



## RAMONA MUNICIPAL WATER DISTRICT

### NOTICE OF SPECIAL MEETING OF THE BOARD OF DIRECTORS OF RAMONA MUNICIPAL WATER DISTRICT

9:00 a.m. on September 28, 2018

**NOTICE IS HEREBY GIVEN** that a special meeting of the Board of Directors of Ramona Municipal Water District will be held at 9:00 a.m. on September 28, 2018 at the Ramona Community Center, located at 434 Aqua Lane, Ramona, California 92065.

The business to be considered and transacted at the meeting will be strictly limited to the following:

1. Call to order and Pledge of Allegiance.
2. Public comment on any item described in this notice.
3. **Discussion and Possible Action to Adopt a Resolution Approving and Authorizing Execution of a Recycled Water and Effluent Disposal Agreement With San Diego Country Estates Association Pursuant to Applicable CEQA Exemptions**

Recommendation: District staff respectfully recommends that the Board adopt the attached Resolution approving and authorizing the SDCEA Agreement pursuant to the applicable CEQA exemptions described above.

4. **Discussion and Possible Action to Adopt a Resolution Approving and Authorizing Execution of a Recycled Water and Effluent Disposal Agreement With Spangler Peak Ranch, Inc. Pursuant to Applicable CEQA Exemptions**

Recommendation: District staff respectfully recommends that the Board consider adoption of the attached Resolution approving and authorizing the Ranch Agreement pursuant to the applicable CEQA exemptions described above.

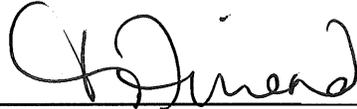
5. **Closed Session – NOT OPEN TO THE PUBLIC**

#### **CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code section 54956.9(d)(4)-(1 case)

6. Adjourn.

DATED: September 25, 2018



Clerk of the Board  
Ramona Municipal Water District

Ramona Municipal Water District in complying with the Americans with disabilities Act (ADA), requests individuals who require specific accommodations to access, attend or participate in the Board Meeting, due to a disability, to please contact the Administrative Services Department prior to the scheduled meeting to ensure that the District may assist you. Telephone: (760) 789-1330; T.D.D.: (760) 789-9497.

**CERTIFICATE OF POSTING AND MAILING**  
**OF NOTICE OF SPECIAL MEETING**

[GOV. CODE § 54956]

I certify that on Sept. 25, 2018,

I caused a true copy of the attached notice to be posted in a location that is freely accessible to members of the public, as follows, at least 24 hours prior to the time of the Special Meeting as specified in the Notice:

[Address of posting:]

- Online at [www.rmwd.org](http://www.rmwd.org)
- RMWD District Office, 105 Earlham Street, Ramona, CA 92065
- Ramona Community Center, 434 Aqua Lane, Ramona, CA 92065
- Ramona Public Library, 1275 Main Street, Ramona, CA 92065

I caused a true copy of the attached notice to be delivered or faxed to each member of the Board of Directors of the Ramona Municipal Water District at his or her designated mailbox and/or home address at least 24 hours prior to the time of the Special Meeting as specified in the Notice.

I caused a true copy of the attached notice to be mailed or faxed to each of the below-named persons, as follows, including each local newspaper of general circulation and radio or television station requesting notice in writing, at least 24 hours prior to the time of the Special Meeting as specified in the Notice:

\_\_\_\_\_ by deposit in U.S. Mail, in sealed envelope(s) to the addresses shown, with first class postage thereon fully prepaid

\_\_\_\_\_ by facsimile transmission, to the phone numbers shown.

\_\_\_\_\_ by email transmission, to the addresses shown.

Dated: Sept. 25, 2018

By: A. Friend  
Clerk of the Board of Directors  
Ramona Municipal Water District

**ADDRESSES OF PERSONS RECEIVING NOTICE:**

- [MMcSweeney@biasandiego.org](mailto:MMcSweeney@biasandiego.org)

# RAMONA MUNICIPAL WATER DISTRICT

# AGENDA MEMO



Agenda Item No. 3  
Board Meeting of September 28, 2018

Jim Robinson, President  
and Members of the Board of Directors  
Ramona, CA 92065

**RE: DISCUSSION AND POSSIBLE ACTION TO ADOPT A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A RECYCLED WATER AND EFFLUENT DISPOSAL AGREEMENT WITH SAN DIEGO COUNTRY ESTATES ASSOCIATION PURSUANT TO APPLICABLE CEQA EXEMPTIONS**

Members of the Board:

## **Purpose**

To approve a resolution approving and authorizing execution of a Recycled Water and Effluent Disposal Agreement with San Diego Country Estates Association (the “SDCEA Agreement”), pursuant to applicable CEQA exemptions.

## **Background**

Effective October 1, 2008, the District and SDCEA entered into an Effluent Disposal Agreement (“2008 Agreement”), which replaced various previous agreements between the parties, for the allocation of its treated effluent to be delivered from the District property to SDCEA’s common areas and golf course, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, and which, pursuant to its terms, will expire on September 30, 2018. The cost for treated effluent was \$35 per acre foot under the 2008 Agreement.

On December 7, 2017, SDCEA served a request upon the District pursuant to Section 13580(c) and 13580.7(b) of the California Water Code that the District enter into an agreement to provide recycled water/treated effluent (hereinafter collectively referred to as “recycled water”) to SDCEA to irrigate SDCEA’s golf course and common areas that would take effect immediately after the existing 2008 Agreement terminates on September 30, 2018. The Water Recycling Act of 1991 requires that the District enter into recycled water agreements with identified customers requesting recycled water service if recycled water service is available.

In anticipation of the expiring 2008 Agreement, the District hired an independent rate consultant to study the costs of providing recycled water service. On February 6, 2018, the Board of Directors considered and accepted a 2018 study done by the independent consultant Bartle

Wells Associates (“Consultant”) that shows the reasonable and proportional costs to provide recycled water service in the San Vicente Wastewater Service Area.

Based on the Consultant’s rate study, on April 3, 2018, the Board held a noticed public hearing and set not to exceed rates for recycled water from the San Vicente Wastewater Service Area under Proposition 218 and the Water Recycling Act of 1991 of \$1,013 per acre foot/\$2.32 per hundred cubic feet (the “Rate”) through the adoption of Resolution Nos. 18-1525 and 18-1526, respectively. Such Resolutions were based on findings by the Board that the Rate reflects a reasonable relationship between the amount of the Rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service. The Rate is less than the District’s rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

Resolution No. 18-1526 also provided that any recycled water agreements may include customer-specific details such as recycled water credits from outside agencies, variation in rates for monthly service depending on a specific customer’s proposed demand, and any other customer-specific applicable offsets. In that resolution, the Board also authorized the General Manager to make offers, continue with negotiations, and finalize negotiations under the Water Recycling Act of 1991 with any customers. The General Manager has done so and now brings to the Board the agreement negotiated with SDCEA.

## **Discussion**

### **A. Need for Recycled Water Agreement:**

The Ramona Municipal Water District’s San Vicente Wastewater Service Area serves a population of roughly 10,000. Wastewater from this service area is conveyed to the San Vicente Wastewater Reclamation Plant for treatment and effluent disposal as part of the District’s sewer service. Over 97% of the effluent produced by the San Vicente Water Reclamation Plant is disposed of as recycled water. The treatment plant produces both secondary and tertiary effluent. Currently, the District incurs a range of costs for producing recycled water, which must undergo additional treatment and purification beyond secondary treatment than what would normally be required with other wastewater treatment and effluent disposal alternatives. A portion of such recycled water costs are being borne by the sewer ratepayers because the treatment of the wastewater is necessary for the disposal of the wastewater as the District currently has no other feasible and practical alternatives to dispose of the wastewater for the sewer customers in this service area. The portion of these charges that are not recouped from recycled water sales will continue to be paid by the sewer ratepayers as a necessary cost to dispose of the effluent. The existing service of creating recycled water is integrally related to providing customers with sewer service because disposal of the effluent is a necessary aspect of the wastewater service.

The SDCEA Agreement allows the District to sell 300 acre feet of its recycled water to SDCEA. The SDCEA Agreement also allows the District to force deliveries of its recycled water for the next ten years. In this way, the District can continue to comply with its obligations to dispose of the effluent from the Plant in the form of recycled water in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The proposed RW Agreement will be effective October 1, 2018 if approved and will have a ten year term.

#### **B. Base Contract Rate:**

The contract rate for recycled water under the SDCEA Agreement does not exceed the Rate that the Board previously set as the not to exceed rate for recycled water pursuant to Resolution Nos. 18-1525 and 18-1526. Under the proposed SDCEA Agreement, SDCEA will pay a base contract rate equal to the Rate (\$1,013 per acre foot) ("Base Rate"), which will be subject to certain credits described below and which may be changed after five years to reflect changes in the cost of service.

The Base Rate reflects a reasonable relationship between the amount of the rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service. The Base Rate is less than the District's rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

#### **C. SDCEA Water Credits:**

On August 1, 2009, the Metropolitan Water District of Southern California ("MWD"), the San Diego County Water Authority ("Water Authority"), and the District entered into Agreement No. 94278 entitled the San Vicente Water Recycling Program 2007 Local Resources Program Agreement ("MWD Agreement") with a 25-year term. The MWD Agreement provides the District with a financial incentive up to \$250 per acre-foot for every acre-foot of additional tertiary treated water with reverse osmosis supplied to the eligible end user in excess of 100 acre-feet and up to a maximum of 340 acre-feet per MWD fiscal year on the terms and conditions described therein (the "MWD Water Credits").

On February 1, 2010, the Water Authority and the District entered into a "Joint Participation Agreement for Local Water Supply Development Program Funding" ("Water Authority Agreement") with a 25-year term. The Water Authority Agreement provides the District with a financial incentive up to \$200 per acre-foot to the District for every acre-foot of additional tertiary treated water with reverse osmosis supplied to the eligible end user in excess of 100 acre feet and up to a maximum of 340 acre-feet per Water Authority fiscal year on the terms and conditions described therein (the "Water Authority Credits").

SDCEA is currently the only eligible end user that allows the District to obtain the MWD Water Credits under the MWD Agreement and the Water Authority Credits under the Water Authority Agreement. Under the proposed SDCEA Agreement, SDCEA will be able to obtain a deduction from its recycled water bill for the amount of MWD and Water Authority Credits issued and received by the District for SDCEA's benefit.

