



JOSHUA BASIN WATER DISTRICT
 REGULAR MEETING OF THE BOARD OF DIRECTORS
 WEDNESDAY DECEMBER 21, 2011 7:00 PM
 JOSHUA TREE COMMUNITY CENTER
 6171 SUNBURST AVENUE, JOSHUA TREE CA 92252

NOTICE

It has come to the District's attention that a formal vote of the Board did not take place when the December 7, 2011 Regular Board Meeting was adjourned to December 14, 2011 and again when the December 14th, 2011 meeting was adjourned to December 16th. As such, any action taken by the Board at the December 14th Meeting will be reconsidered and acted upon at the December 21, 2011 Regular Meeting of the Board, so as to ensure full compliance with Brown Act. The December 16, 2011 Meeting was canceled.

AGENDA

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. DETERMINATION OF QUORUM
4. APPROVAL OF AGENDA
5. PUBLIC COMMENT: At this time, any member of the public may address the Board on matters within the Board's jurisdiction that are not listed on the agenda. Please use the podium microphone. The Board may not discuss at length or take action on items not on the agenda.
During either "Public Comment" Item, please use the podium microphone. State your name and have your information prepared and be ready to provide your comments to the Board. The District is interested and appreciates your comments. A 3-minute time limit may be imposed. Thank you.
6. BOARD APPOINTMENT TO FILL THE BOARD VACANCY
Recommend that the Board appoint Paul F. Coate as Director.
7. CONSENT CALENDAR: Items on the Consent Calendar are considered routine in nature and will be adopted in total by one action of the Board of Directors unless any Board Member or any individual or organization interested in one or more consent calendar items wishes to be heard.
 - A. REVISION OF JBWD ADMINISTRATION CODE SECTION 3.07.02 PROVIDING FOR BOARD AGENDA ITEMS NEEDING TO BE ADDRESSED SUBSEQUENT TO POSTING OF AGENDA: Recommend that the Board adopt the revision to conform with the California Brown Act, rather than the more restrictive current Administration Code Section.

- Pg 5-14
8. SELECTION OF BOARD OFFICERS
Recommend that the Board designate Mike Reynolds as President of the Board for 2012
Recommend that the Board designate Mickey Luckman as Vice President of the Board for 2012
- Pg 15-34
9. AMENDMENT OF ARTICLES III AND VII TO PROVIDE RULES AND REGULATIONS RELATED TO THE WASTE WATER SYSTEM AND TO PROVIDE FOR DEVELOPMENT AGREEMENT WITH PROVISIONS TO EXTEND THE COLLECTION OF CAPACITY FEES
Recommend that the Board adopt Resolution 11-XXX approving proposed changes to Articles III and VII of the Joshua Basin Water District (JBWD) Rules and Regulations to address various procedures and policies regarding waste water systems; and to provide for development agreements with the potential to collect capacity fees over an extended period of time.
10. AGREEMENT BETWEEN HI-DESERT MEDICAL CENTER AND JOSHUA BASIN WATER DISTRICT FOR PACKAGE WASTE WATER TREATMENT PLANT
Recommend that the Board approve the agreement.
11. PUBLIC COMMENT
At this time, any member of the public may address the Board on matters within the Board's jurisdiction that are not listed on the agenda. Please use the podium microphone. The Board may not discuss at length or take action on items not on the agenda.
12. GENERAL MANAGER REPORT
13. DISTRICT GENERAL COUNSEL REPORT
14. DIRECTORS COMMENTS/REPORTS
15. CLOSED SESSION
- A. At this time, the Board will go into Closed Session to confer with Legal Counsel on existing litigation pursuant to subdivision (a) of Government Code Section 54956.9. (Re Joshua Basin Water District v. Robert Ellis, San Bernardino Superior Court - Joshua Tree District, Case No. CIVMS 900168).
- B. At this time, the Board will go into Closed Session to confer with Legal Counsel on existing litigation pursuant to subdivision (a) of Government Code Section 54956.9. (Re Joshua Basin Water District v. Ironhead LLC a California Limited Liability Company, Praxedes Beard and Does 1 – 10 inclusive, San Bernardino Superior Court - Joshua Tree District, Case No. CIVMS 1100087).
16. REPORT ON CLOSED SESSION
17. ADJOURNMENT

INFORMATION

The public is invited to comment on any item on the agenda during discussion of that item.

Any person with a disability who requires accommodation in order to participate in this meeting should telephone Joshua Basin Water District at (760) 366-8438, at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the District's office located at 61750 Chollita Road, Joshua Tree, California 92252 during normal business hours.

JOSHUA BASIN WATER DISTRICT
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

December 7, 2011

Report to: President and Members of the Board
From: Joe Guzzetta, General Manager



TOPIC: REVISION OF JOSHUA BASIN WATER DISTRICT (JBWD)
ADMINISTRATION CODE SECTION 3.07.02 PROVIDING FOR
BOARD AGENDA ITEMS NEEDING TO BE ADDRESSED
SUBSEQUENT TO POSTING OF THE AGENDA

RECOMMENDATION: That the Board adopt revised Section 3.07.02 to conform with
the California Brown Act, rather than the more restrictive
current Administration Code Section.

ANALYSIS: California Government Code 54954 limits Board action to items
that were posted on the published agenda. However, there
are some exceptions. One such exception is Section 54954.2
(2) which states: "Upon a determination by a two-thirds vote
of the members of the legislative body present at the meeting,
or, if less than two-thirds of the members are present, a
unanimous vote of those members present, that there is a
need to take immediate action and that the need for action
came to the attention of the local agency subsequent to the
agenda being posted as specified in subdivision (a). Under
this provision, four of five board members, three of four board
members, or three of three board members present at a
meeting can make the finding.

Joshua Basin Water District Administration Code Section
3.07.02 is slightly more restrictive with the following language:

"Upon a determination by a four (4) member vote of the board
or, if less than four members are present, a unanimous vote of
those Directors present, the Board of Directors may take action
on items if the Board determines that there is a need to take
action and the need for action arose subsequent to the Agenda
being posted."

The section complies with the Brown Act when five or three
board members are present, but does not allow a $\frac{3}{4}$ majority
of the Board to take action where only four board members
are present, making it more restrictive in that circumstance.

The proposed change comes directly from California Government Code 54954 and would allow three of four board members to add an item to the agenda provided that the appropriate findings can be made.

Proposed Section 3.07.02

Upon a determination by a two-thirds vote of the members of the Board present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, the board of Directors may take action on items if the board determines that there is a need to take immediate action and that the need for action came to the attention of the District subsequent to the Agenda being posted.

§ 54954.1

**LOCAL AGENCIES
Title 5**

constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

(Added by Stats.1973, c. 1070, p. 2151, § 1. Amended by Stats.1990, c. 1198 (A.B. 4065), § 1; Stats.1997, c. 253 (S.B.138), § 4; Stats.2002, c. 300 (A.B.3035), § 6.)

Cross References

City government, ordinances, publication, see Government Code § 36933.
"Legislative body" defined for purposes of this Chapter, see Government Code § 54952.
"Meeting" defined for purposes of this Chapter, see Government Code § 54952.2.

Library References

Municipal Corporations Ⓢ89.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 224 to 230, 233.

Research References

Encyclopedias

CA Jur. 3d Administrative Law § 123, Compliance With Americans With Disabilities Act.
CA Jur. 3d Administrative Law § 137, Request for Agenda.

Treatises and Practice Aids

9 Witkin Cal. Proc. 5th Administrative Proceedings § 26, (S 26) in General.
9 Witkin Cal. Proc. 5th Administrative Proceedings § 28, in General.

United States Code Annotated

Equal opportunity for individuals with disabilities, prohibition against discrimination, see 42 U.S.C. § 12132.

Notes of Decisions

Executive sessions 2
Fees 1

cost of providing the service. 62 Op.Atty.Gen. 658, 10-31-79.

2. Executive sessions

1. Fees

Under this section, a reasonable charge for sending such notice is a factual question and the charge should be based upon the estimated

Local agencies, including school boards, may hold executive sessions only during regular or special meetings for which adequate notice has been given as required by provisions of secret meeting law. 43 Op.Atty.Gen. 79, 2-18-64.

§ 54954.2. Agenda; posting; action on other matters

(a)(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

CITIES, COUNTIES AND OTHER AGENCIES

§ 54954.2

Div. 2

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

✓ (2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(Added by Stats.2005, c. 72 (A.B.138), § 12, eff. July 19, 2005.)

Historical and Statutory Notes

Sections 16 and 17 of Stats.2005, c. 72 (A.B. 138), provide:

"SEC. 16. The Legislature finds and declares that Sections 54954.2 and 54957.1 of the Government Code are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

"SEC. 17. (a) Notwithstanding any other provision of law, the Commission on State Mandates, no later than June 30, 2006, shall reconsider its test claim statement of decision in CSM-4202 on the Mandate Reimbursement Program to determine whether Chapter 486 of the Statutes of 1975 and Chapter 1459 of the

Statutes of 1984 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted. If a new test claim is filed on Chapter 890 of the Statutes of 2004, the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202. The commission, if necessary, shall revise its parameters and guidelines in CSM-4485 to be consistent with this reconsideration and, if practicable, shall include a reasonable reimbursement methodology as defined in Section 17518.5 of the Govern-

JOSHUA BASIN WATER DISTRICT
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

December 14, 2011

Report to: President and Members of the Board
From: Joe Guzzetta, General Manager

TOPIC: AMENDMENT OF ARTICLES III AND VII TO PROVIDE RULES AND REGULATIONS RELATED TO THE WASTE WATER SYSTEM AND TO PROVIDE FOR DEVELOPMENT AGREEMENT WITH PROVISIONS TO EXTEND THE COLLECTION OF CAPACITY FEES

RECOMMENDATION: That the Board adopt Resolution 11-XXX, approving proposed changes to Articles III and VII of the Joshua Basin Water District (JBWD) Rules and Regulations to address various procedures and policies regarding waste water systems; and to provide for development agreements with the potential to collect capacity fees over an extended period of time.

