The background features a series of overlapping, semi-transparent green polygons in various shades, creating a modern, abstract geometric pattern. The colors range from light lime green to a slightly darker, muted green. The shapes are scattered across the page, with some larger polygons in the lower half and smaller ones in the upper half.

APPENDIX D

RMWD-City of Oceanside Construction, Use, Maintenance and Operation of Wastewater, Transmission, Treatment and Disposal Facilities Agreement

**AN AGREEMENT BETWEEN THE CITY OF OCEANSIDE, CALIFORNIA
AND THE RAINBOW MUNICIPAL WATER DISTRICT FOR THE
CONSTRUCTION, USE, MAINTENANCE AND OPERATION OF
WASTEWATER, TRANSMISSION, TREATMENT AND DISPOSAL FACILITIES**

THIS AGREEMENT, made and entered into as of the 13th day of February, 2002, by and between the CITY OF OCEANSIDE, California, a municipal corporation, hereinafter referred to as "City", and the RAINBOW MUNICIPAL WATER DISTRICT, a public corporation organized and existing under the Municipal Water District Act of 1911, Division 20 of the Water Code of the State of California hereinafter referred to as "RMWD".

RECITALS

WHEREAS, City and RMWD each provide wastewater collection and conveyance facilities and/or services within the San Luis Rey Basin;

WHEREAS, City owns wastewater conveyance, treatment and disposal facilities located in the City of Oceanside and is willing to treat and dispose of wastewater for RMWD;

WHEREAS, City and RMWD have each determined it is in the best interests of the respective parties to jointly participate in the use, operation, and maintenance of certain existing and future wastewater facilities;

WHEREAS, the Federal Water Pollution Control Act of 1972, as amended (Clean Water Act) (33 U.S.C Sec. 1251 *et seq.*), and the Porter-Cologne Water Quality Act (Water Code, Sec. 13000 *et seq.*) establish goals for the elimination of water pollution of navigable waters;

WHEREAS, in accordance with the aforementioned statutes, the City's treatment and discharge of wastewater into navigable waters must comply with the standards promulgated by the Environmental Protection Agency, the State Water Resources Control Board and the San Diego Regional Water Quality Control Board requirements;

WHEREAS, RMWD, pursuant to Chapter 5, Part 5, Division 20, may enter into contracts with other public agencies to carry out the purposes of RMWD and City, pursuant to Section 37392.1 of the Government Code of the State of California, may enter jointly with public corporations to provide sewers, sewage treatment and disposal facilities;

WHEREAS, City and RMWD previously entered into agreements dated January 2, 1973, and September 10, 1980, to jointly participate in the construction, use, and operation and maintenance of a Wastewater Conveyance and Treatment System (Wastewater System) to serve the City and RMWD;

WHEREAS, City and RMWD are now planning expansion and rehabilitation of said facilities and it is appropriate to revise the previous agreement to reflect current and future needs;

WHEREAS, the City of Oceanside and RMWD acknowledge that they are obligated to comply with the Revenue Program Guidelines of the *Policy for Implementing the State Revolving*

Fund for the Construction of Wastewater Treatment Facilities published by the California State Water Resources Control Board, dated June 18, 1998, or as it may be revised from time to time, because the City has received state and federal grants and loans funding; and

WHEREAS, the City and RMWD desire to enter into an Agreement that reflects and satisfies all Environmental Protection Agency, the California State Water Resources Control Board and the San Diego Regional Water Quality Control Board requirements.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties do hereby agree as follows:

Section I. Purpose

The parties enter into this Agreement to provide for the construction, operation, maintenance and replacement of a Wastewater System to serve the respective parties' needs. The parties will finance the construction, operation, maintenance and replacement of the Wastewater System as herein provided.

Section II. Definitions

"Agreement" means this Agreement which is entitled "An Agreement between the City of Oceanside and the Rainbow Municipal Water District For The Construction, Use, Maintenance and Operation of Wastewater, Transmission, Treatment and Disposal Facilities."

"Biochemical Oxygen Demand" (BOD) means the measure of the biologically decomposable material in wastewater, as determined by the procedures specified in the most current edition of "Standard Methods for the Examination of Water and Wastewater", or any successor publication which establishes the industry standard.

"Capacity" means the maximum flow rate for pipes and pumps, and/or the quantity handled during a 24-hour period for wastewater treatment plant facilities.

"Capacity Entitlement" means the contractual right possessed by RMWD to discharge wastewater into the City's System pursuant to this Agreement up to the limit set forth in Exhibit "B" attached hereto.

"Capital Improvement Costs" are costs associated with the planning, design, financing, construction, or reconstruction of facilities.

"City of Oceanside Wastewater System or Wastewater System" shall mean and consist of those facilities and contract rights to facilities which are shown and/or described in Exhibit A attached hereto and incorporated by this reference, including any amendments thereto authorized by this Agreement. This includes the City's Treatment Plants, the Interceptor First Reach, Interceptor Second Reach, the Land Outfall, and the Ocean Outfall.

"City's Treatment Plants" means the San Luis Rey and La Salina Wastewater Treatment Plants located on land owned by the City.

"Fixed Costs" means capacity costs based on equivalent meters and customer costs based on number of customers.

"Flow" means the amount of wastewater discharged by the City and RMWD.

"Flow Rate" means the volume of flow over a specified period of time, expressed as: gallons per minute (gpm), cubic feet per second (cfs), etc.

"HCF" means one hundred cubic feet or 748 gallons and is the standard unit for measure for municipal water service. Also sometimes referred to as a billing unit or CCF.

