree as follows:

## AGREEMENT

### ARTICLE 1 – PROPOSED LEGISLATION

**1.1 Ocean Pollution Reduction Act.** The Stakeholders shall designate from among themselves one or more parties to act as Stakeholder representatives. The City and the Stakeholder representatives will use reasonable efforts to have federal legislation passed in accordance with the proposal called the Ocean Pollution Reduction Act II (OPRA II), which is attached as Exhibit A and incorporated herein by reference. Generally, OPRA II will allow the City's NPDES permit to be based on secondary equivalency with a commitment to implement potable reuse of wastewater.

**1.2 Lobbying.** The City shall retain the services of one or more professional lobbyists to advocate for OPRA II. The City and the Stakeholder representatives shall also meet with elected and appointed officials as each may determine is reasonably necessary to support OPRA II. If the City and the Stakeholder representatives are jointly meeting with elected or appointed officials, the City may, in its sole discretion, pay for the travel and lodging of the Stakeholder representatives according to the same rules applicable to City employees.

**1.3 Other Environmental Groups.** Stakeholders shall meet with other environmental groups not signatory to this Agreement that Stakeholders reasonably believe may object to OPRA II. Stakeholders will use reasonable efforts to convince those environmental groups not to object to OPRA II. The City shall jointly attend a reasonable number of such meetings with other environmental groups at the request of Stakeholders. The City may, in its sole discretion, enter into separate agreements with other environmental groups or other organizations to support OPRA II and the City's applications for NPDES permits.

**1.4 Legislative Amendments.** If OPRA II is introduced or amended with language that is materially different than that in Exhibit A, the City and Stakeholders shall meet as soon as reasonably possible to discuss whether the legislation is mutually acceptable. If the legislation is not mutually acceptable, and the parties cannot agree on a strategy to return OPRA II to its original or other mutually acceptable form, then this Agreement may be terminated pursuant to sections 5.3.2 or 5.4.2.

**1.5 Legislative Deadline.** If OPRA II is not enacted by August 1, 2019, it shall be considered a *force majeure* event entitling the parties to an extension in time for performance pursuant to section 5.2. If OPRA II is not enacted by thirty days before the deadline for the City to file the next application after the 2015 application to renew the NPDES permit, this Agreement may be terminated pursuant to sections 5.3.3 or 5.4.3.

**1.6 Regular Meetings.** The City and Stakeholders anticipate that regular meetings will be necessary to discuss the progress of the Pure Water San Diego program, at least until OPRA II is enacted. The City shall host, and Stakeholders shall attend, at least four meetings per year to discuss the progress of, and potential impediments to, the Pure Water San Diego program until OPRA II is enacted. After OPRA II is enacted, scheduling and attendance at meetings will be optional.

## ARTICLE 2 – PERMIT APPLICATIONS

**2.1 2015 Application.** The City shall submit an application to renew the NPDES permit for the Point Loma Wastewater Treatment Plant no later than January 30, 2015, unless an extension is granted by the United States Environmental Protection Agency (EPA). The City shall diligently pursue approval of the 2015 application. The Stakeholder representatives shall attend all administrative hearings where the 2015 application will be discussed and express their support for approval of the 2015 application in the context of secondary equivalency and potable reuse. Stakeholders not expressing their support at the administrative hearings shall provide such support in writing to the agencies conducting the administrative hearings.

**2.2 Content.** The City's 2015 application shall be submitted to EPA in compliance with OPRA II in anticipation of its enactment. The City's 2015 application shall also comply with sections 301(h) and 301(j)(5) (as it currently exists) of the Clean Water Act in the event OPRA II is not enacted before the EPA completes its review of the City's application.

