

ADMINISTRATIVE AGREEMENT #1

AGREEMENT BETWEEN CITY OF SAN DIEGO AND PARTICIPATING AGENCIES IN THE METROPOLITAN SEWERAGE SYSTEM FOR UNIFIED MANAGEMENT OF INDUSTRIAL WASTE DISCHARGE PRETREATMENT AND ENHANCED SOURCE CONTROL PROGRAMS

This Administrative Agreement #1 (“**Administrative Agreement**”), Agreement Between City of San Diego and Participating Agencies in the Metropolitan Sewerage System for Unified Management of Industrial Waste Discharge Pretreatment and Enhanced Source Control Programs is entered by and among the CITY OF SAN DIEGO, a municipal corporation (“**City**”), on the one hand; and the CITY OF CHULA VISTA, a municipal corporation; the CITY OF CORONADO, a municipal corporation; the CITY OF DEL MAR, a municipal corporation; the CITY OF EL CAJON, a municipal corporation; the CITY OF IMPERIAL BEACH, a municipal corporation; the CITY OF LA MESA, a municipal corporation; the LEMON GROVE SANITATION DISTRICT, a political subdivision of the State of California; the CITY OF NATIONAL CITY, a municipal corporation; the CITY OF POWAY, a municipal corporation; the OTAY WATER DISTRICT, a political subdivision of the State of California; the PADRE DAM MUNICIPAL WATER DISTRICT, a political subdivision of the State of California; and the SAN DIEGO COUNTY SANITATION DISTRICT, a political subdivision of the State of California (individually a “**Participating Agency**” or collectively, the “**Participating Agencies**”), on the other hand, and shall be effective 30 days after execution by all Parties (the “**Effective Date**”). City and each Participating Agency may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, City operates the Metro System, a regional wastewater system that collects, treats and disposes of wastewater generated from within City’s boundaries and from within the service areas of the Participating Agencies, in accordance with NPDES Permit No. CA107409 and California Waste Discharge Requirements; and

WHEREAS, City desires to carry out a uniform industrial waste disposal, pretreatment and enhanced source control program (“**Industrial Pretreatment and Source Control Program**,” as defined below) on behalf of itself and the Participating Agencies in the Metropolitan Sewerage System (“**Metro System**”) throughout the Metro System service area; and to help ensure that City can meet the requirements of its NPDES permits, including implementation of both indirect potable reuse under Phase 1 of Pure Water San Diego and a potential future direct potable reuse (“**DPR**”) program; and

WHEREAS City and Participating Agencies determined that the centralized operation of an Industrial Pretreatment and Source Control Program provides certain **General Benefits** (as defined below) to all users of the Metro System. Absent an Industrial Pretreatment and Source Control Program providing these General Benefits, the increased costs would be incurred as general treatment and disposal costs of the Metro System. Additionally, any Participating Agency with Industrial Users in their jurisdiction would also incur the costs of operating their own program; and

WHEREAS, pursuant to Government Code Sections 6502 and 6513, the Participating Agencies may delegate to City full authority to carry out a common Industrial Pretreatment and Source Control Program, on behalf of City and the Participating Agencies, which meets the requirements of federal and state law, including City's required permits, and is consistent with the Industrial Pretreatment and Source Control Program ordinances enacted by City and each Participating Agency, as amended from time to time; and

WHEREAS, pursuant to such delegation, City may issue industrial user permits or discharge authorizations to Industrial Users, levy and collect industrial waste Discharge, Pretreatment, and permitting fees, fines and penalties, and recover other costs of monitoring and enforcement from industrial and other users discharging to the Metro System on behalf of the Participating Agencies; and

WHEREAS, City and the Participating Agencies must ensure that all Industrial Users within the Metro System are regulated under an effective Industrial Pretreatment and Source Control Program that conforms to all applicable laws, rules and regulations; and

WHEREAS, previously, City and the Participating Agencies individually entered into individual "Interjurisdictional Pretreatment Agreements" under which the Participating Agencies agreed to adopt and diligently enforce an ordinance which conforms to the minimum legal requirements contained in the Federal Pretreatment Regulations and other provisions of Federal and California law, including carrying out an industrial Pretreatment program and complying with all NPDES and waste discharge requirements issued to each Participating Agency; and

