

**NORTH MARIN
WATER DISTRICT**

**NORTH MARIN WATER DISTRICT
AND
NOVATO SANITARY DISTRICT
AGENDA - SPECIAL JOINT BOARD OF
DIRECTORS MEETING**

October 11, 2012 – 1:30 p.m.
Novato Sanitary District Headquarters
500 Davidson Street
Novato, California



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Item	Subject
	CALL TO ORDER
1.	<i>OPEN TIME: (Please observe a three-minute time limit)</i> This section of the agenda is provided so that the public may express comments on any issues not listed on the agenda that are of interest to the public and within the jurisdiction of the North Marin Water District. When comments are made about matters not on the agenda, Board members can ask questions for clarification, respond to statements or questions from members of the public, refer a matter to staff, or direct staff to place a matter of business on a future agenda. The public may also express comments on agenda items at the time of Board consideration.
2.	<i>Review Cooperative Efforts Between Novato Sanitary District and North Marin Water District (No action(s) will be taken)</i>
3.	<i>Review Recycled Water - North Service Area - The Covello Group (No action(s) will be taken)</i>
4.	ADJOURNMENT <i>After adjournment of the North Marin Water District/Novato Sanitary District Joint Board of Directors meeting, we will be meeting at the Recycled Water Treatment Facility for a ceremony dedicating the Recycled Water Project. No District business will be conducted.</i>

MEMORANDUM

To: Board of Directors October 5, 2012
From: Chris DeGabriele, General Manager, NMWD
Beverly James, Manager-Engineer, NSD
Subject: Review Cooperative Efforts Between Novato Sanitary District and North Marin Water District
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RECOMMENDED ACTION: Information Only

FINANCIAL IMPACT: None at this time

A principal reason for today's joint meeting is to review the cooperative efforts between the two districts which have been ongoing for some time. Attached is the Mutual Aid and Assistance Agreement executed in 2010, and the Third Revised Inter-Agency Agreement for Recycled Water executed in May 2011.

The Mutual Aid Agreement enables an exchange of manpower, materials and equipment on a cost reimbursement basis, something that has been going on informally for decades between the two districts. Most recently, the districts have loaned manpower, temporary employees to maintain appropriate staffing levels and to comply with legal requirements for use of temporary employees. (One of NMWD former temporary employees was recently hired as a regular employee at NSD). Additionally, NMWD is performing laboratory services for NSD. Currently, a NMWD lab technician works at least one day per week at NSD sampling and testing for fecal coliform, total coliform and total suspended solids on 15 to 45 samples per month. In the future, NMWD will be performing bacteriological testing NSD's recycled water once per day when the NSD Recycled Water Treatment Facility commences operation. Similarly, NSD has provided as-needed assistance with NMWD's wastewater facilities in West Marin.

NSD and NMWD have a long history of cooperating in the development, construction and operation of recycled water beginning over 20 years ago when the districts jointly funded a reconnaissance level study of recycled water potential in the Novato area. More recently the districts cooperated with development of the Recycled Water Treatment Facility at Deer Island to serve the Stone Tree Golf Course; and as we will witness today, the new Recycled Water Treatment Facility at the Davidson Plant and expansion of the recycled water distribution system in the Novato North Service Area.

The managers of the districts continue to meet regularly and explore areas where cooperation can continue.

**Mutual Aid and Assistance Agreement
Between
North Marin Water District and Novato Sanitary District**

This agreement is made and entered into by the North Marin Water District and Novato Sanitary District ("Districts") to provide mutual aid and assistance to each other in times of need and to provide reimbursement for equipment, supplies and personnel made available under this agreement.

In consideration of the mutual covenants and agreements hereinafter set forth, the Districts agree to provide mutual aid and assistance to each another in times of need. Each District has the absolute discretion to decline to provide any requested assistance, and the execution of this agreement shall not create any duty to respond on the part of either District.

The General Manager of either District may request aid and assistance (Requesting District) from the General Manager of the other District (Responding District). Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment and supplies shall also be prepared in writing and submitted to the other General Manager as soon as practicable.

When either District receives a request for aid or assistance, the General Manager of the Responding District will evaluate the request and shall inform, as soon as possible, the Requesting District about the type of available resources, if any, and the approximate arrival time of such assistance.

Employees provided under this agreement will be under the direction and control of the Requesting District. The Requesting District's designated supervisor(s) must keep accurate records of time expended and work performed by personnel during the period of assistance. The Responding District's General Manager retains the right to withdraw some or all of its resources at any time for any reason in the Responding District's sole discretion.

Cost Reimbursement

Personnel: The Responding District will make such employees as are willing to participate available to the Requesting District at the Requesting District's expense, defined as being equal to the Responding District's full cost, i.e., equal to the employee's applicable salary or hourly wage plus fringe benefits and overhead. The Requesting District shall be responsible for all direct and indirect labor costs.

Equipment: Use of equipment, such as construction equipment, vehicles, tools, pumps and generators, shall be at the Responding District's current equipment rate and subject to the following conditions: The Requesting District shall reimburse the Responding District for use of equipment including, but not limited to, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Responding District as soon as is practicable and reasonable under the circumstances.

- (a) At the option of the Responding District, equipment may be provided with an operator;
- (b) Equipment shall be returned to the Responding District within 24 hours after receipt of an oral or written request for return;
- (c) In the event equipment is damaged while being dispatched to Requesting District, or while in the custody and use of Requesting District, Requesting District shall reimburse the Responding District for the reasonable cost of repairing said damaged equipment. If

the equipment can not be repaired, the Requesting District shall reimburse the Responding District for the cost of replacing such equipment with equipment that is of at least equal capability as determined by the Responding District. If the Responding District must lease a piece of equipment while the Requesting District equipment is being repaired or replaced, the Requesting District shall reimburse the Responding District for such lease cost.

Materials and supplies: The Requesting District shall reimburse the Responding District in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. Other supplies and reusable items that are returned to the Responding District in a clean, damage-free condition shall not be charged to the Requesting District and no rental fee shall be charged; otherwise, they shall be treated as expendable supplies. Supplies that are returned to the Responding District with damage must be treated as expendable supplies for purposes of cost reimbursement.

Payment Period: The Responding District shall provide an itemized invoice to the Requesting District for the expense incurred in providing assistance under this agreement not later than the 10th of the month following the month wherein assistance is provided. The Requesting District agrees to reimburse the Responding District within 15 days from receipt of an invoice.

Records: Authorized representatives of each District shall have access to the other's books, documents, notes, reports, papers and records for the purpose of reviewing the accuracy of the invoice(s) rendered.

Indemnity: Each District shall assume the defense of, fully indemnify, and hold harmless the other District, its Directors, officers and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from assistance provided hereunder, including, but not limited to, negligent or wrongful use of equipment, supplies or personnel provided, or faulty workmanship or other negligent acts, errors or omission.

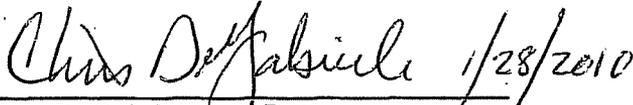
Workers' Compensation: Each District is responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

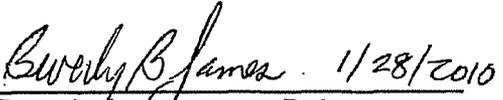
Effective Date: This agreement shall take effect upon execution.