**2.3 Amendments.** If it becomes necessary for the City to amend its 2015 application, the City shall share the proposed amendment with Stakeholders for review and comment, at least thirty (30) days before submitting the amendment to EPA. The City shall consider comments received from Stakeholders, but the City is not obligated to incorporate comments into the amendment. Any amendments submitted by the City must comply with OPRA II. A Stakeholder may submit any dispute over an amendment to mediation pursuant to Article 6.

**2.4 Subsequent Applications.** If the City receives a NPDES permit pursuant to its 2015 application, the City shall timely submit subsequent applications for NPDES permits in compliance with OPRA II.

**2.5 Waiver.** Each Stakeholder waives and relinquishes its right to challenge or protest the eligibility, validity or legality of the City's 2015 application and the resulting NPDES permit, both administratively and through litigation, whether the NPDES permit is issued under OPRA II, or under sections 301(h) and 301(j)(5) of the Clean Water Act provided the application and NPDES permit comply with OPRA II. This waiver similarly applies to subsequent applications and NPDES permits, but only if the subsequent applications and NPDES permits comply with

OPRA II. This waiver does not prohibit a Stakeholder from challenging whether the City is in compliance with its NPDES permit (as opposed to the validity or legality of the NPDES permit itself). This waiver does not apply to a Stakeholder that has withdrawn from this Agreement pursuant to section 5.3.

### ARTICLE 3 – PROGRAM IMPLEMENTATION

**3.1 Program Implementation.** The City shall design, construct, and operate facilities shown in Exhibit B in accordance with the deadlines and milestones set forth therein, contingent on all of the following events occurring in time for the City to meet them. The City shall further use reasonable efforts to ensure the following events occur in a timely manner:

**3.1.1 Legislation.** OPRA II is enacted.

**3.1.2 Environmental Review.** Environmental review is completed under the California Environmental Quality Act, and the National Environmental Policy Act if applicable.

**3.1.3 Funding.** Sufficient funding is identified and appropriated pursuant to San Diego City Charter sections 80 and 99.

**3.1.4 Harbor Drive Site.** The City receives the necessary approvals and plan amendments to construct and operate a new treatment facility on the 25-acre site near Harbor Drive currently leased to the Public Safety Training Institute.

**3.1.5 Regulatory Approval.** The City receives regulatory approval to implement potable reuse at the flow rates specified in OPRA II.

**3.2 Deadlines and Milestones.** The deadlines and milestones for achieving the requirements of OPRA II are identified in Exhibit B.

**3.2.1 Deadlines.** Except as otherwise provided in this Agreement, the failure to meet a deadline is a material breach of this Agreement. If the City or a Stakeholder believes one of the events listed in section 3.1 may not occur in time for the City to meet a deadline, the parties shall promptly meet to discuss changing the deadline or event through an amendment to this Agreement.

**3.2.2 Milestones.** The failure to meet a milestone is not a material breach of this Agreement. The City may extend milestones by up to one year each by sending written notice to Stakeholders prior to the date of the milestone describing the length and reason for the extension. If the City or a Stakeholder believes the City may not meet a milestone, even after extended by the City, the parties shall promptly meet to discuss ways to keep the Pure Water San Diego program on schedule.

**3.3 Pure Water CIP Plan.** The City shall develop a Capital Improvements Program (CIP) plan for the Pure Water San Diego program by July 1, 2015, and provide copies to Stakeholders for review and comment. The Pure Water CIP plan shall include a description of all new, expanded,

and modified facilities necessary to comply with OPRA II, the dates when the design, construction, testing and operation of the facilities are anticipated to start and finish, and the estimated cost of each facility. The Pure Water CIP plan shall be based on indirect potable reuse, but the City may revise the plan later if direct potable reuse is feasible. The City shall meet with Stakeholders to discuss their comments, but the City is not obligated to incorporate comments into the Pure Water CIP plan. A Stakeholder may submit any dispute related to the Pure Water CIP plan to mediation pursuant to Article 6.