ANALYSIS: When the District first adopted a waste water strategy Article XIII of the District Rules and Regulations was modified to assure that the District could charge appropriate capacity, user, and other fees. Staff has now drafted changes to Article **III**, "*Application and Review Procedures for Subdivisions, and Multiple Residential, Commercial, Industrial, Public, Agricultural and Individual Residential Water System mainline Extensions*" and Article **VII**, "*Refund and Reimbursement Agreements*" to apply those articles to future waste water facilities as well. Articles III and VII currently apply to water facilities, so in **most cases the changes just add the words "and waste water"** to the procedures that have already been in place for water. Other changes are proposed to update the sections as follows:

Article 3.1 Requires the Applicants to show that they own the property or have permission of the property owner to request the project. It also adds language to recognize that the developer rather than the District usually installs new lines to a development using District specifications.

Articles 3.4 and 3.6 clarify that a remaining deposit balance for plan checking may be applied toward the inspection fee, and a remaining deposit balance for inspection fee may be applied toward plan check fee.

Article 3.9.1 is new and requires the developer to provide all facilities that are necessary to treat waste water, similar to current Article 3.9 which does so for water service.

Article 3.15 "*Priority Service for Low income Housing Projects*" was not extended to waste water pending review by legal counsel to determine if state law requires the District to give priority to Low Income Housing Projects for waste water.

Article 3.16 is new and provides that the District may enter into a development agreement for water or waste water facilities to assure that the developer installs all facilities needed; and to assure that the developer will have access to water and waste water service once the facilities are installed.

Concern has been raised recently by the Board that if the District allows the Hi Desert Medical Center to pay waste water capacity fees over an extended period of time, the District should consider the same benefit to other developers. Article 3.16 provides that if capacity fees exceed \$100,000 they *may* be paid over an extended period if the District does not anticipate needing the funds during that period to acquire land or plan or construct facilities that are funded by capacity fees; and provided that there is a mechanism for assuring that there will be no default due to bankruptcy, foreclosure, or other means. The specifics would be subject to a Development Agreement.

Article 7.1 defines a "Refund Agreement"

Article 7.3 Was modified to state that the District *may* pay for **oversizing of new pipes rather than "will"** pay for oversizing of pipes. This applies to instances where a new development proposes to install a facility, such as pipe, whose ultimate size should be larger than what is needed strictly for the development.

Previously, a line over 6 inches in residential areas and 8 **inches in commercial areas was considered "oversized."** The proposed regulations designate minimum sizes as 12 inches in commercial areas and 8 inches elsewhere, but state that the District Engineer will define what is considered to be "**oversizing**" recognizing that each situation and each facility may be different.

Previously, the incremental cost of oversizing (that would be paid by the District) was **determined by "the bid method."** This probably was established when the District installed new

service lines and obtained bids from contractors. Now most facilities are installed by the developer which means that the District would not have bids to use as a basis for identifying the incremental cost. This has been changed to state that the District Engineer will define the cost of the incremental oversizing for purposes of this Article

Article 7.4 increases the length of time from 10 years to 15 years, for a refund agreement to be in effect. It places the onus on the Applicant to request a refund when future developments connect to the system, rather than placing the onus on the District to initiate payment of the refund. It also requires District approval for an Applicant to transfer ownership of the Refund Agreement. A refund agreement allows an Applicant to be reimbursed from future Applicants when the original Applicant has paid to extend a line past other undeveloped properties, or when facilities have been oversized, etc.

Adoption of this resolution will specify rules for waste water treatment facilities and will provide for capacity fees to be paid over a period of time subject to Development Agreement.

Article 3

APPLICATION AND REVIEW PROCEDURES FOR SUBDIVISIONS, AND MULTIPLE RESIDENTIAL, COMMERCIAL, INDUSTRIAL, PUBLIC, AGRICULTURAL AND INDIVIDUAL RESIDENTIAL WATER AND WASTE WATER SYSTEM FACILITIES

This Article will apply to all water and waste water facilities for water or waste water service initiated by the property owner or project developer (collectively, “Applicant”) for the purpose of providing service to such Applicant’s parcel or parcels.

ARTICLE 3.1 PROJECT INITIALIZATION

The Applicant must present a completed application to the District describing the project and including tentative parcel maps or tentative tract maps, if applicable. The Applicant shall demonstrate that Applicant is owner of the property or has authority from the property owner to submit the application. After completion of the application, a design conference with the District general manager or his/her designate must be arranged. District staff will review the proposed water and/or waste water demand requirements and will determine if the project is compatible with the existing District facilities.

ARTICLE 3.2 ORGANIZATION OF PARTICIPANTS

The initiation of and organization and/or coordination for a water and/or waste water system project is the Applicant’s responsibility. If there are other potential participants in the project it shall be the responsibility of the Applicant to organize the effort and obtain commitments from potential participants.

ARTICLE 3.3 DISTRICT’S DETERMINATION OF FEASIBILITY

District customers do not have an automatic or unconditional right to have a water or waste water service project constructed. Project feasibility and approval are determined by the District and based on a number of factors, including, but not limited to, availability of water, and water/waste water facilities.

Water and/or waste water service to any housing development of ten (10) units or more must be pre-approved by the District Board of Directors (“Board”) before a water and/or waste water service letter will be issued. The Board will provide final review and acceptance of all feasibility studies.

ARTICLE 3.4 INITIAL DEPOSIT OF PLAN CHECK AND FEASIBILITY FEES

Deposits will be required for all projects accepted for plan check.. Once a deposit has been paid, a set of instructions, insurance requirements, standard construction drawings and specifications for water and/or waste water facilities will be provided to the Applicant. Any cost associated with plan check will be deducted from the deposit made by the Applicant. The District will keep

an itemized listing of all plan check and feasibility costs incurred. If the deposit is insufficient to pay all costs incurred by the District for plan check, a bill for the balance will be sent to the Applicant and must be paid by the Applicant before service will be initiated to the project. If the deposit exceeds the amount required for plan check, the District will refund the balance to the Applicant, or may apply the balance to other fees or deposits. The plan check fees are established in Article 13.

ARTICLE 3.5 PREPARATION OF DESIGN PLANS AND DRAWINGS

Engineering plans, construction cost estimates, and construction of water and/or waste water facilities in accordance with District specifications are the responsibility of the Applicant unless the District specifically determines to provide those services at Applicant's cost and expense. The District specifications provide detailed instructions for design of water and waste water facilities.

The Applicant's engineer shall prepare the final drawings for water and/or waste water facilities in accordance with the District's specifications and the rules and regulations of other regulatory agencies. After compliance with the foregoing, Applicant shall proceed to obtain all certificates, permits, encroachment permits, clearances from all other agencies and approval bodies in accordance with District's requirements. Such documents should be presented to District staff for review and approval.

Reasonable consultation with District staff during preparation of the drawings is expected. The design package should be completed before it is submitted to the District for checking. Four (4) sets of plan check prints must be submitted to District in such format as determined by the District. The District staff or designee will check the design drawings and return one (1) set to the Applicant's engineer with any necessary corrections noted. The Applicant's engineer will then make all corrections required by District or its designee and return the final drawings to the District for review and approval. In the event District does not approve the drawings, the foregoing procedure shall be continued until the drawings have been approved by the District. Upon approval of the drawings, the District shall sign the documents indicating the District's acceptance for construction. After the design drawings have been accepted, the District will issue a notice to proceed.

ARTICLE 3.6 INSPECTION FEE DEPOSIT

Inspection fee deposits will be required for all projects accepted for construction.. Once a deposit has been paid, the Applicant must notify the District of the project construction schedule in order to coordinate with the District's inspector. Any cost associated with inspection by or on behalf of the District will be charged to the Applicant. The District will keep an itemized listing of all inspection costs incurred. If the deposit is insufficient to pay all costs incurred by the District for inspection, a bill for the balance will be sent to the Applicant and must be paid by Applicant before water service and/or waste water connection will be initiated to the project.. If the deposit exceeds the amount required for inspection, the District will refund the balance to the Applicant, or may apply the balance to other fees or deposits. The inspection fees are established in Article 13.

ARTICLE 3.7 REFUND AGREEMENT

When an Applicant constructs a water and/or waste water system facility, he/she/it may be eligible for a partial refund of costs in connection with such facilities as determined in Article 7.

ARTICLE 3.8 FEES REQUIRED DUE TO NEW DIVISIONS OF PARTICIPATING PARCELS

New parcels resulting from a subdivision of real property participating in an earlier water and/or waste water facility project will not have entitlement to a water service and/or waste water service before payment by Applicant of all pertinent fees including water and/or waste water facility fees, or refund to Applicant if there is an applicable refund agreement. A land division may require additional water and/or waste water facilities before service can be provided, in which case the Applicant will be required to comply with applicable District Rules and Regulations.

ARTICLE 3.9 REQUIREMENT FOR ALL FACILITIES NECESSARY TO PRODUCE WATER SUPPLY

Applicants requiring water system mainline extensions, whether it be a main extension or complete facilities for a development project, shall provide all facilities necessary to produce the water supply, including, but not limited to, reservoirs for storage, pumps for pumping of wells and/or booster stations, water transmission and distribution mains, valves, fire hydrants, air valves, blow-offs, pressure control stations, residential customer service installations and easements. Any of the above facilities may be required to provide the proper level of water service, in accordance with the District rules and regulations, and all policies, water master plans, and the like which are in effect at the time, for the type of facility extension contemplated and which are necessary to meet the requirements of other government regulatory agencies.