Termination: Either District may terminate this agreement by providing written notice to the other. Termination does not absolve the Requesting District's duty to reimburse the Responding District for assistance rendered, which duty shall survive such termination.

Modification: Modification to this agreement must be in writing.

Severability: If any provision of this agreement is declared by a court of competent jurisdiction to be invalid, the validity of the remaining terms and provisions shall not be affected.


Chris DeGabriele Date
North Marin Water District


Beverly James Date
Novato Sanitary District

**THIRD REVISED
INTER AGENCY AGREEMENT
FOR RECYCLED WATER
BETWEEN
NOVATO SANITARY DISTRICT
AND
NORTH MARIN WATER DISTRICT**

MAY 2011

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1 INTER AGENCY AGREEMENT
2 FOR RECYCLED WATER
3 BETWEEN
4 NOVATO SANITARY DISTRICT
5 AND
6 NORTH MARIN WATER DISTRICT
7

8 This Agreement is made and entered into on this 10th day of May, 2011, (the
9 "Effective Date") between the Novato Sanitary District (referred to as "Producer") and the North
10 Marin Water District herein (hereinafter referred to as "Distributor"). Producer and Distributor
11 may be referred to herein individually as a "Party" or collectively as the "Parties."

12 **RECITALS**

- 13 A. Producer and Distributor are actively involved in local and regional efforts to develop
14 recycled water supplies and promote recycled water use.
- 15 B. Producer and Distributor recognize that sustainable water resource management
16 requires integration of water supply and wastewater discharge limitations.
- 17 C. Producer and Distributor have previously cooperated in development of the Deer
18 Island Recycled Water Treatment Facility (Deer Island RWTF) and distribution
19 system to supply Stone Tree Golf Course and Novato Fire Protection District Station
20 No. 2 with recycled water pursuant to the April 2009 Revised Inter-Agency
21 Agreement for Recycled Water.
- 22 D. Provisions of this agreement are consistent with conditions established pursuant to
23 the Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS)
24 for the North San Pablo Bay Restoration and Reuse Project (Project) also known as
25 the North Bay Water Recycling Program as published in the Code of Federal
26 Register (CFR) Volume 75, Number 108 dated June 7, 2010.
- 27 E. Included within said Project are facilities to treat such recycled water at the
28 Producer's wastewater treatment site, hereinafter referred to as the Davidson Street
29 Recycled Water Treatment Facility (the "Davidson Street RWTF").
- 30 F. The Deer Island RWTF and recycled water distribution system is permitted by the
31 State of California San Francisco Bay Regional Water Quality Control Board to treat
32 and distribute and use treated effluent as recycled water.
- 33 G. The Davidson Street RWTF and recycled water distribution system will be permitted
34 by the State of California San Francisco Bay Regional Water Quality Control Board
35 to treat and distribute and use treated effluent as recycled water.
- 36 H. Recycled water to be delivered by Producer to Distributor will be disinfected tertiary
37 recycled water, in accordance with the provisions of Title 22 of the California Code of
38 Regulations and applicable requirements of the California Department of Public
39 Health.
- 40 I. Distributor has developed a recycled water master plan for future long-term
41 distribution of recycled water in the Novato area of Marin County, California.

- 1 J. Distributor wishes to acquire from Producer the quantity of secondary effluent and/or
2 recycled water which it can sell to End Users (as defined in Article B2).
- 3 K. City of Novato, Novato Unified School District playing fields, Valley Memorial Park
4 Cemetery and Fireman's Fund Business Park landscaping will be the initial End
5 Users of recycled water and other end users may be served in the vicinity of the
6 recycled water pipeline to be constructed from the RWTF's.

7 **AGREEMENT PROVISIONS**

8 For and in consideration of the foregoing recitals and of the mutual promise and covenants
9 herein contained, the Parties hereto agree as follows:

10 **ARTICLE A. INTRODUCTORY PROVISIONS**

11 **1 Definitions**

12 When used in this Agreement, the following terms shall have the meanings
13 hereinafter set forth:

- 14 a) "End User" shall mean the ultimate user of recycled water.
- 15 b) "Fiscal Year" shall mean each 12-month period during the term of this
16 Agreement commencing July 1 of one year and terminating June 30 of the
17 next succeeding year, both dates inclusive.
- 18 c) "Operation and Maintenance Costs" shall mean the actual cost of: labor
19 (including general and administrative overhead plus tools and supplies
20 normally applied), equipment and vehicle charges, consumables (such as
21 chemicals and electrical power), and spare parts and/or replaced
22 components necessary to reliably treat and deliver recycled water to the End
23 Users pursuant to this agreement. Operation and Maintenance Costs shall
24 not include costs for major capital replacement or process changes.
- 25 d) "Point of Connection" shall mean a secondary effluent connection between
26 the Producer's sewerage system and the Distributor's Deer Island RWTF
27 and distribution system (see Exhibit "A" attached hereto and incorporated
28 herein by this reference), or a recycled water connection between the
29 Producer's Davidson Street RWTF and Distributor's distribution system (see
30 Exhibit "B" attached hereto and incorporated herein by this reference).
- 31 e) "RWTF" shall mean the Recycled Water Treatment and Pumping Facilities
32 required to produce recycled water from the Producer's sewerage system to
33 the "Point of Connection."
- 34 f) "Distribution" system shall mean the recycled water transmission/distribution
35 pipelines and storage facilities.

36 **2. Term and Renewal**

37 This Agreement shall commence on the Effective Date and be in force for
38 twenty (20) years. Following the original twenty (20) year Agreement term, the
39 Agreement term shall be automatically renewed and extended for consecutive
40 one (1) year terms, unless terminated in accordance with the provisions of
41 Article E herein.

42

1 **ARTICLE B. RECYCLED WATER SERVICE PROVISIONS**

2 **1. Recycled Water Delivery Limitations**

- 3 a) Distributor understands and acknowledges that Producer is charged with the
4 responsibility to operate its sewerage systems in a manner which it
5 reasonably determines to be most beneficial to the users thereof. The rights
6 of Distributor to secondary effluent or recycled water under this Agreement
7 pertain only to that which actually is produced at the RWTF. Nothing
8 contained herein shall be construed to qualify in any manner Producer's right
9 to operate the sewerage system and Davidson Street RWTF at such rates of
10 flow as Producer reasonably determines to be appropriate so as to comply
11 with Producer's NPDES permit.
- 12 b) Nothing herein shall be construed to commit any portion of the recycled
13 water from the RWTF beyond that which will be delivered by Distributor to its
14 customers for reasonable beneficial uses. Producer to give to Distributor at
15 least 30 days advance written notice of any non-emergency planned
16 reduction that would reduce the availability of secondary effluent or recycled
17 water to Distributor. Distributor shall have ample opportunity to meet and
18 confer with the Producer on the issue of reduced availability of recycled
19 water.
- 20 c) Any circumstances beyond Producer's control which cause an unplanned
21 reduction in the recycled water available for distribution may, at the
22 discretion of Producer, result in a temporary decrease in recycled water
23 available to Distributor under this Agreement. The reduced availability of
24 recycled water will continue in effect until such time as operations have been
25 restored to normal, provided the Producer must use its reasonable best
26 efforts to restore normal operations as soon as possible. Producer shall
27 inform Distributor on a weekly frequency regarding status of restoration of
28 normal operation.
- 29 d) The Parties acknowledge that in unusual conditions, an emergency diversion
30 of recycled water by Producer may be necessary, and such diversion shall
31 be made to an effluent storage pond or wet weather basin, treatment plant or
32 other authorized location to receive such diversion by the Regional Water
33 Quality Control Board and shall not be deemed a violation of this Agreement.