**3.4 Progress Reports and Updates.** The City shall prepare progress reports annually by December 31 describing the City's progress in meeting the deadlines, milestones, and the Pure Water CIP plan. The City shall also update the Pure Water CIP plan annually by December 31, if necessary. The Pure Water CIP plan is subject to change based on factors such as feasibility studies, environmental analysis, changes in the cost of labor and material, new water reclamation projects of other agencies, and evolving regulatory requirements for potable reuse. If a progress report demonstrates that the City is not on schedule to meet the deadlines, milestones, or the Pure Water CIP plan, the progress report shall include a plan to bring the City back on schedule. The City shall provide the progress reports and any updates to the Pure Water CIP plan to Stakeholders for review and comment. The City shall consider comments received from Stakeholders, and meet with Stakeholders at their request, but the City is not obligated to incorporate comments into the progress reports. A Stakeholder may submit any dispute related to the City's progress reports or updates to the Pure Water CIP plan to mediation pursuant to Article 6.

## ARTICLE 4 – OCEAN MONITORING

**4.1 Ocean Monitoring.** The City shall continue the ocean monitoring program for the Point Loma outfall as set forth in NPDES Permit No. CA0107409 (Order No. R9-2009-0001), which is hereby incorporated by reference.

**4.2 Reports.** The City shall annually complete a Receiving Waters Monitoring and Assessment Report, or equivalent report, for the Point Loma Ocean Outfall and post the latest report on the City's website by every July 31. The City shall notify Stakeholders once the report is available on the City's website.

**4.3 Program Changes.** If the City's NPDES permit requires ocean monitoring that differs from the ocean monitoring required by this Agreement, the City shall comply with whichever requirements are stricter. If the City or a Stakeholder desires to change the ocean monitoring required by this Agreement, the City and Stakeholders shall meet to discuss potential modifications to the program. If the City and Stakeholders agree on changes to the ocean monitoring program, such changes shall be memorialized in writing signed by the parties, and become an enforceable obligation under this Agreement. If the City and Stakeholders cannot reach an agreement, the dispute shall be submitted to mediation pursuant to Article 6 upon the request of any party. Ocean monitoring required by this Agreement shall not be changed, however, without the written consent of all parties. This section does not preclude the City from performing additional ocean monitoring beyond what is required by this Agreement.

## ARTICLE 5 – DURATION OF AGREEMENT

**5.1 Term of Agreement.** This Agreement shall be effective on the date of the last signature to this Agreement. This Agreement shall expire on December 31, 2035, or the date 83 million gallons per day of potable reuse is achieved, whichever occurs later, unless this Agreement is terminated sooner pursuant to this Article.

**5.2 Force Majeure.** In the event the performance of the City or Stakeholders is delayed due to causes which are outside their control, and could not be avoided by the exercise of due care, which may include, but is not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of work, inability to obtain materials, labor or equipment, then the time for performance shall be extended by an amount equivalent to the length of delay. *Force majeure* also includes the events listed in section 3.1 to the extent the City's performance is delayed because any of the listed events has not yet occurred, or if OPRA II is not enacted by August 1, 2019, pursuant to section 1.5.

**5.3 Termination by Stakeholders.** Any Stakeholder may withdraw from this Agreement prior to its expiration date upon the occurrence of any of the qualifying events set forth below by giving written notice of such withdrawal to the City. Such notice shall set forth the grounds for withdrawal and be delivered by certified mail with return receipt for delivery. Withdrawal shall be effective sixty (60) days after receipt of the notice. The right to withdraw must be exercised by mailing notice to the City within one year of the qualifying event or the right to withdraw is deemed waived unless an extension is agreed to in writing by the City. Each occurrence of a qualifying event gives rise to a new right to withdraw. The qualifying events are:

**5.3.1 Breach.** A material breach of this Agreement by the City which is not cured within thirty (30) days of written notice of the breach from the Stakeholders.

**5.3.2 Legislative Amendments.** OPRA II is introduced or amended prior to enactment with language unacceptable to the Stakeholder pursuant to section 1.4.

