

INITIAL AGREEMENT

AGREEMENT FOR DESIGN, CONSTRUCTION,
USE, OPERATION, MAINTENANCE,
REPAIR, AND REPLACEMENT OF COASTAL
TREATMENT PLANT FOR AND ON BEHALF
OF PROJECT COMMITTEE NO. 15,
ALISO WATER MANAGEMENT AGENCY

THIS AGREEMENT, made and entered into this 9th day of November, 1976, by and between ALISO WATER MANAGEMENT AGENCY, an entity created by the joint powers agreement entitled "Joint Exercise of Powers Agreement Creating Aliso Water Management Agency, Orange County, California (AWMA)," dated March 1, 1972, hereinafter referred to as "Agency," and the following parties:

- (a) Moulton-Niguel Water District, hereinafter referred to as "MNWD";
- (b) South Coast County Water District, hereinafter referred to as "SCCWD";
- (c) City of Laguna Beach, hereinafter referred to as "CLB";
- (d) Emerald Bay Service District, hereinafter referred to as "EBSD"; and
- (e) Irvine Ranch Water District, hereinafter referred to as "IRWD."

The foregoing parties to this Agreement are the participating members of the Agency for Project Committee No. 15, hereinafter in some instances referred to as the "Participating Member Agencies."

W I T N E S S E T H:

WHEREAS, Agency desires to pursue in the most beneficial, economical, and environmentally compatible manner, a regional program for wastewater collection, treatment,

reclamation, reuse, disposal and management, including, but not limited to, the coastal treatment plant, which proposed facility is depicted on Exhibit "A" hereto, which document by this reference is incorporated in this Agreement, hereinafter in some instances referred to collectively as "Coastal Treatment Plant"; and

WHEREAS, a project committee, as provided for in the Joint Powers Agreement hereinabove referred to, has been created and designated "Project Committee No. 15," which Project Committee was created for the purpose of preparing an engineering report, construction plans and specifications, environmental impact report, grant application, and acquisition of permits and rights-of-way relative to the Coastal Treatment Plant, the approximate location and capacity thereof being as set forth and described on Exhibit "A" hereto, all of which may be modified during the preparation of the engineering report, construction plans and specifications, environmental impact report, and acquisition of permits and rights-of-way; and

WHEREAS, the scope and purpose of Project Committee No. 15 may be modified subsequently to include the construction, operation, maintenance, repair, and replacement of the Coastal Treatment Plant;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. General. Agency agrees, subject to the receipt of the funds herein required to be deposited by each Participating Member Agency, to cause the preparation

of an engineering report, construction plans and specifications, environmental impact report, grant application, and acquisition of permits and rights-of-way relative to the Coastal Treatment Plant. Each Participating Member Agency, on the terms hereinafter set forth, agrees to pay to Agency the amounts hereinafter set forth, and to perform each and all of the obligations set forth in this Agreement.

Agency's obligation shall include any necessary permits, approvals, and acquisition of land for the construction, and ultimately operation and maintenance, of the Coastal Treatment Plant. Additionally, Agency shall diligently pursue obtaining grant funds from the State of California and the Environmental Protection Agency relative to the Coastal Treatment Plant. Hereinafter, in some instances, such grant funds are referred to as "the Grant."

It is agreed by the parties to this Agreement that if, subsequent to the execution of this Agreement by all parties thereto, but prior to the award of a contract for the construction of the Coastal Treatment Plant, any permit to construct, operate, maintain, repair, or replace the Coastal Treatment Plant is revoked or denied, without which the Coastal Treatment Plant cannot be constructed, operated, or maintained, all further obligations of all parties hereto shall cease as of the date of such denial or revocation, except obligations for expenses already incurred. The Coastal Treatment Plant shall be constructed and thereafter owned, operated, and maintained by Agency, through, on behalf of, and for the use and benefit of CLB, EBSD,

and IRWD, and also on behalf of and for the use and benefit of MNWD and SCCWD for related sludge handling facilities and possible joint operation.

2. Application for Grant Funds. As hereinabove provided, Agency shall file, at the earliest possible date, and thereafter diligently pursue, the Grant as herein defined.