### **CEQA**

Under the SDCEA Agreement, the District would continue to deliver recycled water to the same user and continue the same uses. There are two exemptions under CEQA that the Board may find applicable to the SDCEA agreement: (1) the statutory exemption for ministerial projects and (2) the categorical exemption for existing facilities.

#### **A. Ministerial Projects**

Staff submits that because the Water Code provides that the District "shall" enter into recycled water agreements, the Board may determine that the project is non-discretionary and subject to the ministerial project exemption. See Wat. Code §§ 13580.7(b) & (f).

The other aspect of the recycled water agreement that is ministerial is that the District must dispose of treated effluent from the San Vicente Wastewater Treatment Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The RW Agreement would continue the effluent disposal under the current permits and waste discharge requirements program ("WDR").

Therefore, Staff recommends that the Board find the SDCEA Agreement statutorily exempt as a ministerial project under PRC §21080(b)(1) and 14 CCR 15268(a).

#### **B. Existing Facilities Exemption**

Another exemption upon which the Board may rely is the categorical exemption for existing facilities. Here, there is no expansion of an existing use of publicly owned utilities. Recycled water will continue to be provided at that same combined volume to the SDCEA's property through the same pipelines. The District will continue to dispose of treated effluent from the Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The SDCEA Agreement would continue the effluent disposal under the current permits and WDR program. There are no significant cumulative impacts of continuing with the provision of recycled water over time and there is no reasonable possibility of resulting in a significant effect. Therefore, Staff respectfully submits that the existing facilities (Class 1) exemption under 14 CCR 15301 applies.

### **Fiscal Impact**

The existing 2008 Agreement, which expires on September 30, 2018, had an effluent disposal rate of \$35 per acre foot that had been agreed to among all parties. The proposed SDCEA Agreement has a Base Rate for recycled water of \$1,013 per acre foot. The Base Rate is subject to change after five years, when it is anticipated that the District will perform an updated

rate study. The Water Authority and MWD Credits proposed to be provided to SDCEA will be funded by the Water Authority and MWD and are fiscally neutral to the District.

If the SDCEA Agreement is approved, a proportional and appropriate recycled water rate will be paid for all recycled water post September 30, 2018.

**Recommendation**

District staff respectfully recommends that the Board adopt the attached Resolution approving and authorizing the SDCEA Agreement pursuant to the applicable CEQA exemptions described above.

Submitted by: David Barnum, General Manager  
Mike Metts, District Engineer  
Jennifer Lyon, General Counsel

**ATTACHMENTS:**

- |              |  |                 |
|--------------|--|-----------------|
| Attachment 1 | Draft Resolution   | 3. Page 6 - 9   |
| Attachment 2 | Exhibit A to Resolution – Recycled Water and Effluent Disposal Agreement with San Diego Country Estates Association <b><u>(with revisions to Section 5.1, Section 5.3 and Section 5.4 to reflect that “300 acre feet” will replace the words “fifty percent (50%)” in the Agreement)</u></b> | 3. Page 10 - 21 |

**RESOLUTION NO. 18-XXXX****RESOLUTION OF THE BOARD OF DIRECTORS OF THE RAMONA MUNICIPAL WATER DISTRICT APPROVING AND AUTHORIZING EXECUTION OF A RECYCLED WATER AND EFFLUENT DISPOSAL AGREEMENT WITH SAN DIEGO COUNTRY ESTATES ASSOCIATION PURSUANT TO APPLICABLE CEQA EXEMPTIONS**

**WHEREAS**, the Ramona Municipal Water District (“District”) is organized and operates pursuant to the Municipal Water District Law of 1911 commencing with Section 71000 of the California Water Code and has the authority to enter into recycled water and other contracts in accordance therewith, including recycled water contracts in accordance with the Water Recycling Act of 1991 in the California Water Code; and

**WHEREAS**, the District operates the San Vicente Wastewater Treatment Plant (“Plant”) which produces both secondary and tertiary effluent which the District must dispose of in the form of recycled water in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. Currently, the District incurs a range of costs for producing recycled water, which must undergo additional treatment and purification beyond secondary treatment than what would normally be required with other wastewater treatment and effluent disposal alternatives. A portion of such recycled water costs are being borne by the sewer ratepayers because the treatment of the wastewater is necessary for the disposal of the wastewater as the District currently has no other feasible and practical alternatives to dispose of the wastewater for the sewer customers in this service area. The portion of these charges that are not recouped from recycled water sales will continue to be paid by the sewer ratepayers as a necessary cost to dispose of the effluent. The existing service of creating recycled water is integrally related to providing customers with sewer service because disposal of the effluent is a necessary aspect of the wastewater service; and

**WHEREAS**, effective October 1, 2008, the District and the San Diego Country Estates Association (“SDCEA”) entered into an Effluent Disposal Agreement (“2008 Agreement”), which replaced various previous agreements between the parties, for the allocation of its treated effluent to be delivered from the Plant to the SDCEA’s common areas and golf course for \$35 per acre foot, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, and which, pursuant to its terms, will expire on September 30, 2018; and

**WHEREAS**, on December 7, 2017, SDCEA served a request upon the District pursuant to Section 13580(c) and 13580.7(b) of the California Water Code that the District enter into an agreement to provide recycled water to SDCEA to irrigate SDCEA’s golf course and common areas that would take effect immediately after the existing 2008 Agreement terminates on September 30, 2018; and

**WHEREAS**, in anticipation of the expiring 2008 Agreement, the District hired an independent rate consultant to study the costs of providing recycled water service, and on February 6, 2018, the Board of Directors considered and accepted a 2018 study done by the independent consultant Bartle Wells Associates (“Consultant”) that shows the reasonable and proportional costs to provide recycled water service in the San Vicente Wastewater Service Area; and

**WHEREAS**, based on the Consultant’s 2018 study, on April 3, 2018, the Board of Directors adopted Resolution Nos. 18-1525 and 18-1526, which set a not-to-exceed rate for recycled water under Proposition 218 and the Water Recycling Act of 1991, respectively, of \$1,013 per acre foot/\$2.32 per hundred cubic feet (the “Rate”). Such Resolutions recognized that the Rate reflects a reasonable relationship between the amount of the Rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service. The Rate is less than the District’s rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment. Such April 3, 2018 Resolutions also recognized that any recycled water agreements may include customer-specific details such as recycled water credits from outside agencies, variation in rates for monthly service depending on a specific customer’s proposed demand, and any other customer-specific applicable offsets; and

**WHEREAS**, on August 1, 2009, the Metropolitan Water District of Southern California (“MWD”), the San Diego County Water Authority (“Water Authority”), and the District entered into Agreement No. 94278 entitled the San Vicente Water Recycling Program 2007 Local Resources Program Agreement (“MWD Agreement”) with a 25-year term. The MWD Agreement provides the District with a financial incentive up to \$250 per acre-foot for every acre-foot of additional tertiary treated water with reverse osmosis supplied to the eligible end user in excess of 100 acre-feet and up to a maximum of 340 acre-feet per MWD fiscal year on the terms and conditions described therein (the “MWD Water Credits”); and

**WHEREAS**, on February 1, 2010, the Water Authority and the District entered into a “Joint Participation Agreement for Local Water Supply Development Program Funding” (“Water Authority Agreement”) with a 25-year term. The Water Authority Agreement provides the District with a financial incentive up to \$200 per acre-foot to the District for every acre-foot of additional tertiary treated water with reverse osmosis supplied to the eligible end user in excess of 100 acre feet-and up to a maximum of 340 acre-feet per Water Authority fiscal year on the terms and conditions described therein (the “Water Authority Credits”); and

**WHEREAS**, SDCEA is currently the only eligible end user that allows the District to obtain the MWD Water Credits under the MWD Agreement and the Water Authority Credits under the Water Authority Agreement; and

**WHEREAS**, consistent with the direction provided by the Board of Directors in and authority granted to him in Resolution No. 18-1526, the District’s General Manager has made offers, continued with negotiations, and finalized negotiations under the Water Recycling Act of 1991 with SDCEA. No District Directors participated, influenced or handled any of the negotiations on behalf of the District. SDCEA wishes to enter into a Recycled Water and Effluent Disposal Agreement in the form attached to this Resolution as Exhibit A (“SDCEA Agreement”), which is incorporated fully herein by this reference; and

**WHEREAS**, the Water Recycling Act of 1991, including Water Code §§ 13580.7(b) & (f), provides that the District shall enter into recycled water agreements with identified customers requesting recycled water service when recycled water is available and the District must dispose of all effluent from the Plant in the form of recycled water in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies, and under the current permits and waste discharge requirements program (“WDR”). Therefore, sale and delivery

of recycled water under the SDCEA Agreement is a non-discretionary project, subject to the ministerial project exemption and statutorily exempt under the California Environmental Quality Act (“CEQA”), Public Resources Code §21080(b)(1) and Title 14 of the California Code of Regulations §15268(a); and

**WHEREAS**, under the SDCEA Agreement, there is no expansion of an existing use of publicly owned utilities. Recycled water will continue to be provided to SDCEA’s property through the same pipelines. The District will continue to dispose of treated effluent from the Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The SDCEA Agreement would continue the effluent disposal under the current permits and WDR program. There are no significant cumulative impacts of continuing with the project (irrigation) over time and there is no reasonable possibility of resulting in a significant effect. Therefore, the SDCEA Agreement is categorically exempt from CEQA as existing facilities, a Class 1 exemption under Title 14 of the California Code of Regulations §15301; and

**WHEREAS**, there is a great value accruing to the District’s customers and the public generally of an agreement that allows the District to dispose of treated effluent from the Plant at a rate that is legally justified pursuant to Proposition 218.

**NOW, THEREFORE**, be it hereby resolved, determined and ordered by the Board of Directors of the Ramona Municipal Water District as follows:

- Section 1. The matters set forth in the recitals to this Resolution are true and correct, have served as a basis for the findings, and are a substantive part of this Resolution.
- Section 2. The contract rate (“Contract Rate”) for recycled water under the SDCEA Agreement does not exceed the Rate that the District previously set for recycled water in Resolution Nos. 18-1525 and 18-1526. The Contract Rate reflects a reasonable relationship between the amount of the Contract Rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service, with capital costs of facilities required to serve the customer being amortized over the lesser of the economic life of the facility, or the length of time the customer agrees to purchase recycled water. The Contract Rate is less than the District’s rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.
- Section 3. Having evaluated and considered the SDCEA Agreement, the Board of Directors finds that it serves a great public benefit to the District’s customers and the public generally by allowing the District to dispose of treated effluent from the Plant, and in addition, by establishing a fixed, contractually set revenue stream that can be used to study the cost of providing service to the District’s sewer customers.