**5.3.3 Legislative Deadline.** OPRA II is not enacted by thirty days before the deadline for the City to file the next application after the 2015 application to renew the NPDES permit, pursuant to section 1.5.

**5.3.4 Change in Law.** OPRA II is enacted, but later repealed or amended to allow the Point Loma Wastewater Treatment Plant to discharge wastewater with a higher concentration or level of suspended solids or biological oxygen demand than the levels in OPRA II, or to allow the City to implement potable reuse in a flow rate less than specified in OPRA II.

**5.4 Termination by the City.** The City may terminate this Agreement prior to its expiration date upon the occurrence of any of the qualifying events set forth below by giving written notice of such termination to Stakeholders. Such notice shall set forth the grounds for termination and be delivered by certified mail with return receipt for delivery. Termination shall be effective

sixty (60) days after receipt of the notice. The right to terminate must be exercised by mailing notice to Stakeholders within one year of the qualifying event or the right to terminate is deemed waived unless an extension is agreed to in writing by Stakeholders. Each occurrence of a qualifying event gives rise to a new right to terminate. The qualifying events are:

**5.4.1 Breach.** A material breach of this Agreement by a Stakeholder which is not cured within thirty (30) days of written notice of the breach from the City.

**5.4.2 Legislative Amendments.** OPRA II is introduced or amended prior to enactment with language unacceptable to the City pursuant to section 1.4.

**5.4.3 Legislative Deadline.** OPRA II is not enacted by thirty days before the deadline for the City to file the next application after the 2015 application to renew the NPDES permit, pursuant to section 1.5.

**5.4.4 Change in Law.** A change in State or Federal law, or implementation of existing State or Federal law, will require the Point Loma Wastewater Treatment Plant to discharge wastewater with a lower concentration or level of suspended solids or biological oxygen demand than the levels in OPRA II.

**5.4.5 Order.** A Court order or the order of a State or Federal agency requires the Point Loma Wastewater Treatment Plant to discharge wastewater with a lower concentration or level of suspended solids or biological oxygen demand than the levels in OPRA II.

**5.4.6 Withdrawal by Stakeholder.** A Stakeholder has withdrawn from this Agreement pursuant to section 5.3 and subsequently takes action inconsistent with the purpose or intent of this Agreement.

**5.5 Effect of Termination.** Withdrawal by a Stakeholder shall release that Stakeholder from all obligations under this Agreement upon the effective date of termination. Withdrawal by a Stakeholder shall terminate the Agreement only as to them, and shall not affect the Agreement as to the City and any remaining Stakeholders unless the City terminates the Agreement. Termination of this Agreement by the City shall release all parties from their obligations under this Agreement upon the effective date of the City's termination.

## ARTICLE 6 – DISPUTE RESOLUTION

**6.1 Mandatory Mediation.** If a dispute arises between the City and any Stakeholder relating to a party's obligations under this Agreement, the interpretation of OPRA II, the validity or legality of the City's application or NPDES permit, or the City's compliance with its NPDES permit, that cannot be resolved through informal discussions and meetings, notwithstanding anything to the contrary in the Clean Water Act the City and the Stakeholder shall first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA, or any other neutral organization agreed upon by the parties before having recourse in a court of law. Unless otherwise agreed in writing by the parties, mediation must be

completed prior to termination of this Agreement by Stakeholders or the City, except if the reason for termination is because OPRA II was not enacted by the time specified in section 1.5.

**6.2 Selection of Mediator.** A single mediator that is acceptable to the City and the Stakeholder shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by JAMS, AAA, or any other agreed upon mediator.

**6.3 Mediation Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All mediation costs, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne by the City if the subject of the mediation is the City's compliance with its NPDES permit, or if mediation has not occurred under this Article within the last twenty-four months. Otherwise, mediation costs shall be paid half by the City and half by the Stakeholders unless otherwise agreed.