"Interceptor Sewer - First Reach" means that portion of the interceptor sewer constructed by City from near the intersection of North River Road with College Road to the San Luis Rey Wastewater Treatment Plant and includes the North Valley Sewer Lift Station.

"Interceptor Sewer - Second Reach" means that portion of the interceptor sewer constructed by City from the intersection of North River Road with Stallion Road to near the intersection of North River Road with College Road to connect with First Reach.

"Interceptor Sewer - Third Reach" means that portion of the interceptor sewer constructed by District from the intersection of North River Road with Stallion Road to District's collection system, as shown on said Exhibit "A".

"Land Outfall" means the transmission facilities from City's San Luis Rey Wastewater Treatment Plant to the ocean outfall as shown on said Exhibit "A" and includes the pumping plant.

"MGD" means millions of gallons per day flow rate.

"Ocean Outfall" means the Outfall as shown on said Exhibit "A."

"Point of Delivery" means the location of the meter to measure RMWD's flow of wastewater being delivered to City as shown on said Exhibit "A", said meter being at the westerly end of Interceptor Sewer - Third Reach.

"Operation and Maintenance Costs" are the costs of those items and activities required by sound engineering and management practices to keep the conveyance, treatment and disposal facilities functioning in accordance with all applicable laws, rules, and regulations.

"Replacement Reserve" means a reserve established pursuant to Clean Water Act requirements and funded annually. This reserve is established to provide funds for obtaining and installing equipment, accessories, and/or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

“Revenue Program” means the rate schedule and analysis that demonstrates that each class of wastewater discharger is paying its fair and equitable share of the cost of operating and maintaining the City of Oceanside Wastewater System, complying with the Revenue Program Guidelines of the *Policy for Implementing the State Revolving Fund for the Construction of Wastewater Treatment Facilities* published by the California State Water Resources Control Board, dated June 18, 1998, or as it may be revised from time to time.

“State Revolving Fund” means the Loan Program created by the Federal Clean Water Act and various California State laws including the Clean Water Bond Law of 1984, the Safe, Clean, Reliable Water Supply Act (1996 Bond Law), and any subsequent bond laws. The primary purpose of the State Revolving Fund is to finance wastewater treatment facilities necessary to prevent water pollution, recycle water, correct nonpoint source and storm drainage pollution problems, and thereby protect and promote the health, safety, and welfare of the inhabitants of the State of California.

“Strength” means the measurement of SS and BOD within the wastewater flow and any other measurement required by law after the date of this Agreement.

“Suspended Solids” (SS) means the insoluble solid matter in wastewater that is separable by laboratory filtration, as determined by the procedures specified in the most current edition of “Standard Methods for the Examination of Water and Wastewater”, or any successor publication which establishes the industry standard.

“Transmission System” means the interceptor sewer third reach, second reach, first reach, and the North Valley Lift Station.

“Variable Costs” means transmission system costs based on flow and treatment costs based on flow and sewage strength.

Section III. Scope

The City of Oceanside’s Wastewater System is located in San Diego County as outlined on the attached map, attached hereto as Exhibit "A", and incorporated by this reference, consisting of facilities necessary to collect, treat and dispose of sewage in accordance with requirements of local, State and Federal agencies having jurisdiction over such matters.

From time to time the Wastewater System will be upgraded and enlarged in accordance with the provisions of this Agreement and for projects costing more than \$250,000, the City will notify RMWD at least 3 months in advance of its intention to perform the work.

Section IV. Ownership and Operation of the Wastewater System

A. Rights of Parties

The City is the owner of the Wastewater System, and of any additions to the System or other facilities constructed pursuant to this Agreement. All decisions with respect to the planning, design, construction, operation and maintenance of the System shall rest with the City.

RMWD shall have a contractual right to use the System. Subject to the terms of this Agreement, and in conformance with all applicable laws, the City may transfer ownership of all or part of the System at any time. In the event of a transfer, the City's successor shall be bound by the terms of this Agreement.

B. Wastewater System Services

The City shall provide wastewater transmission, treatment and disposal services to RMWD through the Wastewater System, under terms set forth in this Agreement. The City shall operate the System in an efficient and economical manner, maintaining it in good repair and working order, all in accordance with recognized sound engineering and management practices. The City shall convey, treat, and dispose of all wastewater received under this Agreement in such a manner as to comply with all applicable laws, rules and regulations.

C. Funding Obligations

Nothing in this Section or in this Agreement shall obligate the City to make any payment for the acquisition, construction, maintenance or operation of the Wastewater System from moneys derived from taxes or from any income and revenue of the City other than moneys in or sewer revenues which go into the Sewer Revenue Fund and from construction funds derived from such outside sources as sewer revenue bonds and State Revolving Fund Loans.

D. Financial Statements

1. The City shall keep appropriate records and accounts of all costs and expenses relating to conveyance, treatment, disposal, and reuse of wastewater; and the acquisition, planning, design, construction, administration, monitoring, operation and maintenance of the Wastewater System.

2. Said records and accounts shall be subject to reasonable inspection by any authorized representative of RMWD at its expense. Further, said accounts and records shall be audited annually by an independent certified public accounting firm appointed by the City pursuant to generally accepted accounting principles. A copy of the Comprehensive Annual Financial Report prepared by the City's independent auditors shall be available to RMWD within 30 days after completion of the audit.