- Section 4. The Board of Directors further finds that the SDCEA Agreement as finally negotiated is consistent with Resolution Nos. 18-1525 and 18-1526.
- Section 5. The Board of Directors further finds that the SDCEA Agreement is a non-discretionary project, subject to the ministerial project exemption and statutorily exempt under the California Environmental Quality Act (“CEQA”), Public Resources Code §21080(b)(1) and Title 14 of the California Code of Regulations §15268(a); and the SDCEA Agreement is categorically exempt from CEQA as existing facilities, a Class 1 exemption under Title 14 of the California Code of Regulations §15301.
- Section 6. The Board of Directors approves the SDCEA Agreement and authorizes the President of the Board or General Manager to execute the SDCEA Agreement in a form substantially similar to Exhibit A and any other documents necessary to effectuate it. The Board of Directors further authorizes the General Manager to take all necessary actions to effectuate the terms of this Resolution.
- Section 7. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Board declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 8. This Resolution shall take effect upon the date of its adoption.

**ADOPTED, SIGNED AND APPROVED** at a special meeting of the Board of Directors of Ramona Municipal Water District held on the 28th day of September 2018, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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***Jim Robinson***  
President, Board of Directors  
Ramona Municipal Water District

**ATTEST:**

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***Bryan Wadlington***  
Secretary, Board of Directors  
Ramona Municipal Water District

**RECYCLED WATER AND EFFLUENT DISPOSAL AGREEMENT**

This Recycled Water and Effluent Disposal Agreement (“Agreement”) is entered into by and between RAMONA MUNICIPAL WATER DISTRICT (“District”), a California municipal water district organized under California Water Code section 71000 *et seq.*, and SAN DIEGO COUNTRY ESTATES ASSOCIATION (“User”), a California non-profit corporation. The District and User are sometimes referred to herein individually as “Party” and collectively as “Parties.”

**RECITALS**

- A. The District operates the San Vicente Wastewater Treatment Plant (“Plant”) which provides treated effluent water/recycled water (hereinafter collectively referred to as “recycled water”). The District must dispose of all treated effluent in the form of recycled water from the Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies.
- B. User is a homeowners association for a residential community of approximately 10,000 people with recreational facilities, including 1,300 acres of common space, an 18-hole golf course, several parks, two equestrian centers, hiking and horse trails (“Community”), located east of the Plant.
- C. Effective October 1, 2008, the District and User entered into an Effluent Disposal Agreement (“2008 Agreement”), which replaced various previous agreements between the Parties, for the allocation of treated effluent to be delivered from the Plant to the Community, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, and which, pursuant to its terms, will expire on September 30, 2018.
- D. On August 1, 2009, the Metropolitan Water District of Southern California (“MWD”), the San Diego County Water Authority (“Water Authority”), and the District entered into Agreement No. 94278 titled the San Vicente Water Recycling Program 2007 Local Resources Program Agreement (“MWD Agreement”) with a 25-year term. The MWD Agreement provides the District with a financial incentive up to \$250 per acre-foot for every acre-foot of additional tertiary treated water with reverse osmosis supplied to the eligible end users in excess of 100 acre-feet and up to a maximum of 340 acre-feet per MWD fiscal year on the terms and conditions described therein (the “MWD Water Credits”).
- E. On February 1, 2010, the Water Authority and the District entered into a “Joint Participation Agreement for Local Water Supply Development Program Funding” (“Water Authority Agreement”) with a 25-year term. The Water Authority Agreement provides the District with a financial incentive up to \$200 per acre-foot to the District for every acre-foot of additional tertiary treated water with reverse osmosis supplied to eligible end users in excess of 100 acre feet-and up to a maximum of 340 acre-feet per Water Authority fiscal year on the terms and conditions described therein (the “Water Authority Credits”).

- F. On December 7, 2017, User served a request upon the District pursuant to Section 13580(c) and 13580.7(b) of the California Water Code that the District enter into an agreement to provide recycled water to User to irrigate User's golf course and common areas that would take effect immediately after the existing 2008 Agreement terminates on September 30, 2018.
- G. On April 3, 2018, the District approved Resolution Nos. 18-1525 and 18-1526, which set a not-to-exceed rate for recycled water under Proposition 218 and the Water Recycling Act of 1991, respectively, of \$1,013 per acre foot. To the best of User's knowledge, User believes that the District complied with Proposition 218, the Water Recycling Act of 1991 and all other applicable laws in setting the not-to-exceed rate for recycled water at \$1,013 per acre foot.
- H. The District and User acknowledge and agree that there is a great value accruing to the District's customers and the public generally of an agreement that allows the District to dispose of treated effluent from the Plant.
- I. The District and User now wish to enter into this Agreement for recycled water and delivery and allocation of recycled water from the Plant to User, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, upon the specific terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, the Parties agree as follows:

**AGREEMENT**

1. Scope. The 2008 Agreement expires and shall be deemed terminated as of September 30, 2018, except that the ongoing mutual indemnification obligations of each party under Section 13 of the 2008 Agreement shall survive termination.
2. Effective Date. This Agreement shall be effective on October 1, 2018 ("Effective Date").
3. Term. Unless otherwise terminated pursuant to this Agreement, the Term of this Agreement shall be for ten (10) years from the Effective Date unless, prior to the expiration of the Term of this Agreement, the Parties mutually agree in writing, in their individual and sole discretion, to extend the Agreement for one additional term of five (5) years.
4. Recycled Water System. Unless otherwise specified herein, the District shall maintain and operate its recycled water delivery system, including, but not limited to, the Plant, at its sole cost, to deliver recycled water to the District pump station below the San Vicente Road and Vista Vicente Drive for User's property pursuant to this Agreement. Unless otherwise specified herein, User shall operate, maintain and repair, at its sole cost, all irrigation pipelines, pumps, sprinklers, storage facilities, improvements and appurtenances located on its property.

4.1 Permission to Enter. User hereby grants the District, acting through its duly authorized employees, agents, or representatives, unrestricted access to User's property for any necessary or appropriate work associated with this Agreement, including, but not limited to,

meter reading, monitoring of recycled water used by User, or maintenance and repair of any part of the recycled water delivery system, as it deems appropriate. The District will coordinate all non-emergency work with the User and shall make reasonable schedule adjustments as requested by the User. The User hereby appoints its Golf Course Superintendent as its agent for purposes of coordination pursuant to this section. The District also shall have access to maintain and repair any part of the recycled water delivery system as it deems appropriate with twenty-four (24) hours' notice to the User in any non-emergency situation.

4.2 Emergency Repairs. In the event of an emergency, the District shall have the right, but not the obligation, to enter onto User's property and make repairs to any irrigation pipelines, pumps, sprinklers, storage facilities, improvements and appurtenances located on User's property, at User's sole cost, and shall have immediate and unrestricted access for the purpose of performing such repairs.

5. Delivery of Recycled Water.

5.1 Delivery. The District agrees to deliver, and User agrees to accept, recycled water during each Water Year during the term of this Agreement on an as-available basis in an amount equal to  ~~fifty percent (50%)~~ of the Plant's recycled water output during each Water Year. Recycled water delivered by the District pursuant to this Agreement shall be measured by the meter installed, owned, and operated and read by the District for golf course deliveries only. As used in this Agreement, "Water Year" means a period of twelve (12) consecutive calendar months, commencing on the first day of October of each year during the term of this Agreement (except the date of termination), and ending on the last day of September of the following year. The District shall have the sole and undisputed right to provide recycled water to User from any legal source available to the District.

300  
acre  
feet

5.2 Recycled Water Quality. The District intends to deliver recycled water that meets any applicable, then-current order or regulation issued in accordance with Title 22 of the California Code of Regulations or amendments thereto ("Recycled Water Standards"). The District shall not be deemed to be in noncompliance or breach of this Agreement should the recycled water delivered by the District fail to comply with any applicable, then-current order or regulation issued in accordance with Title 22 of the California Code of Regulations or amendments thereto. The District may, in its sole discretion, undertake improvements to the Plant ("Plant Improvements") in order to produce recycled water that meets Recycled Water Standards.

5.3 Forced Delivery. Regardless of any other deliveries, the District, in its sole discretion, may require the User to accept additional delivery of quantities beyond ~~50%~~ of the Plant's recycled water for a Water Year. Such deliveries shall be called "Forced Deliveries." The User expressly consents and agrees to accept such Forced Deliveries. Before declaring a Forced Delivery, District shall first offer voluntary deliveries to User and any other recycled water recipients. Forced Deliveries shall not be counted as a delivery allocated pursuant to Section 5.1 above. With respect to Forced Deliveries, the District shall not seek reimbursement for or otherwise charge the User the recycled water rate or the pumping costs, nor shall the District be required to make any payment to the User on account of the Forced Deliveries as

300  
acre  
feet

reimbursement for electricity bills, diesel fuel or any other costs incurred in connection with the Forced Deliveries.

5.4 Additional Deliveries. If more than ~~50%~~<sup>300 acre feet</sup> of the District's recycled water from the Plant per Water Year becomes available for delivery at any time during the term of this Agreement, the District may, in its sole discretion, offer some or all of such additional available recycled water to the User, on a one-time basis under the terms and conditions of this Agreement.

5.5 Alternative Deliveries. If User provides the District with written notice that it is unwilling or unable to accept either all or a part of a delivery contemplated under Section 5.1 above, the District may, in its sole discretion, offer some or all of such delivery to a third party, on a one-time, continuing or permanent basis. Nothing set forth in this Section shall be deemed to modify or waive the right of the District to force User to accept the full quantity of recycled water described in Sections 5.1 and 5.3 above.

6. Recycled Water Rate.

6.1 Rate. Except for Forced Deliveries under Section 5.3 above, User agrees to pay the District the amount of One Thousand and Thirteen Dollars (\$1,013.00) per acre-foot of recycled water received pursuant to this Agreement ("Base Rate"), subject to the terms and adjustments provided in Sections 6.2, 6.3, and 6.4 below. Payment for the recycled water shall be made in accordance with Section 7 below.