ARTICLE 3.9.1 REQUIREMENTS FOR ALL FACILITIES NECESSARY TO TREAT WASTE WATER OR CONNECT TO EXISTING WASTE WATER SYSTEM

Applicants requiring a waste water system, whether it be a main extension or complete facilities for a development project, shall provide all facilities necessary to connect to the District's existing waste water treatment facilities, or provide a new waste water treatment facility, including, but not limited to, package waste water treatment plant, pumps and/or booster stations, waste water transmission and distributions mainlines, valves, pressure control stations, customer service installations and easements. Any of the above facilities may be required to provide the proper level of waste water service, in accordance with the District rules and regulations, and all policies, waste water master plans, and the like which are in effect at the time, for the type of facility extensions contemplated and which are necessary to meet the requirements of other government regulatory agencies.

ARTICLE 3.10 LENGTH OF WATER OR WASTE WATER MAINLINE EXTENSIONS

Water and Waste Water Mainline extensions shall be brought to the furthest parcel line of the most distant Applicant, unless the District determines that there is no need to do so. If the District waives the extension to the furthest parcel line but anticipates the need to extend the line in the future, the District shall collect an extension in-lieu fee. The fee shall be the estimated current cost of extending the line to the furthest parcel line.

The District will pay the cost to extend the water mainline across the additional footage where water mainline extensions were installed to the closest parcel line of the most distant Applicant in conformance with the Rules and Regulations in effect between May 1997 and January 2005.

For subdivisions, the water and/or waste water mainlines shall be adjacent to front parcel line of all parcels created by the subdivision and a customer service facility shall be required for all parcel lots.

ARTICLE 3.11 INSPECTION DURING CONSTRUCTION

All water and waste water facilities shall be inspected by the District or its authorized agent, at the Applicant's cost and expense, and the District shall approve the completed project prior to acceptance of title to the facilities. The inspector shall have the authority to approve, reject, or require modifications to the facilities in conformance with the District's rules, regulations and specifications.

ARTICLE 3.12 RESPONSIBILITY OF APPLICANT TO OBTAIN PERMITS

All permits, easements, street dedications and rights-of-way involved with all water and waste water facilities shall be the responsibility of the Applicant at the Applicant's cost and expense and shall be in such location acceptable to the District. Easements, in the name of the District will be required of all affected parcel owners and will be obtained at the expense of the Applicant. All easements will be conveyed to the District prior to approval of the final drawings as set forth in Article 3.5. Easement documents shall be satisfactory to District (in the District's sole and absolute discretion) and shall include a complete legal description and a plat map, both of which shall be prepared by a licensed land surveyor or a licensed civil engineer. The easement description and the easement plat map shall show the licensed civil engineer or surveyor's seal or stamp with his signature.

All construction shall be completed by a contractor, licensed by the State of California and such contractor shall be qualified to install all of the facilities required, proof of which will be provided, in writing, to the District prior to the initiation of construction. During the performance of work under these rules and regulations, the contractor will have the minimum insurance coverage set forth in the Certificate of Insurance Coverage Requirements form, naming the District, its officers, employees and agents as additionally insured before construction is authorized to commence. The endorsements set forth on such certificates in favor of the District are mandatory. The District may require that the contractor provide performance, payment and labor and material bonds.

ARTICLE 3.13 BILL OF SALE TO DISTRICT

After completion of construction and final inspection and acceptance by the District of the water and/or waste water facilities, the Applicant shall execute a bill of sale on a form provided by the District, and shall submit the same to District for final approval by the Board. Upon final approval by the Board, the bill of sale which conveys ownership of all water and/or waste water facilities will be accepted by the District and such facilities will belong to and be maintained by the District.

ARTICLE 3.14 DISTRICT INSTALLED MAINLINE EXTENSION

The District may recoup monies from customers who request service connection to a new water and/or waste water mainline, which has been installed after May 21, 1997. Applicants will reimburse the District on a price-per-foot basis, determined by measuring the distance of the parcel between property lines where the mainline is installed.

ARTICLE 3.15 PRIORITY SERVICE FOR LOW INCOME HOUSING PROJECTS

The District shall devote its commercially reasonable efforts to plan for and, to a reasonable degree (as determined on a case-by-case basis) prioritize providing water connections to the lower income housing element of a general plan adopted by the legislative body of a county or city that pertains to development within the District’s boundaries.

Development projects that include lower income housing units shall not be denied approval of an application for service, nor shall conditions be imposed thereon or services reduced which are applied for, unless the District makes specific written findings that the denial, condition, or reduction is necessary due to the existence of one or more of the following:

- a) insufficient water supply or insufficient water treatment or distribution capacity;
- b) a State Department of Health Services order prohibiting new water connections;
- c) insufficient sewer treatment or collection capacity;
- d) a Regional Water Quality Control Board order prohibiting new sewer connections; or
- e) the applicant has failed to agree to reasonable terms and conditions.

The District shall not discriminate in any manner when processing and considering requests for services by developments that include lower income housing units.

ARTICLE 3.16 DEVELOPMENT AGREEMENT

The District may enter into a development agreement with Applicant for the purpose of identifying the specific facilities required to serve a residential, commercial, industrial, institutional or other development, including, but not limited to, any facilities required by Article 3.9. Such development agreement may establish a timetable for installing such facilities. Subject to the compliance with the development agreement, payment of all fees and compliance with all other District rules and regulations, District shall provide water and/or waste water service to Applicant’s project, subject to the circumstances within the District’s control or as otherwise provided by District’s rules, regulations, policies and procedures, as may be amended from time to time.

The development agreement may (a) specify the duration of the development agreement and the period for which new connections will be made available; (b) include conditions, terms, restrictions and requirements for the subsequent discretionary actions; and (c) provide that the construction of the facilities shall be commenced and completed within a specified time. In the event Applicant is required to pay capacity fees in excess of One Hundred Thousand Dollars (\$100,000.00) the development agreement may also provide for the payment of capacity fees over an extended period of time (as determined by the District in its sole and absolute discretion) provided that a mechanism is in place to protect the District from default due to foreclosure, bankruptcy, or other means, as shall be acceptable to the District in its sole and absolute discretion. Such extension will not exceed the time beyond which the District has a need to use such fees in order to acquire land or plan or construct facilities that are funded by capacity fees. The development agreement shall include such terms and conditions as District shall determine, including, but not limited to, the Applicant financing of necessary facilities and subsequent reimbursement over time.

Article 7

REFUND AND REIMBURSEMENT AGREEMENTS

ARTICLE 7.1 . REFUND AGREEMENTS

A refund agreement is a written contract between the District and a property owner where the property owner has installed water or waste water system facilities to serve their parcel at their sole expense which provides an adjacent mainline and opportunity for future service to other parcels where none existed previously.

A refund agreement may apply in cases where water and/or waste water system facilities have been installed by an Applicant under the terms of the Water and Waste Water System Facilities Policy. See Article 3.

ARTICLE 7.2. EXTENT OF REFUND

An Applicant having paid all or part of the cost of a water and/or waste water facility may be entitled to a refund agreement. Such refund shall not exceed the amount actually collected by the District under the Water and Waste Water System Facilities Policy, and in no event will the refund exceed the Applicant's actual cost. The Applicant's actual cost may include an appropriate pro rata portion of the substantiated cost of engineering easements, rights-of-way, and construction expenses directly attributable to the water and/or waste water system facility. The District's plan check processing fees, inspection fees, capacity fees, customer service facility installation and all other normal District charges and fees in connection with the facility shall not be included in the determination of the refundable amount. Where construction was done by the Applicant, the equivalent amount of the District's normal customer service facility installation charge will be deducted from the Applicant's actual cost in the determination of the refundable amount.

ARTICLE 7.3. OVERSIZING

When District policy requires the oversizing of the water and/or waste water system facility, the cost of such oversizing maybe paid by the District for the water and/or waste water facility Extension Project.

Costs paid by the Applicant for oversizing may qualify for a refund agreement. The Applicant paying for the oversizing of the water and/or waste water system facility may be given credit for part of the capacity fee subject to a development agreement or other agreement. Such credit cannot exceed the cost of the oversizing. Such credit is also deducted from the refundable amount.

Any water or waste water facility will be considered oversized if the size of such facility exceeds the "base size" capacity required to service the Applicant's development as determined by the District Engineer; provided that the minimum size of a pipeline for water and/or waste water service shall be eight inches (8") in diameter for single family residential use, and twelve inches (12") in diameter for commercial, industrial or institutional use.

The incremental cost of the oversizing shall be determined by the District Engineer.

ARTICLE 7.4. REFUND AGREEMENT

After the completion of any water and/or waste water system facility which qualifies for a refund agreement, the District shall prepare a final and complete accounting of the refundable costs. A refund agreement prepared on a standard form provided by the District will be presented to the Applicant which shows the complete and total terms of the refund and the refundable cost attributable to each adjacent benefited parcel. Benefited parcels in this case are defined as those that are situated alongside the water and/or waste water mainline and did not previously have an adjacent mainline, and do not extend beyond the end of the mainline.

Subject to receipt of such amount and upon request of the refund agreement holder, the District will refund any refundable portion provided for in the refund agreement for each adjacent parcel that has water and/or waste water services installed. Such refund will be paid within ninety (90) days of the receipt of payment from the adjacent parcel property owner for the new customer service facilities.

The refund agreement will have attached as Exhibit A the list of the benefited parcels, and a benefited parcel plat showing the relationship of the benefited parcels to the facility extension provided by the Applicant. Refunds shall continue until the term of the refund agreement shall end, or until the total refundable cost has been refunded to the Applicant, whichever is earlier.