WHEREAS, currently, the costs related to the industrial Discharges inspection, monitoring, and enforcement program within City's boundaries, including related administrative and laboratory costs, are excluded from the amounts charged by City as Metro System Costs to City and the Participating Agencies pursuant to section 5.2.1.2.3 of the Amended and Restated Regional Wastewater Disposal Agreement ("ARA" as defined further herein), and

WHEREAS, City and the Participating Agencies agreed, pursuant to section 2.9.1.3 of the ARA, to negotiate in good faith to allow certain costs relating to the Industrial Pretreatment and Source Control Program to be charged as Metro System Costs to City and Participating Agencies in recognition of the General Benefits that the program provides to the Metro System; and

WHEREAS, based on the above, the Participating Agencies agree to delegate City, as the agent of each PA, and City agrees to accept, the authority and responsibility for diligently inspecting, monitoring and enforcing City's Industrial Pretreatment and Source Control Program ordinances on behalf of the Participating Agencies within their respective boundaries through administrative or legal proceedings, with Participating Agencies working in coordination with City as necessary in enforcement efforts. The City shall not be responsible for, and does not accept authority or responsibility to inspect, monitor or enforce any source control program requirements for any Participating Agency's NPDES permits, and

WHEREAS, City and Participating Agencies intend for all costs relating to the Industrial Pretreatment and Source Control Program be recovered, to the maximum extent permissible by law, through fees, costs, charges, and fines billed directly to Industrial Users subject to the

Industrial Pretreatment and Source Control Program, and for such fees, costs, charges, and fines to be reviewed and updated periodically to ensure maximum cost recovery. These costs include, but are not limited to, costs of permitting, inspection, compliance monitoring, setting of Local Limits, source control, and enforcement.

NOW, THEREFORE IT IS AGREED:

1. **RECITALS INCORPORATED.** The foregoing recitals are true and correct and are hereby incorporated into this Administrative Agreement by reference.

2. **DEFINITIONS.** Terms in this Administrative Agreement shall have the same meaning as set forth in the Code of Federal Regulations [C.F.R.] at 40 C.F.R. 401.11 and 403.3. The meaning of various other terms as used in this Administrative Agreement shall be as follows:

(a) **“Act”** means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(b) **“ARA”** means Amended and Restated Regional Wastewater Disposal Agreement executed by and between the City and the Participating Agencies.

(c) **“Categorical Pretreatment Standard,” “Categorical Standard,” “National Pretreatment Standard,” “Pretreatment Standard,” or “Standard”** means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 C.F.R. 403.5.

(d) **“C.F.R.”** means the Code of Federal Regulations.

(e) **“Discharge” or “Indirect Discharge”** means the introduction of pollutants into the POTW from any nondomestic source regulated under section 307(b), (c), or (d) of the Act.

(f) **“EPA”** means the United States Environmental Protection Agency.

(g) **“FOG”** means Fats, Oils and Greases. Any substance such as a vegetable or animal product that is used in, or is a byproduct of, the cooking or food preparation process, and that turns or may turn viscous or solidifies with a change in temperature or other conditions.

(h) **“Food Establishment”** means food facilities defined in California Retail Food Code (commencing with Health and Safety Code section 113700), and any commercial entity within the boundaries of City and the Participating Agencies, operating in a permanently constructed structure such as a room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, or manufacturing, packaging, or otherwise handling food for sale to other entities, or for consumption by the public, its members or employees, and which has any process or device that uses or produces FOG, or grease vapors, steam, fumes, smoke or odors that are required to be removed by a Type I or Type II hood, as defined in the California Retail Food Code. A limited food preparation establishment is not considered a Food Service Establishment when engaged only in reheating, hot holding or assembly of ready to eat food products and as a result, there is no wastewater Discharge containing a significant amount of FOG. A limited food preparation establishment does not include any operation that changes the form, flavor, or consistency of food.