6.2 Local Resource Project Incentive Water Credits. The District will take all reasonable steps to comply with its obligations under the MWD Agreement and the Water Authority Agreement. The MWD Water Credits issued by MWD under the MWD Agreement and the Water Authority Credits issued by the Water Authority under the Water Authority Agreement are collectively referred to as the "Water Credits." To the extent that MWD or the Water Authority issue Water Credits, and for as long as those Water Credits are available, User may deduct the amount of any Water Credits actually issued to District for User's benefit from the Base Rate set forth in Section 6.1 above for deliveries of treated tertiary water with reverse osmosis after the delivery of and payment by User for the first 100 acre-feet of treated tertiary water at the full rate set forth in Section 6.1 above. The Water Credits to be deducted will be up to a maximum of \$450 per acre-foot on a maximum amount of additional treated tertiary water with reverse osmosis of up to 340 acre feet. User understands and acknowledges that the terms and conditions of the MWD Agreement and the Water Authority Agreement control whether the MWD and the Water Authority, respectively, issue the Water Credits and the amounts of such credits. User understands and acknowledges that the amounts of the Water Credits may vary from year to year and that the District makes no guarantee about their availability or applicability in any given Water Year. If MWD or the Water Authority do not issue Water Credits, or if such Water Credits expire or are otherwise terminated, User agrees to pay the Base Rate set forth in Section 6.1 above without deduction.

6.3 Changes to Base Rate. The Base Rate shall be subject to change by the District at any time after the first five years of this Agreement. The Parties acknowledge and agree that it is the District's intention to undertake and complete rate and fee studies to determine the rates for

recycled water after Water Year 5 of this Agreement as the District deems necessary to update and determine actual costs of recycled water. User agrees to pay the new Base Rate set by the District if it is changed after Year 5.

6.4 Recycled Water Rate Deferral and Repayment. In Water Year 1 of this Agreement (2018-2019), the base rate shall be \$150 per acre-foot ("Year 1 Water Rate"). At the end of Year 1 (October 1, 2019), the District shall calculate the difference between what the User paid under the Year 1 Water Rate and what User would have paid if the Base Rate plus any adjustments under Section 6.2 had been applied ("Year 1 Deferral Amount"). The District shall provide User with a written summary of how it reached the Year 1 Deferral Amount. The User shall repay the Year 1 Deferral Amount in 12 equal monthly payments beginning within thirty (30) days after District provides User the written summary of the Year 1 Deferral Amount. Beginning October 1, 2019 and thereafter, the Base Rate in Section 6.1 shall apply with no further deferrals.

6.5 Pumping Costs. User agrees to pay for the pumping costs required to deliver recycled water to its delivery point, except for Forced Deliveries as specified in Section 5.3 above. User shall reimburse the District for the District's actual pumping costs incurred by the District for the use of electricity relating to the delivery of recycled water to User from the Plant. Payment for pumping costs shall be made in accordance with Section 7 below. User shall pay its own pumping and distribution costs incurred beyond the point of recycled water delivery.

7. Payment. The District shall provide monthly invoices to User for amounts due to the District pursuant to the terms of this Agreement, which shall be due and payable within thirty (30) calendar days after the date of invoice. Invoices shall indicate any adjustments applied to the Base Rate in accordance with Section 6 above. Late payments shall accrue interest at the lesser of the maximum legal rate or ten percent (10%) per annum (computed on the basis of a 365-day year), from the date upon which payment was due until payment is received by the District. Breach of this Section 7 shall be considered a material breach and shall entitle the District to terminate this Agreement in accordance with Section 19 below.

8. Restrictions On Use. User understands that the recycled water to be purchased and used is wastewater that has been reclaimed as a result of sewerage treatment operations, and is suitable only for the uses, and in those areas, authorized by applicable law and regulation.

9. Compliance with Regulatory Requirements. User agrees to comply with the District's current Rules and Regulations relating to receipt and use of recycled water as adopted by the District, and any other applicable permits and documents issued by the Regional Water Quality Control Board. All Parties agree to comply with all applicable laws and regulations of any public authority with jurisdiction over any activity contemplated by this Agreement.

10. Changes In Law. User acknowledges that the District is subject to changes in federal law, state law, regulations and permit requirements, and that these changes may conflict with the terms of this Agreement. In the event that the Agreement is not or becomes not in compliance with current law, regulations, permits, orders and other similar legal requirements imposed by an administrative agency, body or court with jurisdiction over the District, User agrees to accept any

modification to this Agreement that incorporates necessary changes to maintain compliance with these legal requirements.

11. Measurement of Delivered Recycled Water. All recycled water delivered pursuant to this Agreement shall be measured by the District at the meter located at the District pump station below the San Vicente Road and Vista Vicente for User's property. The District shall own, inspect, operate, maintain, repair and replace the measuring equipment. All determinations relative to the measuring of recycled water shall be made by the District. Upon written request by User, the accuracy of a measurement shall be investigated by the District and any error appearing therein shall be adjusted. User may inspect such measuring equipment for the purpose of determining the accuracy thereof.

12. Records. The District shall keep proper books and records, in which complete and correct entries shall be made of all recycled water delivered by the District to User during the term of this Agreement. Said books and records shall be subject to inspection at a mutually agreeable time by any duly authorized representative of any Party hereto or the Regional Water Quality Control Board, as public records subject to disclosure pursuant to California law.

13. Monitoring Reports. If requested by the District, the User shall fill out monitoring reports on the form prescribed by the District on a weekly basis or as otherwise required by the District and submit them to the District by the fifth (5th) day of each month with respect to the immediately preceding month. Excessive loss of recycled water off-site by spray or runoff shall be fully reported by User and such reports shall state what corrective action(s) have been taken to prevent the violation from occurring again.

14. Conditions of Shortage. User agrees and understands that weather patterns and other factors have a direct impact on the availability of recycled water. The District will make every reasonable effort to provide recycled water at the quantities consistent with past output, but the District makes no guarantees of recycled water availability.

15. Force Majeure. Both Parties acknowledge that the District's supply and delivery of recycled water and User's ability to take delivery of said water may occasionally be interrupted or curtailed due to Acts of God, power failures, accident, fire, strikes, riots, war, facility failures, facility improvements, inspection, maintenance and repairs of plant, distribution system or equipment, actions or decisions by a governmental agency, or any condition outside of a Party's control. Each Party shall not be liable to the other for damages arising out of interruption or curtailment of service for these reasons. Insofar as feasible, the Party whose performance hereunder is affected by such condition shall give the other Party at least 72 hours advance notice of a temporary discontinuance or substantial reduction in its delivery (in the case of the District) or in its acceptance (in the case of User) of recycled water, except in the case of an emergency, in which case notice shall be given as soon as reasonably practical.

16. User's Rights Nontransferable. User's rights to recycled water deliveries hereunder are not transferable or assignable, without the express written consent of the District. User shall not sell, give, transfer or distribute any of the recycled water purchased by it pursuant to this Agreement to any other person or property for any use, and User shall be the sole person using

the recycled water unless the District approves such a transfer or assignment in writing in advance.

17. Insurance. The User shall provide and maintain, and shall require any and all contractors or subcontractors to maintain, the insurance programs set forth in this Section. The insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the Parties, and shall be provided and maintained at the User's own expense.

17.1 Evidence of Insurance. User shall provide a letter or certificate of insurance, or self-insurance, satisfactory to the District within thirty (30) calendar days of the Effective Date. Such evidence shall identify the coverage, and provide that the District receives written notice by mail at least thirty (30) calendar days in advance of cancellation for all required coverage.

17.2 Insurer Financial Ratings and Self-Insurance. If commercial insurance is used, it shall be provided by an insurance company with an A.M. Best rating of not less than A:VII, or as otherwise mutually agreed to by the Parties. In lieu of commercial insurance, User shall retain the right to self-insure all or any portion of its insurance obligations herein if such self-insurance is adequate and equal to the insurance required in this Agreement.

17.3 Notification of Incidents, Claims or Suits. The Parties mutually agree to notify one another of any accident or incident relating to this Agreement, which involves injury or property damage that may result in the filing of a claim or lawsuit against any of the Parties, and of any actual third party claim or lawsuit arising from or related to this Agreement.

17.4 Insurance Coverage Requirements. User shall maintain the following programs of insurance coverage for this Agreement:

17.4.1 General Liability insurance with general aggregate limits of not less than \$2 million and naming the District as additional insured.

17.4.2 Automobile Liability insurance with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto."

17.4.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the State of California, and for which the User's contractors and/or subcontractors shall be responsible. This insurance shall include Employers' Liability coverage with limits or not less than \$1 million per accident.

18. Relationship of the Parties. Nothing contained in this Agreement shall be deemed or constructed by the Parties or by any third person to create the relationship of principal and agent, or partnership or joint venture, or any association between the Parties, and none of the provisions contained in this Agreement or any act of the Parties shall be deemed to create any relationship other than as specified herein, nor shall this Agreement be construed, except as expressly provided herein, to authorize any Party to act as the agent for any other.

19. Termination.

19.1 Notice: Should one Party breach any of the terms and conditions in this Agreement, written notice of such breach may be given to the breaching Party by the other Party. If the breach remains uncured for thirty (30) calendar days, or, if the breach cannot reasonably be cured within that thirty (30) calendar days and reasonable steps toward correcting the breaching condition(s) are not commenced within such time period and diligently pursued to cure, the other Party may, in addition to any remedies provided in this Agreement or by law or in equity, terminate this Agreement on written notice to the breaching Party effective immediately.

19.2 Termination: Notwithstanding subsection 19.1 above, the District may terminate this Agreement immediately if:

- (A) The District, at its sole determination, is or will be unable to deliver properly and adequately recycled water to User for any reason whatsoever for a period greater than thirty (30) calendar days;
- (B) Any governmental agency other than the District changes the District's requirements for recycled water and District determines that it cannot reasonably meet any of the new requirements;
- (C) The District is ordered to cease delivery of recycled water to User by a governmental authority of competent jurisdiction;
- (D) Actions by User result in enforcement actions against the District or User by regulatory agencies;
- (E) User fails or refuses, without cause, to accept delivery of recycled water in the quantity specified in Section 5 above;
- (F) User makes an unlawful use of the recycled water;
- (G) Any invoice remains unpaid after sixty (60) calendar days; or
- (H) As the result of a claim brought by a third party, a court of competent jurisdiction finds any clause or provision of the Agreement regarding the quantity of the recycled water to be delivered or rate to be paid, is illegal, invalid, or unenforceable.