Section V. Capacity Rights

RMWD is responsible for 10.00 percent of the City's construction cost of the interceptor sewer – first reach and 58.25 percent of the City's construction cost of the interceptor sewer – second reach. RMWD is responsible for 100 percent of interceptor sewer third reach. In addition, RMWD has paid for 1 MGD in the San Luis Rey Treatment Facility as well as the City's Land and Ocean Outfall.

The City hereby grants to RMWD and RMWD hereby accepts the following capacity entitlement in the City's current and future treatment facilities, wastewater, transmission facilities, land outfall and ocean outfall:

	1980 Agreement <u>Capacity</u>	<u>2001 Agreement Capacity Entitlement</u>	
		<u>Before Project Entitlement</u>	<u>After Project Completion</u>
Wastewater Treatment Plant	1.00 MGD	1.00 MGD	1.5 MGD
Land Outfall	1.00 MGD	1.00 MGD	1.5 MGD
Ocean Outfall	1.00 MGD	1.00 MGD	1.5 MGD
Transmission Facility First Reach	1.00 MGD	1.00 MGD	1.5 MGD
Transmission Facility Second Reach	1.00 MGD	1.00 MGD	1.5 MGD

RMWD agrees to pay City for its capacity rights in each of said facilities in an amount equal to the percentage of City's construction costs for each facility allocated to RMWD as hereinafter designated. For the entitlement of an additional .5 MGD of capacity RMWD will pay based on the following formula:

Expansion – 6.7 MGD, 62% of construction costs

<u>City</u>	<u>RMWD</u>
6.2 MGD	0.5 MGD
92.54%	7.46%

Upgrades – 38% of construction costs

<u>City</u>	<u>RMWD</u>
90.48%	9.52%

As identified in Section VII, penalties will be applied should RMWD exceed RMWD's allotted capacity.

RMWD shall not be subject to penalties if completion of construction of the current treatment plant expansion is delayed because of factors beyond the RMWD's ability to control as long as RMWD remains within its allotted capacity.

Section VI. Limitations on Types and Condition of Wastewater

Wastewater discharged by RMWD into the interceptor sewer shall be essentially domestic in character. BOD shall not exceed 250 mg/l, TDS shall not exceed 1200 PPM, and SS shall not exceed 250 mg/l. Volatile organic compounds, abnormal concentrations of heavy metals, or other chemical constituents detrimental to wastewater treatment shall not be permitted in any wastewater discharged into the interceptor sewer. As provided in Section VIII-B of this Agreement RMWD's wastewater flows will be measured for strength.

A. RMWD will comply with all applicable laws, rules, and regulations including its regulatory obligations associated with discharge of wastewater into its respective system and from such system into the City's Wastewater System.

B. RMWD will prevent to the maximum extent practicable, the infiltration and inflow of surface, ground or storm waters into its wastewater system as detailed under Exhibit "B". RMWD will not deliberately discharge stormwater into the City's Wastewater System.

C. In the event a regulatory agency imposes any penalty or takes other enforcement action relating to the conveyance, treatment, or disposal of wastewater in or from the Wastewater System, the City shall determine whether the City or RMWD or any other agency caused or contributed to such penalty or enforcement actions. The City shall allocate the penalty or other relief, including the costs of defense, to the party or parties responsible. Each responsible party shall be obligated to pay its share of such penalty or other relief, and any costs of defense. In the event that the City cannot make such an allocation, the City shall share the cost of such penalty or other relief with RMWD based on each party's respective contribution to Flow and Strength.

D. If RMWD's discharge into the interceptor sewer exceeds these requirements or any additional requirements imposed on the City by the San Diego Regional Water Quality Control Board, the City may perform additional treatment of RMWD's wastewater. The incremental maintenance and operational cost of said treatment shall be paid by RMWD at the time and manner provided for in Section IX hereof.

E. The City has enacted an industrial pretreatment ordinance as well as an Inter-jurisdictional Pretreatment Agreement with RMWD. RMWD shall, by execution of this Agreement, agree to conform to and enforce the Ordinance and Inter-jurisdictional Agreement.

F. RMWD will insure that all industrial users of its wastewater system are regulated by an effective industrial pretreatment program that conforms to all applicable laws, rules and regulations and that is acceptable to the City. RMWD will not discharge any sewage originating outside its respective boundaries into the City's Wastewater System without prior written City approval.

G. When any commercial or industrial activity occurs upstream of the Point of Delivery, RMWD agrees to sample and test monthly for BOD, SS, and TDS, and quarterly for Cd, Cr, Cu, Pb, Ni, and Zn at the Point of Delivery. In addition, RMWD is required to provide the City with a summary of analytical results from an annual full priority pollutant scan. Wastewater sampling and analysis shall be performed in accordance with the City's National Pollutant Discharge Elimination System (NPDES) Order No. 2000-11 and any subsequent amendments thereto. The City may require RMWD to perform such additional testing as may be necessary to identify detrimental elements or compounds.

Section VII. Limitations on Quantities of Wastewater

The City agrees to receive, treat, and discharge RMWD's wastewater in quantities delivered to the City at the Point of Delivery up to a maximum quantity of 1,000,000 gallons during a 24-hour day.

Said maximum quantity shall be considered exceeded if more than 1,000,000 gallons (average dry weather flow – "ADWF") is delivered each 24-hour day for ten (10) or more days in three consecutive calendar months. At such time as the capacity of the San Luis Rey treatment facility is increased and permitted by the Regional Water Quality Control Board to 13,500,000 gallons per day, RMWD's contract capacity will increase to 1,500,000 gallons ADWF during a 24-hour day. At that time said maximum quantity shall be considered exceeded if more than 1,500,000 gallons ADWF is delivered each 24-hour day for ten (10) or more days in any three consecutive calendar months. If the maximum quantity is exceeded for more than ten (10) days in three consecutive calendar months a penalty will apply. The penalty will be seven and a half (7.5) times the current unit cost for capacity, transmission and treatment on flows that exceed RMWD's allocated capacity. The penalty shall last until such time as RMWD meets the flow requirements for three (3) consecutive calendar months.