(i) **“General Benefits”** mean and refer to the benefits provided to all users of the Metro System as the result of the Industrial Pretreatment and Source Control Program, including, but not limited to: a decrease in damage to and extended life of collection systems, pump stations and treatment systems by limiting Discharge of corrosive chemicals; consistency and efficiencies in enforcement, such as the provision of a database for potential violations of permit requirements and a reduction in time to identify sources of actual or potential violations; a decreased risk of permit violations that could result in fines and increased permitting costs to customers; the centralized conduction and management of strength and other sampling for agency billings, or as required for investigation of sewer system issues; increased regional awareness of impacts of Discharges of hazardous materials to the Metro Sewer System; a safer sewer system for wastewater employees; a reduction in illegal Discharges to the Metro System (because City will monitor and accept trucked waste and septage from septic tanks from customers throughout the county); and avoidance or reduction of Discharges to system that could result in plant upsets, bypass, spills, or other disruption of the system, including avoiding penalties or fines resulting from the same.

(j) **“General Benefits Costs”** mean and refer to the costs associated with providing General Benefits to the Metro System, which are calculated as set forth herein. General Benefits Costs shall be charged to the City and the Participating Agencies based on their proportionate share of Flow and Strength, as defined in the SARA.

(k) **“Industrial Pretreatment and Source Control Program”** means an industrial waste Discharge, Pretreatment, and source control program that is sufficient to meet the requirements of federal and state law and the City’s NPDES Permit requirements relating to the Discharge to public sewers upstream of the Metro System. Such program may include, but not be limited to, permitting, inspection, compliance monitoring, Local Limits , source control mechanisms, laboratory work, enforcement, program administration and overhead, and claims relating to the program. The City’s program is known as the Industrial Wastewater Control Program or IWCP.

(l) **“Industrial Wastewater”** means wastewater from any producing, manufacturing, processing, institutional, commercial, service, agricultural, or other similar operation even if such wastewater is combined with domestic wastewater, and includes groundwater and surface run-on at project sites with active construction dewatering or groundwater remediation as defined in Chapter 6, Article 4, Division 2 of the San Diego Municipal Code. If the definition of Industrial Wastewater provided in Chapter 6, Article 4, Division 2 of the San Diego Municipal Code is modified during the term of this Agreement in a way that conflicts with this definition, the meaning in the San Diego Municipal Code shall supersede this definition, without the necessity of an amendment to this Agreement.

(m) **“Industrial User”** means a source of Indirect Discharge.

(n) **“Industrial Users’ Costs”** means that portion of the Total Program Costs remaining to be allocated among Industrial Users in accordance with applicable law, after deducting the Trucked Waste Costs and the amount of the General Benefits Costs from the Total Program Costs.

(o) **“Interference”** means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW’s National Pollutant Discharge Elimination System [NPDES]

permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act [SWDA] (including title II, more commonly referred to as the Resource Conservation and Recovery Act [RCRA], and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(p) **“Laboratory Services Costs”** mean that portion of the laboratory services costs incurred by the City related to IWCP, determined by the number of IWCP samples processed compared to the number of total samples processed by the laboratory. For example, if the laboratory services processed 100 total samples in a year, and 40 of those samples were IWCP samples, then 40% of the City’s total Laboratory Services Costs would be part of the Total Program Costs as defined below.

(q) **“Local Limit”** means a numerical limit on a pollutant established by the City to implement the general and specific prohibitions currently set forth in San Diego Municipal Code section 64.0512, as may be amended, renumbered, or retitled from time to time. Such limits shall be technically based and shall require EPA and/or Regional Water Quality Control Board approval prior to implementation.

(r) **“Metro System”** means and consist of those facilities of the Metropolitan Sewerage System which are listed, shown and/or described in Exhibit A attached to the SARA, as may be amended from time to time.

(s) **“Publicly Owned Treatment Works”** or **“POTW”** means treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(t) **“POTW Treatment Plant”** means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(u) **“Pretreatment”** means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 C.F.R. 403.6 (d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 C.F.R. 403.6(e).

(v) “**Pretreatment Requirement**” means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

(w) “**SARA**” means the Second Amended and Restated Regional Wastewater Disposal Agreement made and entered into by and between the CITY OF SAN DIEGO, a municipal corporation, on the one hand; and the CITY OF CHULA VISTA, a municipal corporation; the CITY OF CORONADO, a municipal corporation; the CITY OF DEL MAR, a municipal corporation; the CITY OF EL CAJON, a municipal corporation; the CITY OF IMPERIAL BEACH, a municipal corporation; the CITY OF LA MESA, a municipal corporation; the LEMON GROVE SANITATION DISTRICT, a political subdivision of the State of California; the CITY OF NATIONAL CITY, a municipal corporation; the CITY OF POWAY, a municipal corporation; the OTAY WATER DISTRICT, a political subdivision of the State of California; the PADRE DAM MUNICIPAL WATER DISTRICT, a political subdivision of the State of California; and the SAN DIEGO COUNTY SANITATION DISTRICT, a political subdivision of the State of California (collectively, the “Participating Agencies”), on the other hand.