20. Specific Performance of Agreement. User understands and acknowledges that the District is relying on delivery of recycled water to User (and others) to comply with its obligations and that the District is relying on a good-faith performance of User in accepting and using the recycled water in accordance with applicable law and this Agreement. If User, as reasonably determined by the District, fails to accept and dispose of the recycled water as agreed herein, the District will suffer irreparable harm and will not be adequately compensated by money damages for said harm. User and the District agree that the District may obtain an injunction compelling specific performance of this Agreement together with such other and further relief as may be allowed by law, contract or equity. Nothing in this Agreement shall be construed to limit the District's rights or remedies. All rights and remedies herein are intended to be cumulative and non-exhaustive.

21. Indemnification.

21.1 User hereby agrees to indemnify, defend (with counsel reasonably acceptable to the District) and hold harmless the District and its officers, officials, employees, contractors, representatives, agents and volunteers from and against any and all actual or potential claims, costs (including, but not limited to, attorney's fees and expert witness fees), damages, demands, encumbrances, expenses, judgments, liabilities, liens, losses, obligations, penalties, whether direct, contingent or consequential, foreseeable or unforeseeable, direct or indirect and no matter how arising, (referred to collectively as "Claims") in any way arising out of or related to this Agreement, including, but not limited to, the District's approval of and entry into this Agreement, User's performance of its obligations under this Agreement, the use of the recycled water by User or the District's delivery of recycled water to the User's property. This indemnification shall survive the termination of this Agreement.

21.2 The District hereby agrees to indemnify, defend (with counsel reasonably acceptable to User) and hold harmless User and its officers, officials, employees, contractors, representatives, agents and volunteers from and against any and all Claims arising out of or related to District's performance of its obligations under this Agreement, including, but not limited to, District's delivery of recycled water under this Agreement, where it is established that the injury or damage was the result of the negligent, reckless or intentionally wrongful act or omission of the District or its officers, officials, employees, agents, representatives or volunteers. This indemnification shall survive the termination of this Agreement.

22. Applicable Law and Jurisdiction. This Agreement shall be governed by California law without reference to conflicts of law principles. In the event of any legal or equitable proceeding arising out of or related to this Agreement, the Parties agree that venue shall lie only in the courts in the Judicial District, County of San Diego, State of California. User hereby waives any and all rights it might have pursuant to California Code of Civil Procedure Section 394.

23. Attorney's Fees. If any action at law is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney's fees and expert witnesses' fees, which may be set by the Court in the same action brought for that purpose, in addition to any other relief to which it may be entitled.

24. Notices. Notices required or permitted under this Agreement shall be sufficiently given if in writing and if either served personally upon the party to whom it is directed or by deposit in the United States mail, postage prepaid, certified, return receipt requested, addressed to the Parties at the following addresses:

DISTRICT:	Ramona Municipal Water District Attn: General Manager 105 Earlham Street Ramona, CA 92065-1599
USER:	San Diego Country Estates Attn: General Manager

24157 San Vicente Road  
Ramona, CA 92065

It shall be the sole responsibility of each Party to this Agreement to promptly notify the other of any change of title or address as long as this Agreement remains in effect.

25. General Contract Terms.

25.1 No Third Party Beneficiary. This Agreement shall not create any right or interest in any non-party or in any member of the public as a third party beneficiary.

25.2 Headings. Headings contained herein are for reference purposes only and shall not constitute terms of this Agreement.

25.3 Counterparts. This Agreement may be executed in counterparts.

25.4 Binding Effect. This Agreement shall be binding upon the Parties and their respective successors in interest, assigns, executors, administrators, and personal representatives.

25.5 Amendment. This Agreement may be amended in writing by mutual agreement of the Parties.

25.6 Successors. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties; but only to the extent that User has complied with Section 16 hereof

25.7 Time of the Essence. The Parties acknowledge and agree that time is of the essence in the performance of this Agreement.

25.8 Cooperation of the Parties. The Parties each agree to cooperate in good faith to effect the purposes and terms of this Agreement.

25.9 Construction. Each Party has had the opportunity to seek advice of legal counsel. This Agreement shall be construed as if primarily written by each of the Parties, respectively, and not by any one Party.

25.10 Entire Agreement. This Agreement constitutes the entire understanding between the Parties with respect to this subject matter, superseding all negotiations, prior discussions, and any prior or preliminary agreements and understandings, written or oral. No waiver of any rights under this Agreement shall be binding unless it is in writing signed by the Party waiving such rights.

25.11 Subsequent Actions. If any clause or provision of this Agreement regarding the rate to be paid, is or becomes illegal, invalid, or unenforceable because of present or future laws, or any rules or regulations of any governmental body or entity, effective during its term, or because of a ruling of a court of competent jurisdiction, the intention of the Parties is that the District shall continue to deliver the quantities of recycled water specified in this Agreement and User shall continue to pay the Base Rate set forth in Section 6 above and receive the recycled

water until the Agreement expires or is terminated; until a new rate is set by the District in compliance with applicable law or court order/judgment; or until the Parties mutually agree in writing to a different rate or quantity, whichever is earlier.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the signatures of their authorized representatives below as of the Effective Date.

RAMONA MUNICIPAL WATER DISTRICT,  
a California municipal water district

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

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

President, District Board of Directors

[SIGNATURES CONTINUED ON NEXT PAGE]

SAN DIEGO COUNTRY ESTATES ASSOCIATION,  
a California nonprofit corporation

By: Mario Trejo  
Name: Mario Trejo  
Its: General Manager

Date: 8/28/18

By: Eileen Carthage  
Name: EILEEN CARSTBERG  
Its: President, Board of Directors

Date: August 28, 2018

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer M. Lyon, General Counsel

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

ATTEST

By: \_\_\_\_\_  
District Clerk

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

# RAMONA MUNICIPAL WATER DISTRICT

# AGENDA MEMO



Agenda Item No. 4.  
Special Board Meeting of September 28, 2018

Jim Robinson, President  
and Members of the Board of Directors  
Ramona, CA 92065

**RE: DISCUSSION AND POSSIBLE ACTION TO ADOPT A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A RECYCLED WATER AND EFFLUENT DISPOSAL AGREEMENT WITH SPANGLER PEAK RANCH, INC. PURSUANT TO APPLICABLE CEQA EXEMPTIONS**

Members of the Board:

## **Purpose**

To approve a resolution approving and authorizing execution of a Recycled Water and Effluent Disposal Agreement with Spangler Peak Ranch (the “Ranch Agreement”), pursuant to applicable CEQA exemptions.

## **Background**

Effective October 1, 2008, the District and the Ranch entered into an Effluent Disposal Agreement (“2008 Agreement”), which replaced various previous agreements between the parties, for the allocation of its treated effluent to be delivered from the District property to the Ranch’s property, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, and which, pursuant to its terms, will expire on September 30, 2018. The cost for treated effluent was \$35 per acre-foot under the 2008 Agreement.

In anticipation of the expiring 2008 Agreement, the District hired an independent rate consultant to study the costs of providing recycled water service, and on February 6, 2018, the Board of Directors considered and accepted a 2018 study done by the independent consultant Bartle Wells Associates (“Consultant”) that shows the reasonable and proportional costs to provide recycled water service in the San Vicente Wastewater Service Area.

Based on the Consultant’s rate study, on April 3, 2018, the Board held a noticed public hearing and set not to exceed rates for recycled water from the San Vicente Wastewater Service Area under Proposition 218 and the Water Recycling Act of 1991 of \$1,013 per acre-foot/\$2.32 per hundred cubic feet (the “Rate”) through the adoption of Resolution Nos. 18-1525 and 18-1526, respectively. Such Resolutions were based on findings by the Board that the Rate reflects a

reasonable relationship between the amount of the Rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service. The Rate is less than the District's rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

Resolution No. 18-1526 also provided that any recycled water agreements may include customer-specific details such as recycled water credits from outside agencies, variation in rates for monthly service depending on a specific customer's proposed demand, and any other customer-specific applicable offsets. In that resolution, the Board also authorized and directed the General Manager to make offers, continue with negotiations, and finalize negotiations under the Water Recycling Act of 1991 with customers. The General Manager has done so and now brings to the Board the RW Agreement negotiated with the Ranch.

## **Discussion**

### **A. Need for Recycled Water Agreements:**

The Ramona Municipal Water District's San Vicente Wastewater Service Area serves a population of roughly 10,000. Wastewater from this service area is conveyed to the San Vicente Wastewater Reclamation Plant for treatment and effluent disposal as part of the District's sewer service. Over 97% of the effluent produced by the San Vicente Water Reclamation Plant is disposed of as recycled water. The treatment plant produces both secondary and tertiary effluent. Currently, the District incurs a range of costs for producing recycled water, which must undergo additional treatment and purification beyond secondary treatment than what would normally be required with other wastewater treatment and effluent disposal alternatives. A portion of such recycled water costs are being borne by the sewer ratepayers because the treatment of the wastewater is necessary for the disposal of the wastewater as the District currently has no other feasible and practical alternatives to dispose of the wastewater for the sewer customers in this service area. The portion of these charges that are not recouped from recycled water sales will continue to be paid by the sewer ratepayers as a necessary cost to dispose of the effluent. The existing service of creating recycled water is integrally related to providing customers with sewer service because disposal of the effluent is a necessary aspect of the wastewater service.

The Ranch Agreement allows the District to sell 100 acre-feet of its recycled water to the Ranch. The Ranch Agreement also allows the District to force deliveries of its recycled water onto the Ranch during the term of the agreement. In this way, the District can continue to comply with its obligations to dispose of the effluent from the Plant in the form of recycled water in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The proposed Ranch Agreement will be effective October 1, 2018 if approved and will have a one year term with the option for three one-year extensions.

The Water Recycling Act of 1991 requires that the District enter into recycled water agreements with identified customers requesting recycled water service if recycled water is available.