City will monitor RMWD flows and require RMWD to comply with the City's NPDES permit (Order No. 2000-11), Section G. Reporting Requirements, Paragraph 17. a.-c., to insure adequate future capacity. This shall include:

Upon completion of the expansion, RMWD shall submit a written report to the City within 90 days after the average dry weather influent flow rate for any 30-day period equals or exceeds 75 percent of RMWD's allotted capacity of the waste disposal facilities. RMWD's senior administrative officer shall sign a letter which transmits that report and certifies that the policy-making body is adequately informed about it. The report shall include:

- a. Average daily flow for the 30-day period, the date on which the instantaneous peak flow occurred, the rate of that peak flow, and the total flow for that day;
- b. RMWD's best estimate of when the average daily dry-weather flow rate will equal or exceed RMWD's allotted capacity of the facilities; and
- c. RMWD's intended schedule to control the flow rate before the waste flow rate equals the capacity of the Publicly Operated Treatment Work's present unit operations and processes.

If RMWD exceeds 95 percent of its allotted capacity, RMWD will be required to place a moratorium on sewer connections in its service area.

Section VIII. Flow and Strength Measurements

A. Flow Monitoring

RMWD has installed at the Point of Delivery a meter for the purpose of measuring the amount of wastewater delivered by RMWD to the City. All costs associated with the meter and installation of a replacement meter, if any, shall be paid by RMWD. The City shall approve the type of meter and method of installation of said meter. Flow metering equipment shall include redundant measuring techniques over the entire range of flows for which the station is intended to measure. Flow shall be monitored continuously.

B. Strength Reporting

RMWD shall install a City-approved wastewater strength sampling station adjacent to their existing flow metering station. Strength shall be sampled monthly for the first two years after Execution of this Agreement and then quarterly thereafter. Strength samples shall be collected for 24 uninterrupted hours each month or quarter such that each day of the week is represented over a seven sample period and no day of the week is represented in more than four out of twelve consecutive 24-hour samples. Each 24-hour composite sample shall consist of 24 individual samples, which are combined, such that each sample represents the volume of wastewater discharged during the time between samples. All strength samples shall be taken at the same location as the flow measurement station using an automatic sampling device.

Section IX. System of Charges

A. Charges Authorized

The City agrees to implement and RMWD agrees to abide by a new system of charges. These charges are detailed under Exhibit "C". This new system allows the City to equitably recover from RMWD that district's proportional share of the net Wastewater System Costs through the imposition of a new Wastewater Service Charge (WSC). The charges established by the City shall not discriminate against RMWD's customers, and shall be calculated on the same basis as comparable charges for City customers. Such charges shall be set at the lowest cost consistent with maintaining safe and environmentally sound sewer service to all users.

B. Wastewater Service Charge (WSC)

The City shall determine the WSC based on projected Wastewater System Costs (as defined below and detailed under Exhibit "C") for the forthcoming fiscal year.

1. Wastewater System Costs

The following shall at a minimum be considered Wastewater System Costs for purposes of calculating the annual WSC.

- a. Except as provided in Excluded Costs, Subsection 2 below, the annual costs associated with wastewater treatment administration, general administrative

allocation, operation, maintenance, annual debt service costs and other periodic financing costs and charges attributable to jointly debt financed facilities, capital improvements, insurance, premiums, claims payments and claims administration costs of the Wastewater System, including projected overhead costs.

b. A share of the annual costs associated with transmission costs of the categories listed above. This includes labor, maintenance, and utilities for the North Valley Sewer Lift Station and other joint transmission system facilities as herein defined.

c. Funding of a replacement reserve as required by the City's approved Revenue Program.

d. Fines or penalties imposed on the City as a result of the operation of the Wastewater System, unless the fine/penalty is allocated to the City or RMWD as provided in Section VI.

e. Costs incurred by the City, including attorneys' fees, necessary to implement the terms of this Agreement.

2. Excluded Costs

The following shall not be considered Wastewater System Costs for purposes of calculating the annual WSC:

a. Costs related to the City's municipal collection system as determined by reasonable calculations.

b. A share of City General Administrative allocation related to the municipal collection system, any bad debts, and administrative charges in lieu of taxes.

c. Costs related to the treatment of sewage from any agency, which is not party to this Agreement.

d. Capital Improvement Costs of any non-Wastewater System facility.

e. Debt service associated with City's municipal collection system capital program.

f. Debt service associated with City's share of wastewater treatment reclamation, transmission, and outfall system capital programs.