34 **2. Recycled Water Delivery Quantities**

- 35 a) Subject to the provisions herein, Producer agrees to make available to
36 Distributor each Fiscal Year during the term hereof, secondary effluent
37 and/or recycled water produced at the Davidson Street RWTF in the
38 anticipated minimum annual delivery quantity of 186 acre feet per year (the
39 "Annual Delivery Quantity") pursuant to the User Connection Schedule
40 (Exhibit F).
- 41 b) Annually, Producer and Distributor shall meet and confer in good faith to
42 mutually determine the Annual Delivery Quantity and anticipated production
43 schedule for each month for the ensuing Fiscal Year and to project minimum
44 Annual Delivery Quantities for the next ensuing three Fiscal Years. The
45 purpose of this determination is to provide the Producer and Distributor with
46 information necessary to plan production at the Davidson Street RWTF and

1 Deer Island RWTF respectively including staffing, chemical purchases,
2 maintenance and coordination of operations at the RWTF's.

- 3 c) Producer and Distributor acknowledge that circumstances such as drought
4 may require additional Annual Delivery Quantities or a prolonged schedule
5 of operation at the RWTF's and agree to use reasonable best efforts to meet
6 such additional requirements.
- 7 d) Distributor shall make reasonable efforts to provide back-up source(s) of
8 water for the distribution system at the Deer Island RWTF that will provide a
9 reliable flow of water to End Users in the event that circumstances beyond
10 Producer's control cause a reduction or temporary loss of flow of secondary
11 effluent or recycled water from Producer.

12 **3. Metering and Measurement of Flows**

- 13 a) Producer will measure all recycled water delivered to Distributor at the point
14 of connection. This point of connection delivery (master) metering will be in
15 addition to any retail (customer) metering conducted by the Distributor
16 and/or End Users (collectively, the "Customer Metering"). The Master
17 Metering shall govern billings to Distributor and shall also be used for
18 reporting Distributor's recycled water usage to regulatory agencies. Where
19 either Distributor or Producer acts as End Users, they shall also report
20 usage by metering.
- 21 b) The Producer shall test the accuracy of the Master Metering not less
22 frequently than annually and provide the Distributor with a report of such
23 test. The Distributor shall have the right at any time and at its expense to
24 make additional tests of the Master Metering. If the Master Metering is
25 found to be reading 2 percent or more, fast or slow, it shall immediately be
26 recalibrated, repaired or replaced by the Producer to bring it within 2 percent
27 accuracy.
- 28 c) Title to and risk of loss and responsibility for the handling and control of all
29 recycled water which meets the quality criteria shall pass from the Producer
30 to the Distributor at the point of connection. The Producer and Distributor
31 agree to exercise due diligence in inspecting their various pipelines and
32 appurtenances and take steps to guard against unreasonable loss of
33 recycled water. Should unreasonable loss of recycled water occur, the
34 parties shall meet in good faith to determine a fair allocation of the cost
35 thereof.

36 **4. Recycled Water Quality and Pressure**

- 37 ~~a) All recycled water to be delivered pursuant to the terms of this Agreement~~
38 ~~will be of such quality that the same may be used for all purposes from time~~
39 ~~to time allowed for disinfected tertiary recycled water. The recycled water to~~
40 ~~be delivered to Distributor at the Davidson Street RWTF Point of Connection~~
41 ~~pursuant to this Agreement shall range in pressure from XX to 80 pounds~~
42 ~~per square inch (psig) and conform to the quality requirements set forth in~~
43 ~~the then current disinfected tertiary recycled water quality and monitoring~~
44 ~~regulations specified in Title 22, Division 4, Chapter 3: Wastewater~~
45 ~~Reclamation Criteria Section 60301.230 (California Code of Regulations), as~~
46 ~~further regulated by the State of California Regional Water Quality Control~~

1 Board, the California Department of Public Health and all other federal, state
2 and local agencies having jurisdiction over recycled water quality.

- 3 b) The Parties recognize that factors beyond the control of Producer could
4 cause operational difficulties at the Davidson Street RWTF resulting in the
5 temporary production of recycled water which does not meet the current
6 requirements referenced in the previous subparagraph for the intended uses
7 of the End Users. In such cases, Producer shall temporarily suspend
8 deliveries of recycled water to Distributor from Producer's facilities, and
9 Distributor shall produce recycled water from the Deer Island RWTF or
10 provide a back-up source pursuant to Article B, Section 2.d) of this
11 agreement. Producer shall use its best efforts to reestablish the production
12 of recycled water of a suitable quality and pressure as soon as reasonably
13 possible and shall reestablish Distributor's supply of such water accordingly.
- 14 c) Producer shall immediately notify Distributor if recycled water from the
15 Davidson Street RWTF does not meet the currently applicable regulatory
16 requirements and its deliveries of recycled water will be suspended. Such
17 notice shall be given to Distributor, via control system alarm, e-mail
18 (info@nmwd.com) or telephone (415) 897-4133 with a follow-up written
19 confirmation on the same day automatic notice is given, or on the next
20 business day if automatic notice is not given during normal business hours.
21 Said notice shall contain the date and time delivery was interrupted and the
22 date and time delivery resumed or is scheduled to resume.
- 23 d) From time to time, it may be necessary for the parties to develop, agree
24 upon and implement detailed operating criteria and procedures. Distributor
25 agrees to provide real time recycled water storage level data to facilitate
26 such operating criteria for the RWTF.

27 **5. Recycled Water Limitations of Use**

28 Distributor agrees to provide the recycled water it receives hereunder only for
29 the use of those End Users who have obtained the appropriate permits to use
30 recycled water. Distributor shall be responsible for establishing the required
31 Administrative Procedures and End User Rules and Regulations, for issuing
32 permits to End Users, and for providing regulatory oversight of End User sites.

33 **6. Permits**

34 This Agreement is based on the necessary permitting requirements under the
35 San Francisco Regional Water Quality Control Board Order 96-011 General
36 Water Reuse Requirements for Wastewater and Water Agencies and the
37 Department of Public Health Title 22 water reuse criteria relating to the use of
38 recycled water and the development and construction of a recycled water
39 production and distribution system. Each of the Parties undertakes and agrees,
40 severally and jointly as appropriate, to file any and all applications and
41 undertake such proceedings as may be necessary to enable each Party to carry
42 out the undertaking contemplated herein, and to pursue each application and
43 proceedings in good faith and due diligence. Distributor will act as lead agency
44 in obtaining, complying with and maintaining the permits that are applicable to
45 the construction and initial permitting of the distribution system and Deer Island
46 RWTF. Producer will act as lead agency in obtaining, complying with, and
47 maintaining the permits that are applicable to the operation of the Davidson

1 Street RWTF. However, both Producer and Distributor agree to cooperate in
2 obtaining and complying with permits necessary to carryout the provisions of
3 this agreement and are responsible, where applicable to their role as Producer
4 or Distributor, to comply with the requirements set forth in these permits.