### **B. Base Contract Rate:**

The contract rate for recycled water under the Ranch Agreement does not exceed the Rate that the Board previously set as the not to exceed rate for recycled water pursuant to Resolution Nos. 18-1525 and 18-1526. Under the proposed Ranch Agreement, the Ranch will pay a base contract rate equal to the Rate (\$1,013 per acre-foot) (“Base Rate”), which will be subject to certain credits described below and which may be changed after five years to reflect changes in the cost of service.

The Rate reflects a reasonable relationship between the amount of the rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service. The Base Rate is less than the District’s rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

### **CEQA**

Under the Ranch Agreement, the District would continue to deliver recycled water to the Ranch with the same use. There are two exemptions under CEQA that the Board may find applicable to the Ranch Agreement: (1) the statutory exemption for ministerial projects and (2) the categorical exemption for existing facilities.

#### **A. Ministerial Projects**

Staff submits that because the Water Code provides that the District “shall” enter into recycled water agreements, the Board may determine that the projects are non-discretionary and subject to the ministerial project exemption. See Wat. Code §§ 13580.7(b) & (f).

The other aspect of the recycled water agreement that is ministerial is that the District must dispose of treated effluent from the San Vicente Wastewater Treatment Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The Ranch Agreement would continue the effluent disposal under the current permits and waste discharge requirements program (“WDR”), including as set forth in Regional Board Order No. 93-03 and its addendums.

Therefore, Staff recommends that the Board find the Ranch Agreement statutorily exempt as a ministerial project under PRC §21080(b)(1) and 14 CCR 15268(a).

#### **B. Existing Facilities Exemption**

Another exemption upon which the Board may rely is the categorical exemption for existing facilities. Here, there is negligible or no expansion of an existing use of publicly owned utilities. Recycled water will continue to be provided to the Ranch through the same pipelines and within previously approved limits. The District will continue to dispose of treated effluent from the Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The Ranch Agreement would continue the effluent disposal under the current permits and WDR program. There are no significant cumulative impacts of continuing with the provision of recycled water over time, and there is no reasonable possibility of resulting in a significant effect. Therefore, Staff respectfully submits that the existing facilities (Class 1) exemption under 14 CCR 15301 applies.

**Fiscal Impact**

The existing 2008 Agreement, which expires on September 30, 2018, had an effluent disposal rate of \$35 per acre-foot that had been agreed to among all parties. The proposed Ranch Agreement has a Base Rate for recycled water of \$1013 per acre foot. If the Ranch Agreement is approved, a proportional and appropriate recycled water rate will be paid for all recycled water post September 30, 2018.

**Recommendation**

District staff respectfully recommends that the Board consider adoption of the attached resolution approving and authorizing the Ranch Agreement pursuant to the applicable CEQA exemptions described above.

Submitted by: David Barnum, General Manager  
Mike Metts, District Engineer  
Jennifer Lyon, General Counsel

**ATTACHMENTS:**

Attachment 1	Draft Resolution	4. Page 5-8
Attachment 2	Exhibit A to Resolution – Recycled Water and Effluent Disposal Agreement with Spangler Peak Ranch	4. Page 9-18

**RESOLUTION NO. 18-XXXX****RESOLUTION OF THE BOARD OF DIRECTORS OF THE RAMONA MUNICIPAL WATER DISTRICT APPROVING AND AUTHORIZING EXECUTION OF A RECYCLED WATER AND EFFLUENT DISPOSAL AGREEMENT WITH SPANGLER PEAK RANCH, INC. PURSUANT TO APPLICABLE CEQA EXEMPTIONS**

**WHEREAS**, the Ramona Municipal Water District (“District”) is organized and operates pursuant to the Municipal Water District Law of 1911 commencing with Section 71000 of the California Water Code and has the authority to enter into recycled water and other contracts in accordance therewith, including recycled water contracts in accordance with the Water Recycling Act of 1991 in the California Water Code; and

**WHEREAS**, the District operates the San Vicente Wastewater Treatment Plant (“Plant”) which produces both secondary and tertiary effluent which the District must dispose of in the form of recycled water in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. Currently, the District incurs a range of costs for producing recycled water, which must undergo additional treatment and purification beyond secondary treatment than what would normally be required with other wastewater treatment and effluent disposal alternatives. A portion of such recycled water costs are being borne by the sewer ratepayers because the treatment of the wastewater is necessary for the disposal of the wastewater as the District currently has no other feasible and practical alternatives to dispose of the wastewater for the sewer customers in this service area. The portion of these charges that are not recouped from recycled water sales will continue to be paid by the sewer ratepayers as a necessary cost to dispose of the effluent. The existing service of creating recycled water is integrally related to providing customers with sewer service because disposal of the effluent is a necessary aspect of the wastewater service; and

**WHEREAS**, effective October 1, 2008, the District and Spangler Peak Ranch, Inc. (“Ranch”) entered into an Effluent Disposal Agreement (“2008 Agreement”), which replaced various previous agreements between the parties, for the allocation of its treated effluent to be delivered from the Plant to the Ranch for \$35 per acre-foot, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, and which, pursuant to its terms, will expire on September 30, 2018; and

**WHEREAS**, the Ranch has requested that the District enter into an agreement to provide recycled water to the Ranch that would take effect immediately after the existing 2008 Agreement terminates on September 30, 2018; and

**WHEREAS**, in anticipation of the expiring 2008 Agreement, the District hired an independent rate consultant to study the costs of providing recycled water service, and on February 6, 2018, the Board of Directors considered and accepted a 2018 study done by the independent consultant Bartle Wells Associates (“Consultant”) that shows the reasonable and proportional costs to provide recycled water service in the San Vicente Wastewater Service Area; and

**WHEREAS**, based on the Consultant’s 2018 study, on April 3, 2018, the Board of Directors adopted Resolution Nos. 18-1525 and 18-1526, which set a not-to-exceed rate for

recycled water under Proposition 218 and the Water Recycling Act of 1991, respectively, of \$1,013 per acre-foot/\$2.32 per hundred cubic feet (the “Rate”). Such Resolutions recognized that the Rate reflects a reasonable relationship between the amount of the Rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service. The Rate is less than the District’s rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment. Such April 3, 2018 Resolutions also recognized that any recycled water agreements may include customer-specific details such as recycled water credits from outside agencies, variation in rates for monthly service depending on a specific customer’s proposed demand, and any other customer-specific applicable offsets; and

**WHEREAS**, consistent with the direction provided by the Board of Directors in and authority granted to him in Resolution No. 18-1526, the District’s General Manager has made offers, continued with negotiations, and finalized negotiations with the Ranch. No District Directors participated, influenced or handled any of the negotiations on behalf of the District. The Ranch wishes to enter into a Recycled Water and Effluent Disposal Agreement in the form attached to this Resolution as Exhibit A (“Ranch Agreement”), which is incorporated fully herein by this reference; and

**WHEREAS**, the Water Recycling Act of 1991, including Water Code §§ 13580.7(b) & (f), provides that the District shall enter into recycled water agreements with identified customers requesting recycled water service when recycled water is available and the District must dispose of effluent from the Plant in the form of recycled water in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies, and under the current permits and waste discharge requirements program (“WDR”). Therefore, sale and delivery of recycled water under the Ranch Agreement is a non-discretionary project, subject to the ministerial project exemption and statutorily exempt under the California Environmental Quality Act (“CEQA”), Public Resources Code §21080(b)(1) and Title 14 of the California Code of Regulations §15268(a); and

**WHEREAS**, under the Ranch Agreement, there is no expansion of an existing use of publicly owned utilities. Recycled water will continue to be provided to the Ranch’s property through the same pipelines. The District will continue to dispose of treated effluent from the Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies. The Ranch Agreement would continue the effluent disposal under the current permits and WDR program. There are no significant cumulative impacts of continuing with the project (irrigation) over time and there is no reasonable possibility of resulting in a significant effect. Therefore, the Ranch Agreement is categorically exempt from CEQA as existing facilities, a Class 1 exemption under Title 14 of the California Code of Regulations §15301; and

**WHEREAS**, there is a great value accruing to the District’s customers and the public generally of an agreement that allows the District to dispose of treated effluent from the Plant at a rate that is legally justified pursuant to Proposition 218.

**NOW, THEREFORE**, be it hereby resolved, determined and ordered by the Board of Directors of the Ramona Municipal Water District as follows:

- Section 1. The matters set forth in the recitals to this Resolution are true and correct, have served as a basis for the findings, and are a substantive part of this Resolution.
- Section 2. The contract rate (“Contract Rate”) for recycled water under the Ranch Agreement does not exceed the Rate that the District previously set for recycled water in Resolution Nos. 18-1525 and 18-1526. The Contract Rate reflects a reasonable relationship between the amount of the Contract Rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of the recycled water service, with capital costs of facilities required to serve the customer being amortized over the lesser of the economic life of the facility, or the length of time the customer agrees to purchase recycled water. The Contract Rate is less than the District’s rate for potable water and does not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.
- Section 3. Having evaluated and considered the Ranch Agreement, the Board of Directors finds that it serves a great public benefit to the District’s customers and the public generally by allowing the District to dispose of treated effluent from the Plant, and in addition, by establishing a fixed, contractually set revenue stream that can be used to study the cost of providing service to the District’s sewer customers.
- Section 4. The Board of Directors further finds that the Ranch Agreement as finally negotiated is consistent with Resolution Nos. 18-1525 and 18-1526.
- Section 5. The Board of Directors further finds that the Ranch Agreement is a non-discretionary project, subject to the ministerial project exemption and statutorily exempt under the California Environmental Quality Act (“CEQA”), Public Resources Code §21080(b)(1) and Title 14 of the California Code of Regulations §15268(a); and the Ranch Agreement is categorically exempt from CEQA as existing facilities, a Class 1 exemption under Title 14 of the California Code of Regulations §15301.
- Section 6. The Board of Directors approves the Ranch Agreement and authorizes the President of the Board or General Manager to execute the Ranch Agreement in a form substantially similar to Exhibit A and any other documents necessary to effectuate it. The Board of Directors further authorizes the General Manager to take all necessary actions to effectuate the terms of this Resolution.
- Section 7. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given

effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Board declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 8. This Resolution shall take effect upon the date of its adoption.