Each refund agreement will expire at the end of fifteen (15) years from the date of execution, or when the Applicant has been fully repaid for the cost that is refundable to him, whichever first occurs. All non-refunded charges collected thereafter shall belong to the District.

With District approval, refund agreements may be sold, conveyed, or assigned by the original signatory Applicant. The District will honor the agreement which has been transferred, provided that such transfer is evidenced by a document recorded with the County Recorder.

ARTICLE 7.5 REIMBURSEMENT FOR DISTRICT-INSTALLED MAINLINE EXTENSIONS

Where the District has installed new water and/or waste water mainlines or replaced water and/or waste water mainlines adjacent to parcels not currently connected to the water system, the District will be reimbursed a Front Footage Fee. The footage is measured along the side of the parcel that sits adjacent to the water and/or waste water mainline, from property corner to property corner. In situations where the mainline sits adjacent to two sides of the parcel, the shortest measurement will be used to compute the fee. The fee is computed by taking all of the costs incurred to install or upgrade the water and/or waste water mainline divided by the number of feet of water and/or waste water mainline installed then divided in half to allocate the charge to parcels on both sides of the street. The Front Footage Fee is calculated by multiplying the footage measurement by the fee. The Board will adopt each Front Footage Fee subject to reimbursement separately as projects are completed. Adopted reimbursement fees are listed in Article 13.18.1

JOSHUA BASIN WATER DISTRICT
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

September 7, 2011

Report to: President and Members of the Board
From: Joe Guzzetta, General Manager

TOPIC: AGREEMENT BETWEEN HI DESERT MEDICAL CENTER AND
JOSHUA BASIN WATER DISTRICT FOR PACKAGE WASTE
WATER TREATMENT PLANT

RECOMMENDATION: That the Board approve an agreement between Hi Desert Medical Center (HDMC) and Joshua Basin Water District (JBWD) to provide for a package wastewater treatment to be paid by the HDMC and constructed, owned, and operated by Joshua Basin Water District.

ANALYSIS: In planning for its future expansion the Hi Desert Medical Center anticipates the need to provide waste water treatment to meet the requirements of the Colorado River Basin Region California Water Quality Control Board (Regional Board) and JBWD. In 2009 JBWD adopted its waste water strategy which lays the foundation for addressing the HDMC needs.

In November 2009 JBWD and HDMC agreed to work together toward an agreement that would provide for JBWD to design, construct, own and operate a package waste water treatment plant to serve HDMC, with the cost to be paid by HDMC. **The basic provisions of this agreement are consistent with JBWD's** waste water requirements for all development in Joshua Tree, except that it stretches out or defers the payment of certain fees recognizing that HDMC is a governmental agency, and recognizing the cooperative and mutually beneficial nature of this agreement.

The major points of the agreement are noted below. The attached summary shows more detail. Also attached is the full agreement.

- JBWD will design and construct a 52,000 gallon per day (gpd) average daily flow waste water treatment plant with a maximum flow of 73,000 gpd. This will serve the 23,500 square feet of planned offices and all of the existing HDMC facilities including the Continuing Care Center, except the chillers. The waste water treatment plant has been designed to expand in the future (Phase

2) to bring the total to 104,000 average and 146,000 gpd maximum flow for 100,000 square feet of future hospital facilities.

- HDMC will pay for all costs of constructing the project, which HDMC would incur even absent this agreement.
- HDMC will pay to JBWD a capacity fee of \$1,245,636.36 less a credit of \$126,480 for a net of \$1,119,156.36. Although this fee would normally be required at the onset, the agreement allows HDMC to pay over a period of 16 years with interest at the rate that JBWD would otherwise receive on the funds. This capacity fee is for **the future "central" waste water treatment plant that** JBWD is expected to need to comply with the Regional Board. This fee is required of all similar projects.
- The package waste water treatment plant has a designed life of 15 years, although the life could be longer. JBWD regulations would require HDMC to pay for the replacement over a 15-year period. In lieu of that, this agreement provides for HDMC to pay for the replacement whenever the plant needs to be replaced.
- HDMC will pay a monthly fee for operation and maintenance of the plant.
- **Whenever JBWD constructs the "central plant" the package plant will be abandoned and HDMC will be connected to the "central plant."**
- The design of the plant has already been completed by Dudek & Associates, district engineers for JBWD. It would require about 12 months for construction.

This agreement is mutually beneficial to both agencies. It enables the HDMC to expand its facilities at a cost anticipated to be the same or lower than if it were constructed by HDMC. It relieves HDMC of operating a waste water treatment plant. It furthers the goals of JBWD for clean water by reducing the nitrates that otherwise would enter the ground water, and it provides a prototype of future waste water treatment plants in JBWD consistent with the JBWD Waste Water Strategy.

The agreement has been reviewed by the appropriate committees of the Hi Desert Medical Center and the Joshua Basin Water District and they concur with this recommendation.

EXECUTIVE SUMMARY OF THE PROPOSED WASTE WATER AGREEMENT (“AGREEMENT”) BETWEEN HIGH DESERT MEDICAL CENTER (“HDMC”) AND JOSHUA BASIN WATER DISTRICT (“JBWD”)

- HDMC proposes to expand its Acute Care Hospital in Joshua Tree, California (“Acute Care Facility”). In connection with the expansion, the parties desire to enter into the Agreement wherein JBWD would design, build, own and operate the Phase 1 package waste water treatment plant, subject to HDMC’s right to take over such plant as discussed below, with a 52,000 gallon-per-day (gpd) average daily flow and 73,000 gpd maximum daily flow. Phase 1 of the project is intended to treat waste water from a building addition of 23,500 square feet in addition to all current septic waste from the Acute Care Facility with the exception of water used for the chillers.
- In the future HDMC may construct up to 100,000 square feet of building at the Acute Care Facility which would require Phase 2 of the package waste water treatment plant with a 104,000 gpd average flow and a 146,000 gpd maximum flow. Phase 2 of the project shall also be designed, constructed, owned and operated by JBWD, subject to HDMC’s right to take over such plant as discussed below.
- HDMC would pay for all of the costs to design, build, and operate Phase 1 and Phase 2 of the package treatment plant. HDMC has, in certain circumstances, the ability to abandon or assume responsibility for the planning, design, and/or construction of Phase 1 and/or Phase 2 of the project if the parties are unable to come to agreement at various points on items such as (1) what improvements are to be constructed, (2) the cost of bids for each phase, (3) change orders required during construction,(4) initiation of the Phase 2 improvements, and (5) rates and charges levied by JBWD. The right to abandon or take over the project are subject to the conditions set forth in the Agreement.
- Within 30 days of the effective date of the Agreement HDMC will deposit \$200,000 with JBWD to provide for planning, engineering, advertising, bidding and other costs incurred by JBWD prior to award of the construction contract.
- If HDMC decides to proceed with the design of Phase-2 of the project, HDMC will place a deposit at that time with JBWD for pre-construction costs which amount shall be determined by JBWD.
- JBWD will use commercially reasonable efforts to obtain all licenses, permits, entitlements, consents, or authority to construct the project. HDMC shall have the opportunity to review and comment on plans, bids and change orders in connection with the project. Upon the opening of bids, HDMC shall have the option of (1) approving the bids and depositing with JBWD the construction costs; or (2) taking over the project or (3) abandoning the project (or abandoning Phase 2, if Phase 1 is in effect). The right to abandon or take over the project are subject to the conditions set forth in the Agreement. In the event of (2) or (3) above, HDMC shall pay to JBWD or JBWD may use the deposit to pay all costs incurred by JBWD to date.
- HDMC shall provide an easement at the Acute Care Facility to JBWD of such a size which JBWD considers reasonable, at no cost, for construction, operation and maintenance of the project.
- HDMC shall be responsible, at HDMC’s sole cost and expense, for all CEQA review and approvals.
- During construction, HDMC shall have the opportunity to review, approve, or disapprove all proposed change orders. If disapproved, the Agreement shall terminate if the disapproval is to a Phase 1 change order. If the disapproved change order relates to Phase 2, the Agreement will terminate as to Phase 2. In either event HDMC shall pay to JBWD or JBWD may use the deposit to pay all costs incurred by JBWD to date.

- JBWD may use the services of a construction manager which shall be paid by HDMC.
- If HDMC elects not to use all the capacity herein described and JBWD determines that capacity exists to serve other off-site properties, those off-site properties may be connected to the package treatment plant provided that they reimburse HDMC for their pro-rata share of the costs and expenses incurred by HDMC.
- HDMC shall pay to JBWD a capacity fee required of all similar developments, for the purpose of construction of a future central waste water treatment plant (“Central Plant”). The estimated fee is \$1,245,636.36. JBWD shall apply a credit of \$126,480 thereto resulting in an estimated fee of \$1,119,156.36. Recognizing that HDMC is a governmental agency, and considering the cooperative nature of the Agreement, the fee may be paid over a period of 15 years with interest at a rate comparable to what JBWD receives on its investments.
- HDMC shall pay rates and charges to JBWD for operation of the package treatment plant, subject to the HDMC’s right to take over such plant as discussed above.
- The package treatment plant is anticipated to have a useful life or 15 years. HDMC shall pay to JBWD the *replacement cost* of the package treatment plant over a 15-year period for Phase I of such plant and for Phase 2 if it is constructed. In lieu of making payments for the replacement of the package treatment plant, HDMC will have the option of deferring payments and providing for payment at the time that JBWD determines such plant needs to be replaced. In the event HDMC does not want to pay the replacement costs, HDMC shall take over the package treatment plant subject to the conditions set forth in the Agreement.
- At such time as a Central Plant is constructed, the package treatment plant will be abandoned. HDMC will have the option of paying to remove such plant or retaining such plant.
- The Agreement provides for a penalty of 5% for payments to JBWD that are late, to compensate for additional administrative costs, provided that any costs over \$500 must be documented. The Agreement also provides for interest at the highest of the following (1) a rate equal to the return that JBWD receives on instruments of \$1M; (2) the rate paid by the Local Agency Investment Fund; or (3) costs incurred by a third party contractor if the late payment results in additional contract costs.
- The Agreement provides for disputes to be resolved through a dispute resolution process.