5
6 **ARTICLE C. EXPANDED NOVATO NORTH SERVICE AREA RECYCLED WATER**
7 **FACILITIES**

8 **1. Initial Construction**

9 a) The Parties have worked together to develop planning, permitting and
10 preliminary engineering design for a Davidson Street RWTF and distribution
11 system to serve various Novato North Service Area End Users including the
12 City of Novato, Novato Unified School District playing fields, Valley Memorial
13 Park Cemetery and Fireman's Fund Business Park landscaping.

14 **2. Master Plan**

15 a) The Parties have prepared and approved a focused master plan (the
16 "Master Plan") for contemplated expanded distribution and/or treatment
17 facilities for the distribution of recycled water in the service area of
18 Distributor (the "Expanded Facilities"). The focused Master Plan promotes
19 the use of recycled water throughout the service area of Distributor, and is
20 consistent with Distributor's overall water supply planning.

21 Arrangements between the parties relating to permitting, design and
22 construction of Expanded Facilities beyond that contemplated herein shall
23 be addressed in one or more future agreements.

24 **3. Construction of Facilities**

25 a) Each party shall be solely responsible for obtaining all permits, contracts,
26 approvals, easements, land rights, or other permission or consent necessary
27 to proceed with its recycled water facilities, as contemplated by this
28 Agreement.

29 b) Recycled water delivered to Distributor pursuant to this Agreement shall be
30 provided by Producer from the Davidson Street RWTF facility. Initial
31 construction of the Davidson Street RWTF shall be administered, managed
32 and financed by the Producer with a bank loan and/or grant funding.
33 Repayment of any said loan financing shall be pursuant to Producer
34 wastewater sewer service charges.

35 Initial construction of Recycled Water distribution facilities shall be
36 administered, managed and financed by the Distributor with a California
37 State Water Resources Control Board State Revolving Fund Low Interest
38 Loan, bank loan and/or grant funding. Repayment of any said loan financing
39 shall be pursuant to Distributor Water Connection Fees paid by Distributor
40 customers.

41 c) Initial Construction Costs (including engineering support, construction
42 management and administration) for the Davidson Street RWTF are
43 estimated to be \$5,450,000 pursuant to the Phase 3 Engineering and
44 Economic/Financial Analysis Report for the Project by Camp Dresser McKee
45 (CDM, June 2008) with revised project summary costs (RMC, August 2010)

1 costs) or 52% of the total Initial Construction Costs, and allocated to the
2 Producer.

3 Initial Construction Costs for the Recycled Water distribution facilities are
4 estimated to be \$5,100,000 pursuant to the revised CDM, November 2009
5 costs, or 48% of the total initial construction costs and allocated to the
6 Distributor.

7 d) Federal Funding Grant Allocation.

8 The Producer has entered into an agreement with Sonoma County Water
9 Agency (SCWA) on behalf of Producer and Distributor for up to 25% federal
10 grant funding for the Expanded Facilities, also known as the "Novato North
11 and Central Service Area Recycled Water" projects as defined by the North
12 San Pablo Bay Restoration and Reuse Project – EIR/EIS (ESA 2010).
13 Federal grant funds are anticipated from the American Reinvestment and
14 Recovery Act (ARRA) and Title XVI Grants awarded by the U.S. Bureau of
15 Reclamation (USBR). Until such a time that Distributor is a direct recipient of
16 ARRA or Title XVI grant funds from SCWA, Distributor agrees to abide by all
17 the terms and conditions of said agreement between Producer and SCWA,
18 attached hereto as Exhibit D.

19 i. Allocation of ARRA Grant Funds

20 Of the \$7,203,000 in ARRA grant funds eligible for payment to SCWA by
21 USBR, \$2,637,500 is to be allocated by SCWA to Producer for the Expanded
22 Facilities Novato North Service Area Recycled Water. The aforementioned
23 ARRA grant fund allocation is based on the Expanded Facilities Novato
24 North Service Area project total cost estimate of \$10,550,000, 48% allocated
25 for Distributor's storage and pipeline components and 52% allocated for
26 Producer's treatment and pumping components. It is agreed that the ARRA
27 grant funds will be shared proportionately between the Producer and
28 Distributor using the above-stated percentages after accounting for the grant
29 administration expenses.

30 ii. Allocation of Title XVI Funds

31 Notwithstanding the allocation methodology provided above for the ARRA
32 grant allocation, any future Title XVI grant funding allocation will be based
33 upon the amounts identified in Exhibit C of the North Bay Water Reuse
34 Authority Second Amended Memorandum of Understanding (Exhibit E). It is
35 further anticipated that any future grant application and funding disbursement
36 will be structured so that SCWA distributes grant funds directly to Distributor
37 as a Member Agency of NBWRA and Recipient under a future Agreement for
38 Grant Facilitation Services for North San Pablo Bay Restoration and Reuse
39 Project.

40 e) State Funding Grant Allocation

41 Allocation of any grant funding from the State of California for the expanded
42 facilities shall be shared proportionately between the Producer and
43 Distributor using the percentages stated in Article C. Section 3.d)i.

44 f) Expansion of the Davidson Street RWTF and Expanded Distribution
45 Facilities will be undertaken from time to time as subject to any other future
46 agreements executed between Producer and Distributor.

1 Planned capital improvements or replacements projects to the Davidson
2 Street RWTF shall be coordinated with Distributor sufficiently in advance to
3 ensure adequate funds are available to carry out said projects

4 **4. Ownership, Operation and Maintenance of Facilities**

5 Distributor shall own, operate and maintain at no cost to Producer, The Deer
6 Island RWTF and all of its distribution facilities from the Point of Connection up
7 to the End User meters.

8 Producer leases the property on which the Deer Island RWTF is located from
9 the Marin County Flood Control and Water Conservation District. This lease
10 expires on July 1, 2023 with an option to extend it for an additional ten years.

11 Producer shall own, operate and maintain all of the Davidson Street RWTF up
12 to the Point of Connection. At Distributor's request or as necessary to comply
13 with permit conditions of state or federal law, Producer may assist with the
14 maintenance and emergency repair of Distributor's distribution facilities.
15 Distributor shall reimburse Producer for reasonable and necessary expenses
16 incurred in carrying out such maintenance or repair. At Producer's request or as
17 necessary to comply with permit conditions of state or federal law, Distributor
18 may assist with the maintenance and emergency repair of Producer's
19 distribution facilities. Producer shall reimburse Distributor for reasonable and
20 necessary expenses incurred in carrying out such maintenance or repair.

21 Producer agrees to provide the Distributor the uninterrupted right of ingress to
22 and egress from the recycled water pipeline route on Producer's property and
23 the right at all times to enter in, over and upon and to use said recycled water
24 pipeline route and every part thereof for all purposes connected with the laying
25 down, constructing, reconstructing, replacing, removing, repairing, maintaining,
26 operating and using said distribution facilities.