**ADOPTED, SIGNED AND APPROVED** at a special meeting of the Board of Directors of Ramona Municipal Water District held on the 28th day of September 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

***Jim Robinson***

President, Board of Directors

Ramona Municipal Water District

**ATTEST:**

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***Bryan Wadlington***

Secretary, Board of Directors

Ramona Municipal Water District

## RECYCLED WATER AND EFFLUENT DISPOSAL AGREEMENT

This Recycled Water and Effluent Disposal Agreement (“Agreement”) is entered into by and between RAMONA MUNICIPAL WATER DISTRICT (“District”), a California municipal water district organized under California Water Code section 71000 *et seq.*, and SPANGLER PEAK RANCH, INC. (“User”), a Nevada corporation, ~~a California non-profit corporation~~. The District and User are sometimes referred to herein individually as “Party” and collectively as “Parties.”

### RECITALS

- A. The District operates the San Vicente Wastewater Treatment Plant (“Plant”) which provides treated effluent water/recycled water (hereinafter collectively referred to as “recycled water”). The District must dispose of all treated effluent in the form of recycled water from the Plant in accordance with regulations of the San Diego Regional Water Quality Control Board, Region 9, and other agencies.
- B. User is the owner of that certain real property commonly known as Spangler Peak Ranch located in Ramona, California, and conducts agricultural operations there (“Ranch”).
- C. Effective October 1, 2008, the District and User entered into an Effluent Disposal Agreement (“2008 Agreement”), which replaced various previous agreements between the Parties, for the allocation of treated effluent to be delivered from the Plant to the Ranch, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, and which, pursuant to its terms, will expire on September 30, 2018.
- D. On April 3, 2018, the District approved Resolution Nos. 18-1525 and 18-1526, which set a not-to-exceed rate for recycled water under Proposition 218 and the Water Recycling Act of 1991, respectively, of \$1,013 per acre foot. To the best of User’s knowledge, User believes that the District complied with Proposition 218, the Water Recycling Act of 1991 and all other applicable laws in setting the not-to-exceed rate for recycled water at \$1,013 per acre foot.
- E. The District and User acknowledge and agree that there is a great value accruing to the District’s customers and the public generally of an agreement that allows the District to dispose of treated effluent from the Plant.
- F. The District and User now wish to enter into this Agreement for recycled water and delivery and allocation of recycled water from the Plant to User, in accordance with the Water Recycling Act of 1991, California Water Code sections 13575 *et seq.*, upon the specific terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, the Parties agree as follows:

## AGREEMENT

1. Scope. The 2008 Agreement expires and shall be deemed terminated as of September 30, 2018, except that the ongoing mutual indemnification obligations of each party under Section 13 of the 2008 Agreement shall survive termination.
2. Effective Date. This Agreement shall be effective on October 1, 2018 ("Effective Date").
3. Term. Unless otherwise terminated pursuant to this Agreement, the Term of this Agreement shall be for one (1) year from the Effective Date unless, prior to the expiration of the Term of this Agreement, the Parties mutually agree in writing, in their individual and sole discretion, to extend the Agreement. This Agreement may be extended for three (3) additional one (1) year terms pursuant to mutual written agreement of the Parties. The District's General Manager has the authority to authorize these extensions.
4. Recycled Water System. Unless otherwise specified herein, the District shall maintain and operate its recycled water delivery system, including, but not limited to, the Plant, at its sole cost, to deliver recycled water to the User's property pursuant to this Agreement. Unless otherwise specified herein, User shall operate, maintain and repair, at its sole cost, all irrigation pipelines, pumps, sprinklers, storage facilities, improvements and appurtenances located on its property.

4.1 Permission to Enter. User hereby grants the District, acting through its duly authorized employees, agents, or representatives, unrestricted access to User's property for any necessary or appropriate work associated with this Agreement, including, but not limited to, meter reading, monitoring of recycled water used by User, or maintenance and repair of any part of the recycled water delivery system, as it deems appropriate. The District will coordinate all non-emergency work with the User and shall make reasonable schedule adjustments as requested by the User. The User hereby appoints its MATT WITMAN as its agent for purposes of coordination pursuant to this section. The District also shall have access to maintain and repair any part of the recycled water delivery system as it deems appropriate with twenty-four (24) hours' notice to the User in any non-emergency situation.

4.2 Emergency Repairs. In the event of an emergency, the District shall have the right, but not the obligation, to enter onto User's property and make repairs to any irrigation pipelines, pumps, sprinklers, storage facilities, improvements and appurtenances located on User's property, at User's sole cost, and shall have immediate and unrestricted access for the purpose of performing such repairs.

5. Delivery of Recycled Water.

5.1 Delivery. The District agrees to deliver, and User agrees to accept, recycled water during the Term of this Agreement on an as-available basis in an amount equal to 100 acre feet of the Plant's recycled water output during the Water Year. Recycled water delivered by the District pursuant to this Agreement shall be measured by the meter installed, owned, and operated and read by the District for Ranch deliveries only. As used in this Agreement, "Water Year" means a period of twelve (12) consecutive calendar months, commencing on the first day of October of 2018 during the term of this Agreement (except the date of termination), and

ending on the last day of September of the following year. The District shall have the sole and undisputed right to provide recycled water to User from any legal source available to the District.

5.2 Recycled Water Quality. The District intends to deliver recycled water that meets any applicable, then-current order or regulation issued in accordance with Title 22 of the California Code of Regulations or amendments thereto ("Recycled Water Standards"). The District shall not be deemed to be in noncompliance or breach of this Agreement should the recycled water delivered by the District fail to comply with any applicable, then-current order or regulation issued in accordance with Title 22 of the California Code of Regulations or amendments thereto. The District may, in its sole discretion, undertake improvements to the Plant ("Plant Improvements") in order to produce recycled water that meets Recycled Water Standards.

5.3 Forced Delivery. Regardless of any other deliveries, the District, in its sole discretion, may require the User to accept additional delivery of quantities beyond 100 acre feet of the Plant's recycled water for the Water Year. Such deliveries shall be called "Forced Deliveries." The User expressly consents and agrees to accept such Forced Deliveries. Before declaring a Forced Delivery, District shall first offer voluntary deliveries to User and any other recycled water recipients. Forced Deliveries shall not be counted as a delivery allocated pursuant to Section 5.1 above. With respect to Forced Deliveries, the District shall not seek reimbursement for or otherwise charge the User the recycled water rate or the pumping costs, nor shall the District be required to make any payment to the User on account of the Forced Deliveries as reimbursement for electricity bills, diesel fuel or any other costs incurred in connection with the Forced Deliveries.

5.4 Additional Deliveries. If more than 100 acre feet of the District's recycled water from the Plant during the Water Year becomes available for delivery at any time during the term of this Agreement, the District may, in its sole discretion, offer some or all of such additional available recycled water to the User, on a one-time basis under the terms and conditions of this Agreement.

5.5 Alternative Deliveries. If User provides the District with written notice that it is unwilling or unable to accept either all or a part of a delivery contemplated under Section 5.1 above, the District may, in its sole discretion, offer some or all of such delivery to a third party, on a one-time, continuing or permanent basis. Nothing set forth in this Section shall be deemed to modify or waive the right of the District to force User to accept the full quantity of recycled water described in Sections 5.1 and 5.3 above.

## 6. Recycled Water Rate.

6.1 Rate. Except for Forced Deliveries under Section 5.3 above, User agrees to pay the District the amount of One Thousand and Thirteen Dollars (\$1,013.00) per acre-foot of recycled water received pursuant to this Agreement ("Base Rate"). Payment for the recycled water shall be made in accordance with Section 7 below.

6.2 Pumping Costs. User agrees to pay for the pumping costs required to deliver recycled water to its final delivery point, except for Forced Deliveries as specified in Section 5.3 above.

7. Payment. The District shall provide monthly invoices to User for amounts due to the District pursuant to the terms of this Agreement, which shall be due and payable within thirty (30) calendar days after the date of invoice. Invoices shall indicate any adjustments applied to the Base Rate in accordance with Section 6 above. Late payments shall accrue interest at the lesser of the maximum legal rate or ten percent (10%) per annum (computed on the basis of a 365-day year), from the date upon which payment was due until payment is received by the District. Breach of this Section 7 shall be considered a material breach and shall entitle the District to terminate this Agreement in accordance with Section 19 below.

8. Restrictions On Use. User understands that the recycled water to be purchased and used is wastewater that has been reclaimed as a result of sewerage treatment operations, and is suitable only for the uses, and in those areas, authorized by applicable law and regulation.

9. Compliance with Regulatory Requirements. User agrees to comply with the District's current Rules and Regulations relating to receipt and use of recycled water as adopted by the District, and any other applicable permits and documents issued by the Regional Water Quality Control Board. All Parties agree to comply with all applicable laws and regulations of any public authority with jurisdiction over any activity contemplated by this Agreement.

10. Changes In Law. User acknowledges that the District is subject to changes in federal law, state law, regulations and permit requirements, and that these changes may conflict with the terms of this Agreement. In the event that the Agreement is not or becomes not in compliance with current law, regulations, permits, orders and other similar legal requirements imposed by an administrative agency, body or court with jurisdiction over the District, User agrees to accept any modification to this Agreement that incorporates necessary changes to maintain compliance with these legal requirements.

11. Measurement of Delivered Recycled Water. All recycled water delivered pursuant to this Agreement shall be measured by the District at the District's meter. The District shall own, inspect, operate, maintain, repair and replace the measuring equipment. All determinations relative to the measuring of recycled water shall be made by the District. Upon written request by User, the accuracy of a measurement shall be investigated by the District and any error appearing therein shall be adjusted. User may inspect such measuring equipment for the purpose of determining the accuracy thereof.

12. Records. The District shall keep proper books and records, in which complete and correct entries shall be made of all recycled water delivered by the District to User during the term of this Agreement. Said books and records shall be subject to inspection at a mutually agreeable time by any duly authorized representative of any Party hereto or the Regional Water Quality Control Board, as public records subject to disclosure pursuant to California law.

13. Monitoring Reports. If requested by the District, the User shall fill out monitoring reports on the form prescribed by the District on a weekly basis or as otherwise required by the District

and submit them to the District by the fifth (5th) day of each month with respect to the immediately preceding month. Excessive loss of recycled water off-site by spray or runoff shall be fully reported by User and such reports shall state what corrective action(s) have been taken to prevent the violation from occurring again.

14. Conditions of Shortage. User agrees and understands that weather patterns and other factors have a direct impact on the availability of recycled water. The District will make every reasonable effort to provide recycled water at the quantities consistent with past output, but the District makes no guarantees of recycled water availability.