(x) “**Total Program Costs**” means all of the costs incurred by the City’s Public Utilities Department to staff, operate, and maintain the City’s Industrial Wastewater Control Program (or successor program if renamed in the future). Permissible program costs include but are not limited to personnel, permit issuance, monitoring and related programmatic and administrative costs including costs associated with reasonable overhead, regulatory compliance, and laboratory services.

(y) “**Trucked Waste Costs**” mean the costs associated with administering the City’s Industrial Wastewater Control Program and treating the wastewater disposed of into the wastewater system through delivery by a transport truck, which costs are charged directly to the trucking discharger.

3. **ORDINANCE ADOPTION.** No later than 60 days after the Effective Date of this Administrative Agreement, each Party to this Administrative Agreement shall begin the process of amending its Pretreatment ordinances or resolutions, as applicable, including providing public notices as may be required by law, as necessary to implement this Administrative Agreement. Each Participating Agency shall adopt an ordinance delegating authority to City to implement, operate and enforce an Industrial Pretreatment and Source Control Program against Industrial Users in the Metro System, in a form substantially similar to the model ordinance attached to this Administrative Agreement as **Attachment A**. Each Participating Agency must provide a copy of its adopted ordinance to City. Each Party’s revised ordinances or resolutions (as applicable) governing Pretreatment shall be adopted and effective by no later than the effective date of the SARA as set forth in Section 14.1 of the SARA.

4. **NOTICE AND AMENDMENTS.** On or shortly after the Effective Date of this Administrative Agreement, City shall notify the Participating Agencies of any amendments to City’s ordinances or Municipal Code relating to Pretreatment, in order to develop and maintain, insofar as possible, a uniform set of wastewater disposal regulations at least as stringent as those adopted by City throughout the Metro System, including the established Local Limits and source control measures for protection of the Pure Water program. Throughout the life of this

Administrative Agreement, City shall continue to notify the Participating Agencies of any amendments to City's ordinances or Municipal Code relating to the Industrial Pretreatment and Source Control Program which may require the Participating Agencies to take action to ensure their ordinances, rules or regulations relating to Pretreatment conform or adhere to City's rules and requirements. When necessary, each Participating Agency shall adopt and routinely maintain Industrial Pretreatment and Source Control Program ordinances or resolutions which conform or adhere to the rules adopted by City. City shall not require that the Participating Agencies adopt any ordinances or amendments that are more stringent than ordinances or amendments that have been adopted by City.

5. **IDENTIFICATION OF INDUSTRIAL USERS.** Participating Agencies shall be responsible for notifying all known Industrial Users in their jurisdiction which are subject to regulation under the Act about the change from Participating Agency to City Pretreatment oversight, and the change from Participating Agency to City direct billing and enforcement, by no later than the first July 1 after the Effective Date of this Administrative Agreement. The cost of this notice will be borne by the individual Participating Agency providing the notice. Each Participating Agency shall create and maintain a reporting procedure mutually acceptable to the City and Participating Agency that includes a monthly report identifying potential new Industrial Users, including the name of the business, business address, type of business, and contact information. The reporting procedure shall also include a requirement that the Participating Agency promptly inform the City of a potential new Industrial User after the Participating Agency becomes aware of the new potential Industrial User. Each Participating Agency shall provide notice and a blank copy of the City's Industrial Wastewater Control Program Industrial User Permit application to each identified potential new Industrial User. The notice may indicate that the Pretreatment program fees or charges billed and collected by City are in addition to any business license fees, permits or general wastewater service charges adopted and imposed by the Participating Agency. The notice shall be in a form approved from time to time by City. Thereafter, it shall be the responsibility of the City and the potential new Industrial User to coordinate regarding potential permitting and compliance, subject to the provisions in Section 2.8.6 of the SARA which govern permitting and permit compliance. New residential users, and dischargers of FOG, including Food Establishments, to the Participating Agencies' collection system need not be reported to City, absent unusual circumstances. City and each Participating Agency shall meet and confer prior to making changes to administrative procedures unique to a Participating Agency relating to the identification of a potential new Industrial User.