27 Producer agrees not to do anything which may interfere with Distributor's full
28 rights for the purposes noted above including without limitation the following:
29 placing or permitting to be placed on said recycled water pipeline route any
30 building or structure (including without limitation new fences not approved by
31 Distributor) or deck(s), tree(s), large shrub(s), or rock(s) weighing more than 50
32 pounds;

33 Subject to the foregoing provisions, Producer may excavate or change the
34 grade of the surface of said recycled water pipeline route way for the Producer's
35 continued operation and maintenance of the existing wastewater facility
36 operations, provided that before making any such change, Producer shall notify
37 Distributor of the proposed change and enable Distributor the opportunity to
38 raise or lower distribution facilities as solely determined by Distributor if
39 Distributor determines in its sole discretion that the change of the grade
40 necessitates that any Distributor facilities be raised or lowered.

41 Producer may cultivate and landscape the surface of said recycled water
42 pipeline route and may construct a roadway thereon provided that such actions
43 do not in any way conflict with or violate any of the preceding limitations.

44 Producer reserves the right to change the location of said recycled water
45 pipeline route on Producer's property to a new location agreeable to Distributor,
46 provided that the full expense of relocating the recycled water pipeline and

1 appurtenant facilities to the new location shall be funded from the Recycled
2 Water Capital Replacement and Expansion Fund.

3 Distributor shall be under no obligation to install or maintain a roadway or
4 pavement or other surfacing upon the recycled water pipeline route except such
5 as may be convenient for its own purposes. (Any surface changes, such as
6 paving, need to be approved by Producer.)

7 **5. Monitoring**

8 Producer's responsibility for management and monitoring the recycled water
9 delivered hereunder shall be limited only to recycled water production at the
10 Davidson Street RWTF and shall cease upon delivery to Distributor at the Point
11 of Connection. Operation, management, maintenance and monitoring of
12 facilities under the control of the Distributor shall be the sole responsibility of
13 Distributor. Distributor agrees to accept Producer's reporting responsibility for
14 conformance to all monitoring, reporting, and any other requirements assigned
15 to the "recycled water agency" in Title 22 of the California Code of Regulations,
16 all applicable regulations of the State of California Regional Water Quality
17 Control Board and the California Department of Health Services and Order 96-
18 011 (General Water Reuse Requirements for Municipal Wastewater and Water
19 Agencies).

20 **6. Reporting**

21 As a condition of, and to provide assistance sufficient to enable Distributor to
22 carry out this reporting responsibility undertaken by Distributor, Producer shall
23 provide Distributor with the following reporting information:

- 24 a) Quarterly (or annual, at Distributor's option) recycled water production and
25 monitoring records certified by Producer to meet quality pursuant to Exhibit
26 C within 30 days of the close of each fiscal quarter (or Calendar Year, as the
27 case may be) to the extent permissible by law.
- 28 b) Adequate notifications of Producer inspections, start-ups, shutdowns and
29 disconnections, or violations, if any.

30 **ARTICLE D. PAYMENT PROVISIONS**

31 **1. Recycled Water Pricing Policy**

32 The Parties agree that the rates charged by Producer to Distributor shall be in
33 the amount required to reimburse Producer's actual Davidson Street RWTF
34 Operation and Maintenance Costs. Rates charged by Distributor to End Users
35 shall cover actual RWTF Operation and Maintenance Costs and Distributor's
36 actual Operation and Maintenance Costs of the distribution facilities, plus an
37 amount for maintenance and replacement. Any payments to the Distributor by
38 the End User in excess of actual costs (marginal payments) shall be deposited
39 in a Recycled Water Capital Replacement and Expansion Fund.

40
41 **2. Recycled Water Rate Review**

42 Producer shall charge for the delivery of recycled water in accordance with the
43 rate schedule for recycled water service as such rate schedule is established by
44 the producer and approved by Producer's governing board. Producer shall
45 review and establish said rate schedule based on the above-described policy of

1 reimbursing Producer's Davidson Street RWTF actual Operation and
2 Maintenance Costs every Fiscal Year. Distributor shall be given ample
3 opportunity to meet and confer upon the intended application of the pricing
4 policy and Producer's proposed recycled water rates with Producer prior to final
5 determination of Producer's recycled water rates, to ensure compatibility with
6 the intent of this Agreement.

7 Notwithstanding any other provision of this Agreement, the cost of planned
8 capital improvements or replacement projects to the Davidson Street RWTF
9 shall not be included in Producer's recycled water rates but shall instead be
10 reimbursed from the Recycled Water Capital Replacement and Expansion Fund
11 30 days after receipt of invoice.

12 **3. Billings**

13 Distributor agrees to make quarterly (or annual, at Producer's option) payments
14 for the total amount of recycled water delivered pursuant to Article B.3 in each
15 fiscal quarter (or Fiscal Year, as the case may be) at the rates set according to
16 the procedures herein.

17 **4. Obligation to Pay for Available Water**

18 Distributor is obligated to pay Producer for the Annual Delivery Quantity of
19 recycled water for each Fiscal Year, assuming such quantity of recycled water is
20 made available to it by Producer. Producer shall bill Distributor at the close of
21 each quarter (or each Fiscal Year) for the actual quantity of recycled water
22 taken by Distributor pursuant to Article B.3 during that quarter (or Fiscal Year).

23 **5. Time and Method of Payment**

24 Payments shall be made by Distributor in response to, and within 30 days of,
25 billing by Producer.

26 **6. Recycled Water Capital Replacement and Expansion Fund**

27 The Recycled Water Capital Replacement and Expansion Fund will be
28 maintained by the Distributor. Distributor shall provide annual reports of the
29 fund to the Producer. Any expenditure from the fund shall be jointly approved
30 by both the Producer and the Distributor.

31 **ARTICLE E. TERMINATION**

32 **1. General**

33 This Agreement may be terminated upon the occurrence of the events
34 described in the following paragraphs.

35 **2. Failure to Initiate Initial Construction**

36 If the initial construction is not initiated by the second anniversary of the
37 Effective Date of this Agreement (the "Plan Date"), then either Party may elect
38 to terminate this Agreement by serving a written notice (the "Termination
39 Notice") on the other Party within 180 days following the Plan Date. In the event
40 of such termination:

- 41 a) This Agreement shall be deemed terminated as of the last day of the Fiscal
42 Year during which the Termination Notice was given.

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3. Non-Renewal

Following the expiration of the original 20-year term of this Agreement, either Party may serve upon the other no later than 30 days prior to the next occurring anniversary of the Effective Date a notice of intent to terminate this Agreement. Such termination shall become effective upon said next occurring anniversary of the Effective Date.

4. Cause

This Agreement may be terminated by either Party at any time for good cause upon 60-days' written notice to the other Party. However, if the good cause is the breach of the other Party, this Agreement may not be terminated under this section unless such breach is not cured by the breaching Party during such 60-day period. Notwithstanding the foregoing, if a cure of any such breach by any Party hereto cannot practicably be effected within such 60-day period, and the breaching Party, upon receiving such written notice, promptly initiates efforts to cure such failure within such 60-day period, and diligently pursues such cure, this Agreement may not be terminated under this section.

5. Failure to Approve Annual Funding

The Parties acknowledge that each Party undergoes an annual budgeting process and that neither Party is obligated to expend additional funds or to construct additional facilities in any given year unless the applicable Party's governing board has budgeted money for that purpose. Notwithstanding the foregoing, failure to budget such funds may constitute good cause for termination of this Agreement under paragraph 4 above.

