

**PARTICIPATION AGREEMENT AMONG THE
LAKE SAN MARCOS WORK GROUP**

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EXHIBITS

Exhibit A	Figure 5.1 – Carlsbad Watershed Management Area
Exhibit B	USMC Watershed Map
Exhibit C	Form of Work Group Proxy
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ADDENDA

- Addendum A New Member Addendum
- Addendum B Regional Water Quality Control Board Agreement
- Addendum C San Marcos Unified School District Addendum
- Addendum D California Department of Transportation Addendum
- Addendum E County of San Diego Addendum
- Addendum F Vallecitos Water District Addendum
- Addendum G Wrap-Around Addendum

PARTICIPATION AGREEMENT AMONG THE LAKE SAN MARCOS WORK GROUP

This Participation Agreement (“Agreement”) is made by the undersigned parties, including political subdivisions of the State of California, organizations, and individuals (collectively, the “Members”), as follows:

RECITALS

Whereas, the Lake San Marcos (“Lake”) is an approximate 60-acre lake located in the unincorporated area of the County of San Diego (“County”) just outside the southwestern limits of the City of San Marcos (“San Marcos”);

Whereas, the watershed draining into San Marcos Creek (“Creek”) includes, but is not limited to, waste discharges subject to the control of the San Diego Regional Water Quality Control Board (“Regional Board”);

Whereas, San Marcos and the Vallecitos Water District (“Vallecitos”) are the “Members”;

Whereas, other entities and individuals may elect to participate as Members pursuant to Section 5.2;

Whereas, the Members may agree to perform some of the Work with parties who are not Members pursuant to a written agreement among the Members and such other parties pursuant to a separate Work and Cost Sharing Agreement to be attached hereto;

Whereas, the County, San Marcos and the City of Escondido (“Escondido”) (the “MS4 Co-Permittees”) are required by the San Diego Municipal Stormwater Permit, Order No. R9-2007-0001, to regulate surface water discharges from their respective municipal separate storm sewer systems (MS4s) to various waterways, such as creeks, streams, lakes and the ocean, to the maximum extent practicable (MEP);

Whereas, the Members and other persons and entities, who are not Members, may have discharged or represent individuals who may have discharged and may in the future discharge nitrogen and phosphorous (collectively, “Nutrients” or “Pollutants”) into the Creek and/or the Lake;

Whereas, the Regional Board, has the authority to issue Cleanup and Abatement Orders (“CAO”) and/or engage in other investigative or enforcement actions against any discharger to address past discharges and to abate future discharges of Pollutants into the Creek and/or the Lake;

Whereas, the Lake consists of an impoundment of San Marcos Creek by means of a privately-owned manmade dam at its southern end (the “Dam”), that retains water, sediment and Pollutants in the Lake;

Whereas, Citizens Development Corporation (“CDC”) is the fee simple owner of the land underlying the Lake and the Dam and holds an appropriative License for Diversion and Use of Water, Permit 6305, License 7224, issued by the State Water Resources Control Board (“State Board”); Division of Water Rights and holds certain riparian rights (collectively “Water Rights”);

Whereas, the Members desire to assess the presence of, and to determine the causal and contributing sources of Nutrients in the Creek and the Lake;

Whereas, the Members further desire to assess and evaluate the relative feasibility and effectiveness of reasonably available means and methods to abate Nutrient conditions in the Creek and Lake;

Whereas, the Members desire to develop and implement a remediation strategy and plan, for approval by the Regional Board, addressing the causal and contributory sources of Nutrients in the Creek and Lake to improve Nutrient water quality conditions in the Creek and Lake in accordance with such plan (collectively the “Work”);

Whereas, the Members intend to fairly allocate the responsibility and costs of the Work, and such other activities as necessary to complete the obligations required by this Agreement, among themselves and other parties responsible for causing or contributing to Nutrients in the Creek and Lake while making provision for reasonable de minimis party buy-out agreements;

Whereas, the Members desire to implement a process for involving public participation to enable interested persons to provide input at meaningful times during the progress of the Work;

Whereas, the Members will conduct the Work under the terms and conditions of this Agreement in lieu of potential regulatory enforcement proceedings commenced by the State Water Resources Control Board (“State Board”), the Regional Board, or any other public agency having jurisdiction, or a lawsuit among the Members or a lawsuit initiated by a citizen;

Whereas, without admitting any fault or liability in connection with the water quality conditions in the Creek and/or Lake, the Members wish to voluntarily (1) devote their resources to respond efficiently to conduct the Work, (2) share common legal, technical, administrative and other costs, as agreed to by the Members; (ii) identify and pursue other entities and persons potentially responsible for the impairment of the Creek or the Lake; and (3) cooperate among themselves for these purposes;

Whereas, the Members will coordinate with the Regional Board regarding the Work pursuant to the terms and conditions of a separate Administrative Agreement with the Regional Board;

THEREFORE, premised upon the Recitals, in consideration of the mutual covenants herein, and for good and valuable consideration, the Members agree as follows:

SECTION 1 THE ORGANIZATION

1.1 Organization. The Members hereby agree to accomplish the Purpose of this Agreement. Each party whose authorized representative has executed this Agreement is a Member of the San Marcos Work Group (the “Work Group”).

SECTION 2 DEFINITIONS

2.1 Definitions. Unless otherwise expressly provided for in this Agreement, the terms used in this Agreement which are defined in the California Water Code (“Water Code”), the California Code of Regulations (“CCR”), the federal Clean Water Act (“CWA”), or the Code of Federal Regulations (“CFR”) shall have the meaning assigned to them in such laws and regulations. Whenever the terms listed below are used in this Agreement or in the exhibits attached hereto and incorporated herein, the following definitions shall apply:

- (a) “Agreement” shall mean this Participation Agreement.
- (b) “Basin Plan” shall mean the current version of the Water Quality Control Plan for the San Diego Basin 9, as amended.
- (c) “Best Management Practices” (“BMPs”) as defined in 40 CFR 122.2 are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (d) “Budget” shall mean the estimated not-to-exceed sum of expenditures which the Work Group feels is necessary for the satisfactory completion of each specified phase or portion of the Work.
- (e) “Consultant” or “Contractor” shall mean any person or entity, not a Member, selected by the Work Group to perform any part of the Work described in this Agreement.

(f) “Creek” shall mean that portion of the San Marcos Creek upstream of the Lake, as defined herein, and the surface waters tributary thereto.

(g) “Day” shall mean a calendar day, unless otherwise expressly provided. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or a California or federal holiday, the period shall run until the close of business of the next working day.

(h) “Initial Work” shall mean the gathering and review of historical data and the in-Lake survey work performed by Dr. Michael Anderson at the request of the Members prior to the execution of this Agreement.

(i) “Lake San Marcos” shall mean those waters of the United States and the State of California, which have been impounded by the Dam, where the boundary of such waters is defined by the perimeter of the impounded waters at 503.5 feet elevation above mean sea level ((AMSL, USGS datum), which is the listed California Department of Water Resources Division of Safety of Dams (“DOSD”) Crest Elevation), which is equal to the maximum topographical elevation of the Dam along the southern border of the Lake. For purposes of this Agreement, Lake San Marcos shall include such waters of the Creek that are downstream of a point in the Creek that is (1) equal to or less than one hundred feet (100’) upstream of the Lake and (2) downstream of the last MS4 conveyance into the Creek, whichever is less.

(j) “Lake San Marcos Basin” (the “Lake Basin”) shall mean that portion of the Richland Hydrologic Subarea whose surface waters drain directly into the Lake either naturally or through any public or private conveyance that does not first enter the Creek, plus that portion of the Richland Hydrologic Subarea which overlays any aquifer or ground water source which has a direct or indirect hydrological connection to the Lake.

(k) “Lake San Marcos Dam” (the “Dam”) is that privately-owned manmade structure built in the 1940’s, as modified thereafter, to create the Lake, and that causes the impoundment of the Creek. The DOSD Dam ID number is # 848-000 and its DOSD National ID number is CA00782.

(l) “Maximum Extent Practicable” (“MEP”) shall mean the technology-based standard established in CWA section 402(p)(3)(B)(iii) and in the Regional Board’s Order No. R9-2007-0001, NPDES No. CAS0108758, Waste Discharge Requirements for Dischargers of Urban Runoff from the Municipal Separate Storm Sewer Systems (“MS4s”) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority (the “MS4 Permit”).

(m) “Municipal Separate Storm Sewer System” (“MS4”) shall have the meaning set forth in 40 CFR 122.26(b) and as defined in the MS4 permit.

(n) “New Member” shall mean a Member joining into this Agreement as described in Section 5.2 herein.

(o) “Shared Costs” shall mean all costs authorized by the Members in accordance with the provisions of this Agreement, including but not limited to the Work as in Section 6.14, legal, technical, administrative and other costs reasonably necessary to achieve the Purpose of the Agreement.

(p) “Terminated Member” shall mean a Member which is terminated from this Agreement as provided in Section 9.5.

(q) “Upper San Marcos Creek Watershed” shall mean Twin Oaks Hydrologic Subarea 904.53 and Richland Hydrologic Subarea 904.52 within the Region 9, Carlsbad Hydrologic Unit, San Marcos Hydrologic Area, as described in the San Diego Basin Plan and shown on Exhibit A (Carlsbad Watershed Management Area) attached hereto and incorporated herein by this reference.

(r) “Voting Power” shall mean that each Member shall have a vote in the proportion that the Member’s then current allocated share of responsibility to pay Shared Costs as determined under this Agreement. Any Member that is more than sixty (60) days past due on payment of its portion of Shared Costs shall not participate in any vote until such time as said Member becomes current in such payments and shall remain liable for payment of such costs.

(s) “Water Quality Objective” shall mean the numeric or narrative limits on constituents or characteristics of water which are established for the reasonable protection of designated beneficial uses of the water or the prevention of nuisance within a specific water body as established in the “Basin Plan,” as the same may be amended to include an approved site specific water quality objective.

(t) “Water Rights” shall mean the appropriative and riparian rights to use waters of the state as defined by the United States and California Constitutions, the California Water Code, and the cases interpreting the same.

(u) “Work” shall mean those activities necessary to achieve the Purpose of this Agreement, to be accomplished as defined in Section 6.14 of this Agreement.