6. **INVENTORY.** City shall create and maintain an inventory, that will be available to the Participating Agencies upon request, of all Industrial Users within the Metro System as soon as reasonably practicable after the Effective Date of this Administrative Agreement. If the City includes this inventory in an annual report, no additional inventory is required to be created. Upon request from a Participating Agency, the City will provide the location or locations, and the point of contact for each Industrial User. City shall update this inventory as often as reasonably practicable, but by no later than March 1 of each year. If a Participating Agency is aware of an Industrial User within its jurisdiction which is not noted on the City's inventory, the Participating

Agency shall promptly notify the City of the name of the business, business address, type of business and contact information so that the City may investigate as appropriate.

7. **EVALUATION, PERMITTING AND MONITORING.** It shall be City's right and obligation to perform all evaluation, permitting, and monitoring required under the Act or any National Pretreatment Standards as required by City's NPDES permit, for all Industrial Users discharging to the Metro System. City shall review and amend its Pretreatment Requirements as necessary, but no less than every five (5) years, to ensure full compliance with Federal and State Laws. The City shall follow the requirements set forth in Section 2.8.6 of the SARA with respect to permitting and permit compliance. The City shall not be responsible for evaluation, permitting, or monitoring requirements contained in a Participating Agency's NPDES Permit.

8. **DILIGENT ENFORCEMENT.** City shall be responsible for identifying any Interference or other unlawful Discharges by Industrial Users in the Metro System, other than Discharges by Food Establishments and other FOG dischargers, and shall be responsible for initiating and administering enforcement actions related to the violation of any applicable laws, rules, or regulations associated with Discharge. The Participating Agencies hereby delegate authority to City to diligently enforce the provisions of Article 4, of Chapter 6, commencing with § 64.0100, et seq. of City's Municipal Code, as may be updated or amended, against Industrial Users throughout the Metro System and in each Participating Agency's service areas, and City hereby accepts these enforcement rights, liabilities and obligations; provided, however, that each Participating Agency shall undertake within their boundaries, primary enforcement of Food Establishment and FOG Discharges to protect the collection system within its jurisdiction and City shall have no responsibility therefor.

(a) City may, in its authority as provided herein, commence informal or formal enforcement procedures against a delinquent Industrial User according to the procedures set forth in the City's then current Enforcement Response Plan. If City issues formal enforcement to an Industrial User in a Participating Agency's jurisdiction, City shall carbon-copy that Participating Agency on the letter or transmission delivering the Compliance Order to the Industrial User in order to ensure the Participating Agency receives notice that formal enforcement procedures have commenced in its jurisdiction.

(b) City may revoke an Industrial User permit as provided in City's Enforcement Response Plan. Before a Permit Revocation Notice is delivered to an Industrial User in a Participating Agency's jurisdiction, City shall contact that Participating Agency to discuss and, if necessary, coordinate termination of the Industrial User's services. City and the Participating Agency shall work together in identifying a termination of services date before City delivers a Permit Revocation Notice to the Industrial User.

9. **ENFORCEMENT AND COOPERATION BY PARTICIPATING AGENCIES.** Nothing herein shall be construed as prohibiting any Participating Agency from enforcing its own Pretreatment ordinance within its jurisdiction, nor shall this agreement require the City to accept a delegation of authority to enforce a Pretreatment ordinance adopted by a

Participating Agency that is more stringent or contains different requirements than the City's. Notwithstanding the delegation of authority to City, each Participating Agency retains authority to implement and enforce its own ordinance and to contract with other agencies for such purposes, including without limitation through a joint powers agreement. However, such enforcement shall be in cooperation and coordination with the City and shall not interfere with City's enforcement. Participating Agencies shall be solely responsible for enforcement of Discharges of FOG and Food Establishments within their service areas. In the event a Participating Agency adopts an ordinance more stringent than City's, the Participating Agency may enforce the ordinance itself, or negotiate and enter into a separate agreement with City under which City will enforce the Participating Agency's ordinance; provided, however, that any added costs of such enforcement will be borne by the Participating Agencies adopting the ordinance and shall not be borne by City or the other Participating Agencies. If the authority of City to act as agent of a Participating Agency is challenged by any person in a manner which may restrict or prevent City from performing the permitting, inspection, monitoring or enforcing of applicable provisions of law, the Participating Agency will cooperate in good faith with City and take such actions as are reasonably necessary to ensure effective implementation and enforcement of the Participating Agency's ordinance and this Administrative Agreement.