**6.4 Conduct of Mediation.** Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code Sections 1115 - 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. The City and the Stakeholder shall have representatives attend the mediation who are authorized to settle the dispute, though the City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**6.5 Mediation Results.** Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## ARTICLE 7 – REMEDIES

**7.1 Remedies for Breach.** Except as otherwise provided in this section, the sole and exclusive remedy for breach of this Agreement is termination pursuant to sections 5.3 and 5.4. Damages shall not be recoverable by any party. Specific performance shall be available to enforce ocean monitoring under article 4 and mediation under article 6. This Agreement shall not affect any remedies available to the parties under the Clean Water Act.

## ARTICLE 8 – GENERAL PROVISIONS

**8.1 Contract Interpretation.** This Agreement and its exhibits are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with industry standards. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**8.2 Mutual Obligations.** The City and Stakeholders commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under this Agreement.

**8.3 Successors-In-Interest.** This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested and binding on their successors in interest.

**8.4 Third Party Beneficiaries.** Nothing in this Agreement shall grant rights or benefits to anyone other than the City and Stakeholders, and any alleged third party beneficiaries are hereby expressly disclaimed.

**8.5 Severability.** Should any provision of this Agreement be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the parties shall be construed and enforced accordingly, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate either or both parties' essential objectives set forth in this Agreement.

**8.6 Waivers.** Except as otherwise specified in this Agreement, the failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either party to thereafter enforce each and every provision of this Agreement.

**8.7 Limitation on Powers.** Nothing in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

**8.8 Notices.** All notices required to be given under this Agreement must be in writing and either served personally, sent by facsimile transmission, or mailed by express or certified mail with delivery confirmation. Notices shall be effective upon receipt. Notices shall be mailed to:

Surfrider Foundation  
San Diego County Chapter  
9883 Pacific Heights Blvd., Suite D  
San Diego, CA 92121

San Diego Coastkeeper  
2825 Dewey Road, Suite 200  
San Diego, CA 92106

Coastal Environmental Rights Foundation  
1140 South Coast Highway 101  
Encinitas, CA 92024

San Diego Audubon Society  
4010 Morena Blvd., Suite 100  
San Diego, CA 92117

City of San Diego  
Public Utilities Department  
9192 Topaz Way  
San Diego, CA 92123

**8.9 Assignment.** Neither party shall assign its rights or obligations under this Agreement without the other party's prior written approval, which shall not be unreasonably withheld. Any attempted assignment in violation of this section shall be void and incapable of creating any contractual relationship between a party and a putative assignee.

**8.10 Incorporation of Exhibits.** All exhibits referenced in this Agreement are hereby incorporated into and made a part of this Agreement by reference.

**8.11 Integration Clause.** The City and Stakeholders represent, warrant and agree that no oral promise or agreement not expressed herein has been made to them, that this Agreement contains the entire agreement between the parties, that this Agreement supersedes any and all prior oral agreements or understandings between the parties unless otherwise provided herein, and that in executing this Agreement, neither party is relying on any statement or representation made by the other party concerning the subject matter, basis or effect of this Agreement other than as set forth herein, and that each party is relying solely on its own judgment and knowledge. This Agreement may not be amended except by an instrument in writing signed by both parties.

**8.12 Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

*[remainder of page intentionally blank]*

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego pursuant to San Diego Resolution No. R- 309342 authorizing such execution, and the Stakeholders acting by and through their authorized officers.

SAN DIEGO COASTKEEPER

SAN DIEGO AUDUBON SOCIETY

By: M. Baehrens

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

Name: Megan Baehrens

Name: \_\_\_\_\_

Date: 10/31/14

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

SURFRIDER FOUNDATION  
SAN DIEGO COUNTY CHAPTER

THE CITY OF SAN DIEGO

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

By: Tony Heinrichs  
Tony Heinrichs

Name: \_\_\_\_\_

Name: Tony Heinrichs

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

Date: 12/4/14

COASTAL ENVIRONMENTAL RIGHTS  
FOUNDATION

I HEREBY APPROVE the form and legality of the foregoing agreement this 9th day of December, 2014.