(v) “Work Group” shall consist of all the Members to this Agreement.

SECTION 3 PURPOSE

3.1 Purpose. The Members' purpose is to reasonably achieve nutrient Water Quality Objectives in the Lake and Creek (the "Purpose").

SECTION 4 COVERED WATER BODIES

4.1 Water Bodies Subject to this Agreement. This Agreement covers the Creek and the Lake. Both of these water bodies are located within the Carlsbad Hydrologic Unit upstream of the Dam in the uppermost hydrologic subareas ("HSA") of the Carlsbad HU (HSA 904.53 and 904.52, Exhibit B). HSA 904.53 (Twin Oaks) is centered on Twin Oaks Valley at the southern end of the Merriam Mountains. HAS 904.52 (Richland), is centered on the valley principally occupied by San Marcos. The Richland HSA is ovoid in shape and at its lower end the Creek is impounded by the Dam to create the Lake as a part of the Lake San Marcos Community Development Project. The Lake is the largest impoundment within the Creek.

Both the Creek and Lake are listed as impaired water bodies under the approved Section 303(d) of the federal Clean Water Act (CWA). The Creek is listed for phosphorus (the "Creek Pollutant"); the Lake is listed for ammonia (as nitrogen), nutrients, and phosphorus (the "Lake Pollutants").

SECTION 5 WORK GROUP ORGANIZATION

5.1 Members. The Members consist of the parties who have executed this Agreement and the Common Interest Agreement attached to this Agreement of even date herewith.

5.2 New Members. Any entity or person that becomes a Member by execution of the Addendum to this Agreement (Addendum A) subsequent to the effective date of this Agreement shall be deemed a Member ab initio and shall pay all sums which such Member would have been obligated to pay if it were a Member ab initio, plus a premium to be determined by the existing Members, which payments shall be a condition to becoming a Member.

5.3 Capacity of Members. Each Member shall hold the capacity and power to contract, sue, and be sued under California law.

5.4 Members' Cooperation. The Members shall, without waiving any applicable attorney-client, attorney work product, joint defense privilege and other privileges and immunities as well as claims of confidentiality, cooperate with each other to effectuate the Work and this Agreement, and shall make prompt payment of their

Shared Cost obligations arising under this Agreement as allocated pursuant to Section 8.1 hereof.

5.5 Withdrawal. Any Member may withdraw from all future participation in this Agreement upon written notice to the Steering Committee or its designees, or if there is no Steering Committee to the Members, effective as of the date the notice is postmarked, except that such Member shall remain liable for its Shared Costs assessed to that Member more than thirty (30) days prior to the date of withdrawal. Withdrawing Members shall pay their portion of any Shared Costs for which they are liable pursuant to this Agreement no later than sixty (60) days following the withdrawal notice from the Work Group. Any Member entering into any settlement including, but not limited to, any de minimis buy-out agreement, with the Work Group, by which an accord and satisfaction of all of the Member's obligations under this Agreement is reached, shall be deemed to have fully performed its duties and obligations under this Agreement.

5.6 Removal of a Member. If any Member fails to pay any portion of the Shared Costs assessed to that Member pursuant to this Agreement within sixty (60) days following mailing of notice of such assessment, that Member shall be considered in default, and its power to vote shall be suspended until such assessment and any penalty is paid in full, and may be terminated from this Agreement by a vote of two-thirds (2/3) of the Voting Power present in person or by proxy at a Work Group meeting called for the purpose of considering such termination. A Member subject to a termination action shall be provided with fifteen (15) days prior written notice of a Work Group meeting at which the Member's termination will be considered and the Member will be given a reasonable opportunity to be heard and present evidence in opposition to the action.

If the Work Group or Steering Committee retains any contractor or consultant in common with a Member which withdraws or is removed, such Member shall not claim any conflict of interest in, or object to, the continued provision of any technical assistance to the Work Group or Steering Committee by any such contractor or consultant.

5.7 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Member from its obligations under this Agreement without the prior written consent of the Work Group.

5.8 Relationship of Members. Each Member represents that it has sought and obtained any appropriate legal advice it deems necessary from legal counsel of its choosing prior to entering into this Agreement.

No Member, its representative(s), or counsel serving on the Steering Committee or any subcommittee shall act or be deemed to act as legal counsel or a representative of any other Member, unless expressly retained by such Member for such purpose, and, except

for such express retention, no attorney/client relationship is intended to be created between representatives on the Steering Committee or any subcommittee and/or the Members.

Nothing in this Agreement shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Members.

5.9 Committees. The Members may establish a Steering Committee (the powers and duties of which may include those enumerated in Section 7 herein) to carry out or exercise specific rights, duties and obligations of the Work Group under this Agreement. The Steering Committee may establish such other committees or subcommittees as it deems appropriate.

SECTION 6 WORK GROUP PROCEDURES

6.1 Notice of Meetings. Written notice of the time, place and purpose (including a list of issues that are anticipated will be presented to the Work Group for discussion and/or vote) of any meeting of the Work Group shall be given by the Steering Committee to each Member entitled to vote at such meeting not less than three (3) days and not more than thirty (30) days before the date of such meeting either personally, by mail, or by other means of written communications, including facsimile, or e-mail addressed to each Member at the address appearing on the Service List attached to this Agreement as Exhibit D, as amended from time to time by the Members. In the event of an emergency, the notice required may be less than three (3) days.

6.2 Meetings. The Members may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose, which meetings shall be called at least quarterly by the Steering Committee, or if there is no Steering Committee by the Members. Meetings of the Work Group may be called for any purpose at any time by any three or more Members of the Steering Committee, or by twenty five percent (25%) or more of the then existing Voting Power of Work Group. Meetings may be held in person or by telephone conference. Meetings shall be conducted in general accordance to Robert's Rules of Order with meeting notes taken and distributed to the Work Group within a reasonable time after the Work Group meeting.

6.3 Members Authority to Delegate. The Members may delegate any of their powers and duties to a Steering Committee, including such powers as identified in Section 7 herein.

6.4 Reservation of Members' Rights. Each Member reserves the right to unilaterally do work in furtherance of the Purpose of the Agreement, without Work Group input or voting, provided that such work shall not adversely affect the Work of the Work Group, is coordinated with the Work of the Work Group, and shall not be subject

to the cost sharing requirements of this Agreement. However, certain portions of the Work to be performed under this Agreement, as approved by the Members, may be conducted by the Members, and the costs thereof may, as approved by the Work Group, be treated as Shared Costs as defined in Section 8.1.

6.5 Majority Rule. Except for matters reserved to the Steering Committee, any matter under this Agreement may be referred to a meeting of the Work Group. The Work Group shall attempt to make decisions by consensus; however, except as otherwise provided in this Agreement, on any matter put to a vote, such matter shall be decided by a majority (more than 50%) of the Voting Power (as defined in Section 2.1(r) of this Agreement) of the Members present in person or by proxy at the meeting, subject to the quorum limitation in Section 6.7. Decisions to hire contractors, consultants or common counsel must be approved or ratified by 60% of the Voting Power of the Members present in person or proxy at the meeting and decisions affecting the final allocation of the Members shall be determined by two-thirds of the Voting Power of the Work Group.

6.6 Voting by Proxy. A Member eligible to vote at a Work Group meeting may assign in writing, using the proxy form attached as Exhibit C to this Agreement or similar form, its Voting Power (as defined in Section 2.1(r) to another Member eligible to vote at the meeting.

6.7 Quorum for Work Group. Forty percent (40%) of the eligible Voting Power of the Work Group shall be present in person or represented by proxy at any Work Group meeting.

6.8 Apportionment of Voting Power. Votes shall be apportioned among the Members in accordance with Section 7 of this Agreement. All Members will work expeditiously and in good faith to establish an apportionment of responsibility as provided for in Section 8 herein. Until such time as the Members have apportioned the share of responsibility, under Section 8.4 each Member shall have one (1) vote, (the "Initial Work Group Voting Power").

6.9 Right to Audit. The Members shall each have the right to audit and inspect the books and records of the Steering Committee and the Work Group during reasonable business hours. All such records shall be kept by the secretary of the Steering Committee.

6.10 Shared Information. Consistent with the provisions of the Common Interest Agreement as executed by the parties on the same date as this Agreement, the Members agree that information discussed at meetings held pursuant to the Agreement, including but not limited to, decisions concerning allocations created hereunder, unless otherwise provided for, shall be kept confidential and shall not be disclosed to any person or public agency not a Member without the consent of the Members holding a majority of the Voting Power. From time to time, the Members may elect to disclose or transmit to

the Regional Board and non-Members, information necessary to carry out the purposes of this Agreement. The Members intend that no claim of work product doctrine protection, attorney-client privilege or other privilege be waived by reason of sharing of some information with Members.

6.11 Work Completion. The Work required by this Agreement shall be deemed complete when the Members have received the Regional Board's written determination that all Work has been satisfactorily performed.

6.12 Compliance With Laws. Members shall perform all actions required pursuant to this Agreement in accordance with all applicable local, state, and federal laws, regulations, and orders.

6.13 Procurement of Contractors or Consultants. The Work undertaken by the Work Group shall be deemed a "public work" within the meaning of California Labor Code Section 1720(a)(1); and, for work performed by contractors within the meaning of California Public Contract Code Section 1101, shall be deemed a "public work contract" subject to the requirements of the Public Contract Code. In determining whether to apply the provisions applicable to contracting with state agencies (Sections 1011 et seq.) or contracting by local agencies (Sections 20100 et seq.), Members shall apply the provisions of each that are the most stringent, as if the Work Group were a public entity.

6.14 Phasing of Work. The Work shall be logically phased, with each phase being substantially completed before the scope of work for the next phase is authorized. The scope of work for later phases shall be structured and defined to logically build upon Work performed in earlier phases and to focus its purpose based on Work performed in earlier phases. Work shall mean (a) the diagnostic assessment of existing Nutrient conditions, as well as the identification and assessment of the contributing and causal sources and pathways affecting Nutrient conditions in the Lake and Creek ("Diagnosis Work"); (b) the identification and feasibility assessment of alternative processes, means, methods, and technologies for abating the Nutrient conditions in the Lake and Creek, improving the existing Nutrient water quality conditions in the Creek and Lake, and the determining feasible site-specific Water Quality Objectives (the "Feasibility Work"); (c) the development of a remediation plan to achieve the Water Quality Objectives within a reasonable period of time ("Remedial Action Plan"); (d) implementation of the Remedial Action Plan; (e) pre-and-post project Nutrient monitoring in the Creek and Lake ("Monitoring Work"); and (f) work incidental thereto. Each phase of Work shall be further tiered in logical sub-phases, as appropriate. A Budget for each phase or sub-phase of Work and a corresponding Shared Cost assessment shall be made upon Members for the amount of the Budget prior to the initiation of each phase or sub-phase of Work.