15. Force Majeure. Both Parties acknowledge that the District's supply and delivery of recycled water and User's ability to take delivery of said water may occasionally be interrupted or curtailed due to Acts of God, power failures, accident, fire, strikes, riots, war, facility failures, facility improvements, inspection, maintenance and repairs of plant, distribution system or equipment, actions or decisions by a governmental agency, or any condition outside of a Party's control. Each Party shall not be liable to the other for damages arising out of interruption or curtailment of service for these reasons. Insofar as feasible, the Party whose performance hereunder is affected by such condition shall give the other Party at least 72 hours advance notice of a temporary discontinuance or substantial reduction in its delivery (in the case of the District) or in its acceptance (in the case of User) of recycled water, except in the case of an emergency, in which case notice shall be given as soon as reasonably practical.

16. User's Rights Nontransferable. User's rights to recycled water deliveries hereunder are not transferable or assignable, without the express written consent of the District. User shall not sell, give, transfer or distribute any of the recycled water purchased by it pursuant to this Agreement to any other person or property for any use, and User shall be the sole person using the recycled water unless the District approves such a transfer or assignment in writing in advance.

17. Insurance. The User shall provide and maintain, and shall require any and all contractors or subcontractors to maintain, the insurance programs set forth in this Section. The insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the Parties, and shall be provided and maintained at the User's own expense.

17.1 Evidence of Insurance. User shall provide a letter or certificate of insurance, or self-insurance, satisfactory to the District within thirty (30) calendar days of the Effective Date. Such evidence shall identify the coverage, and provide that the District receives written notice by mail at least thirty (30) calendar days in advance of cancellation for all required coverage.

17.2 Insurer Financial Ratings and Self-Insurance. If commercial insurance is used, it shall be provided by an insurance company with an A.M. Best rating of not less than A:VII, or as otherwise mutually agreed to by the Parties. In lieu of commercial insurance, User shall retain the right to self-insure all or any portion of its insurance obligations herein if such self-insurance is adequate and equal to the insurance required in this Agreement.

17.3 Notification of Incidents, Claims or Suits. The Parties mutually agree to notify one another of any accident or incident relating to this Agreement, which involves injury or

property damage that may result in the filing of a claim or lawsuit against any of the Parties, and of any actual third party claim or lawsuit arising from or related to this Agreement.

17.4 Insurance Coverage Requirements. User shall maintain the following programs of insurance coverage for this Agreement:

17.4.1 General Liability insurance with general aggregate limits of not less than \$2 million and naming the District as additional insured.

17.4.2 Automobile Liability insurance with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto."

17.4.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the State of California, and for which the User's contractors and/or subcontractors shall be responsible. This insurance shall include Employers' Liability coverage with limits or not less than \$1 million per accident.

18. Relationship of the Parties. Nothing contained in this Agreement shall be deemed or constructed by the Parties or by any third person to create the relationship of principal and agent, or partnership or joint venture, or any association between the Parties, and none of the provisions contained in this Agreement or any act of the Parties shall be deemed to create any relationship other than as specified herein, nor shall this Agreement be construed, except as expressly provided herein, to authorize any Party to act as the agent for any other.

19. Termination.

19.1 Notice: Should one Party breach any of the terms and conditions in this Agreement, written notice of such breach may be given to the breaching Party by the other Party. If the breach remains uncured for thirty (30) calendar days, or, if the breach cannot reasonably be cured within that thirty (30) calendar days and reasonable steps toward correcting the breaching condition(s) are not commenced within such time period and diligently pursued to cure, the other Party may, in addition to any remedies provided in this Agreement or by law or in equity, terminate this Agreement on written notice to the breaching Party effective immediately.

19.2 Termination: Notwithstanding subsection 19.1 above, the District may terminate this Agreement immediately if:

(A) The District, at its sole determination, is or will be unable to deliver properly and adequately recycled water to User for any reason whatsoever for a period greater than thirty (30) calendar days;

(B) Any governmental agency other than the District changes the District's requirements for recycled water and District determines that it cannot reasonably meet any of the new requirements;

(C) The District is ordered to cease delivery of recycled water to User by a governmental authority of competent jurisdiction;

- (D) Actions by User result in enforcement actions against the District or User by regulatory agencies;
- (E) User fails or refuses, without cause, to accept delivery of recycled water in the quantity specified in Section 5 above;
- (F) User makes an unlawful use of the recycled water;
- (G) Any invoice remains unpaid after sixty (60) calendar days; or
- (H) As the result of a claim brought by a third party, a court of competent jurisdiction finds any clause or provision of the Agreement regarding the quantity of the recycled water to be delivered or rate to be paid, is illegal, invalid, or unenforceable.

20. Specific Performance of Agreement. User understands and acknowledges that the District is relying on delivery of recycled water to User (and others) to comply with its obligations and that the District is relying on a good-faith performance of User in accepting and using the recycled water in accordance with applicable law and this Agreement. If User, as reasonably determined by the District, fails to accept and dispose of the recycled water as agreed herein, the District will suffer irreparable harm and will not be adequately compensated by money damages for said harm. User and the District agree that the District may obtain an injunction compelling specific performance of this Agreement together with such other and further relief as may be allowed by law, contract or equity. Nothing in this Agreement shall be construed to limit the District's rights or remedies. All rights and remedies herein are intended to be cumulative and non-exhaustive.

21. Indemnification.

21.1 User hereby agrees to indemnify, defend (with counsel reasonably acceptable to the District) and hold harmless the District and its officers, officials, employees, contractors, representatives, agents and volunteers from and against any and all actual or potential claims, costs (including, but not limited to, attorney's fees and expert witness fees), damages, demands, encumbrances, expenses, judgments, liabilities, liens, losses, obligations, penalties, whether direct, contingent or consequential, foreseeable or unforeseeable, direct or indirect and no matter how arising, (referred to collectively as "Claims") in any way arising out of or related to this Agreement, including, but not limited to, the District's approval of and entry into this Agreement, User's performance of its obligations under this Agreement, the use of the recycled water by User or the District's delivery of recycled water to the User's property. This indemnification shall survive the termination of this Agreement.

21.2 The District hereby agrees to indemnify, defend (with counsel reasonably acceptable to User) and hold harmless User and its officers, officials, employees, contractors, representatives, agents and volunteers from and against any and all Claims arising out of or related to District's performance of its obligations under this Agreement, including, but not limited to, District's delivery of recycled water under this Agreement, where it is established that the injury or damage was the result of the negligent, reckless or intentionally wrongful act or omission of the District or its officers, officials, employees, agents, representatives or volunteers. This indemnification shall survive the termination of this Agreement.

22. Applicable Law and Jurisdiction. This Agreement shall be governed by California law without reference to conflicts of law principles. In the event of any legal or equitable proceeding arising out of or related to this Agreement, the Parties agree that venue shall lie only in the courts in the Judicial District, County of San Diego, State of California. User hereby waives any and all rights it might have pursuant to California Code of Civil Procedure Section 394.

23. Attorney's Fees. If any action at law is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney's fees and expert witnesses' fees, which may be set by the Court in the same action brought for that purpose, in addition to any other relief to which it may be entitled.

24. Notices. Notices required or permitted under this Agreement shall be sufficiently given if in writing and if either served personally upon the party to whom it is directed or by deposit in the United States mail, postage prepaid, certified, return receipt requested, addressed to the Parties at the following addresses:

DISTRICT: Ramona Municipal Water District  
Attn: General Manager  
105 Earlham Street  
Ramona, CA 92065-1599

USER: Spangler Peak Ranch  
Attn: PO Box 1959  
Escondido CA 92033  
~~Ramona, CA 92065~~

It shall be the sole responsibility of each Party to this Agreement to promptly notify the other of any change of title or address as long as this Agreement remains in effect.

25. General Contract Terms.

25.1 No Third Party Beneficiary. This Agreement shall not create any right or interest in any non-party or in any member of the public as a third party beneficiary.

25.2 Headings. Headings contained herein are for reference purposes only and shall not constitute terms of this Agreement.

25.3 Counterparts. This Agreement may be executed in counterparts.

25.4 Binding Effect. This Agreement shall be binding upon the Parties and their respective successors in interest, assigns, executors, administrators, and personal representatives.

25.5 Amendment. This Agreement may be amended in writing by mutual agreement of the Parties.

25.6 Successors. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties; but only to the extent that User has complied with Section 16 hereof

25.7 Time of the Essence. The Parties acknowledge and agree that time is of the essence in the performance of this Agreement.

25.8 Cooperation of the Parties. The Parties each agree to cooperate in good faith to effect the purposes and terms of this Agreement.

25.9 Construction. Each Party has had the opportunity to seek advice of legal counsel. This Agreement shall be construed as if primarily written by each of the Parties, respectively, and not by any one Party.

25.10 Entire Agreement. This Agreement constitutes the entire understanding between the Parties with respect to this subject matter, superseding all negotiations, prior discussions, and any prior or preliminary agreements and understandings, written or oral. No waiver of any rights under this Agreement shall be binding unless it is in writing signed by the Party waiving such rights.

25.11 Subsequent Actions. If any clause or provision of this Agreement regarding the rate to be paid, is or becomes illegal, invalid, or unenforceable because of present or future laws, or any rules or regulations of any governmental body or entity, effective during its term, or because of a ruling of a court of competent jurisdiction, the intention of the Parties is that the District shall continue to deliver the quantities of recycled water specified in this Agreement and User shall continue to pay the Base Rate set forth in Section 6 above and receive the recycled water until the Agreement expires or is terminated; until a new rate is set by the District in compliance with applicable law or court order/judgment; or until the Parties mutually agree in writing to a different rate or quantity, whichever is earlier.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the signatures of their authorized representatives below as of the Effective Date.

RAMONA MUNICIPAL WATER DISTRICT,  
a California municipal water district

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

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

President, District Board of Directors

[SIGNATURES CONTINUED ON NEXT PAGE]

SPANGLER PEAK RANCH, a Nevada corporation

By: 

Date: 9-24-2018

Name: HENRY BEUDEN

Its: President

By: 

Date: September 24 2018

Name: Matthew Wotman

Its: Secretary

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer M. Lyon, General Counsel

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

ATTEST

By: \_\_\_\_\_  
District Clerk

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