By: M. Gonzalez

JAN I. GOLDSMITH, City Attorney

Name: Marco Gonzalez

By: JAG  
Deputy City Attorney

Date: 11/4/13

RR-309342

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego pursuant to San Diego Resolution No. R-\_\_\_\_\_ authorizing such execution, and the Stakeholders acting by and through their authorized officers.

SAN DIEGO COASTKEEPER

SAN DIEGO AUDUBON SOCIETY

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

SURFRIDER FOUNDATION  
SAN DIEGO COUNTY CHAPTER

THE CITY OF SAN DIEGO

By: Roger L Kube, Jr

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

Name: Roger L Kube, Jr

Name: \_\_\_\_\_

Date: 10/15/14

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

COASTAL ENVIRONMENTAL RIGHTS  
FOUNDATION

I HEREBY APPROVE the form and legality of the foregoing agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

JAN I. GOLDSMITH, City Attorney

Name: \_\_\_\_\_

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

Deputy City Attorney

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

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego pursuant to San Diego Resolution No. R-\_\_\_\_\_ authorizing such execution, and the Stakeholders acting by and through their authorized officers.

SAN DIEGO COASTKEEPER

SAN DIEGO AUDUBON SOCIETY

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

By: Ed Henry

Name: \_\_\_\_\_

Name: Edward O. Henry

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

Date: 9-26-14

SURFRIDER FOUNDATION  
SAN DIEGO COUNTY CHAPTER

THE CITY OF SAN DIEGO

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

COASTAL ENVIRONMENTAL RIGHTS  
FOUNDATION

I HEREBY APPROVE the form and legality of the foregoing agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

JAN I. GOLDSMITH, City Attorney

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy City Attorney

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

## EXHIBIT A

### OCEAN POLLUTION REDUCTION ACT II

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Ocean Pollution Reduction Act II."

#### SECTION 2. FINDINGS AND POLICY

In 1972, Congress passed the Federal Water Pollution Control Act Amendments, which required Publicly Owned Treatment Works to achieve secondary treatment capability by 1977.

In 1994, the Federal District Court for the Southern District of California determined that upgrading the City of San Diego's Point Loma Wastewater Treatment Plant to secondary treatment level would not be in the public interest, being excessively costly without producing additional environmental benefits.

The Point Loma Plant currently meets all the requirements of secondary treatment except for the removal of total suspended solids and biological oxygen demand.

At the direction of Congress, the Environmental Protection Agency (EPA) requested that the National Research Council advise the agency on ways to improve wastewater management in coastal urban areas. The resulting study, "*Managing Wastewater in Coastal Urban Areas*," produced several important findings, including:

- Biological oxygen demand discharged thru a well-designed outfall is generally of no ecological concern in open coastal waters.
- Total suspended solids can be adequately controlled by advanced primary treatment and high dilution outfalls.
- Over-control is particularly likely along ocean coasts, but nevertheless full secondary treatment is required regardless of cost or lack of benefits.

Past reviews by the City, the EPA, the State of California, and scientists affiliated with the Scripps Institution of Oceanography and the University of California at San Diego, as well as other organizations have concluded the Point Loma Plant does not have a significant adverse impact on the ocean environment.

The ocean outfall for the Point Loma Plant discharges effluent 4.5 miles from the coast at a depth of over 300 feet, one of the longest and deepest in the world.

Implementing full secondary treatment at the Point Loma Plant will cost approximately \$2.1 billion.

Implementing full secondary treatment is contrary to the national interest, in that it will compromise views from the Cabrillo National Monument and interfere with the Navy's use of adjacent property.