SECTION 7 STEERING COMMITTEE

7.1 Steering Committee. The Steering Committee shall consist of two or more Members who shall serve for such terms as determined by the Members from time to time.

7.2 Enumerated Powers of the Steering Committee. The powers, duties and responsibilities of the Steering Committee may include, but are not limited to, the following:

- (a) recommendations, coordination, supervision of execution, any contractors, or common counsel and consultants, as approved by the Work Group;
- (b) appointing subcommittees, including technical and allocation subcommittees as deemed necessary;
- (c) negotiating and referring settlement matters to the Work Group;
- (d) electing a chairperson and such other officers of the Steering Committee, who will also act as chairperson of the Work Group;
- (e) negotiating with state or federal governmental agencies, including the Regional Board with respect to other all actions or request by the Work Group related to the Work or Purpose of this agreement;
- (f) recommending to the Work Group that litigation be commenced against any party;
- (g) circulating to the Work Group such material as the Steering Committee deems necessary;
- (h) conducting such other activities that are necessary and proper to carry out the Purpose of this Agreement;
- (i) calling meetings of the Work Group;
- (j) recommending to the Work Group a de minimis buyout proposal, if appropriate, and/or a partial or total cashout proposal;
- (k) proposing a method of allocation of Shared Costs;
- (l) proposing removal of Member(s) from the Work Group for non-payment of the Member's Shared Costs allocation; and

(m) those activities authorized by the Steering Committee to be done on behalf of the Work Group shall be funded by the Members as Shared Costs. The Steering Committee's authority to expend Work Group funds shall be limited to the amount of any funds then available as the result of prior assessments.

7.3 Project Manager. The Steering Committee may designate one or more Members to act as the Project Manager(s) to administer the Work Group's contracts with consultants and/or contractors performing Work. If no Project Manager is designated the chair of the Steering Committee shall act as the Project Manager.

7.4 Notice of Meetings. The Steering Committee may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose, which meetings should be called regularly by the Steering Committee. Meetings of the Steering Committee may be called by the Chairperson or by any two Members of the Committee. Whenever feasible, written notice of the time, place and purpose of any meeting of the Steering Committee shall be given to each Steering Committee Member at least three (3) days and not more than thirty (30) days before the date of such meeting either personally by mail or by other means of written communication, including facsimile, charges prepaid, addressed to each such member at the address appearing on a service list to be maintained by the Steering Committee. Meetings may be held by telephone conference.

7.5 Quorum for Steering Committee. Fifty percent (50%) of the eligible Voting Power of the Steering Committee members shall be present in person or represented by proxy at any Steering Committee.

7.6 Voting. The Steering Committee shall attempt to make decisions by consensus; however, any matter put to a vote by the Steering Committee shall be decided by a majority (more than 50%) of the Steering Committee members present in person or by proxy at the meeting.

7.7 Minutes. Minutes shall be kept of all Steering Committee meetings and provided in draft form within twenty (20) days of the meeting to the Members for review, comment and approval. The Steering Committee secretary shall keep copies of all minutes.

7.8 Record Retention. The Secretary of the Steering Committee or his/her designee shall retain records of activities undertaken in the performance of this Agreement for a period of five (5) years and shall also instruct consultants and contractors to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work for the same period. At the conclusion of the aforementioned document retention period, the Work Group shall notify the Members and the Regional Board in writing at least 90 days prior to the destruction of any such records or documents, and, upon request by a Member or the

Regional Board, the Steering Committee shall deliver any such records or documents to the Members or to the Regional Board. The Steering Committee may make reasonable assertions that certain documents, records and other information are privileged under the attorney-client privilege, attorney work product doctrine, or any other privilege or confidentiality recognized by California or federal law.

7.9 Compensation of Steering Committee. The Members of the Steering Committee and all subcommittees formed under the Agreement shall serve as volunteers without compensation from the Work Group.

7.10 Common Counsel for Cost Recovery or Litigation Against Other Persons. The Steering Committee may recommend to the Work Group that a claim be asserted on behalf of the Members against other persons or business entities, that are believed to be legally responsible for all or some of the costs incurred by Members relating to the Creek or Lake. No such claim may be asserted by common counsel under this Agreement without the consent of a majority of the Voting Power of the Work Group as defined in Section 2.1(r), and any Member may elect to decline participation in any such suit, and may, but need not, in lieu of such participation assign its claims to the other Members. Nothing in this section shall affect or impair the right of any Member to assert any claim in its own name and right against any person or business entity. In the event a claim is asserted on behalf of participating Members against other persons, any recovery resulting from such action shall be distributed among the participating Members in proportion to the participating Members' assessed and paid contributions in support of such claim, including any and all costs of pursuing that claim. Any recoveries shall be distributed among participating Members only after all costs of the action to prosecute a claim are first paid. Members who decline participation in any such claim and/or suit shall not be responsible for any costs of common counsel with respect to such claim and/or suit, but shall likewise not participate in any proceeds recovered or otherwise as a result of such claim and/or suit by the participating Members. Any Member who withdraws from such suit after it has commenced and before it has been resolved shall forfeit any right, title or interest in any sums recovered pursuant to such suit, if any.

7.11 Common Counsel – Waiver of Conflict of Interest. In the event that common counsel is retained to represent the Work Group, each Member agrees that: (1) it will not claim or assert that, based solely on said counsel's past or present representation of a Member in this or any other matter, said counsel has a conflict of interest in performing legal services authorized by the Steering Committee, arising out of the Lake or Creek, or any Work under this Agreement; (2) it will not claim or assert that, based solely on said counsel's representation of the Work Group under the terms of this Agreement, said counsel has a conflict of interest in connection with any representation involving a Member unrelated to the Lake or Creek; (3) it will not claim or assert that, based solely on said counsel's representation of the Work Group under the terms of this Agreement, said counsel has a conflict of interest in any future representation of any

person or entity unless the subject matter relating to said representation arises out of or in connection with the Work on the Creek or Lake; (4) if any conflict develops in the performance of the Work authorized by the Steering Committee and the performance of Work authorized by a Member that has retained said common counsel separately with respect to the Creek or Lake, that Member consents to common counsel's continued performance of the Work authorized by the Steering Committee; and (5) if a Member withdraws or is removed from this Agreement or its representation by common counsel is terminated, it shall not claim any conflict of interest in, or object to, the continued representation by common counsel of all or any of the other Members in connection with any legal services arising out of the Creek or Lake.

Should the Steering Committee discuss a cash-out option or a de minimis settlement with any Member potentially eligible for such a resolution, no such Member will claim any conflict of interest in, or object to, the continued representation by any technical or legal consultant retained by the Steering Committee to represent the Work Group.

SECTION 8 ALLOCATION OF COSTS

8.1 Shared Costs. Shared Costs (as defined in Section 2.1(o)) shall be assessed by the Members or Steering Committee and be paid by the Members in accordance with such Members' allocated share of liability as determined by the Members or Steering Committee and as approved by two-thirds of the Voting Power of the Work Group. All assessments shall be due and payable within forty-five (45) days of mailing of notice thereof. A Member shall be deemed to be in default of its obligations hereunder if its payment of its Shared Costs allocation is not received within sixty (60) days of mailing of notice thereof. Each Member's contractual liability hereunder shall be several, not joint and several, nor joint. The Members' timely payment of assessed Shared Costs is necessary to ensure that the required costs and expenses incurred in performing the Work ("Costs of Work") are fully and timely paid.

8.2 Interim Allocation. The Work Group may in accordance with the terms of this Agreement establish an interim allocation of the Members' share of liability for the Work, and other obligations of the Work Group under this Agreement for the period commencing with the effective date until a final allocation is established under Section 8.4 (the "Interim Allocation"). This Interim Allocation will be subject to reallocation as part of the Final Allocation process as provided for in Section 8.4. Any monies contributed by a Member pursuant to the Interim Allocation are subject to adjustment and, as appropriate, Members shall be entitled to reimbursement or required to make an additional contribution based on that Member's proportionate share of responsibility for the payment of Shared Costs as determined in the Final Allocation.

8.3 Addition of New Members. Upon the inclusion of New Members into the Work Group as provided in this Agreement, such New Members shall be assigned an allocation share consistent with the Interim Allocation and the Final Allocation as appropriate, based on the best information then in possession of the Work Group and the proportionate shares of the existing Members shall be equitably diluted. New Members shall be required to pay their proportionate share of the total amount of Shared Costs assessed as of the time the New Member joins the Work Group. In the event this occurs during the Interim Allocation period, the New Member's payment shall be disbursed as reimbursement to the existing Members in equal shares. In the event this occurs after Final Allocation, the New Member's payment shall be retained by the Steering Committee for use in the Work and credited proportionately to the accounts of the existing Members.

8.4 Final Allocations.

(a) The Steering Committee and the Work Group will strive to determine a fair and reasonable method or process by which a Final Allocation can be assigned to each Member on or before December 31, 2010, or as soon as reasonable possible thereafter. Until the Work Group approves a Final Allocation, the Work Group will make assessments to cover Shared Costs pursuant to the Interim Allocation which shall mean each Member shall be allocated an equal share or some other agreed to method as approved by more than fifty percent (50%) of the Voting Power of the Work Group. The Final Allocation formula shall be approved by two-thirds (66%) of the Interim Allocation Voting Power of the Work Group. The Final Allocation shall be binding on all Members subject to their right to withdrawal under Section 9.4. The Final Allocation formula shall be adopted as an amendment to this Agreement to supersede the Interim Allocation as provided for in Section 8.2.