3. Previous Facilities Planning. The parties to this Agreement recognize that Project Committees No. 3 and 12 of the Aliso Water Management Agency previously expended funds for various wastewater treatment facilities planning. The parties to this Agreement agree that under Project Committee No. 15, there will be a request for grant funds under a Step II grant for the purpose of reimbursement for expenditures under Project Committees No. 3 and 12. In the event that there is such a reimbursement, the reimbursement shall be given to the Member Agencies of Agency who previously advanced said funds. However, there shall be no liability incurred by any parties to this Agreement by reason of the application for such grant funds.

4. Engineering Report. It is agreed that upon Agency's receipt of funds as set forth on Exhibit "B" hereto, which document by this reference is incorporated in this Agreement, Agency shall contract with an engineering firm satisfactory to at least four of the Participating Member Agencies, whereby said engineering firm shall cause to be prepared an engineering report and construction plans and specifications relative to the nature and extent

and location of the Treatment Plant to treat sewage of CLB, EBSD, and IRWD in the vicinity of the existing treatment plant facilities of SCCWD and MNWD. The engineering report shall further make recommendations with regard to the existing sludge handling facilities for SCCWD and MNWD, as well as CLB, EBSD, and IRWD. The engineering report shall include recommendations as to placing of sludge handling facilities from that area upstream of the existing treatment plant and the estimated cost of the Treatment Plant sludge handling facilities. The engineering report shall further investigate and report upon the proposed method and operation, whether integrated or not, of the existing treatment plant facilities of SCCWD and MNWD, and the Coastal Treatment Plant facilities for CLB, EBSD, and IRWD.

5. Site for Sludge Handling Facilities. MNWD agrees that it will make a site available for sludge handling facilities at the existing MNWD 1-A Treatment Plant site.

6. Acquisition of Coastal Treatment Plant Site. MNWD does agree that it will, at the request of CLB, EBSD, and IRWD, make available to the Agency for the benefit of CLB, EBSD, and IRWD, a Treatment Plant site on land presently owned by MNWD for the construction of the Coastal Treatment Plant, at a price equivalent to the cost of the property involved to MNWD plus interest charges from the date of the acquisition by MNWD at a rate equivalent to the cost of the money used by MNWD for such acquisition, or at the then appraised fair market value of the property, whichever

method indicates a fair market value of the property. In the event that the engineering report indicates that the Coastal Treatment Plant should be located on land which is presently leased by MNWD, MNWD agrees that it will, at no cost, except for past lease payments, assign said lease to Agency. In the event that the engineering report indicates that the Coastal Treatment Plant should be located on land which is not presently the property of MNWD, either by lease or by ownership, Agency, MNWD, and SCCWD agree to take all steps necessary and appropriate to assist Agency to acquire such property, provided the proposed location will not prevent or impede the operation of the existing treatment plant facilities. The location of the land referred to in this section is set forth in Exhibit "A."

7. Assistance by Participating Member Agencies.

Each Participating Member Agency agrees that it will assist Agency and each other Participating Member Agency in this project, and recognizes that CLB, EBSD, and IRWD shall be entitled to have constructed by Agency on their behalf on fair and equitable terms and conditions, a Treatment Plant to be served by the construction of the North Coast Interceptor Sewer.

8. Access to Coastal Treatment Plant. MNWD and SCCWD hereby agree that they will grant to Agency, at no cost, on behalf of all Member Agencies of Agency, use of all rights they currently have for access, including pipeline easements to the site of the existing treatment plant and the site of the proposed Coastal Treatment Plant,

whether lying downstream or upstream of said site. The parties to this Agreement, including Agency, shall pursue the acquisition of the necessary easements and other access rights to insure unimpeded access to the facilities proposed to be constructed, which access shall be made available to all Member Agencies of Agency.

9. Approval of State Treasurer. This Agreement shall be subject to the approval of the Treasurer of the State of California. MNWD and IRWD, concurrently with the execution of this Agreement, shall request approval of this Agreement by the Treasurer of the State of California.