The City generates all the energy it needs to operate the Point Loma Plant onsite through co-generation. Implementing full secondary treatment will turn a "green" facility into one of the region's largest energy consumers, requiring the purchase of over \$17 million each year in electricity and producing more than 100,000 tons of greenhouse gas emissions annually.

Implementing full secondary treatment at the Point Loma Plant will require removal of 1,250,000 tons of earth from environmentally sensitive habitat immediately adjacent to the Point Loma Ecological Reserve.

Recognizing the unique situation surrounding the Point Loma Plant, Congress adopted the Ocean Pollution Reduction Act of 1994 (OPRA). OPRA allowed the Point Loma Plant to avoid conversion to full secondary treatment and instead operate under a modified permit according to standards contained in OPRA and section 301(h) of the Clean Water Act.

The City has complied with all requirements of OPRA and the results have been significant, including reduction in the discharge of total suspended solids and biological oxygen demand, advanced ocean monitoring, and construction of 45 million gallons per day of reclaimed water capacity at a cost of approximately \$340 million.

Successor legislation to OPRA will capitalize on the record of improvements initiated under OPRA and provide a framework for further enhancements to the City's water and wastewater systems, increased potable water reliability, and additional meaningful environmental protection.

The City has completed its Water Purification Demonstration Project showing that municipal wastewater can successfully be treated to levels suitable for potable reuse. The City completed its Recycled Water Study in 2012 describing how wastewater can be diverted from the Point Loma Plant to new treatment facilities to generate water suitable for potable reuse. Through the construction and operation of new treatment facilities, the City can reduce the total suspended solids discharged by the Point Loma Plant to the same or lower levels as would be achieved by implementing full secondary treatment, while creating an important new local source of water.

The City currently relies on imported water for over 85% of its water supply. A new local source of water can significantly reduce the environmental impacts of importing water to San Diego from the Colorado River and the California Bay-Delta by offsetting the City's demand for imported water.

Due to severe drought in California, the 2014 water allocation from the State Water Project is only 5% of normal, forcing water agencies to draw down water reserves, implement mandatory conservation measures, and search for new, dependable sources of water.

### SECTION 3. SAN DIEGO SECONDARY TREATMENT EQUIVALENCY.

Section 301(j)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1311(j)(5)) is amended to read as follows:

#### (5) SAN DIEGO SECONDARY TREATMENT EQUIVALENCY.

(A) IN GENERAL. Notwithstanding anything to the contrary in the Federal Water Pollution Control Act or the Coastal Zone Management Act, an application for the Point Loma Wastewater Treatment Plant shall be reviewed and processed as the equivalent of an application for a secondary treatment discharge pursuant to subsection (b)(1)(B) and section 402 of the Federal Water Pollution Control Act, provided that the application includes a commitment to:

- (i) maintain a deep ocean outfall from the Point Loma Wastewater Treatment Plant with a discharge depth of no less than 300 feet.
- (ii) discharge no more than 12,000 metric tons of total suspended solids per year commencing on December 31, 2015, no more than 11,500 metric tons of total suspended solids per year commencing on December 31, 2025, and no more than 9,942 metric tons of total suspended solids per year commencing on December 31, 2027.
- (iii) discharge no more than a concentration of 60 milligrams per liter of total suspended solids calculated as a thirty day average.
- (iv) remove no less than 80% of total suspended solids on a monthly average, and no less than 58% of biological oxygen demand on an annual average, from wastewater flow tributary to the Point Loma Plant. Wastewater flow is tributary to the Point Loma Plant if it is discharged into the applicant's wastewater system, or into any wastewater system connected to the applicant's wastewater system, excluding wastewater flow treated and discharged from facilities separately permitted under section 402.
- (v) meet all other effluent limitations of secondary treatment, as defined by the Administrator pursuant to section 304(d)(1), except for any effluent concentration limits for biological oxygen demand.
- (vi) comply with federal anti-degradation policy as determined by the Administrator.
- (vii) perform ocean monitoring that meets or exceeds the Administrator's requirements for section 301(h) dischargers.