C. Calculation of the WSC Rates

1. Variable Operations & Maintenance (O&M) and Capital Costs (These are detailed under Exhibit "C", Sections 3 and 4)

a. Prior to the initial implementation of the new system of charges, the City shall prepare a sample fiscal year estimate based on the City's Water Utilities - Wastewater Division Program FY 2001 Budget setting forth the cost categories, methodologies and sampling data used as a base for Strength Based Billing (SBB). SBB includes not only projected Flow but also Strength (BOD and SS). Until one year's strength baseline is established by the sampling station as defined in Section VIII., paragraph B, RMWD's wastewater strength shall be estimated at 200 BOD and 200 SS, which is equal to residential strength in the City of Oceanside. Projected flow will be based on prior year's flow of 178.9 MG.

b. The City shall determine the unit WSC variable rates by allocating net costs (Variable Wastewater System Costs less Variable Wastewater System Revenues, if any) among the parameters of Flow, BOD, and SS. This allocation is based on the City's approved Revenue Program cost allocation factors for Operation and Maintenance (O&M) and Capital Costs allocated to the three parameters. The City may revise the calculations to include any other measurement required by law after the effective date of this Agreement.

c. The net variable cost allocated to each of the three parameters (Flow, BOD, and SS) shall be divided by the total Wastewater System quantity for that parameter to determine the unit rates for Flow, BOD and SS at the point of delivery into the Oceanside wastewater system.

d. RMWD shall pay for variable transmission cost based on flow as detailed under Exhibit "C", Section 3.

e. RMWD shall pay for variable treatment costs based on flow, BOD, and SS as detailed in Exhibit "C", Section 4.

2. Fixed O&M and Capital Costs
(These are detailed under Exhibit "C", Sections 1 and 2)

a. RMWD shall, on an annual basis, provide City the total number of residential and non-residential units connected to RMWD's sewer system on a per meter size basis. The number of equivalent meters shall be the basis for capacity related fixed cost allocation.

b. The City shall determine the unit WSC capacity related fixed rate by allocating net fixed costs (Fixed Wastewater System Costs less Fixed Wastewater System Revenues) divided by the total Wastewater System number of equivalent meters. This is detailed under Exhibit "C", Section 1.

c. RMWD shall pay for customer related costs on a per account basis as detailed under Exhibit "C", Section 2.

3. Replacement Reserve
(This is detailed under Exhibit "C", Section 5)

a. Pursuant to EPA and SWRCB requirements a separate line item for replacement must be shown in the calculation of the annual revenue requirement for the WSC. Replacement costs include all expenditures required for the Wastewater System to operate for its design life.

b. Annually a deposit will be made by RMWD into a replacement account established by the District for such purposes and acceptable to the City of an amount equal to RMWD's share of straight-line depreciation of the Wastewater System. RMWD's share of the straight line depreciation shall be based on RMWD's then current wastewater flow in the Wastewater System as detailed under Exhibit "C", Section 5. RMWD's bank shall send City monthly statements for the replacement account to the attention of the Water Utilities Director.

c. Funds in the RMWD replacement account will, insofar as possible, be invested, and actual interest accrued to the account. Disbursements from said

account shall be made by the RMWD's bank upon vouchers prepared and certified by the City for necessary replacement capital projects.

d. If the amount in the account is insufficient to pay for RMWD's share of the required replacement capital projects, the District shall fund its share of replacement costs from other District funds.

e. If RMWD is unable to forward the requisite funds to the City in a timely fashion, it may request the City to advance the required funds. If the City is required to advance funds the City shall be entitled to interest on the advanced funds equal to the rate of return on the investment of the City's portfolio plus 5 percent. In the event RMWD fails to reimburse the City the required funds, with interest, within 90 calendar days, RMWD shall be liable for additional interest on the outstanding principal and interest owed at the legal rate. Nothing in this section shall construe the City to advance such funds.

D. Estimate and Billing Schedule and Year End Adjustment

1. Estimate – The City shall estimate the WSC rates on an annual basis. The City shall quantify the WSC rates based on costs developed in the annual budget for the Water Utilities – Wastewater Division and by estimating the quantity of Flow, BOD, SS, and equivalent meters for each party, based on that party's actual flow, cumulative data of sampling for BOD and SS over the preceding years, and most recent equivalent meter count. City will provide a copy of its adopted budget to RMWD as part of the budgetary process.

2. The City shall bill RMWD on a monthly basis in an amount equal to 1/12th (one-twelfth) of the annual amount determined above. Each bill shall be paid within thirty (30) days of mailing. Monthly billings will consist of total estimated cost for RMWD, based on RMWD's prior year-metered flow, estimated BOD and SS, and equivalent meter and customer counts.

3. Interest charges shall accrue on the unpaid balance of any monthly billing from the date payment is due at the rate of ten percent (10%) per annum. Acceptance by the City of any partial payment shall not constitute a waiver of the City's right to levy late charges, to collect interest on the full amount due, or to demand payment in full.

4. Year-End Adjustments – At the end of each fiscal year, the City shall determine the actual Wastewater System Costs as set forth in the City's audited Financial Statements and the actual Flow as well as the cumulative strength data and number of equivalent meters. The City shall make any necessary adjustments to the unit rates for Flow, BOD, SS or equivalent meters based on actual costs for the year. The City shall then recalculate the variable and fixed portions of the WSC for the year using actual costs for the year, actual Flow, cumulative strength factors, and equivalent meters for the City and RMWD. The City shall credit any future charges or bill for any additional amounts due, the quarter after the prior year costs have been audited.

Section X. Construction By City

Construction costs shall be prorated to the parties in accordance with capacity rights reserved in that particular segment of work. For the purposes of this Agreement, City's construction cost of each facility shall be determined by computing the total construction cost of each facility, including the cost of land and rights of way, engineering, administrative costs, inspection and legal fees directly attributable to said construction after deducting from said total construction cost the amount of previous Federal and State grant and or loan funds received by City for previous construction. If grants and or loans received by City are not allocated to the respective facilities, the total amount of the grant and or loan received for the entire project shall be allocated to the respective facilities in the proration that the total construction cost of each facility bears to the total construction cost of all the facilities.