10. Miscellaneous.

(1) Notice. Any notice of instrument required to be given or delivered may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

ALISO WATER MANAGEMENT AGENCY
27500 La Paz Road
Laguna Niguel, CA 92677

CITY OF LAGUNA BEACH
505 Forest Avenue
Laguna Beach, CA 92651

MOULTON-NIGUEL WATER DISTRICT
27500 La Paz Road
Laguna Niguel, CA 92677

EMERALD BAY SERVICE DISTRICT
600 Emerald Bay
Laguna Beach, CA 92651

IRVINE RANCH WATER DISTRICT
P. O. Box D-1
Irvine, CA 92664

SOUTH COAST COUNTY WATER DISTRICT
31652 Second Avenue
South Laguna, CA 92677

and shall be effective upon receipt thereof.

(2) Attorneys's Fees. In the event an action is commenced by any party to this Agreement to enforce or construe its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the Court, shall be entitled to recover all statutory costs plus a reasonable amount for attorney's fees.

(3) Arbitration. Any controversy or claim between the parties to this Agreement, including but not by way of limitation, any claims, disputes, demands, differences, controversies, or misunderstandings arising under, out of, or in relation to this contract, or any alleged breach thereof, shall be submitted to and determined by arbitration. To the extent not inconsistent herewith, the rules of the American Arbitration Association shall apply. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to the other party to this Agreement. Such notice shall designate such other parties, if any, as the initiating party intends to have bound by any award made therein. Within twenty (20) days of the service of the initial demand for arbitration, the American Arbitration Association, hereinafter referred to as "AAA," shall submit simultaneously to the initiating party and to all parties, if any, named as respondents or filing a response therein, an identical list of names of persons chosen from the AAA National Panel of Arbitrators, which persons shall be, to the extent possible, persons first in the field of wastewater disposal and reclamation or in the alternative, public law. Each party to the dispute shall have seven (7)

consecutive calendar days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitration panel consisting of three persons from those designated, or if for any reason an acceptable panel of three arbitrators is unable to act, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment of the panel of three arbitrators from other members of the list originally submitted, without the submission of any additional list.

The panel of arbitrators shall determine the rights of the parties in accordance with the law, and the award shall be subject to review as to the panel's application of the law by any court having jurisdiction thereof, whether or not any mistake of the law shall appear upon the face of the award. As to all questions of fact, however, the determination of the arbitrators shall be binding upon all parties and shall be final. Any party shall be entitled to written findings of fact and conclusions of law as to all issues determined by the award. Subject to the above limitations, the award shall be binding upon all parties to the arbitration and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

The arbitrators may, in their discretion, as part of the arbitration award, impose upon any one party or allocate among two or more of the parties, the liability for the arbitration fees and expenses. Such allocable fees may include the initial administration fees, fees for second and subsequent hearings, postponement fees, and overtime fees. Allocable expenses may include the expenses of producing witnesses, the cost of stenographic records, the cost of any transcripts, travel expenses of the arbitrators and Tribunal Administrator, the expenses of any witnesses, the cost of any proofs produced at the direct request of the arbitrators, and any other expenses relating directly to the arbitration. In the event of the failure of the arbitrators to provide for the allocation of such fees and expenses, the arbitration fees shall be divided equally between the parties and the expenses shall be borne by the party incurring them.

11. Agreement Binding Upon Successors and Assigns.

This Agreement shall be binding upon the successors and assigns of each party to this Agreement, and upon any such succession or assignment, the successor or assignee shall accept and assume in writing each and every obligation applicable under this Agreement.

12. Effective Date. This Agreement shall not be effective until the following have occurred:

- (1) An agreement has been executed by Agency, CLB, EBSD, and IRWD for the construction of the North Coastal Interceptor Sewer on behalf of Project Committee No. 7-A.

(2) The existing agreement dated September 24, 1976, on behalf of Project Committee No. 11-A, to construct the Ocean Outfall, has been executed by Agency and six Member Agencies of the Aliso Water Management Agency.

(3) Amendments No. 1, 2, and 3 to the agreement dated September 24, 1976, have been executed by Agency and six Member Agencies of Agency.