Recording Requested by
When Recorded Return to

JOSHUA BASIN WATER DISTRICT
P O BOX 675
JOSHUA BASIN CA 92252
ATTN: GENERAL MANAGER

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN:

AGREEMENT

THIS AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 2011 (“**Effective Date**”) by and between **JOSHUA BASIN WATER DISTRICT**, a public agency of the State of California (“**JBWD**”) and **HI DESERT MEDICAL CENTER**, a public agency of the State of California (“**HDMC**”). JBWD and HDMC are referred to in this Agreement collectively as the “**Parties**” and each individually as a “**Party**.”

RECITALS

A. HDMC owns and operates a general acute care hospital in Joshua Tree, California, and is the owner of certain real property located in the County of San Bernardino, State of California, legally described on Exhibit A attached hereto and by this reference incorporated herein (“**HDMC Property**”).

B. JBWD is a public agency of the State of California and operates in the County of San Bernardino, State of California.

C. HDMC desires to expand its present infrastructure, and JBWD desires to expand its capacity to provide water treatment and other services to HDMC.

D. HDMC desires to enter into an agreement for JBWD to construct and operate, principally for HDMC's benefit, a waste water treatment plant (“**Project**”). The Project shall be constructed in two (2) phases. The first phase of the Project (“**Phase 1 of the Project**”) shall consist of the expansion of certain existing building(s) and constructing new building(s) on the HDMC Property. Phase 1 of the Project shall consist of approximately **Twenty-Three Thousand Five Hundred** (23,500) square feet of improvements on the HDMC Property. Phase 1 of the Project is generally depicted on Exhibit B attached hereto and by this reference incorporated herein. The second phase of the Project (“**Phase 2 of the Project**”) shall consist of approximately **One Hundred Thousand** (100,000) square feet of improvements on the HDMC Property. HDMC has not decided, as of the date hereof, the exact improvements which will consist of Phase 2 of the Project.

E. HDMC desires that JBWD provide sanitary sewer service to the HDMC Property and JBWD is willing to provide such sanitary sewer service to such property by the construction of a waste water package treatment plant and appurtenances thereto ("**Package Plant**") on the terms and subject to the conditions set forth in this Agreement.

F. In or about 2009 JBWD adopted a waste water treatment strategy ("**Strategy**"). The Strategy, in part, provided for the potential design, land acquisition and construction of a centralized waste water treatment plant, trunk sanitation system and appurtenances for the collection and treatment of sewage and industrial wastes of a liquid nature (collectively, "**Treatment Plant**"). In the event the Treatment Plant is constructed, the Parties anticipate that the Package Plant will be abandoned and the Project will be connected to the Treatment Plant in accordance with the rules, regulations, ordinances, policies and procedures developed by JBWD.

G. San Bernardino County approved the Mitigated Negative Declaration concerning the Project on December 16, 2008 ("**Negative Declaration**").

H. JBWD approved the Project on April 13, 2010.

I. The Parties desire to enter into this Agreement to set forth certain commitments and agreements of the Parties with respect to (i) the design, construction, ownership and financial contributions of the Parties concerning the Package Plant and (ii) the provision of sanitary sewer service to the Project.

J. This Agreement is consistent with the Negative Declaration and there have been no changes in the Project that would warrant any supplemental environmental analysis.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, AND UPON THE CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. The facilities to be constructed as part of the Package Plant with respect to Phase 1 of the Project are generally described on Exhibit C attached hereto and by this reference incorporated herein (collectively, "**Phase 1 Improvements**"). It is contemplated that the Phase 1 Improvements shall allow JBWD to process approximately **fifty-two thousand** (52,000) gallons per day ("**gpd**") average daily flow and **seventy-three thousand** (73,000) gpd maximum daily flow. This Agreement recognizes the capacity limit of the Package Plant with the Phase I Improvements is projected to be up to **seventy-three thousand** (73,000) gpd, which is the projected maximum waste water need of HDMC with respect to Phase 1 of the Project. Should these capacity needs change, HDMC shall timely notify JBWD and the Parties will subsequently negotiate appropriate modifications to this Agreement. At the time HDMC determines to construct Phase 2 of the Project, JBWD shall determine the facilities which are necessary to serve Phase 2 of the Project ("**Phase 2 Improvements**"), provided that JBWD shall meet and confer with HDMC as to what constitutes the Phase 2 Improvements. [In the event the Parties are unable to agree, after meeting and conferring, with respect to what constitutes the Phase 2 Improvements, either; (a) the Phase 2 Improvements shall not be constructed and the provisions herein concerning the design, construction, operation and maintenance and ownership of the Phase 2 Improvements shall be null and void; or (b) HDMC shall elect, in writing, to design and

construct such Phase 2 Improvements as HDMC shall desire; provided that the conditions of Section 12 are satisfied. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, the Phase 2 Improvements shall not be constructed and the provisions herein concerning the design, construction, operation, maintenance and ownership of the Phase 2 Improvements shall be null and void.] It is anticipated that the Phase 2 Improvements shall allow JBWD to process approximately **one hundred four thousand** (104,000) gpd average daily flow and **one hundred forty-six thousand** (146,000) gpd maximum daily flow, if JBWD constructs the Phase 2 Improvements pursuant to the terms hereof. This Agreement recognizes the capacity limits of the Package Plant as expanded is projected to be up to **one-hundred forty-six thousand** (146,000) gpd, which is the projected maximum waste water needs of HDMC with respect to Phase 2 of the Project. Should these capacity needs change, HDMC shall timely notify JBWD and the Parties will subsequently negotiate appropriate modifications to this Agreement. The Phase 1 Improvements and the Phase 2 Improvements (if constructed) shall sometimes be collectively referred to herein as the "**Improvements.**"

2. (a) HDMC shall, at HDMC's sole cost and expense, be responsible for compliance with the California Environmental Quality Act ("**CEQA**") and all other applicable state and federal environmental laws and all requirements of the Federal Endangered Species Act and the California Endangered Species Act arising out of or in connection with the design and construction of the Improvements and for compliance with all conditions and mitigation measures which must be satisfied in connection with the same. HDMC represents to JBWD that HDMC may, pursuant to federal, state and local law, act as lead agency for the purpose of complying with CEQA. Pursuant to the foregoing representation, HDMC shall act as lead agency for the purpose of complying with CEQA. As part of its obligation to fund the CEQA process, HDMC shall prepare or cause to be prepared all supplemental environmental instruments, documents, reports and other like or kind writings required to be prepared and/or filed by CEQA.

(b) HDMC shall, upon request by JBWD, and at no cost to JBWD, furnish JBWD with such information as HDMC possesses or has available to it from any consultants, engineers, contractors or other persons engaged by or under the control of HDMC relating to the environmental assessment relative to the creation of the Improvements. In this regard, nothing herein contained shall be construed or interpreted to require JBWD to take or participate in any legal action pertaining to compliance with CEQA and/or other state and federal environmental laws and requirements.

3. (a)(i) Subject to the following, HDMC shall fund the cost of the design and construction of the Improvements including any related costs and expenses arising out of or in connection with the same. JBWD will obtain bids for the construction of the Improvements. Upon the opening of the bids, JBWD shall provide HDMC with copies of such bids. HDMC shall, within [time period], have the option to (A) approve the bids; provided that HDMC understands and acknowledges that the board of directors of JBWD ("**Board**") may select the lowest responsible bidder as determined by such Board or reject all bids, or (B) take over the construction of the Improvements; provided that the conditions of Section 12 are satisfied. In the event HDMC elects to take over the Project, HDMC may deduct from the deposits made pursuant to Subsections 3.(b) or 3.(c), whichever is applicable, such amount as JBWD considers

sufficient to pay for the costs and expenses paid or incurred by JBWD prior to HDMC's election. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, this Agreement shall terminate if such occurs with respect to the Phase 1 Improvements and HDMC shall pay all costs and expenses that District paid or incurred prior to the deemed termination of this Agreement; provided that if the issue is with the Phase 2 Improvements and the Phase 1 Improvements have been constructed and are then being operated by JBWD, this Agreement shall only terminate as to the Phase 2 Improvements. In the event HDMC approves the bids and JBWD awards the construction contact for the Improvements, JBWD will use commercially reasonable efforts to minimize additional Improvement costs. However, the Parties recognize and agree that additional costs may be warranted for a variety of reasons, including, but not limited to, unforeseen circumstances or need for work not contemplated by the Phase 1 Plans or Phase 2 Plans, as the case may be, as those terms are defined in Section 5. JBWD shall be authorized to pay such costs. Such costs shall be paid by HDMC in accordance with this Agreement. .