A. Administrative Construction Costs

The administrative-construction expense for construction projects will be prorated between the parties based upon the parties' respective capacity rights in the project. RMWD shall pay the City a general administrative overhead charge equaling 2.7 percent of RMWD's share of the cost to design and construct the project.

B. Deposits and Disbursements

1. The City shall have no obligation to proceed with advertising for bids for new construction projects until RMWD deposits in a separate District construction fund account established for such purposes and acceptable to the City RMWD's share of estimated project costs. If the bids for the work indicate the deposit is insufficient, the City shall notify RMWD. RMWD shall within 30 days increase the deposit so that the account will have sufficient funds for RMWD's share of the work. RMWD's bank shall send City monthly statements for the construction fund account to the Water Utilities Director.
2. Funds in the construction fund account will be invested, and actual interest will accrue to the account. Disbursements from said account shall be made by RMWD's bank upon vouchers prepared and certified by the City and approved by RMWD.
3. If RMWD is unable to deposit the requisite funds into the construction fund in a timely fashion, it may request the City to advance the required funds. If the City advances funds, it shall be entitled to interest on the advanced funds equal to the rate of return on the investment of the City's portfolio plus 5 percent. In the event RMWD fails to reimburse the City the required funds, with interest, within 90 calendar days, RMWD shall be liable for additional interest at a rate of 10 percent per year. Nothing in this section shall require the City to advance such funds.
4. If RMWD fails to deposit funds to the construction fund account it shall bear the entire cost of any contract penalties that may be incurred because of District's failure.

Section XI. Reclaimed Water System Operation

Nothing contained herein is intended to limit or govern the rights of either party to own, operate, produce and or distribute reclaimed water independent of the other party, nor is anything contained herein intended to give either party rights to any such existing facilities.

Section XII. Dispute Resolution

The parties shall first attempt to resolve any claim, controversy or other dispute arising under this Agreement by negotiations among the staff of each party. If resolution can not be reached, the parties shall mediate the claim, controversy or other dispute arising under this Agreement. The costs of mediation shall be borne equally by each party.

Any remaining dispute regarding any part of this Agreement shall be resolved by arbitration pursuant to the rules of the American Arbitration Association.

Section XIII. General Provisions

A. Revenue Program Requirements

RMWD shall prepare a Revenue Program as required by the Environmental Protection Agency and State Water Resources Control Board for all agencies benefiting from State and Federal grants and/or State Revolving Fund loans. The Revenue Program shall comply with the applicable Federal and State laws and regulations, including the Revenue Program Guidelines of the *Policy for Implementing the State Revolving Fund for the Construction of Wastewater Treatment Facilities* published by the California State Water Resources Control Board, dated June 18, 1998, or as it may be revised from time to time. Biannually, while this Agreement is in effect, RMWD shall provide the City with a copy of RMWD's Revenue Program for that upcoming fiscal year. Any actions by State or Federal agencies against the City for RMWD's failure to submit a Revenue Program approvable by the State Water Resources Control Board, which results in expense or damage to the City, shall be the sole responsibility of RMWD. RMWD shall reimburse the City for all such expense or damage as provided for in Section IX, Subdivision D.3 hereof.

B. Termination

This Agreement shall continue in full force and effect in perpetuity or until terminated by the mutual agreement, in writing, of the parties hereto.

C. Allocation Upon Total or Partial Termination

If both parties desire to terminate this Agreement or to terminate use of a portion of the Wastewater System by one of the parties, the property acquired hereunder, which use is to be terminated, shall be disposed of by the City and the proceeds thereof divided or distributed to the parties in the same proportion as party's contributions to construction costs for the facility or equipment in question. Property to be disposed of shall have its value determined in a mutually agreeable manner.

E. Insurance

The City shall maintain, during the life of this Agreement, such public liability and property damage insurance as shall protect parties from claims for damages or personal injury, including accidental death, as well as from claims for property damage, which may arise from its operations under this Agreement, whether such operations be by the City or by any contractor or subcontractor or anyone directly or indirectly employed by the City. The amount of such insurance shall be as from time to time determined by the parties.

RMWD shall maintain, during the life of this Agreement, such public liability and property damage insurance as shall protect parties from claims for damages or personal injury, including accidental death, as well as from claims for property damage, which may arise from its operations under this Agreement, whether such operations be by RMWD or by any contractor or subcontractor or anyone directly or indirectly employed by RMWD. The amount of such insurance shall be as from time to time determined by the parties.

F. Agreement Binding on All Parties

The provisions of this Agreement shall inure to the benefit of, and be binding upon, each of the parties and their successors and assigns.

G. Captions

The captions contained herein are for the convenience of the parties and shall not be considered in interpreting this Agreement, construed as part of this Agreement or as full or accurate descriptions of the terms hereof.

H. Prior Agreements

This Agreement supercedes the prior agreements of the parties and is substituted therefore, provided, however, all apportionment of costs, expenses or liability heretofore made or incurred shall not be affected by terms hereof.

I. Review

The chief executive officer of each party shall examine this Agreement at least every five (5) years and jointly report thereon to the governing Boards of the parties.

J. Amendments and/or Changes to Agreement

Any amendments and/or changes to this Agreement must be in writing, signed by a duly authorized representative of the Parties hereto, and must expressly state the mutual intent of the Parties to amend this Agreement as set forth herein.

K. Notice

1. Any notice required under this Agreement shall be written and shall be served either by personal delivery, mail or fax.