(b) In determining the Final Allocation formula for apportioning responsibility among the Members for the Shared Costs, the Members shall use reasonable means and methods of apportionment which result in allocations among the Members bearing a reasonable relationship and nexus to the acts, omissions, operations, events, and property of the Members that the Work Group reasonably determines has caused or contributed to the Nutrient impairment of the Creek and/or the Lake. In making this assessment, the Member may consider both the type and mass of the Pollutants, and the extent to which such Pollutants have affected the water quality of the Creek and the Lake, the cost to abate such water quality conditions, and other relevant factors. The Members may also consider the retention of the Nutrients in these water bodies, the duration, frequency, estimated mass loading, and effect of the discharge (whether point or non-point source).

(c) Reservation of Powers by Public Agencies. Public agency Members have the capability under applicable public agency statutes to identify and levy fees for

programs and facilities for activities other than Work, as defined in Section 2.1(u) of this Agreement, and this Agreement does not modify or change those capabilities or powers.

(d) The Final Allocation formula, as modified, shall be used for all subsequent Shared Costs assessments of the Work Group. In the Final Allocation, each Member shall be given credit for Interim Allocation previously paid to the Work Group.

8.5 Custodial Account. The funds collected pursuant to this Agreement shall be maintained in a Custodial Account held by San Marcos, or such other Member or person, approved by the Steering Committee, for the purposes set forth herein. San Marcos is hereby authorized to maintain such funds within the city control or to open a custodial account for the benefit of the Work Group at a banking institution selected by San Marcos. San Marcos or its designee shall provide periodic accounting to the Members of the funds received, spent, and obligated, and a final accounting upon the termination of the Agreement. San Marcos or other custodian shall be entitled to a reasonable fee for the account management services, as negotiated and agreed to by the Steering Committee and San Marcos.

8.6 Purpose of Funds. All monies provided by Members pursuant to this Agreement shall be used solely to achieve the Purposes of this Agreement and shall not be considered as payment for any fines, penalties or monetary sanction.

8.7 Allocation in the Event of Default. The unpaid balance of any defaulting Member's share may be assessed by the Steering Committee against the other Members hereto (without waiving any rights such Members may have against the defaulting Member or its successors or assigns) in the same proportion as the other Members would have been obligated to pay if the defaulting Member had not been a signatory of this Agreement.

8.8 Adjustments to the Final Allocation. Apportioned shares of responsibility made under the provisions of Section 8.3 may be appropriately adjusted upon discovery of new and credible information supporting such adjustment. Such adjustments shall be subject to a vote of more than fifty percent (50%) of the Voting Power of the Work Group .

8.9 Distribution of Excess Funds. Upon completion of the Work, or upon sooner termination of this Agreement, and after payment of all outstanding costs and expenses incurred by the Work Group in furtherance of this Agreement, the Steering Committee shall distribute any excess funds remaining in the Work Group account to the Members in proportion to their respective allocated share of responsibility to pay Shared Costs.

8.10 Penalties for Non-Payment of Cash Call. The Members agree that the timely and complete payment of Work Group approved Shared Costs assessments ("Cash

Call") is essential. Therefore, a Member failing to make its cash contributions to the Work Group in full within the time prescribed, shall be in default and liable for a penalty equal to five percent (5%) of the Member's allocated share of the assessment plus an additional five percent (5%) for each thirty (30) days said payment is late up to a maximum penalty of twenty-five percent (25%) or as otherwise permitted by law whichever is less. Each Member's contractual liability hereunder shall be several, not joint and several, nor joint.

8.11 Prior Funding. Prior to entering into this Agreement, certain parties, including Members contributed up to \$1,000 to fund historical document review and preliminary in-Lake field sampling, which money was paid to San Marcos and deposited in the Lake San Marcos and Upper San Marcos Creek Work Group Administration Fund ("Initial Fund"). These contributions are nonrefundable and was not a part of this Agreement.

8.12 Cashout Option. The Steering Committee may propose the terms and conditions of a cashout option whereby Members may pay a cash amount plus a premium to cover unforeseen liabilities, cost of the work, and other contingencies, and be relieved of some or all of its obligations under this Agreement. A Member electing a cashout option would receive the same contribution protections from the remaining Members and Regional Board or other state or federal governmental agencies, if any, relating to the Work as received by any other Member from the remaining Members and said agencies upon completion of the Work.

8.13 De Minimis Settlement. Based upon the proportionate Final Allocation formula developed by the Work Group the Members may find that certain Members are allocated responsibility for only a small portion of the shared costs. Where a Member's contribution to Nutrients in the Creek and/or the Lake are minimal when compared with the overall man-induced contributions of Nutrients to the Creek and/or Lake (a de minimis Member), the Work Group may negotiate a good faith settlement agreement with such de minimis Member, bearing a reasonable and rational nexus with the amount of Nutrients contributed to the water bodies by such de minimis Member and a good faith estimate of the costs to complete the Work plus a reasonable premium to cover unforeseen liabilities, cost of the work, and other contingencies. A de minimis Member may elect to postpone entry into a de minimis settlement agreement until after the Work Group's remediation plan is approved by the Regional Board. A de minimis Member entering into a settlement agreement shall be credited with assessments and contributions paid to the Work Group and those amounts described in Section 8.14. Such a de minimis Member shall also be entitled to a release, and covenant not to sue, and indemnity from the Work Group relating to further Work and Shared Costs assessments necessary to complete the Work required by this Agreement; and shall be entitled to the protections afforded de minimis Members under an Administrative Agreement, if any is entered into, with the Regional Board. The Members may negotiate such good faith settlement

agreements with de minimis parties whose contribution of Nutrients to the Creek and Lake is determined to be an acceptably small percentage of the total Nutrient load in or to these waters.

8.14 Incurred Transactional Costs. Certain Members of the Work Group have contributed substantial resources to the solicitation of Members and the negotiation and development of this Agreement, the Administrative Agreement with the Regional Board, and Common Interest Agreement. Such Members shall be entitled to recover a reasonable amount of such expenditures from the other Members and New Members. The reasonable value shall be determined in good faith by a majority vote of the Work Group. At a reasonable time in the future, the requesting Member(s) shall identify in writing its/their reasonable cost and expenses in providing the above described services. The Work Group shall evaluate the reasonableness of the costs and expenses requested and approve the request, by a majority vote, or identify those cost and expenses in dispute. The dispute shall be resolved pursuant to the Dispute Resolution provisions set out in Section 12 of this Agreement. The reimbursement to the requesting Member can be by cash payment or credit against its allocable portion of Shared Costs.

8.15 Public Participation. Early public notification and meaningful opportunity for public participation is an important means for the public to be informed of planned Work activities and to provide timely input addressing public concerns as key decisions are being made concerning the Work and future use of the water bodies. The Work Group will develop a public participation plan for approval by Regional Board that would, among other things, provide for the distribution of fact sheets, a contact number and/or website or other means to provide current information to the interested public concerning Work activities and the overall status of the Work and providing for meaningful opportunities, throughout the planning process, for members of the public to voice their concerns and opinions on site-specific issues and proposed Work activities.

SECTION 9 DENIAL OF LIABILITY AND INDEMNIFICATION

9.1 Reservation of Rights. This Agreement and the activities engaged in pursuant to the Agreement shall not constitute, or be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any Member by Members as among themselves or by any other person or governmental body. However, nothing in this section is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of the Agreement against any party to this Agreement.

9.2 Covenant-Not-To-Sue and Reservation of Rights. Except in accordance with Sections 19, Members to this Agreement, unless precluded by statute, covenant not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against each other arising out of or related in any way to

water quality conditions relating to the Nutrient impairment of the Creek or Lake or for any liability or responsibility therefore, and agree to resolve any such disputes among themselves in accordance with the Dispute Resolution procedures set out in Section 12 of this Agreement. Except as provided in this section, each Member expressly reserves the right to claim, bring a cause of action, and/or to commence a proceeding in any judicial, administrative and/or other forum against any person not a Member to this agreement.

9.3 Right of Separate Counsel. Each Member reserves the right, at its own expense, to select and retain its own counsel to represent such Member on any matter; provided, however, that (i) a Member retaining its own counsel shall nevertheless continue to be obligated for Shared Costs assessed to that Member, including the expenses of common counsel, except where a Member declines participation in a suit as provided in Section 7.10; and (ii) Member's separate counsel have no responsibility or authority to direct litigation on behalf of the Work Group.

9.4 Indemnification. No Member or its representative(s) serving on the Steering Committee or subcommittee shall be liable to any Member for any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment incurred or arising as a result of any acts or omissions taken or made authorized by or at the direction of the Work Group.

Each Member agrees to indemnify, defend and hold harmless, to the fullest extent permitted by law (including such laws that apply uniquely to public entities), any Member and its governing body, officers, employees, representative(s), successors and assigns from and against any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment (collectively "liability") arising from or in connection with the good-faith performance of any duties or obligations under this Agreement performed at the direction of the Steering Committee or Work Group, by any Member or its governing body, officers, employees, contractors, representative(s), successors or assigns ("Acting Member") including, but not limited to, any liability arising from any contract or agreement signed by the Acting Member at the request of the Steering Committee or the Work Group to the extent that any such acts or omissions are performed at the direction of the Work Group. This indemnification shall not apply to any liability arising from a criminal proceeding where the Acting Member had reasonable cause to believe that the conduct in question was unlawful and this indemnification shall not apply to the extent the Acting Member's acts or omissions were reckless, or the result of willful misconduct.

Payments under this section shall be a Shared Cost in accordance with Section 8.1 of this Agreement, and shall be allocated among each Member that (1) was a Member when the action was taken or omission made that gives rise to this indemnification or (2) subsequently joins the Work Group.

The terms of this Section shall survive the termination of the Agreement and the withdrawal or removal of any Member, but a withdrawn or removed Member shall have

no liability under this Section for any acts, omissions, performance of duty or other events authorized after the effective date of withdrawal or removal.

SECTION 10 CONFIDENTIALITY AND USE OF INFORMATION.

10.1 Preservation of Privilege. Information disclosed by the Members to common counsel may be disclosed to any other Member, and each Member hereby expressly consents to treat such disclosure to it as being for the sole purpose of asserting any common claims or defenses arising out of the Creek or Lake. Such disclosure shall not be deemed a waiver of the attorney-client privilege or work product immunity or any other privilege.

10.2 Confidentiality of Information. Each Member agrees that information received from any other Member or its counsel, from common counsel, or from any technical consultant retained by the Work Group pursuant to this Agreement, unless otherwise provided for, shall be subject to the confidentiality provisions of the Common Interest Agreement.