10. **COSTS FOR INDUSTRIAL WASTE CONTROL PROGRAM.** City shall, not less often than every 5 years, adopt resolutions establishing fees, costs, charges and fines sufficient to recover the full cost of carrying out the Industrial Pretreatment and Source Control Program. City shall directly bill Industrial Users to recover the costs and charges of the Industrial Pretreatment and Source Control Program, with additional billings sent directly to Industrial Users as needed for any enforcement costs (including related monitoring) incurred by City.

(a) Method for Allocating Industrial Pretreatment and Source Control Program Costs. To establish the costs that are recovered from Industrial Users, the City will take the following steps during each annual budget process:

1. Determine the budgeted Total Program Costs for the upcoming Fiscal Year. The budgeted Trucked Waste Costs and budgeted General Benefits Costs shall be determined periodically, but no less often than every five (5) years, consistent with the cost-of-service study required by Section 10(d) below.
2. Deduct the budgeted Trucked Waste Costs and the amount of the budgeted General Benefits Costs from the budgeted Total Program Costs for the upcoming Fiscal Year.

In other words: (Total Program Costs) – (Trucked Waste Costs) – (General Benefits Costs) = (Industrial Users' Costs)

3. Allocate the remaining costs to Industrial Users as Industrial Users' Costs through permit fees and annual charges ("**Permit Fees**").

(b) If, at the end of a Fiscal Year, the actual Total Program Costs are determined to have exceeded the total amounts collected from Industrial Users' Costs, Trucked Waste Costs, and General Benefit Costs, the remaining costs for that fiscal year shall be allocated to the City and the Participating Agencies with Industrial Users within their jurisdiction, in proportion to the total Permit Fees charged to Industrial Users in each Party's jurisdiction compared to the total amount of Permit Fees charged for all Industrial Users for the applicable fiscal year. For example, if the Permit Fees charged for Industrial Users in the City of San Diego is \$2,000,000, and the Permit Fees charged to all Industrial Users in that same fiscal year was \$4,000,000 then fifty-percent (50%) of the remaining costs for that fiscal year ($\$2,000,000/\$4,000,000$) will be allocated to the City of San Diego. The remaining Participating Agencies shall pay their respective proportionate shares according to the same methodology (Permit Fees charged for Industrial Users in the Participating Agencies Jurisdiction divided by the total Permit Fees charged for the fiscal year). See the table attached hereto as **Attachment B** for a more complete example.

(c) City shall seek, to the maximum extent permitted by law, to ensure that Industrial Users' Costs shall be paid for entirely by the Industrial Users regulated under the ordinances of City and Participating Agencies, through permit fees, fines, administrative penalties, inspection fees and other cost recovery mechanisms provided for under the ordinances of City and Participating Agencies, as applicable. However, this section is not intended to prevent the City from approving Industrial User fees based on a cost of service study that phases in fee increases to mitigate significant fee spikes, which may not be fully cost recoverable for a specific fiscal year as further discussed in subsection 10(h) below.

(d) Periodically, but no less often than every five (5) years, City shall cause to be performed a cost-of-service study or other appropriate study to ensure that permit fees, fines, administrative penalties, inspection fees and other cost recovery mechanisms, including General Benefit costs, are sufficient to fully fund the Industrial Pretreatment and Source Control Program. The City will work with Metro JPA staff as part of this process in advance of any presentation to the Metro Commission or the San Diego City Council. The costs of this study shall be allocated based on the results of the study as either programmatic or administrative costs.

(e) The City will bring a yearly update to the Metro Commission, after the release of the City's Annual Comprehensive Financial Report (ACFR), that provides an update on the program and will include recorded revenues and expenses for the completed year.