2. In the case of service by personal delivery or fax, no additional time, in days, shall be added to the time in which a right may be exercised and an act may be done.

3. In the case of the service by mail, notice must be deposited in a post office, mailbox, sub-post office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the representative(s) of the a Party on whom it is to be served, at the office set forth in Section 4 below. The service is complete at the time of deposit. Any period of notice and any right to duty to do any act or make any response within any period or on a date certain after service of notice by mail shall be extended five days. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days.

4. Any notice required this Agreement shall be served on the following representative(s) of the Parties:

City of Oceanside:

Water Utilities Director
City of Oceanside Water Utilities Department
300 North Coast Highway
Oceanside, CA 92054

Rainbow Municipal Water District:

General Manager
Rainbow Municipal Water District
PO Box 2500
Fallbrook, CA 92088-2500

L. Construction of Agreement

Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.

M. Severability

Should any non-material provision of the Agreement be held invalid or illegal, 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 part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

N. Choice of Law

This Agreement shall be construed and enforced pursuant to the laws of the State of California.

O. Authority to Enter into Agreement

Each Party represents and warrants that its respective obligations herein are legal and binding obligations of such Party, that each Party is fully authorized to enter into this Agreement, and that the person signing this Agreement hereinafter for each Party has been duly authorized to sign this Agreement on behalf of said Party.

P. Attorneys Fees

In any adversarial proceedings between the Parties, the prevailing Party shall be entitled to recover its costs, including reasonable attorneys' fees. If there is no clear prevailing party, the Court shall determine the prevailing party and provide for the award of costs and reasonable attorneys' fees. In considering the reasonableness of either Party's request for attorneys' fees as a prevailing party, the Court shall consider the quality, efficiency, and value of the legal services and similar/prevaling rate for comparable legal services in the local community.

Q. Waiver of Breach

No waiver or indulgence of any breach or series of breaches of this Agreement shall be deemed or construed as a waiver of any other breach of the same or any other provision hereof or affect the enforceability of any part of all of this Agreement. No waiver shall be valid unless executed in writing by the waiving Party.

R. Awareness of Contents/Legal Effect

The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.

Section XIV. Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this Agreement on behalf of the respective legal entities of the Rainbow Municipal Water District and the City of Oceanside.

**RAINBOW MUNICIPAL
WATER DISTRICT**

BY: Charles W. Kemp
SIGNATURE

Charles W. Kemp, General Mgr / CEO
NAME/TITLE

APPROVED AS TO FORM:
RMWD ATTORNEY

CITY OF OCEANSIDE

BY: [Signature]
STEVEN R. JENSEN
CITY MANAGER

[Signature]
ATTEST: CITY CLERK

[Signature]
APPROVED AS TO FORM:
CITY ATTORNEY

Section XIV. Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this Agreement on behalf of the respective legal entities of the Rainbow Municipal Water District and the City of Oceanside.

**RAINBOW MUNICIPAL
WATER DISTRICT**

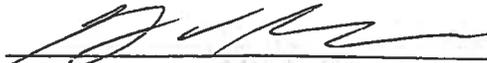
CITY OF OCEANSIDE

BY: _____
SIGNATURE

BY: _____
STEVEN R. JEPSEN
CITY MANAGER

NAME/TITLE

ATTEST: CITY CLERK



APPROVED AS TO FORM:
RMWD ATTORNEY
Gregory V. Moser
Foley & Lardner
February 1, 2002

APPROVED AS TO FORM:
CITY ATTORNEY

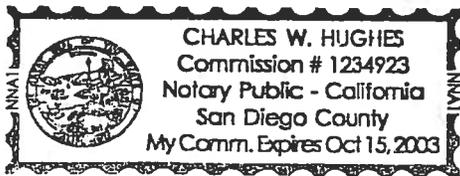
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of SAN Diego } ss.

On 2/1/02, before me, Charles W. Hughes, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Charles W. Kemp
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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



Place Notary Seal Above

WITNESS my hand and official seal.
Charles W. Hughes
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Agreement

Document Date: February 13, 2002 Number of Pages: 15

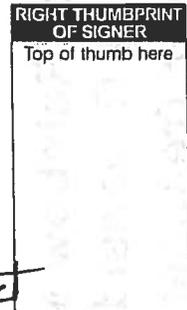
Signer(s) Other Than Named Above: Steven R. Jepsen