SECTION 11 INSURANCE

11.1 Preservation of Coverage. The Members do not intend hereby to make any agreement that will prejudice any Member with respect to its insurers and, by entering into this Agreement, the Members anticipate that the actions taken pursuant to this Agreement will benefit such insurers. If any insurer makes any claims that any aspect of this Agreement provides a basis for rejection or limitation of coverage of a Member, the Work Group will attempt, consistent with the objectives and provisions of this Agreement, to return any Member subject to such claim to a position that is satisfactory to such insurers.

11.2 Disclosure of Terms of Agreement to Insurance Carriers. Subject to the conditions contained in the Common Interest Agreement, a Member may provide a copy of this Agreement to its insurer(s) for purposes of asserting a claim for insurance coverage at the Creek or Lake. Prior to delivery of the Agreement to an insurance carrier, the Member shall obtain a signed copy of the following language from the insurance company and the Member shall transmit the original of the signed language to the Chairperson of the Steering Committee:

The undersigned, on behalf of _____
understands that the Lake San Marcos and Upper San Marcos Creek
Work Group Participation Agreement includes a Common Interest
Agreement concerning confidential document between the
signatories thereto. The undersigned agrees that it will not disclose

the contents, or any portion of the contents, of the confidential documents to any person or entity other than employees or attorneys of _____ without first receiving written permission from the Members of the Lake San Marcos and Upper San Marcos Creek Work Group or without first receiving a court order permitting such disclosure.

Signature

Date

11.3 Work Group Insurance. The Work Group shall procure and maintain in effect throughout the performance of the Work a policy or policies of commercial general liability and automobile insurance, or provide the same through self insured retention by individual Members, providing coverage against injuries to persons or damage to property which may arise out of or in connection with the Work Group's performance of this Agreement. The insurances shall be obtained from a carrier or carriers authorized to do business in the State of California having a rating of at least A:III or better as listed in Best's Insurance Guide. The commercial general liability insurance shall provide coverage of at least \$1,000,000 per occurrence and an aggregate limit of at least \$2,000,000 for products and operation hazard, contractual liability, broad form liability, property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

The automobile liability insurance shall provide coverage for vehicles used in connection with the performance of the Agreement, whether owned, hired, leased, or borrowed, with limits of at least \$1,000,000 per occurrence, combined single limit, for bodily injury or property damage. The Members may elect to procure the required coverage required by this section as a Work Group or by each Member independently, in which event independent Member policies of insurance shall name the Work Group, whose membership may be amended from time to time, as additional insureds in respect of the performance of this Agreement.

SECTION 12 DISPUTE RESOLUTION

12.1 Exclusive Mechanism. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising among the Members under this Agreement. The Members shall attempt to resolve any disagreements among themselves concerning this Agreement in good faith, expeditiously and informally.

12.2 Informal Process. Any dispute which arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Members to the dispute. The period for informal negotiations shall not exceed thirty (30)

days from the time written notice of the dispute is served on all Members to the dispute, unless the negotiation period is modified by written agreement of the Members to the dispute.

12.3 Arbitration Decision. In the event that the Members cannot resolve a dispute by informal negotiations, a Member involved in the dispute may petition for the commencement of formal dispute resolution procedures under this Section 12 (the “Petitioner”) by serving on the other Member (the “Respondents”) a written statement of position on the matter in dispute, including supporting documents. Within 20 days after service of the petition, the Respondent shall provide a responsive statement, including supporting documentation. Within 10 days after receipt of the responsive statement, the Petitioner may submit a Reply.

Any dispute, claim or controversy arising out of or relating to this Agreement shall be determined by binding arbitration in San Diego, California, before an arbitrator. At the option of the Petitioner, the arbitration shall be administered either by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, or by an alternate arbitration provider pursuant to the same rules. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys’ fees of the prevailing party.

12.4 Settlement. Any agreement reached by the Members under Section 12 shall be in writing and shall, upon signature by such Members, be incorporated into and become an enforceable part of this Agreement.

SECTION 13 ACCESS

13.1 Access. The Members and their affiliates owning or controlling property where access is necessary to implement this Agreement shall provide the Regional Board, the Work Group and their respective consultants and contractors with reasonable access to such property to perform the Work.

13.2 Non-Member Owned Property. Where any action under this Agreement is to be performed in, on, or about property owned by or in possession of a person other than a Member, the Members shall use their best efforts to obtain reasonable access rights from such persons. Members shall notify the Regional Board if they are unable to obtain the necessary access to such property. For purposes of this section, if necessary, “best efforts” does include the payment of money as reasonable consideration of access.

SECTION 14 FORCE MAJEURE AND DELAY

14.1 Force Majeure. The Members agree to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a force majeure. For purposes of this Agreement, an event of force majeure is defined as any event arising from causes beyond the control of the Members, or of any entity controlled by the Members, including but not limited to their consultants, which delays or prevents performance of any obligation under this Agreement despite the Members' best efforts to fulfill the obligation. Force majeure does not include financial inability, however the lack of legislative appropriation, authorization or spending authority shall be treated in the same manner as force majeure.

14.2 Extension of Time. The time for performance of the obligations under this Agreement that are affected by the force majeure event will be extended for such time as is reasonably necessary to complete those obligations.

SECTION 15 INTEGRATION/APPENDICES

15.1 Entire Agreement. This Agreement and its Exhibits constitute the final, complete and exclusive agreement and understanding among the Members with respect to this Agreement. The Members acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

15.2 Power to Sign. Each of the undersigned Members hereby certifies, and warrants that to the best of his or her knowledge, he or she is authorized to bind his or her agency or entity to the continuing obligations described herein.

15.3 Method of Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, which shall be held by the Secretary of the Steering Committee. Each Member shall be entitled to a complete set of copies of all counterpart signature pages upon request. In any action or proceeding, a Member need only produce a copy of the executed Agreement provided to such Member as sufficient proof of this Agreement.

15.4 Amendments. This Agreement may be amended only by a vote of at least two-thirds (2/3) of the Voting Power of the Members present in person or by proxy at a Work Group meeting called to consider such amendment. Such amendment shall become effective thirty (30) days after written notice of it is mailed to all Members. However, Sections 12 and 14 of this Agreement cannot be amended to limit the effect of those sections regarding acts or omissions taken or made prior to such amendment.

15.5 Separability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

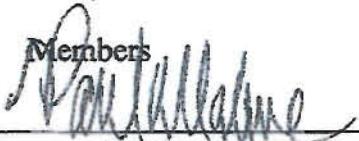
15.6 Law. This Agreement shall be interpreted under the laws of the State of California.

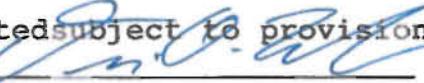
15.7 Non-Waiver. Nothing in this Agreement shall be construed to waive or release any rights, claims or privileges which any Member shall have against any other Member or any other person or entity. Each Member agrees that during the period that it is a Member of the Work Group, all claims and actions against any other Member arising out of or related to the Creek or Lake shall be held in abeyance and all applicable statute of limitation shall be tolled as to such actions or claims.

15.8 Termination. This Agreement may be terminated by a vote of the majority of the Voting Power of the Members present in person or by proxy at a Work Group meeting called to consider such termination. To the extent that any funds exist as of the date of termination, said funds shall be returned to the Member in good standing, in the same proportion as last Work Group assessments levied and paid.

15.9 Notice. All notices, bills, invoices, reports, and other communications with a Member shall be sent to the representative designated by the Member on said Member's signature page of this Agreement. Each Member shall have the right to change its representative upon ten (10) days written notice to the Chairperson of the Steering Committee.

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Members

Member: Paul Malone
By: CITY OF SAN MARCOS
Title: PAUL MALONE, CITY MANAGER
Address: 1 CIVIC CENTER DRIVE, SAN MARCOS, CA 92069
Date: 4/29/2010

"Executed subject to provisions of Addendum F attached hereto."

Member: Dennis Lamb
By: VALLECITOS WATER DISTRICT
Title: DENNIS LAMB, GENERAL MANAGER
Address: 201 VALLECITOS DE ORO, SAN MARCOS, CA 92069
Date: 3/9/11

Member: Bruce April
By: CALIFORNIA DEPARTMENT OF TRANSPORTATION
Title: Bruce April, Deputy District Director
Address: 4050 Taylor Street, MS 130, San Diego, CA 92110
Date: 6/21/2011

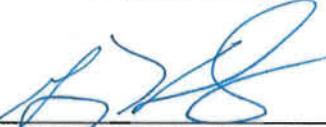
Member: _____
By: SAN MARCOS UNIFIED SCHOOL DISTRICT
Title: Katherine Tanner, Executive Director of
Facilities Planning & Development
Address: 255 Pico Avenue, San Marcos, CA 92069
Date: _____

Member: _____
By: COUNTY OF SAN DIEGO
Title: Richard Crompton, Director, Department
of Public Works
Address: 5500 Overland Avenue, Suite 310, San Diego, CA 92123
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: CALIFORNIA DEPARTMENT OF TRANSPORTATION
Title: Bruce April, Deputy District Director
Address: 4050 Taylor Street, MS 130, San Diego, CA 92110
Date: _____

Member: 
By: SAN MARCOS UNIFIED SCHOOL DISTRICT
Title: Gary M. Hamels, Assistant Superintendant
of Business Services
Address: 255 Pico Avenue, San Marcos, CA 92069
Date: June 30, 2011

Member: _____
By: COUNTY OF SAN DIEGO
Title: Richard Crompton, Director, Department
of Public Works
Address: 5500 Overland Avenue, Suite 310, San Diego, CA 92123
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: CALIFORNIA DEPARTMENT OF TRANSPORTATION
Title: Bruce April, Deputy District Director
Address: 4050 Taylor Street, MS 130, San Diego, CA 92110
Date: _____

Member: _____
By: SAN MARCOS UNIFIED SCHOOL DISTRICT
Title: Katherine Tanner, Executive Director of
Facilities Planning & Development
Address: 255 Pico Avenue, San Marcos, CA 92069
Date: _____

Member: Elpidio
By: COUNTY OF SAN DIEGO
Title: PCO
Address: 255 Pico Avenue, San Marcos, CA 92069
Date: _____

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL.