(f) City will provide notice of fee structure changes in accordance with the requirements of City's Municipal Code as well as applicable state rules.

(g) City will make a good faith effort to conduct outreach to Industrial Users regarding potential changes to the program fees.

(h) If the City proposes a fee structure for Industrial User fees based on a cost of service study that is not fully cost recoverable for a fiscal year (or years) that are part of the study in order to phase-in or mitigate significant fee increases for Industrial Users, the City will provide a presentation to the Metro Commission on the proposed fees and how it would impact the

calculation in Sections 10(a) and 10(b) above. If the Metro Commission takes a vote regarding the proposed fee structure, City staff will provide that information to the City Council for the City Council's consideration at the time the proposed fees are before the City Council for adoption, however, the City Council may choose to adopt the fee or not, in accordance with its legislative authority. If the fees adopted based on a cost of service study are set at an amount intended to recover the full cost of carrying out the Industrial Pretreatment and Source Control Program over the study period (but not to exceed five (5) years), no Participating Agency shall have a claim against the City for a failure to adopt fully cost recoverable fees.

(i) City will in its sole discretion select and procure billing system software to use for this program.

11. **TERMINATION OF INDIVIDUAL PRETREATMENT AGREEMENTS.** Any and all previously approved "Interjurisdictional Pretreatment Agreements" between City and any Participating Agency shall be terminated on the Effective Date of the SARA.

12. **PERMIT OBLIGATIONS CONTINUE.** Nothing herein shall be construed to relieve any Industrial User to the Metro System of the responsibility to obtain a permit for, and to comply with rules and regulations applicable to Industrial Users to the Metro System.

13. **LIABILITIES.** If a third-party liability, penalty or fine arises relating to City's operation of this Industrial Pretreatment and Source Control Program, then all costs arising from the liability, penalty or fine shall be directly passed through to the Industrial User(s) found to be responsible for the liability, penalty or fine. If the Industrial User(s) responsible for the liability, penalty or fine cannot be ascertained or identified, or if the Industrial User(s) initiates bankruptcy proceedings or is declared bankrupt, then the liability, penalty or fine shall be absorbed as part of the Total Program Costs, and shall be allocated among the City and the Participating Agencies in accordance with the methodology described in Section 10(b). The Participating Agencies shall not be responsible for any liability, penalty or fine, or portion thereof, that arises from City's gross negligence or willful misconduct.

14. **DELEGATION OF AMENDMENT OR TERMINATION AUTHORITY TO METRO COMMISSION.** The Participating Agencies hereby delegate to the Metro Commission the authority to approve, by a vote of no less than two-thirds of the members of the Metro Commission at a duly noticed public meeting (in other words, upon the affirmative vote of no less than eight of the twelve members of the Metro Commission, irrespective of how many Metro Commissioners are present at the meeting), any amendments or supplements to this Administrative Agreement, including, if necessary, termination of this Administrative Agreement.

15. **MISCELLANEOUS PROVISIONS.**

(a) A Participating Agency's local limits may be more stringent than the City's Local Limits, but may not be less stringent.

(b) City is performing services under this Administrative Agreement as an independent contractor and is not an employee of any of the Participating Agencies. No employee or agent of City shall be considered an employee of any of the Participating Agencies. City shall be and remain responsible for all payroll, compensation, employee benefits, and employment administration of any of its employees who perform services under this Administrative Agreement.

(c) Books, documents, papers, accounting records, and other evidence pertaining to costs and revenues related to this Administrative Agreement shall be maintained by City and made available Participating Agencies to the same extent as under the SARA.

(d) If any term of this Administrative Agreement shall be held invalid in any judicial action, the remaining terms shall be unaffected.

(e) Other agreements by and between the Parties to this Administrative Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Administrative Agreement, except as expressly provided herein.

(f) Except as otherwise provided in this Administrative Agreement, the rights and obligations of any Party to this Administrative Agreement shall not be assignable or transferable without the consent of the governing body of each Party hereto; provided, however, that this provision shall not affect City's ability to contract with a third party to provide services related to this Administrative Agreement.

(g) This Administrative Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.

(h) This Administrative Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.

(i) The Parties are hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Administrative Agreement.