6. Decision by Distributor to Cease Distributing Recycled Water

This Agreement shall be terminated in the event that Distributor determines that it no longer intends to be a purveyor of recycled water within its service area. Such termination shall be effective at the end of the Fiscal Year following the Fiscal Year in which notice of Distributor's desire to terminate this Agreement pursuant to this Paragraph is furnished to Producer.

In the event of termination pursuant to this Section, the Producer and Distributor agree to meet and consider arrangements to insure water service is maintained as necessary to customers historically receiving recycled water.

7. Impasse over Rates

If following mediation as provided for herein, Distributor is unwilling to accept a new annual rate set for recycled water by Producer then this Agreement shall be deemed terminated at the end of the Fiscal Year for which such impasse is reached. Producer, following mediation as provided for herein, declares an impasse due to Distributor setting rates that do not recover costs necessary to adequately fund recycled water production, then this Agreement shall be terminated at the end of the Fiscal Year for which such impasse is reached.

8. Buyout Upon Termination

If this Agreement is terminated in accordance with the provisions of Paragraphs 3, 4, 5, 6 or 7 of this Article, then Producer shall have the option to purchase from Distributor those portions of the Distribution Facilities (along with any appurtenances necessary to distribute recycled water in Producer's service

1 area) that have been constructed or are then under construction from
2 Distributor, including easements and any associated real estate required for
3 their use or maintenance. Producer may exercise this option on the following
4 terms:

- 5 a) Producer shall give written notice of its intent to purchase said facilities
6 within 180 days following the effective date of the termination.
- 7 b) The purchase price shall be equal to the newly reconstructed cost
8 (determined as of the date of the notice in paragraph 8.a) less depreciation
9 (RCNLD) of Distributor's improvements. Upon request, Distributor shall
10 furnish appropriate accounting data and information to Producer to
11 establish the purchase price.
- 12 c) Distributor shall assign to Producer all water delivery contracts with End
13 Users using the Distribution Facilities along with any applicable consulting
14 or construction contracts.

15 **ARTICLE F. GENERAL PROVISIONS**

16 **1. Good Faith**

17 This Agreement is the result of good faith negotiations entered into by the
18 Parties willingly, with due diligence, and with full advice of legal counsel, and it
19 is the intent of the Parties that all aspects of performance of this Agreement will
20 be undertaken in the same manner. The Parties acknowledge and agree that it
21 is not possible to anticipate every issue, situation or problem that might arise or
22 be encountered during the term of this Agreement. As to any issue, situation, or
23 problem not expressly provided for in this Agreement, each Party agrees to
24 refrain from doing anything (1) to injure the right of each other Party to receive
25 the benefits of this Agreement, or (2) to frustrate the purpose for which this
26 Agreement was executed. Each Party further agrees that in the event any such
27 unanticipated issue, situation or problem arises, they will meet and confer in
28 furtherance of the implied covenant of good faith and fair dealing in order to find
29 a mutually acceptable solution.

30 **2. Amendments**

31 This Agreement may be amended at any time by mutual written agreement of
32 the Parties. The Parties agree that in the event of action by an outside
33 governmental body producing a prospective change in the volume or use of
34 recycled water by Distributor's customers, the Parties will make such
35 amendments to this Agreement as the circumstance may reasonably and
36 equitably require.

37 **3. Notices**

38 All notices or other writings in this Agreement to be given by either Party to the
39 other, shall be deemed to have been given or when made in writing and either
40 (i) delivered personally, or (ii) sent by facsimile transmission to the Fax numbers
41 set forth below with the original deposited in the U.S. mail, postage pre-paid,
42 first class, addressed as set forth below, or (iii) deposited in the United States
43 mail, registered, or certified, postage prepaid, and addressed as follows:

44 To Distributor

45 General Manager

1 North Marin Water District
2 P.O. Box 146
3 Novato, CA 94948-0146
4 Phone: (415) 897-4133
5 FAX: (415) 892-8043
6

7 To Producer

8 General Manager/Engineer
9 Novato Sanitary District
10 500 Davidson Street
11 Novato, CA 94945
12 Phone: (415) 892-1694
13 FAX: (415) 898-2279

14 The address of either Party may be changed upon written notice given by such
15 Party as above provided. Notices shall also be deemed given when delivered
16 by personal delivery, with a confirmation copy by first class mail.

17 **4. Severability**

18 If any one or more of the covenants or agreements set forth in this Agreement
19 on the part of Producer or Distributor, or either of them, to be performed should
20 be contrary to any provision of law or contrary to the policy of law to such extent
21 as to be unenforceable in any court of competent jurisdiction, then such
22 covenant or covenants, agreement or agreements, shall be null and void and
23 shall be deemed severable from the remaining covenants and agreements and
24 shall not affect the validity of this Agreement.

25 **5. Paragraph Headings**

26 Paragraph headings in this Agreement are for convenience only and are not to
27 be construed as part of this Agreement or any way limiting or amplifying the
28 provisions here.

29 **6. Successors and Assigns**

30 Subject to the provisions of the succeeding Paragraph hereof, this Agreement
31 and all the terms, covenants, agreements, and conditions herein contained shall
32 inure to the benefit of and be binding upon the successors and assigns of the
33 Parties hereto.

34 **7. Assignment**

35 No assignment or transfer by Distributor of this Agreement or any part hereof, or
36 of any rights hereunder or interest herein of Distributor, shall be valid unless
37 approved by Producer, which approval shall not be unreasonably withheld.

38 No assignment or transfer by Producer of this Agreement or any part hereof, or
39 of any rights hereunder or interest herein of Producer, shall be valid unless
40 approved by Distributor, which approval shall not be unreasonably withheld.

41 **8. Remedies**

42 By reason of the specialized nature of the recycled water service to be
43 rendered, and for the further reason that the extent of any damage caused to a
44 party by any breach of this Agreement by the other party may be extremely
45 difficult to determine in monetary terms, it is agreed by the Parties hereto that an

1 action for monetary damages is an inadequate remedy for any breach, and that
2 specific performance, without precluding any other remedy available in equity or
3 at law, will be necessary to furnish either Party hereto with an adequate remedy
4 for the breach hereof.

5 **9. Indemnification**

6 Producer shall save Distributor, its officers, agents and employees, free and
7 harmless from any and all cost liability, damages or health-related claims arising
8 out of any act or omission to act, including any negligent act, by Producer, its
9 officers, agents or employees arising out of the Producer's performance of its
10 obligation under this Agreement. Distributor shall save Producer, its officers,
11 agents and employees, free and harmless from any and all cost liability,
12 damages or health-related claims arising out of any act or omission to act,
13 including any negligent act, by Distributor, its officers, agents or employees
14 arising out of the Distributor's performance of its obligation under this
15 Agreement.

16 **10. Dispute Resolution**

17 Any controversies between the Parties regarding the construction or application
18 of this Agreement, and claims arising out of this Agreement or its break, shall be
19 submitted to mediation within 30 days of the written request of a Party after the
20 service of that request on the other Party. The Parties may agree on one
21 mediator. If they cannot agree on one mediator, the Party demanding mediation
22 shall request that the Presiding Judge of the Superior Court of Marin County
23 appoint a mediator. The mediation meeting shall not exceed one day (eight
24 hours), unless the Parties agree to extend said time. The cost of the mediator
25 shall be borne by the Parties equally. Mediation under this section is a condition
26 precedent to filing an action in any court.