BY John Peak
SENIOR DEPUTY

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

EXHIBIT A

SECTION 5

Carlsbad WMA

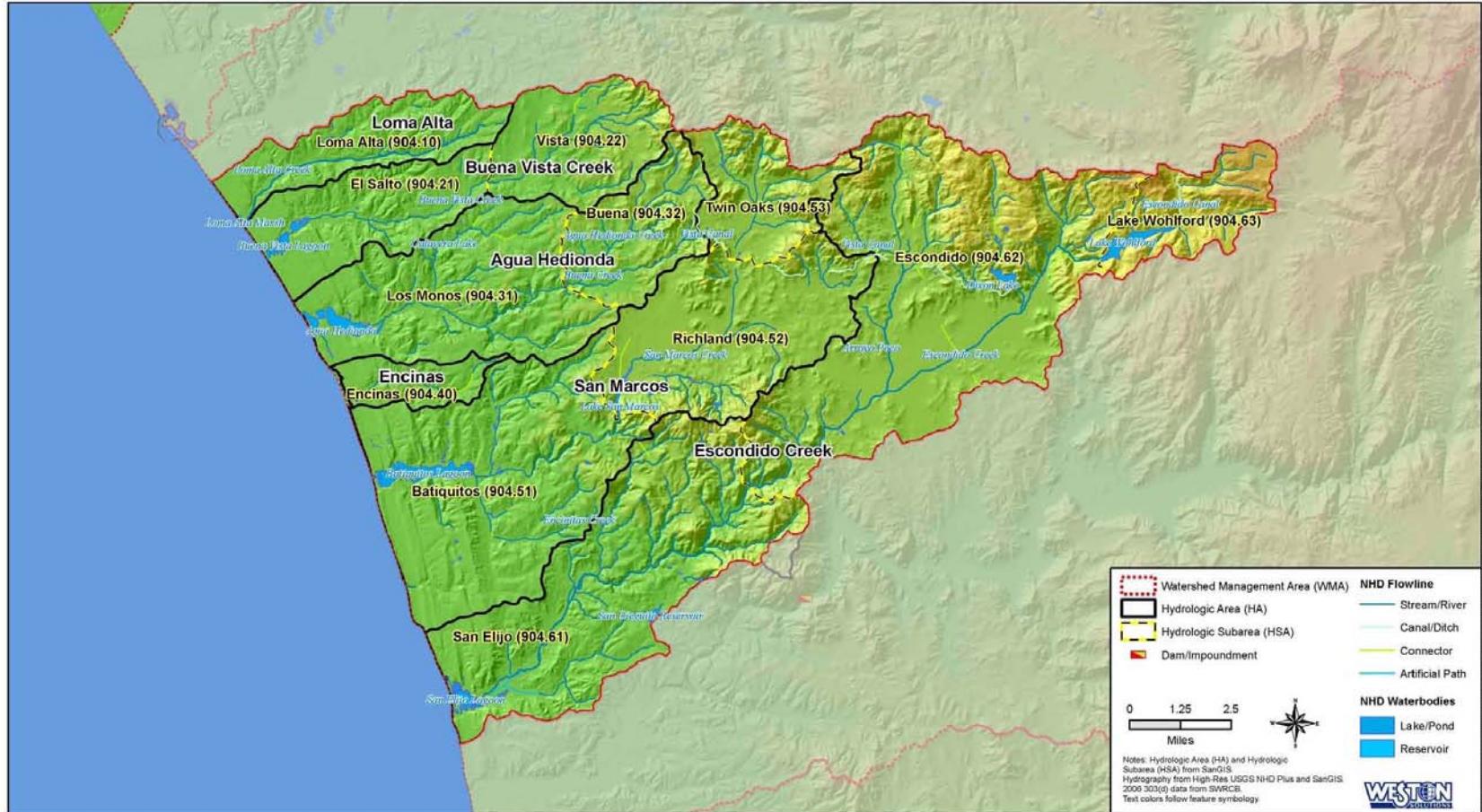


Figure 5-1. Carlsbad Watershed Management Area

EXHIBIT B

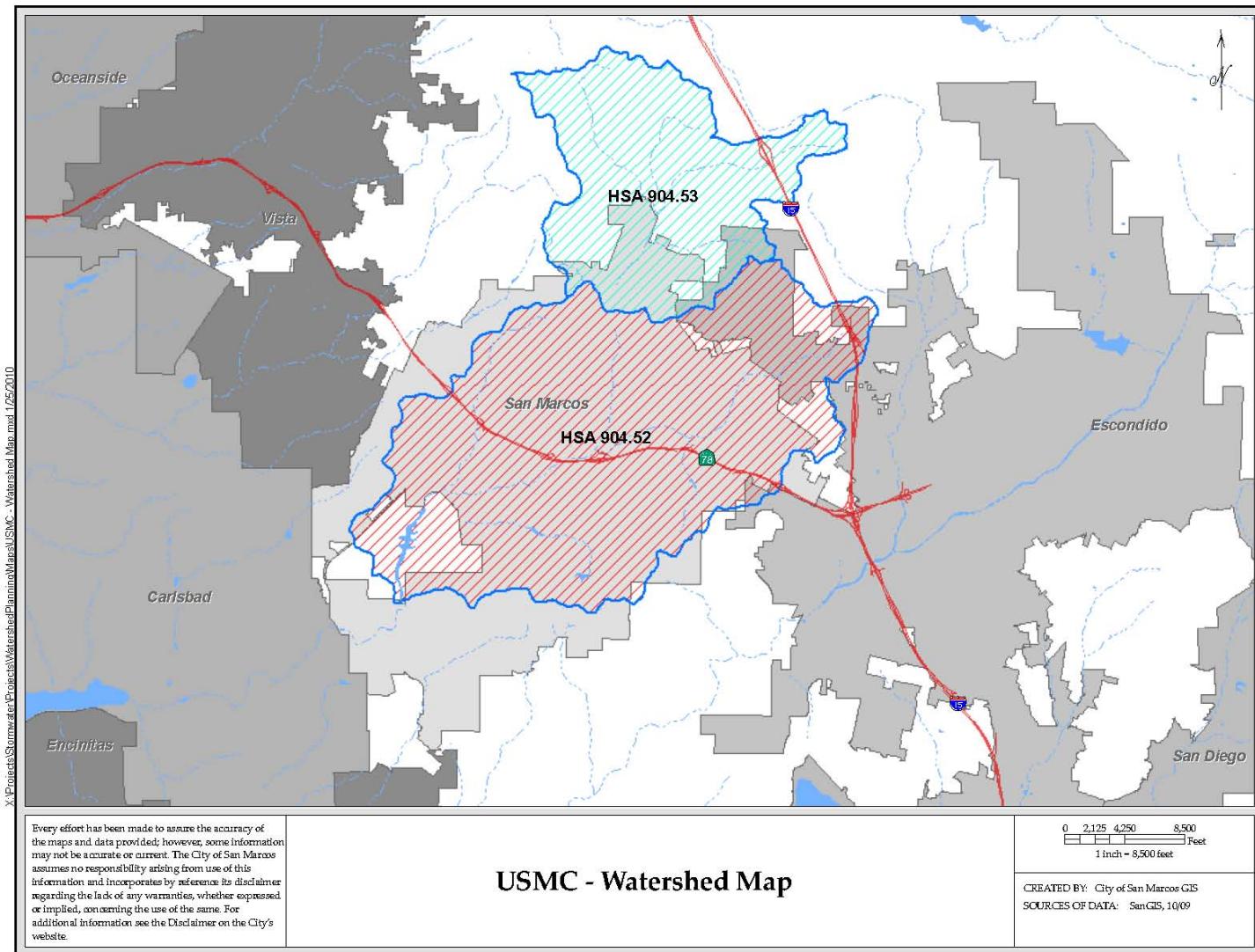


EXHIBIT C

Form of Work Group Proxy

LAKE SAN MARCOS AND UPPER SAN MARCOS CREEK WORK

GROUP PROXY

I, the duly authorized representative of _____ (hereinafter the "Member") hereby grant the Proxy of the Member to _____ for the _____ meeting to be held on the ___day of _____.

_____ is hereby authorized and empowered to vote for the Member and in the Member's name and stead at such meeting (and at any adjournment thereof) on any issue, except for those issues listed below, put to a vote in accordance with the Lake San Marcos and Upper San Marcos Creek Work Group Participation Agreement. For those issues noted below, _____ has no authority on behalf of the Member and must abstain from voting on the Member's behalf.

Member: _____

By: _____

Name: _____

Title: _____

Date: _____

Issues for which this proxy is not granted:

1. _____
2. _____
3. _____

EXHIBIT D

Service List

Designated Representative for Receipt of Notice and Invoices Name:

Name: _____

Firm, Department, etc.: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

ADDENDUM A

New Member Addendum

This New Member Addendum (the “Addendum”) is made by the undersigned New Member(s) pursuant to Section 5.2 of the Participation Agreement Among Lake San Marcos Work Group (the “Agreement”) executed by the City of San Marcos on April 29, 2010, and executed by the Vallecitos Water District on March 9, 2011, as follows,

RECITALS

A. The undersigned New Member(s) desire to join in the Agreement as a Member, subject to all of the rights, benefits, duties, and obligations contained therein;

B. The existing Members desire to include the undersigned New Member(s) as a Member under the Agreement, subject to the terms and conditions thereof;

NOW THEREFORE, in consideration of the mutual covenants contained in this Addendum and the Agreement, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows.

1. Agreement to be Bound. The undersigned New Member(s) agree to be bound by, to assume the rights, benefits, duties, and obligations held by Members as of the date hereof under, and to in all ways fully comply with the terms and conditions of the Agreement. A copy of the Agreement, as the same may have been amended, is attached to this Addendum as Exhibit “A” and incorporated herein by this reference.

2. Due Diligence. The undersigned New Member(s) acknowledge having had a suitable opportunity to review with counsel of its choosing the Agreement, the aggregate Shared Costs as of the date of this Addendum, and the Work prior to signing this Addendum.

3. New member Payments. The undersigned New Member(s) agree to make the payments due the Work Group under Sections 5.2 and 8.3 of the Agreement as a further condition of this Addendum.