ALISO WATER MANAGEMENT AGENCY

By *Carl J. Lymla*
Chairman

Dated: 11 Nov 76

By *W. F. Wilson*
Secretary

MOULTON-NIGUEL WATER DISTRICT

By *Thomas R. Gatta*
President

Dated: 18 Nov 76

By *[Signature]*
Assistant Secretary

SOUTH COAST COUNTY WATER DISTRICT

By *Shos. A. Brooks*
President

Dated: 11-22-1976

By *[Signature]*
Secretary

CITY OF LAGUNA BEACH

By *Phyllis J. Sweeney*
Mayor

Dated: 11-10-76

By *Terna L. Robinson*
City Clerk

EMERALD BAY SERVICE DISTRICT

By J. Thomas Swanson
President

Dated: Nov. 18, 1976

By Charles S. Ugel
Secretary

IRVINE RANCH WATER DISTRICT

By P. E. Chalberg
President

Dated: Nov. 17, 1976

By Robert C. Jones
Secretary



ALISO WATER MANAGEMENT AGENCY
 COASTAL TREATMENT PLANT
 PROJECT COMMITTEE 15
 PROPOSED BUDGET

November 9, 1976
 Page 1 of 2

<u>Task Order</u>		<u>Consultant</u>	<u>General Purposes</u>	<u>Plants Specific</u>	<u>Total</u>
1	Engineering Design Study - (Dependent on scope desired)		\$ 10,000	\$ 40,000	\$ 50,000
2	E.I.R.		10,000	20,000	30,000
3	Agreement, Budgets & Contracts	Staff	2,000	4,000	6,000
4	Agreements	Legal	1,500	2,000	3,500
5	Archaeological Survey	Westec	1,700	-0-	1,700
6	Archaeological Survey - Contingency		2,000	-0-	2,000
7	Conditional Use Permit	Staff	2,000	4,000	6,000
8	Conditional Use Permit	Legal	1,000	2,000	3,000
9	Coastal Commission Permit	Staff	2,000	2,000	4,000
10	Coastal Commission Permit	Legal	1,000	1,000	2,000
11	Accounting and Costs Reporting	Smith	1,500	3,500	5,000
12	Contingency		5,000	10,000	15,000
	<u>Sub-Total "Coastal Treatment Plant"</u>		<u>\$ 39,700</u>	<u>\$ 88,500</u>	<u>\$128,200</u>
15	Professional Services paid by Agencies on Regional Treatment Plant - 1972 through May 6, 1975:				
	Engineering		\$ 506,358		
	Legal		23,074		
	Fiscal and miscellaneous		10,132		
	<u>TOTAL</u>				<u>\$539,564</u>
					<u>\$667,764</u>

ALISO WATER MANAGEMENT AGENCY
 COASTAL TREATMENT PLANT
 PROJECT COMMITTEE 15
 PROPOSED BUDGET

November 9, 1976
 Page 2 of 2

	General Purposes			Plants Specific			Total		
	*MGD	Percent	Amount	*MGD	Percent	Amount	Costs	Less: Amount Paid on 6/9/76 Budget	Net Amount Due
Moulton-Niguel Water District	1.60	17.68	\$ 7,019			\$ -0-	\$ 7,019	\$ 6,461	\$ 558
South Coast County Water District	1.60	17.68	7,019			-0-	7,019	1,593	5,426
City of Laguna Beach	4.40	48.62	19,302	4.40	75.21	66,561	85,863	4,374	81,489
Emerald Bay Service District	.20	2.21	877	.20	3.42	3,027	3,904	198	3,706
Irvine Ranch Water District	1.25	13.81	5,483	1.25	21.37	18,912	24,395	1,242	23,153
	<u>9.05</u>	<u>100.00</u>	<u>\$ 39,700</u>	<u>5.85</u>	<u>100.00</u>	<u>\$ 88,500</u>	<u>\$ 128,200</u>	<u>\$ 13,868</u>	<u>\$ 114,332</u>

* Allocation based on capacity for each agency.