27 The Parties shall make good faith efforts to resolve all claims and disputes
28 related to this Agreement at the lowest possible cost. Unless the Parties agree
29 upon an alternative forum of dispute resolution, any litigation concerning claims
30 and disputes related to this Agreement shall be filed in and timely prosecuted to
31 conclusion in the Superior Court in and for Marin County, and each party hereby
32 waives its right to move to change venue.

33 **11. Governing Law**

34 This Agreement shall be governed, construed and enforced in accordance with
35 the laws of the State of California.

36 **12. Further Assurances**

37 Each of the Parties agrees to execute, and deliver to the other parties, such
38 documents and instruments, and take such actions, as may reasonably be
39 required to effectuate the terms and conditions of this Agreement; provided,
40 however, such covenant shall not have the effect of increasing the obligations of
41 any Party pursuant to this Agreement or require any representations and
42 warranties by any Party in addition to those of such party set forth herein.

43 **13. Waiver**

44 No waiver of any right or obligation of any of the parties shall be effective unless
45 in writing, specifying such waiver, executed by the party against whom such
46 waiver is sought to be enforced. A waiver by any of the parties of any of its

1 rights under this Agreement on any occasion shall not be a bar to the exercise
2 of the same right on any subsequent occasion or of any other right at any time.

3 **14. Presumptions**

4 Because all of the parties have participated in preparing this Agreement, there
5 shall be no presumption against any party on the ground that such party was
6 responsible for preparing this Agreement or any part hereof.

7 **15. Counterparts**

8 This Agreement may be executed in two or more counterparts, each of which
9 shall be deemed an original, but all of which shall constitute one and the same
10 instrument.

11 **16. Entire Agreement**

12 This Agreement constitutes the entire agreement between the parties regarding
13 the subject matter hereof and thereof, and supersedes all prior or
14 contemporaneous negotiations, understandings or agreements of the parties,
15 whether written or oral, with respect to such subject matter.

16 **17. Insurance**

17 Each Party shall be responsible for requiring all contractors that it retains for the
18 construction and construction-related tasks related to this Agreement to provide
19 insurance in the amounts and with the coverages consistent with its policies and
20 practice for projects involving similar construction costs and risks. Each Party
21 shall be responsible for obtaining from each such contractor a certificate of
22 insurance evidencing such coverage, and policy endorsements adding both
23 Parties, and their respective directors, officers, employees, agents, and
24 authorized volunteers as additional insureds to the contractor's Commercial
25 General Liability and Comprehensive Automobile Liability insurance policies,
26 which shall be provided to both Parties prior to the commencement of the
27 construction and/or construction-related tasks.

28

1 IN WITNESS WHEREOF, Producer and Distributor have caused this Agreement to be
2 executed by their respective duly authorized officers effective as of the day and year first herein
3 written below.
4

NOVATO SANITARY DISTRICT

By: _____

Board President

Dated: 5/10/2011

Attest: _____

Board Secretary

Approved as to Form: _____

Novato Sanitary District Attorney

NORTH MARIN WATER DISTRICT

By: _____

Board President

Dated: 5/17/2011

Attest: _____

Board Secretary

Approved as to Form: _____

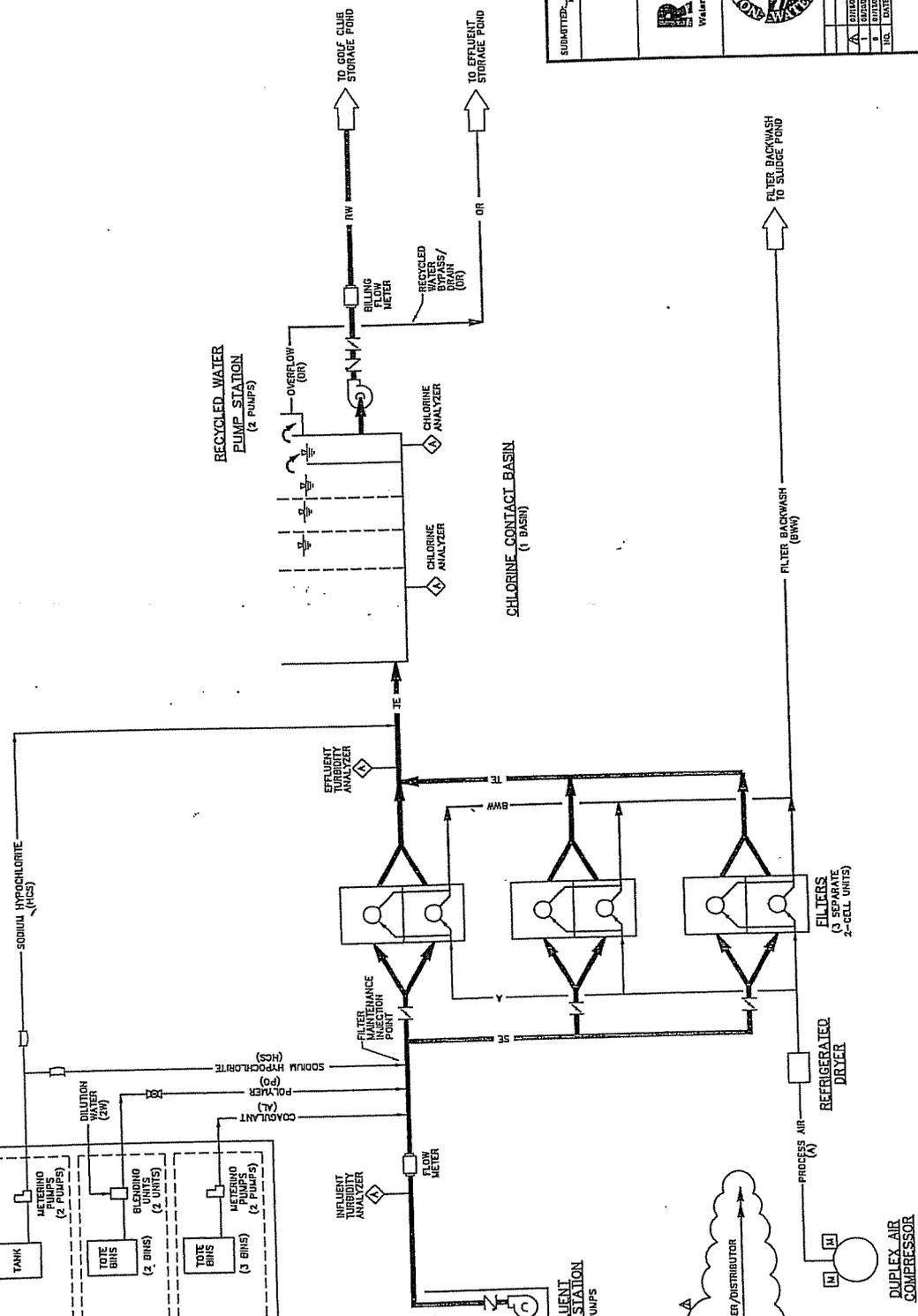
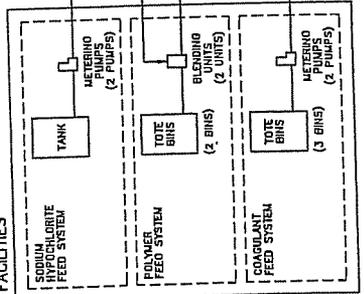
North Marin Water District Attorney