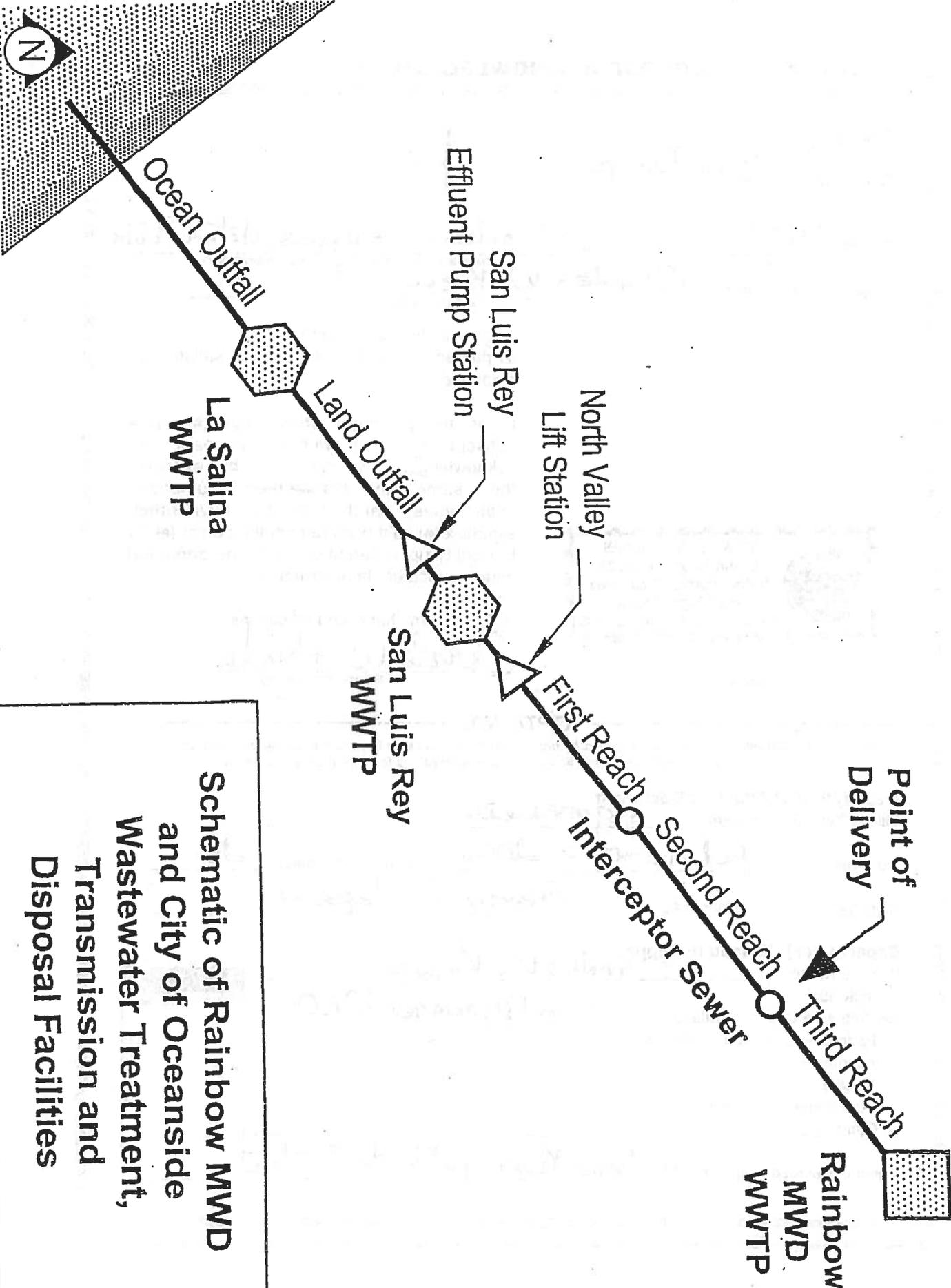
Capacity(ies) Claimed by Signer

Signer's Name: Charles W. Kemp

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

Signer Is Representing: Rainbow Municipal Water District





Schematic of Rainbow MWD and City of Oceanside Wastewater Treatment, Transmission and Disposal Facilities

Exhibit "B"

ALLOWABLE INFILTRATION

The average specification allowance is 500 gallons per day (gpd) in diameter inch per mile (ASCE, Design and Construction of Sanitary and Storm Sewers). This would appear, to be a good estimate of the average infiltration into Reaches One and Two, without making detailed, time-consuming measurements of the actual system.

DETERMINATION OF INFILTRATION FLOWS

Based on the figure of 500 gallons per day in diameter inch per mile, the total infiltration flows shall be as follows:

Reach One:

$$(500 \text{ gpd/in/mile}) (54.779 \text{ in-miles}) = 27,390 \text{ GPD}$$

Reach Two:

$$(500 \text{ gpd/in/mile}) (16.405 \text{ in-miles}) = 8,203 \text{ GPD}$$

ALLOCATION OF INFILTRATION FLOWS

- a. Reach One: Since District's capacity in this reach is 10.00% of design capacity, it shall be assumed that District's share of the infiltration flow in this reach shall be 10.00%.
$$(10.00\%) (27,390 \text{ GPD}) = 2,739 \text{ GPD}$$
- b. Reach Two: Since District's capacity in this reach is 58.25% of design capacity, it shall be assumed that District's share of the infiltration flow in this reach shall be 58.25%.
$$(58.25\%) (8,203 \text{ GPD}) = 4,778 \text{ GPD}$$
- c. District's total infiltration flow allocation of $2,739 + 4,778 = 7,517 \text{ GPD}$ shall be added to the measured flow at the Point of Delivery to determine the gallonage for which the District shall be billed.

Exhibit "B"

ALLOCATION OF INFILTRATION / INFLOW FOR INTERCEPTOR SEWER REACH
ONE AND REACH TWO BETWEEN DISTRICT AND CITY

REACH ONE

STA 4+ 58.20 to STA 104 + 80.62

STA 4 + 58.20 to STA 66 + 68.21 → 30" Ø

STA 66 + 68.21 to STA 104 + 80.62 → 27" Ø

6210.01' of 30" Ø → 19.495 in-miles

3812.41' of 27" Ø → 35.284 in-miles

TOTAL 54.779 in-miles

REACH TWO

STA 104 + 80.62 to STA 148 + 28.04

STA 104 + 80.62 to STA 132 + 69.19 → 21" Ø

STA 132 + 69.19 to STA 148 + 28.04 → 18" Ø

2788.57' of 21" Ø → 11.091 in-miles

1558.85' of 18" Ø → 5.314 in-miles

TOTAL 16.405 in-miles