(ii) HDMC may demand an accounting as to the status of the account of all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(b) HDMC shall deposit with JBWD within **thirty** (30) days after the Effective Date, the sum of **Two Hundred Thousand Dollars** (\$200,000.00) ("**Phase 1 Deposit**"). The Phase 1 Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the creation of the Phase 1 Improvements, except construction costs, which shall be handled pursuant to Section 7, including, but not limited to, the costs of the plans and specifications, Entitlements (as that term is defined in Section 4), advertising and bidding of the construction of the Phase 1 Improvements (including preparation of the bid documents) and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Phase 1 Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Phase 1 Deposit separate from its general funds and HDMC shall not be entitled to interest on the Phase 1 Deposit. If there are any funds left in the Phase 1 Deposit after the Phase 1 Improvements are completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within **ten** (10) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(c) Within a period of time as mutually agreed after HDMC notifies JBWD of its election to construct the Phase 2 Improvements, HDMC shall deposit with JBWD such sum as shall be reasonably determined by JBWD ("**Phase 2 Deposit**"). The Phase 2 Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the creation of the Phase 2 Improvements, except construction costs, which shall be handled pursuant to Section 7, including, but not limited to, the costs of the plans and specifications, Entitlements, advertising and bidding of the construction of the Phase 2 Improvements (including preparation of the bid documents) and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Phase 2 Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Phase 2 Deposit

separate from its general funds and HDMC shall not be entitled to interest on the Phase 2 Deposit. If there are any funds left in the Phase 2 Deposit after the Phase 2 Improvements are completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within **ten** (10) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

4. On or after receipt of the Phase 1 Deposit or Phase 2 Deposit, as the case may be, JBWD shall, at HDMC's sole cost and expense, use commercially reasonable efforts to obtain or cause to be obtained through consultants and/or third parties, all consents, approvals, permits, authority, licenses or entitlements ("**Entitlements**") as shall be required for the design, construction, operation and maintenance of the Improvements with respect to the appropriate phase, including Entitlements from the County of San Bernardino and the California Regional Water Quality Control Board, Colorado River Basin Region. Nothing herein shall be construed as a guaranty that JBWD shall obtain such Entitlements. HDMC agrees to cooperate, in all respects with JBWD, or such other individuals or entities designated by JBWD, in connection with the obtaining of the Entitlements including, without limitation, attending meetings, testifying in public hearings and the execution of all applications, petitions and documents reasonably necessary in the Entitlement process.

5. (a) On or after the receipt of the Phase 1 Deposit, JBWD shall employ, or cause to be employed, at HDMC's cost and expense, Dudek Engineering, in coordination with the existing Agreement between HDMC and Dudek Engineering ("**Engineer**") to plan, design and prepare detailed construction plans, drawings and specifications for the Phase 1 Improvements ("**Phase 1 Plans**"). JBWD shall submit the Phase 1 Plans to HDMC for review and comment. HDMC shall have **sixty** (60) business days after receipt of the Phase 1 Plans to comment thereon. Failure of HDMC to comment within such **sixty** (60) business-day period shall be deemed a waiver by HDMC of the right to do so. In the event that HDMC does comment within the **sixty** (60) business-day period, JBWD shall, in good faith, consider such comments, but shall not be required to amend the Phase 1 Plans in accordance therewith. HDMC shall cooperate with the Engineer with respect to the preparation of the Phase 1 Plans.

(b) On or after the receipt of the Phase 2 Deposit, JBWD shall employ, or cause to be employed, at HDMC's cost and expense, a qualified professional engineering firm to plan, design and prepare detailed construction plans, drawings and specifications for the Phase 2 Improvements ("**Phase 2 Plans**"). JBWD shall submit the Phase 2 Plans to HDMC for review and comment. HDMC shall have such time as the Parties shall agree, to review and comment on the Phase 2 Plans. HDMC shall cooperate with the engineering firm with respect to the preparation of the Phase 2 Plans.

6. Upon the Effective Date, HDMC shall execute, cause to be executed and delivered the easement attached hereto as Exhibit D and by this reference incorporated herein ("**Easement**"). The Easement provides for the construction, operation and maintenance of the Improvements on that portion of the HDMC Property described therein ("**Easement Area**") together with the reasonable right of access to and from said Easement for purposes of exercising the rights granted therein. In connection therewith, HDMC hereby irrevocably grants to JBWD

and its agent, contractors, employees, representatives and consultants the right to enter on the Easement Area to investigate matters which pertain to the design and construction of the Improvements, including, without limitation, soil and surface conditions and to conduct environmental studies, engineering studies, land use and such other investigations as JBWD, in its reasonable discretion, may desire.

7. (a)(i) Upon completion of the Phase 1 Plans and satisfaction of the CEQA requirements by HDMC, JBWD shall, at HDMC's sole cost and expense, advertise and bid the construction of the Phase 1 Improvements. The Parties recognize, acknowledge and agree that the construction and installation of the Phase 1 Improvements is a public works project. As such, it is the intent of JBWD to comply with the provisions of the California Labor Code, Government Code and Public Contract Code, including, without limitation, prevailing wage requirements. Subject to the provisions of California law relating to public works projects applicable to JBWD, and subject to HDMC's rights under Section 3.(a)(i), JBWD shall award the work to the lowest responsible bidder ("**Phase 1 Contractor**"). The Parties agree that JBWD shall be the awarding body without the approval or consent from HDMC, except as provided in Section 3.(a)(i). Subject to HDMC's rights under Section 3.(a)(i), JBWD shall negotiate and enter into all contracts and Agreements with the Phase 1 Contractor with respect to the construction of the Phase 1 Improvements. Subject to HDMC's rights under Section 3.(a)(i), HDMC shall fund the cost of the design and construction of the Phase 1 Improvements and any related costs and expense arising out of or in connection with the same. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(ii) The Phase 1 Contractor shall install the Phase 1 Improvements in substantial accordance with the Phase 1 Plans. HDMC understands and acknowledges that change orders for the construction of the Phase 1 Improvements may be warranted due to a variety of reasons, including, but not limited to, unforeseen circumstances or the need for construction of additional or changed improvements not contemplated by the Phase 1 Plans. In the event of a change order which increases the cost of the installation of the Phase 1 Improvements, JBWD shall submit the change order to HDMC for approval or disapproval. HDMC shall have five (5) business days from receipt of a request of a change order to approve or disapprove, in writing, of the same. Failure to disapprove of a change order, in writing, within the five (5) business day period shall be deemed approval thereof by HDMC. In the event HDMC disapproves, in writing, a change order within the five (5) business day period, the Parties shall meet and confer over a five (5) business day period after the disapproval to resolve the change order. In the event the Parties are unable to resolve the change order within such five (5) business day period, this Agreement shall terminate; provided that if the issue is with the Phase 2 Improvements and the Phase 1 Improvements have been constructed and are then being operated by JBWD, this Agreement shall only terminate as to the Phase 2 Improvements. JBWD shall pay from the Phase 1 Construction Deposit (as that term is defined below) all amounts owed or accrued with respect to the construction of the Phase 1 Improvements including, but not limited to, any amount required to be paid as a result of the early termination of the construction contract. After payment of such amount, JBWD shall return to HDMC all funds remaining in the Phase 1 Construction Deposit less Ten Percent (10%) of the unexpended funds which may be held for an additional period of ninety (90) days for work owed or accrued with respect to the construction of the Phase 1 Improvements. In the event there are costs that are incurred as a

result of the foregoing process of approving a change order, HDMC shall bear those costs and JBWD is hereby authorized to deduct such amount from the Phase 1 Construction Deposit. The Parties acknowledge and agree that the construction of the Improvements is for the benefit of the HDMC Property and JBWD is not required to expend any funds of the JBWD to create the Improvements including design and construction of the same.

(iii) JBWD may, but is not required, to retain the services of a project manager(s) as a cost of the installation of the Phase 1 Improvements paid by HDMC, to (A) oversee the furnishing and installation of the Phase 1 Improvements; and (B) inspect the installation of the Phase 1 Improvements.

(iv) HDMC shall pay the costs for installation of the Phase 1 Improvements as more particularly provided in this Subsection 7.(a). HDMC shall deposit with JBWD an amount equal to all estimated construction costs including the bid to be awarded, the cost of construction management, plus a **ten percent (10%)** contingency ("**Phase 1 Construction Deposit**") within _____ (____) days after written notice from JBWD of an intent to accept the bid referred to in Subsection (a) above. The Phase 1 Construction Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the construction of the Phase 1 Improvements and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Phase 1 Construction Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Phase 1 Construction Deposit separate from its general funds and HDMC shall not be entitled to interest on the Phase 1 Construction Deposit. If there are any funds left in the Phase 1 Construction Deposit after the Phase 1 Improvements are completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within thirty (30) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(v) From time to time JBWD shall submit progress reports to HDMC with respect to the installation of the Phase 1 Improvements. JBWD shall provide HDMC at least semi-annual construction progress reports signed by the project/construction manager or the district engineer.

(vi) HDMC shall cooperate with JBWD, the Phase 1 Contractor and any consultants and representatives of JBWD in the construction of the Phase 1 Improvements. JBWD or the Phase 1 Contractor shall provide HDMC with prior written notice of such date the Phase 1 Contractor shall initiate construction of the Phase 1 Improvements on the Easement Area.

(vii) Upon completion of the construction and installation of the Phase 1 Improvements, JBWD shall give HDMC notice of the same and require the Phase 1 Contractor to file a notice of completion for recording in the Office of the County Recorder. Upon completion of the Phase 1 Improvements, the facilities constructed as part of the Phase 1 Improvements shall be owned by the JBWD. Upon the request of JBWD, HDMC shall execute and deliver to JBWD a bill of sale in such form and content as shall be reasonably determined by

the Parties. The Parties further agree that all personal property associated with the Phase 1 Improvements shall also become the sole property of the JBWD, including, without limitation, all Entitlements, Phase 1 Plans, operating manuals, surveys and as-built drawings associated with the construction of the Phase 1 Improvements. Subject to the terms of Section 10, JBWD shall thereafter repair, replace and maintain the Phase 1 Improvements. Once the Phase 1 plant is completed and transferred to JBWD the operation/maintenance and compliance costs will be periodically billed to HDMC. If other dischargers become additionally serviced by the Package Plant, such expenses shall be proportionately billed to those additional parties.