5

1 EXHIBITS:

- 2 Exhibit A Point of Connection Detail – Deer Island RWTF
3 Exhibit B Point of Connection Detail – Davidson Street RWTF
4 Exhibit C Producer’s Schedule of Sampling and Analysis
5 Exhibit D Agreement for Grant Facilitation Services for North San Pablo Bay
6 Restoration and Reuse Project
7 Exhibit E North Bay Water Reuse Authority Second Amended Memorandum of
8 Understanding
9 Exhibit F User Connection Schedule

CHEMICAL FACILITIES



SUBMITTED: *[Signature]* APPROVED: *[Signature]*
 DATE: 11/15/01 DATE: 11/15/01

RMC
 Water & Environment

STAMP & SIGNATURE ON FILE

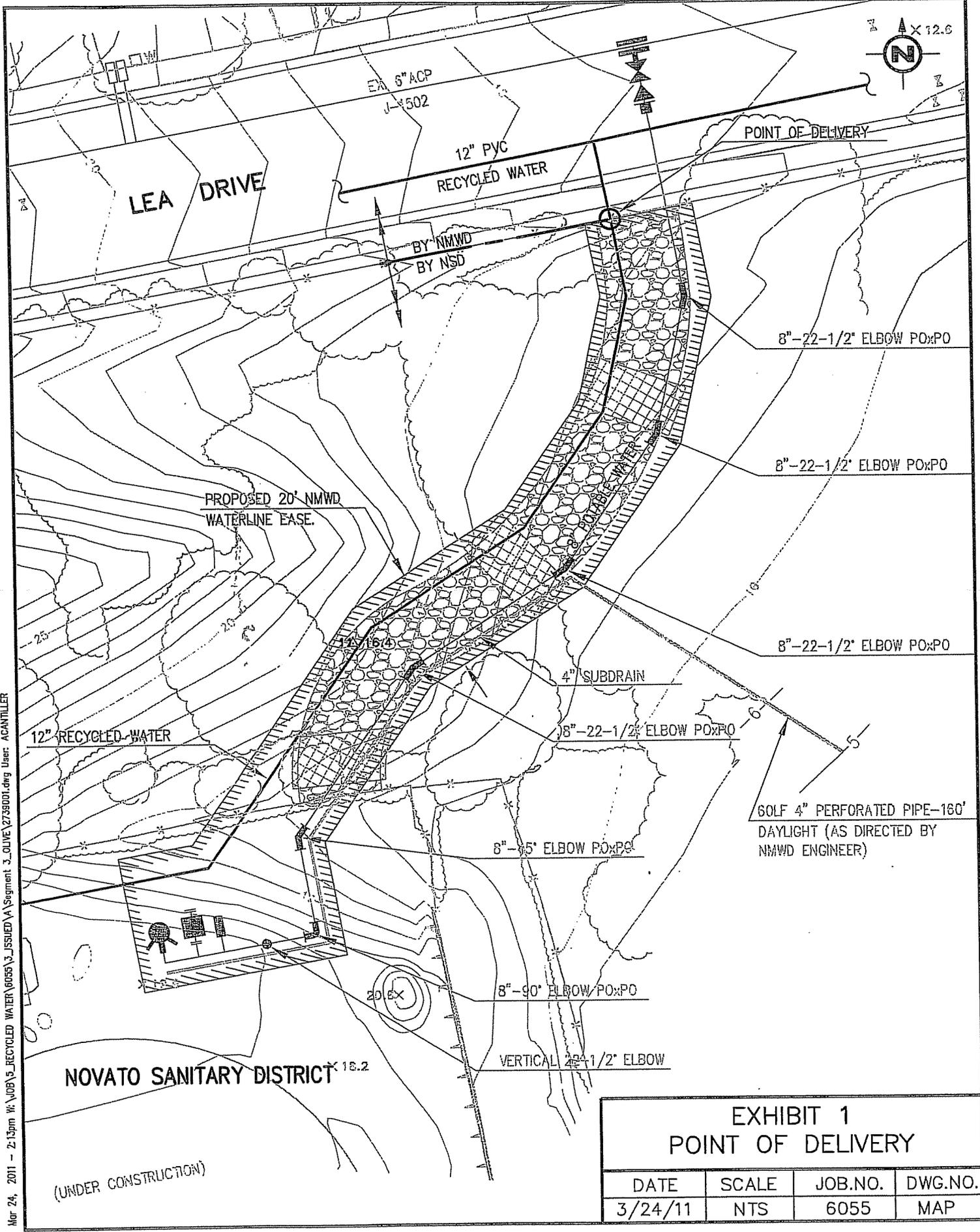
NO.	DATE	BY	DESCRIPTION
1	11/15/01	AKS	ISSUED FOR CONSTRUCTION
2	11/15/01	AKS	ISSUED FOR CONSTRUCTION
3	11/15/01	AKS	ISSUED FOR CONSTRUCTION
4	11/15/01	AKS	ISSUED FOR CONSTRUCTION
5	11/15/01	AKS	ISSUED FOR CONSTRUCTION
6	11/15/01	AKS	ISSUED FOR CONSTRUCTION
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8	11/15/01	AKS	ISSUED FOR CONSTRUCTION
9	11/15/01	AKS	ISSUED FOR CONSTRUCTION
10	11/15/01	AKS	ISSUED FOR CONSTRUCTION

NORTH MARIN WATER DISTRICT
 NOVATO, CALIFORNIA

PROCESS FLOW DIAGRAM
 RECYCLED WATER FACILITY AND PIPELINE

DES.	REV.	DATE	SCALE	BY	CHKD.
AKS	1	11/15/01	AS SHOWN	AKS	AKS

AREA: 1 | JOB: 2493.02 | SHEET: 0-4



Apr 24, 2011 - 2:13pm W:\JOB\5_RECYCLED WATER\6055\3_ISSUED\A\Segment 3_OUVE\2739001.dwg User: ACANTILLER

EXHIBIT 1 POINT OF DELIVERY			
DATE	SCALE	JOB.NO.	DWG.NO.
3/24/11	NTS	6055	MAP

EXHIBIT C

PRODUCER'S SCHEDULE OF SAMPLING & ANALYSIS

Constituent (units)	Limit	Type of sample	Frequency
Flow Rate (gallons/day)	500,000	Observation	Daily
Total Coliform (MPN/100 ml)	2.2 median	Grab (7 days)	Daily
	23 maximum	Grab (in any 30 day period)	Daily
Turbidity (NTU)	2 maximum	Daily average	Continuous
	5 maximum	5% of time	Continuous
	10 maximum	Any time	
Dissolved Oxygen (mg/l)	1.0 minimum	Grab	3/week
Dissolved Sulfide (mg/l)	0.1 maximum	Grab	3/week (only if D.O. ≤ 1.0 mg/l)