(B) POTABLE REUSE. To be eligible to submit an application under this paragraph, the applicant must demonstrate to the satisfaction of the Administrator that to the extent potable reuse is permitted by federal and state regulatory agencies, at least 83 million gallons per day of water suitable for potable reuse on an annual average will be produced by December 31, 2035, from wastewater in the applicant's wastewater system and wastewater systems connected to the applicant's wastewater system as of the date of this Act. The Administrator shall determine development milestones necessary to ensure compliance with this paragraph and include said milestones as conditions in each permit issued prior to December 31, 2035.

(C) PREVIOUS OCEAN MONITORING DATA. The applicant must demonstrate to the satisfaction of the Administrator that the applicant has performed monitoring that meets or exceeds the requirements for section 301(h) dischargers for at least the last 10 years.

(D) PENDING APPLICATIONS. Any application for the Point Loma Wastewater Treatment Plant pending on the effective date of this Act shall be reviewed and processed under this paragraph.

(E) SECONDARY TREATMENT. Nothing in this Act shall prevent the applicant from submitting an application for the Point Loma Wastewater Treatment Plant that complies with secondary treatment pursuant to subsection (b)(1)(B) and section 402

## EXHIBIT B

### Pure Water San Diego Project Deadlines and Milestones

Environmental Review		
Task	Deadline	Milestone
Issue Notice of Preparation of Program EIR		January 31, 2015
Publish draft Program EIR for public review		January 31, 2017
Certify Final Program EIR	January 31, 2018	

North City Projects		
Task	Deadline	Milestone
Issue NTP for pre-design of transmission pipelines		July 31, 2014
Issue NTP for pre-design of a 15 mgd potable reuse facility		July 31, 2015
Issue NTP for full design of transmission pipelines		January 31, 2017
Issue NTP for full design of a 15 mgd potable reuse facility		May 31, 2017
Advertise for bids to construct transmission pipelines		October 31, 2019
Advertise for bids to construct a 15 mgd potable reuse facility		January 31, 2020
Issue NTP to construct transmission pipelines		October 31, 2020
Issue NTP to construct a 15 mgd potable reuse facility		January 31, 2021
Complete construction of transmission pipelines	June 30, 2023	
Complete construction of a 15 mgd potable reuse facility	June 30, 2023	
Produce a total of at least 15 mgd of potable reuse	December 31, 2023	

South Bay* Projects		
Task	Deadline	Milestone
Issue NTPs for pre-design of a potable reuse facility and pipelines		September 30, 2018
Issue NTPs for full design of a potable reuse facility and pipelines		September 30, 2020
Issue NTPs to construct a potable reuse facility and pipelines		September 30, 2024
Complete construction of a potable reuse facility and pipelines	June 30, 2027	
Produce a cumulative total of at least 30 mgd of potable reuse**	December 31, 2027	

Harbor Drive* Projects		
Task	Deadline	Milestone
Complete real property appraisal of Harbor Drive site		June 30, 2015
Complete acquisition of Harbor Drive site		December 31, 2019
Issue NTPs for pre-design of a potable reuse facility and pipelines		June 30, 2025
Issue NTPs for full design of a potable reuse facility and pipelines		June 30, 2027
Issue NTPs to construct a potable reuse facility and pipelines		June 30, 2031
Complete construction of a potable reuse facility and pipelines	June 30, 2035	
Produce a cumulative total of at least 83 mgd of potable reuse**	December 31, 2035	

\* actual location of projects subject to change in accordance with changes to the Pure Water CIP plan.

\*\* cumulative totals of potable reuse include projects that may be implemented by the participating agencies signatory to the 1998 Metro Agreement (Doc. # OO-18517).