(b) The provisions of Section 7.(a)(i) through 7.(a)(vii) shall apply to the advertising, bidding and construction of the Phase 2 Improvements; provided that the deposit of funds by HDMC to construct the Phase 2 Improvements shall be in an amount reasonably determined by the JBWD.

8. (a) Upon completion and acceptance of the Phase 1 Improvements and compliance by HDMC with the terms of this Agreement and including, but not limited to, the payment of fees and charges, the JBWD shall provide or cause to be provided, sanitary sewer service to Phase 1 of the Project, subject to circumstances within the control of JBWD or consistent with the JBWD's rules, regulations, policies and procedures as may be amended from time to time; provided that HDMC has not elected to take over the Project and satisfied the obligations set forth in Section 12 JBWD agrees that it shall take all commercially reasonable steps to assure that the Package Plant shall meet all requirements of the California Regional Water Quality Control Board (Colorado River Basin Region) and that such plants shall be operated in such commercially reasonable fashion to appropriately handle the waste water of HDMC in compliance with waste discharge requirements, and all other applicable requirements.

(b) Upon completion and acceptance of the Phase 2 Improvements and compliance by HDMC with the terms of this Agreement and including, but not limited to, the payment of fees and charges, the JBWD shall provide or cause to be provided, sanitary sewer service to Phase 2 of the Project subject to circumstances within the control of JBWD or as otherwise provided by the JBWD's rules, regulations, policies and procedures as may be amended from time to time; provided that HDMC has not elected to take over the Project and satisfied the obligations set forth in Section 12. JBWD agrees that they shall take all commercially reasonable steps to assure that the Package Plant shall meet all requirements of the California Regional Water Quality Control Board (Colorado River Basin Region) and that such plants shall be operated in such commercially reasonable fashion to appropriately handle the waste water of HDMC in compliance with waste discharge requirements, and all other applicable requirements.

(c) After acceptance of the Phase 1 Improvements and/or the Phase 2 Improvements and subject to the provisions of Section 1, JBWD may determine, in its reasonable discretion, that capacity exists in the Package Plant to provide sanitation service to other real property ("**Off Site Property**"), in addition to that portion of the Project to be served by the Package Plant. The Parties hereby agree that JBWD shall have the absolute right to provide sanitation service to such Off Site Property from the Package Plant on such terms and conditions as the JBWD shall agree with such Off Site Property owners ("**Off Site Owner(s)**") provided that such Off Site Owners pay the prorata portion of all the costs and expenses incurred by

HDMC in the design and installation of the appropriate Improvements. Thus, for example, (i) if the total cost of the Phase 1 Improvements which was paid by HDMC is One Million Five Hundred Thousand Dollars (\$1,500,000.00); (ii) HDMC uses on average seventy-five percent (75 %) of the capacity of the Package Plant attributable to the Phase 1 Improvements; (iii) an Off Site Owner is calculated to use on average five percent (5 %) of the capacity of the Package Plant attributable to the Phase 1 Improvements, then as a condition to sanitation service from the Package Plant, the Off Site Owner shall pay to JBWD the sum of Seventy-Five Thousand Dollars (\$75,000.00) ($\$1,500,000.00 \times 5\%$) of the capacity fee. JBWD shall remit such amount to HDMC within a reasonable amount of time after JBWD receives such amount from the Off Site Owner.

9. (a)(i) Prior to any sanitary service to Phase 1 of the Project, HDMC shall pay to JBWD, a capacity fee equal to Five Thousand Two Hundred Seventy Dollars (\$5,270.00) times the number of equivalent dwelling units ("**EDU**") generated by Phase 1 of the Project as reasonably determined by the JBWD based on the average flow of two hundred twenty (220) gallons per day per EDU. EDU's for Phase I are estimated at **two hundred thirty six and six/tenths** (236.6) with the capacity fee estimated at One Million Two Hundred Forty-Five Thousand Six Hundred Thirty-Six and 36/100 Dollars (\$1,245,636.36). Notwithstanding the foregoing, HDMC shall be exempted from payment of the first twenty-four (24) EDUs (e.g., One Hundred Twenty-Six Thousand Four Hundred Eighty Dollars (\$126,480.00) so that the total due shall be One Million One Hundred Nineteen Thousand One Hundred Fifty-Six and 36/100 Dollars (\$1,119,156.36). In lieu of depositing the full amount of the capacity fee prior to any sanitary service to Phase 1 of the Project, HDMC may elect to enter into an agreement in such form and content attached hereto as Exhibit E and by this reference incorporated herein ("**Payment Agreement**"), with HDMC to make annual principal installments over a period of fifteen (15) years with additional annual interest payments based on the annual interest earned by other JBWD funds that could have been available for investment of the capacity fees. HDMC must affirmatively elect, in writing, to enter into the Payment Agreement within thirty (30) days of the Effective Date; and if so elected, to execute and deliver the Payment Agreement to JBWD within thirty (30) days of the Effective Date. Failure to timely satisfy the foregoing conditions shall be deemed an election to pay the full amount of the capacity fee prior to any sanitary service to Phase 1 of the Project.

(ii) Pay to JBWD such rates and charges related to sanitation service to Phase 1 of the Project in accordance with the rules, regulations, ordinances, policies and procedures developed by JBWD. In the event HDMC disputes any rates and charges, or proposed rates and charges, related to sanitation service to Phase 1 of the Project, HDMC shall (A) waive such objections, or (B) elect to take over operation, maintenance and ownership of Phase 1 of the Project; provided that the conditions of Section 12 are satisfied. In the event HDMC disputes any rates and charges, HDMC shall have [number of days] to elect Subsection (A) or Subsection (B) above, in writing. Failure to make any such election, in writing, within such [time period] shall be deemed an election of Subsection (A) above. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, HDMC shall be deemed to have elected Subsection (A). During the time that HDMC is attempting to satisfy the conditions set forth in Section 12, JBWD may charge the rates and charges it proposes.

(b) (i) Prior to any sanitary service to Phase 2 of the Project, HDMC shall pay to JBWD, the capacity fee in effect at the time of payment, times the number of EDUs generated by Phase 2 of the Project as reasonably determined by the JBWD based on the average flow of **two hundred twenty** (220) gallons per day per EDU.

(ii) Pay to the JBWD such rates and charges related to sanitation service to Phase 2 of the Project in accordance with the rules, regulations, ordinances, policies and procedures developed by the JBWD. Any dispute regarding rates and charges related to sanitation service to Phase 1 of the Project must be negotiated by JBWD and HDMC and HDMC shall (A) waive such objections, or (B) elect to take over operation, maintenance and ownership of Phase 1 of the Project; provided that the conditions of Section 12 are satisfied. In the event HDMC disputes any rates and charges, HDMC shall have [number of days] to elect Subsection (A) or Subsection (B) above, in writing. Failure to make any such election, in writing, within such [time period] shall be deemed an election of Subsection (A) above. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, HDMC shall be deemed to have elected Subsection (A). During the time that HDMC is attempting to satisfy the conditions set forth in Section 12, JBWD may charge the rates and charges it proposes.

10. (a) (i) HDMC acknowledges that the Package Plant has a useful life of approximately fifteen (15) years. Notwithstanding anything contained in this Agreement, HDMC shall be required to pay for the replacement of the Package Plant, if HDMC is the sole user of the Package Plant, or a prorata portion of the replacement of the Package Plant if there are other users pursuant to Section 8.(c).

(ii) HDMC hereby agrees to pay for the replacement of the portion of the Package Plant attributable to the Phase 1 Improvements (or HDMC's prorata share of such) either pursuant to this subsection or subsection 10.(d) below. On or before one (1) year after the acceptance of the Phase 1 Improvements, JBWD will estimate the cost of the replacement of the Package Plant which is attributable to the Phase 1 Improvements, which includes a ten percent (10 %) contingency amount ("**Replacement Cost**"). The Parties agree that interest on the Replacement Cost shall accrue at the rate equal to the annual increase in the Engineering News-Record Construction Cost Index (ENR-CCI 20 Cities). JBWD shall give HDMC written notice of the Replacement Cost, and HDMC's portion thereof ("**HDMC's Share**"), which HDMC Share shall be amortized over **fifteen** (15) **years**. HDMC shall have the right for a period of **six** (6) months after receipt of the amount of the replacement costs from JBWD to either (A) pay the replacement costs as hereinafter provided; or (B) pay the replacement costs pursuant to subsection 10.(d) below. In the event HDMC elects Subsection (A), the first payment shall be due and payable to JBWD **two** (2) **years** after the acceptance of the Phase 1 Improvements and continuing every year thereafter until the HDMC Share and interest thereon are paid in full. The HDMC Share may be prepaid at any time without penalty.

(iii) HDMC hereby agrees to pay for the replacement of the portion of the Package Plant attributable to the Phase 2 Improvements (or HDMC's prorata share of such) either pursuant to this subsection or subsection 10.(d) below. On or before one (1) year after the acceptance of the Phase 2 Improvements, JBWD will estimate the Replacement Cost of the replacement of the Package Plant attributable to the Phase 2 Improvement. The Parties agree

that interest on the Replacement Cost shall accrue at the rate equal to the annual increase in the Engineering News-Record Construction Cost Index (ENR-CCI 20 Cities). JBWD shall give HDMC written notice of HDMC's Share of the Replacement Cost attributable to the Phase 2 Improvements, which HDMC Share shall be amortized over **thirteen (13) years**. HDMC shall have the right for a period of **six (6) months** after receipt of the amount of the replacement costs from JBWD to either (A) pay the replacement costs as hereinafter provided; or (B) pay the replacement costs pursuant to subsection 10.(d) below. In the event HDMC elects Subsection (A) the first payment shall be due and payable to JBWD **two (2) years** after the acceptance of the Phase 2 Improvements and continuing every year thereafter until the HDMC Share and interest thereon are paid in full. The HDMC Share may be prepaid at any time without penalty.