4. Further Assurances. Each party to this Addendum will, at its own cost and expense, execute and deliver such further documents and instruments and will take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Addendum.

5. Entire Addendum; Waiver. This Addendum constitutes the final, complete and exclusive statement between the parties pertaining to the terms and conditions of this Addendum, and this Addendum supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of

their respective heirs, representatives, successors and assigns. Neither party has been induced to enter into this Addendum by, nor is either party relying on any representation or warranty outside those expressly set forth in this

6. Addendum. Any agreement made after the date of this Addendum is ineffective to modify, waive, or terminate this Addendum, in whole or in part, unless that agreement is in writing, is signed by the parties to this Addendum, and specifically states that the agreement modifies this Addendum.

7. Governing Law. This Addendum will be governed by, and construed in accordance with, California Law.

8. Effective Date and Consent of existing Members. The existing members' consent to this Addendum is a condition precedent to the effectiveness and validity of this Addendum. The date of execution of the Consent clause below by the existing Members shall be the effective date of this Addendum. If the existing Members do not execute the Consent clause below, then this Addendum shall not become effective and shall be null and void.

9. Execution in Counterparts. This Addendum may be executed in any number of counterparts, each of which when so executed shall be deemed an original and all of which shall constitute together one and the same instrument, and shall be effective upon execution by all of the Parties

IN WITNESS WHEREOF, the undersigned New member(s) have executed this Addendum in San Diego County, California, as follows,

New Member:

By: _____

Its: _____

Date: _____

Address and Contact Information

Consent of Existing Members

In reliance upon the foregoing and subject to the payments of the New Members executing the Addendum required under Sections 5.2 and 8.3 of the Agreement, the existing members Consent to the Addendum and agree that such New Members shall be members under the Agreement subject to all the terms and conditions thereof, its rights, benefits, duties, and obligations. The undersigned warrants that it is a Member under the Agreement and authorized by all Members under the Agreement to execute this Consent clause to the Addendum on behalf of all Members.

IN WITNESS WHEREOF, the undersigned member representative has executed this Consent in San Diego County, California.

Existing Members

By: _____

Name: _____

Its: _____

Date: _____

ADDENDUM B TO PARTICIPATION AGREEMENT

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD PROVISIONS

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ADDENDUM B TO THE PARTICIPATION AGREEMENT

San Diego Regional Water Quality Control Board Provisions

The Participation Agreement (herein called the “Agreement”) is hereby supplemented by this stand alone agreement referred to as Addendum B (the “Addendum”). This Addendum is entered into this ____ day of June, 2011 by and between the undersigned political subdivisions of the State of California, municipalities, other organizations, and individuals (herein collectively comprising the “Members”), and the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION (the “RWQCB”),¹ as follows:

RECITALS

A. The Members have drafted the Agreement whereby they will agree upon the manner and means by which they will perform certain work to benefit water quality in San Marcos Creek (“Creek”) and Lake San Marcos (“Lake”).

B. To provide leadership, to promote the voluntary and timely progression of the work, to define the process of coordination between the Members and the RWQCB, to ensure reasonable public participation, and to provide regulatory supervision and timely completion of the covered work the RWQCB now desires to enter into an agreement with the Members relative to the Agreement in the form of this Addendum.

C. Except in the case of parties signing the Agreement after the date that the RWQCB signs the Addendum (“New Members”), the Members will execute the Participation Agreement and the Addendum prior to or concurrent with the RWQCB’s execution of the Addendum.

Now therefore, based upon the foregoing recitals and in consideration of the mutual covenants and other good and valuable consideration contained herein, the RWQCB and the Members agree as follows:

1. Definitions. For the purposes of this Addendum, unless otherwise expressly provided for in this Addendum, the terms used herein are defined in the Agreement, the Water Code, the California Code of Regulations (“CCR”), the Clean Water Act, or the Code of Federal Regulations (“CFR”), and shall have the

¹ The RWQCB has delegated to the Executive Officer all delegable authorities under the California Water Code. Except as specified in Sections 14, 15 and 33 of this Addendum, the Executive Officer’s actions or inactions under this Addendum are actions or inactions of the RWQCB.

meaning assigned to them in the Agreement and in such laws and regulations. Whenever the terms listed below are used in this Addendum or in the exhibits attached hereto and incorporated by reference herein, the following definitions shall apply:

(a) “Consultant” or “Contractor” shall mean any person or entity, not a Member, selected by the Members or the RWQCB to perform any part of the Work described in the Agreement or this Addendum.

(b) “De-Minimis Party” shall mean a Member who elects to exercise its rights under de-minimis party buy-out agreements, negotiated and agreed to by the remaining Members under the Agreement, allowing the de-minimis party to pay an appropriate sum to such remaining Members in partial or full satisfaction of the de-minimis party’s remaining obligations to perform the Scope of Work under the Agreement, except there shall be no de-minimis buy-out option unless and until the number of signatories to the Agreement equal three or more Members and at no time shall the Members number less than two (2).

(c) “Effective Date” of this Addendum shall mean the date this Addendum has been executed by both the RWQCB and at least two Members.

(d) “Feasible” shall mean what is technologically and economically feasible within the meaning of Section III. H. 1 of State Water Resources Control Board Resolution No. 92-49 (as amended on April 21, 1994 and October 2, 1996) entitled, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304.

(e) Impaired Water Bodies. The San Marcos Creek Watershed extends approximately 14.11 miles inland from the Pacific Coast, is about 36,050 acres in area, and represents 27% of the Carlsbad Hydrologic Unit. The Upper San Marcos Creek Watershed encompasses two of its three basins, the upper basin centered on Twin Oaks Valley at the southern end of Merriam Mountains (Twin Oaks Hydrologic Subarea HU 904.53) and the middle basin centered on the valley occupied by the City of San Marcos (Richland Hydrologic HSA 904.52), as shown on Exhibit A attached hereto and incorporated herein by this reference (as the “Watershed”). For purposes of the Agreement and this Addendum, the Watershed includes the Creek and its tributaries down to the dam, which impounds the Creek and creates the Lake. Downstream of the dam is the lower basin of the San Marcos Creek

Watershed (known as the Batiquitos Hydrologic Subarea HU 904.51). Under §303(d) of the Clean Water Act, the Creek is listed for sediment toxicity, phosphorus, and DDE; and the Lake is listed for ammonia (as N), nutrients, and phosphorus.

(f) **Matters Addressed.** The Matters Addressed in this Addendum shall include (a) the collective discharges of the Members and the individual discharges of the Members occurring prior to the Effective Date that caused or contributed to the Nutrient impairment in the Impaired Water Bodies (“Members’ Discharges”), (b) the Members’ Discharges occurring after the Effective Date, to the extent the same represent a continuation of discharges occurring prior to the Effective Date and are the subject of the investigation, cleanup and/or abatement of Nutrient impairment in the Impaired Water Bodies, and (c) the Scope of Work described in Exhibit B, as the same may be amended from time to time.

(g) **“Member”**, for purposes of this Addendum, shall mean a party which is both a Member under the Participation Agreement and a party to this Addendum. The RWQCB is not a Member and, apart from the express terms and conditions of this Addendum, the RWQCB shall not have any responsibilities or obligations to perform the Scope of Work under the Agreement or the Addendum.

(h) **“New Member”** shall mean a party which is both a New Member as defined in Section 5.2 of the Agreement and becomes a party to this Addendum.

(i) **“Non-Member”**, for purposes of this Addendum, shall mean any person, political subdivisions of the State of California, governmental agency, municipality, entity, organization, and/or individual which at any time, is potentially responsible and/or liable for Nutrients impairment in the Impaired Water Bodies, but who have not signed the Agreement and/or this Addendum.

(j) **“Nutrients”** shall mean phosphorus, ammonia (as N), and nutrients, as listed for the Creek and Lake under §303(d) of the Clean Water Act.

(k) **“Terminated Member”** shall mean a Member terminated from the Agreement as provided in Section 5.6 thereof and/or from this Addendum as provided in Section 33(b) hereof. A Member terminated from

the Agreement shall be deemed terminated from this Addendum. A Member which voluntarily withdraws from the Agreement as provided in Section 5.5 thereof shall be deemed to have voluntarily terminated this Addendum in respect of such Member.

(l) Intentionally deleted.

(m) "Water Quality Objective" shall have the meaning set forth in Water Code Section 13050(h) as, "The limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area." In addition, the term "water quality objective" is further characterized in Chapter 3 of The Water Quality Control Plan for the San Diego Basin 9 (Basin Plan). For purposes of the Work to be performed by the Work Group (as such term is defined below), such Work shall be sufficient to achieve water quality objectives in the Impaired Water Bodies having such numeric or narrative limits on Nutrients or Nutrient-related characteristics of water which can be feasibly achieved and provide reasonable protection of designated beneficial uses of the Creek and Lake and the prevention of nuisance consistent with Water Code Section 13241. Such water quality objectives may be those defined in the applicable water quality control plan or site specific objectives, as appropriate. In the event biologically-based thresholds, bio-objectives, or other water quality objectives become viable and accepted alternatives to existing chemistry or toxicity based objectives for the Creek and the Lake during the progress of the Work, the Members and the RWQCB shall collaborate to describe the appropriate Water Quality Objectives to be attained by the Work Group, recognizing the effects on water quality caused by various physical and other factors, such as, the hydro-modification effects of the dam, the effects of groundwater infiltration, waterfowl habitation, atmospheric deposition, the warming trend of inland waters, the impacts of historic and current water rights use practices, and surrounding land use, among other water quality factors beyond surface water Nutrient discharges over which the Members have no or limited control, in addition to the biological and chemical effects on water quality (collectively, the "Other Causal and Contributing Factors"). The RWQCB shall determine what water quality objectives can reasonably be achieved within a reasonable period by considering what is technologically and economically feasible and shall take into account environmental characteristics of the hydrogeologic unit under consideration

pursuant to State Water Resources Control Board Resolution No. 92-49, as amended.