(j) Except as otherwise may be provided in this Administrative Agreement, neither this Administrative Agreement nor any provision hereof may be modified or amended except by a written instrument approved pursuant to Section 15 of the SARA. In the event of any conflict between the SARA and this Administrative Agreement, the terms of the SARA shall control.

(k) This Administrative Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

(l) All the covenants contained in this Administrative Agreement are for the express benefit of each and all such Parties. This Administrative Agreement is not intended to benefit any third parties, and any third-party beneficiaries are expressly disclaimed.

(m) Notices required or permitted hereunder shall be provided in the manner set forth in the SARA.

(n) The individuals executing this Administrative Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

(o) The term of this Administrative Agreement shall run concurrently with and remain in effect in accordance with the provisions of Section 15 of the SARA.

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

CITY OF CHULA VISTA

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF CORONADO

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF DEL MAR

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF EL CAJON

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF IMPERIAL BEACH

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF LA MESA

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

LEMON GROVE SANITATION DISTRICT

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF NATIONAL CITY

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

OTAY WATER DISTRICT

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

PADRE DAM MUNICIPAL WATER DISTRICT

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF POWAY

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF SAN DIEGO

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

SAN DIEGO COUNTY SANITATION DISTRICT

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

ATTACHMENT A

Ordinance of the [Member Agency] Amending Ordinance [xxx]

Delegating Authority to City of San Diego to Enforce Regulations for the Discharge of Wastewater to Sewerage Facilities, Pretreatment and Source Control Program

WHEREAS, [Participating Agency] has adopted Ordinance/Resolution [number], establishing a local sewer use ordinance, including a pretreatment and source control program to control discharges from all industrial and other users of its wastewater collection and treatment system pursuant to the requirements of 40 CFR Part 403 and California law; and

WHEREAS, [Participating Agency] has contracted with City of San Diego to manage, treat and dispose of wastewater discharged within [Participating Agency]'s boundaries and conveyed to the Metropolitan Sewerage System, a regional wastewater system owned by City of San Diego and in which [Participating Agency] owns contract capacity; and

WHEREAS, Government Code sections 6502 and 6513, and [Water Code section, etc.] provide authority for [Participating Agency] to contract with City of San Diego for such purposes and to delegate to City of San Diego primary responsibility for implementation and enforcement of Ordinance [number], as may be amended from time to time; and

WHEREAS, [Participating Agency] desires City of San Diego to assume primary responsibility for implementation and enforcement of [Participating Agency]'s regulations for the control of discharges to the Metropolitan Sewerage System from all industrial and other users of its wastewater collection and treatment system pursuant to the requirements of 40 CFR Part 403 and California law, other than food establishments and dischargers of fats, oils and grease for which [Participating Agency] retains primary responsibility, and the City of San Diego shall not be responsible for, and does not accept authority or responsibility to inspect, monitor or enforce any source control program requirements for any Participating Agency's NPDES permits.

NOW, THEREFORE BE IT ORDAINED:

1. Notwithstanding any provision of Ordinance [number] to the contrary, the [City council/Board of Directors], hereby delegates to City of San Diego authority to implement and enforce the terms and conditions of the Industrial Waste Discharge Pretreatment and Enhanced Source Control Program in [Participating Agency]'s jurisdiction as the agent of [Participating Agency], to be effective upon the date of execution of the **ADMINISTRATIVE AGREEMENT BETWEEN CITY OF SAN DIEGO AND PARTICIPATING AGENCIES IN THE METROPOLITAN SEWERAGE SYSTEM FOR UNIFIED MANAGEMENT OF INDUSTRIAL WASTE DISCHARGE PRETREATMENT AND ENHANCED SOURCE CONTROL PROGRAM** dated [insert], as may be amended from time to time, to the **SECOND AMENDED AND RESTATED REGIONAL WASTEWATER DISPOSAL AGREEMENT BETWEEN CITY OF SAN DIEGO AND THE PARTICIPATING AGENCIES IN THE METROPOLITAN SEWERAGE SYSTEM.**

2. A copy of this amendment shall be forwarded to City of San Diego by the clerk/secretary forthwith upon its adoption.

Approved and adopted by the following vote this ___ day of ____, 2025:

Ayes:

Noes:

Absent

Abstain:

[add signature lines for chair of governing body and secretary/clerk]