(b) HDMC shall be responsible for any subsequent replacement costs and elections at **fifteen (15) year** intervals on the same terms and conditions as set forth in Section 10(a)(ii) in the event that HDMC is not connected to the Treatment Plant.

(c) At the time that HDMC is connected to the Treatment Plant and all expenses paid, there shall be a project accounting prepared and any funds remaining in the "replacement fund" shall be applied to costs to connect HDMC to the Treatment Plant. Any funds remaining after payment for the costs to connect HDMC to the Treatment Plant shall be returned to HDMC.

(d) In lieu of making annual payments toward the replacement of any phase noted in Sections 10(a)(ii), 10(a)(iii) or 10(b) above, HDMC may elect to defer all payments for the replacement of the Package Plant until JBWD determines, in its sole and absolute discretion, that the Package Plant needs to be replaced. HDMC shall provide the replacement amount to JBWD within _____ (___) days after receipt of written notice from JBWD. HDMC shall have the right for a period of **six (6) months** after receipt of the amount of the replacement costs from JBWD to either (A) pay the replacement costs as hereinafter provided; or (B) take over the ownership of the Project Plant, provided the conditions of Section 12 are satisfied. Failure to make such election, in writing, within the **six (6) month** period shall be deemed an election of Subsection (A). In the event HDMC cannot satisfy the conditions set forth therein, HDMC shall be deemed to have elected Subsection (A). In the event HDMC elects Subsection (A) or Subsection (A) is deemed elected, whether making annual payments for the cost of replacement or paying at the time that the replacement is needed, HDMC shall be responsible for the cost of full replacement or any portion thereof, when needed, including, but not limited to, replacement due to failure of the system and/or failure to comply with the regulatory discharge requirements of JBWD and/or the California Regional Water Quality Control Board, Colorado River Basin Region.

11. Upon the completion of the Treatment Plant and the hook-up of the HDMC Property and other properties serviced by the Package Plant thereto in accordance with the rules, regulations ordinances, policies and procedures developed by the JBWD, HDMC shall give JBWD written notice of HDMC's election to: (a) retain the Package Plant; or (b) require JBWD to remove, at HDMC's sole cost and expense, the Package Plant from the HDMC Property. In the event HDMC does not elect in writing, to require JBWD to remove the Package Plant from the HDMC Property within **one hundred twenty (120) days** after receipt of the written notice, then HDMC will be deemed to have elected to retain the Package Plant. In the event HDMC

elects or is deemed to have elected to retain the Package Plant on the HDMC Property, JBWD shall deliver to HDMC, a bill of sale for the Package Plant in the same form and content as required pursuant to Section 7.(a)(vii). The Package Plant shall be transferred to HDMC free of all liens and encumbrances. In the event HDMC elects to cause JBWD to remove the Package Plant from the HDMC Property, HDMC shall deposit with JBWD a sum reasonably determined by the JBWD ("**Removal Deposit**") within **sixty** (60) days after written notice from JBWD. The Removal Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the removal of the Package Plant from the HDMC Property and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Removal Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Removal Deposit separate from its general funds and HDMC shall not be entitled to interest on the Removal Deposit. If there are any funds left in the Removal Deposit after the removal of the Package Plant from the HDMC Property is completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within **thirty** (30) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. Upon the complete removal of the Package Plant, JBWD shall quitclaim to the owner of the HDMC Property, all of JBWD's rights, title and interest in and to the Easement. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

12. The following shall be conditions precedent to HDMC's election pursuant to Sections [1, 8(a), 8(b), 9(a), 9(b), 10(a) and 10(d) ("Option Sections"]:

(a) HDMC shall take title to the Package Plant as is, where is, with all faults.

(b) HDMC shall have obtained all entitlements to own and operate the Package Plant from all governmental agencies having jurisdiction thereof, including entitlements from the County of San Bernardino and the California Regional Water Quality Board, Colorado River Basin Region.

(c) The written consent of any off site owners using or contractually entitled to use the Package Plant.

The conditions set forth in this Section must be satisfied on or before [time period] after HDMC has made an election pursuant to the Option Sections.

13. (a) All notices or other communications between the JBWD and HDMC required or permitted hereunder shall be in writing and personally delivered or sent by certified mail, return receipt requested and prepaid, or sent by reputable overnight courier (such as Federal Express, UPS or DHL), or transmitted by electronic facsimile transmission (with electronic confirmation of receipt) to the following addresses:

JBWD: Joshua Basin Water District
P O Box 675
61750 Chollita Road
Joshua Tree CA 92252
Attn: _____
Telephone: 760-366-8438
Facsimile: 760-366-9528

HDMC: Hi Desert Medical Center
6601 White Feather Road
Joshua Tree, CA 92252
Attn: Dan McClure, Chief Information Officer
Telephone: 760-366-6137
Facsimile: 760-366-6240

COPY TO: Cathy Deubel Salenko
Best Best & Krieger LLP
400 Capitol Mall, Suite 1650
Sacramento, CA 95814
Telephone: 916-325-4000
Facsimile: 916-325-4010

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m., otherwise on the day following personal delivery, or on the date of receipt, if transmitted by electronic facsimile transmission (with electronic confirmation of receipt) prior to 5:00 p.m. or otherwise on the next day, provided receipt of such transmission shall be confirmed by follow-up notice within **seventy-two** (72) hours by another method authorized above, or **two** (2) business days following the date the notice is postmarked, if mailed, or on the day following delivery to the applicable overnight courier, if sent by overnight courier. Any Party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

(b) Time is of the essence of this Agreement and each and every term and provision hereof.

(c) This Agreement shall be construed as if prepared by all of the Parties. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. This Agreement shall be construed, interpreted and governed by the laws of the State of California and the laws of the United States of America prevailing in California.

(d) If any provision of this Agreement shall be ruled invalid, illegal or unenforceable, the parties shall: (i) promptly negotiate a substitute for the provision which shall, to the greatest extent legally permissible, effect the intent of the parties in the invalid, illegal or unenforceable provision, and (ii) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction

with Subsection (i) above to give effect to the intent of the parties without the invalid, illegal or unenforceable provision. To the extent the parties are unable to negotiate such changes, substitutions or additions as set forth in the preceding sentence, and the intent of the parties with respect to the essential terms of the Agreement may be carried out without the invalid, illegal or unenforceable provision, the balance of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if the invalid, illegal or unenforceable provision did not exist.

(e) The terms and provisions set forth in this Agreement shall be deemed provisions, terms and/or covenants running with the HDMC Property in accordance with applicable law, including, without limitation, Section 1468 of the California Civil Code and shall pass to and be binding upon the successor owners of the HDMC Property. As such, all successor owners of the HDMC Property will have any of the rights, responsibility and liabilities of HDMC as if such person or entity originally executed this Agreement in place and stead of HDMC. Each and every contract, deed or other instrument hereafter executed covering or conveying the HDMC Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such terms and conditions regardless of whether such terms and conditions are set forth in such contract, deed or other instrument. No transfer of the HDMC Property shall relieve HDMC of any responsibility or liability under this Agreement.

(f) Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to business days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

(g) In the event of any legal action to interpret this Agreement or enforce the rights or remedies of any Party to this Agreement, the prevailing Party in such legal action shall be entitled to recover its costs and expenses (including attorneys' fees) of such action.

(h) Except as otherwise provided in Section 7(a)(ii), the Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the state courts located in San Bernardino County, California or the federal court located in Riverside County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

(i) In the event any undisputed amount due to JBWD hereunder is not paid when due, HDMC shall pay to JBWD an additional five percent (5%) for each payment due as an administrative processing charge provided that any cost in excess of Five Hundred Dollars (\$500.00) shall be documented and itemized. The Parties agree that this late charge represents a fair and reasonable estimate of the costs the JBWD will incur by reason of such late payment to JBWD. Any payment not paid when due shall bear interest at the highest of the following rates: 1) The rate of interest that JBWD earns during the period of delinquency, from the Local Agency Investment Fund or other investment of One Million Dollars (\$1,000,000) whichever is greater; 2) If the payment is for a contract, HDMC will reimburse JBWD at the rate that JBWD would owe the Contractor for the delinquent payment; 3) If the payment is for a capacity fee or other construction fund, the rate of interest represented by the change in the Engineering New-Record Construction Cost Index (ENR-CCI 20 Cities) (provided such amount shall not exceed the maximum rate allowed under California law); from the date due until paid in full.

(j) This Agreement, together with any other written agreements referred to herein, is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the agreement between the Parties. As such, this Agreement supersedes any prior understandings between the Parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all Parties hereto.

(k) No delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(l) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

(m) Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named Parties.

(n) HDMC shall have a period of one hundred twenty (120) days after the Effective Date to cause any monetary liens and encumbrances recorded against the HDMC Property to be subordinated to the lien of this Agreement.

14. Dispute Resolution

Should any dispute arise between the parties relative to construction, deposits, operations, transfer or any other provision of the Agreement, the complaining/initiating party shall timely provide notice to the other party/parties.

Within **thirty** (30) days after receipt of such notice, the parties shall meet and confer over the dispute.

If the parties do not reach agreement, the dispute shall be transferred to the American Arbitration Association and resolved in accordance to their rules of commercial arbitration as more fully referenced in Section 7(a)(ii).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

"JBWD"
JOSHUA BASIN WATER DISTRICT, a
public agency of the State of California

"HDMC"
HI DESERT MEDICAL CENTER, a
public agency of the State of California

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT LIST

Exhibit A	Legal Description of the HDMC Property
Exhibit B	Depiction of Project
Exhibit C	Description of Package Plant Facilities
Exhibit D	Easement
Exhibit E	Payment Agreement