(n) “Work” shall mean the (a) diagnostic assessment of existing Nutrient conditions, as well as the identification and assessment of the contributing and causal sources and pathways affecting Nutrient conditions in the Lake and Creek (“Diagnosis Work”); (b) identification and feasibility assessment of alternative processes, means, methods, and technologies for abating the Nutrient conditions in the Lake and Creek, improving the existing Nutrient water quality conditions in the Creek and Lake, and determining feasible site-specific Water Quality Objectives (the “Feasibility Work”); (c) development of an abatement plan to achieve the Water Quality Objectives within a reasonable period of time (“Abatement Planning Work”); (d) implementation of the Abatement Plan (“Implementation Work”); (e) pre-and-post project Nutrient monitoring in the Creek and Lake (“Monitoring Work”); and (f) work incidental thereto (“Incidental Work”) all as is reasonably necessary to achieve the Project Purpose described in Section 4 of this Addendum to the reasonable satisfaction of the RWQCB. The RWQCB and the Members agree that the Work shall be performed by the Work Group pursuant to a scope of work as described in Exhibit B to this Addendum, as such scope of work is amended from time to time as described below (the “Scope of Work”). The RWQCB or the State Board, by enforcement order or agreement may assign some or all of the Work to Non-Members (“Non-Members Work”). When such an assignment is made the Members’ obligations to perform the Scope of Work under this Addendum shall be modified and/or reduced to the full extent of the Non-Members Work, and as will reasonably allow the Work Group to achieve the Project Purpose. Members and Non-Members will work cooperatively.

In assessing and imposing responsibility, obligations, and/or liability on the Work Group to perform Work to achieve the Project Purpose described in Section 4 of this Addendum, the RWQCB agrees to take into account the Other Causal and Contributing Factors (as described in Section 1(m)). Such Other Causal and Contributing Factors may be determined to represent a substantial percentage of the overall causal and/or contributing factors resulting in the Nutrient impairment of the Impaired Water Bodies and, therefore, the RWQCB shall not require a Member to perform Work, including cleanup and abatement Work, beyond the scope of their legal obligation to perform such Work as described in Water Code Sections

13225(c), 13267(b), 13304(a), and 13370 et seq. (collectively, the Water Code Obligations).

(o) “Work Group” shall mean the Members and all Non-Members which are, after the Effective Date, working in coordination with the RWQCB to perform the Work, whether as Members under the Participation Agreement and this Addendum B, or as Non-Members under an enforcement order or other agreement.

2. Voluntary Participation by the Members. The Members have entered into this Addendum and the Agreement voluntarily, in consideration of the RWQCB’s covenant not to sue set forth in Section 16 of this Addendum, to develop and implement a pilot program whereby the Members would develop and conduct the Work in accordance with a voluntary process as expressed in the Agreement. The Members have entered into this Addendum and the Agreement with the goal of contributing their allocated share (as defined in the Agreement) toward achieving lasting water quality for the Lake and the Creek in advance of the schedule reasonably contemplated under the formal TMDL process for the Impaired Water Bodies, and with the goal of developing a structural framework for such voluntary process that can be used as an effective alternative to the formal TMDL process for achieving water quality improvements at a quicker pace than in other impaired water bodies throughout Region 9 and other Water Quality Control Board Regions. The Members desire to work collaboratively with the RWQCB to develop effective procedures and strategies for such voluntary process and to describe and implement their allocated share of the Work necessary to achieve the Project Purpose.

3. RWQCB Jurisdiction. Pursuant to Porter-Cologne Water Quality Control Act (“Water Code”) §§13000 et seq., the RWQCB has jurisdiction over the surface waters and ground waters within the Watershed. This jurisdiction includes, but is not limited to, the right to formulate, adopt, and amend the Basin Plan and/or other water quality control plans pursuant to Water Code §§13240 et seq.; to impose waste discharge requirements pursuant to Water Code §§13260 et seq.; to administer the federal National Pollutant Discharges Elimination System (“NPDES”) permits pursuant to the federal Water Pollution Control Act (“Clean Water Act”) §402 and Water Code §§13370 et seq.; and, to take enforcement actions as provided in Water Code §§13200 et seq. and §§13300 et seq. The RWQCB contends and the Members dispute that the RWQCB has a sufficient factual and legal basis for exercising its authority to compel the Members and Non-Members, individually or collectively, to perform the Work, as defined in Section 1(m) herein, and as described in Exhibit B which is incorporated herein by

this reference, and for Non-Members Work as determined by an enforcement order or such other means as the RWQCB or State Board determines.

4. Project Purpose. The Project Purpose shall be the Feasible abatement of the Nutrient impairment related conditions in the Lake and the Creek, as necessary to achieve existing or site specific Water Quality Objectives providing reasonable protection of designated beneficial uses.

5. Work Phases. The RWQCB and the Members agree that the Work to be performed by the Work Group shall be accomplished in reasonable and logical phases or sub-phases, with the findings, determinations, and progress made as a part of each of the earlier phases or sub-phases being used to define, focus, and develop later phases or sub-phases, in order to achieve the appropriate Water Quality Objectives in accordance with sound science and in a cost-effective and efficient manner. In addition, the total Work necessary to accomplish the Project Purpose shall be performed by the Work Group, in part by the Members as described in Exhibit B (Scope of Work) and in part by the Non-Members, if any, under such enforcement proceedings, or other means as RWQCB or State Board deems appropriate.

6. Implementation of the Scope of Work. The Members shall perform the Scope of Work described in Exhibit B to this Addendum, and upon execution of this Addendum, the RWQCB and the Members agree that the phase or sub-phase of the Work described in Exhibit B represents a reasonable and logical phase or sub-phase of the overall Work to be performed by the Work Group. The RWQCB and the Members further agree that Exhibit B shall be amended, as necessary, to include each later phase or sub-phase of the Work to be performed by the Members, using the Scope of Work Amendment Form attached to this Addendum as Exhibit C. Each phase or sub-phase of the Scope of Work described in Exhibit B shall include a schedule for performing such phase or sub-phase of the Scope of Work which, based on the best information available to the Members, is Feasible. The Members may amend the Scope of Work and schedule described in Exhibit B upon a demonstration of good cause to the RWQCB, which shall review and approve, modify, or reject the proposed Scope of Work or schedule amendment within a reasonable time not to exceed sixty (60) days, or the amended schedule shall be deemed acceptable. The RWQCB's execution of any Scope of Work Amendment Form shall be deemed its approval of the included phase or sub-phase of Scope of Work and schedule described therein.

7. Modification Of Work. If the RWQCB reasonably determines, on the basis of new information, that a modification of the Scope of Work, or a phase or

sub-phase of the Scope of Work as described in Exhibit B, is necessary to achieve the overall Project Purpose, the RWQCB may require the Members to evaluate and consider amending such Scope of Work, or phase sub-phase of such Scope of Work, in such a manner as the RWQCB reasonably determines would meet the overall Project Purpose; provided, however, that any new information upon which such determination is based shall have been previously unknown or reasonably unavailable to the RWQCB at the Effective Date and which if known to RWQCB at the Effective Date would have materially affected RWQCB's approval of the Scope of Work as set forth in Exhibit B. The RWQCB shall convey such requirement to the Members by written notice setting forth the new information and basis for the RWQCB's determination that an amendment to the Scope of Work is necessary. Within a reasonable time of receiving the RWQCB's notice, the Members shall conduct an independent evaluation of the new information and basis identified by the RWQCB and provide the RWQCB with their written response describing either the Members' rationale for why an amendment to the Scope of Work is not necessary or a proposed amendment to the Scope of Work addressing the basis for the RWQCB's notice. If the Members and the RWQCB are in disagreement, the parties agree to coordinate and negotiate in good faith to resolve any such disagreement and to facilitate a determination of whether or not, and to what extent, an amendment to the Scope of Work is necessary in accordance with the Dispute Resolution provisions of Section 15 of this Addendum.

8. Public Participation. Within sixty (60) days after the Effective Date, the Members shall develop and submit a plan to the RWQCB setting forth a process for providing the public with reasonable notice and opportunity to comment upon the Scope of Work and subsequent revisions thereto ("Public Participation Plan"). In addition, the Members shall cooperate with and support the RWQCB in its efforts to provide reasonable public participation related to the Work.

9. Progress Reports. The Members shall provide the RWQCB with semi-annual written progress reports regarding the Members' performance of the Scope of Work.

10. Technical Reports. The Members shall submit copies of all final technical reports of Scope of Work phases or sub-phases performed by the Members for review by the RWQCB which may, within a reasonable time not to exceed sixty (60) days from receipt, (a) approve the report, (b) approve the report on specified conditions, (c) disapprove the report, in whole or in part, requiring changes be made, or (d) any combination of the foregoing.

11. Force Majeure. Force Majeure is any occurrence beyond the control of the Members which renders the Members, notwithstanding their exercise of due diligence, unable to perform their obligations hereunder due, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, action or inaction of legislative bodies, judicial bodies, or regulatory agencies, or other proper governmental authority, which may prevent the Members from performing the Scope of Work. The Members shall not be considered to be in default in the performance of any of the provisions contained in this Addendum when and to the extent failure of performance shall be caused by an event(s) of Force Majeure. If the Members are rendered wholly or partly unable to perform their obligations under this Addendum, the Members shall be excused from whatever performance is affected by the event of Force Majeure to the extent so affected, provided that: (i) the Members give the RWQCB written notice describing the particulars of the occurrence within two (2) weeks from its onset, (ii) performance shall only be delayed to the extent caused by Force Majeure, (iii) the Members use reasonable efforts to mitigate their inability to perform, and (iv) when the Members are reasonably able to resume performance of their obligations under this Addendum, the Members shall give the RWQCB written notice to that effect. If the ability of the Members to perform the Scope of Work is caused by the actions or inactions of legislative bodies, judicial bodies, or regulatory agencies or other proper governmental authority, this Addendum may be amended to comply or conform with the legal or regulatory change which caused the nonperformance. If the RWQCB does not agree that the Members' nonperformance is attributable to an event of Force Majeure, then the matter may be subject to the Dispute Resolution procedures set forth in Section 16 of this Addendum.

12. No Further Action Letter. Upon a demonstration by the Members, to the reasonable satisfaction of the RWQCB, that the Members have satisfactorily performed their obligations regarding the Scope of Work, as amended, and that the Scope of Work is consistent with the Members' California Water Code obligations in respect of the Impaired Water Bodies, taking into account the Other Causal and Contributing Factors and upon reasonable demonstration that the Project Purpose as defined in Section 4, has been achieved, RWQCB shall issue a No Further Action Letter or other substantially similar written instrument evidencing that the Scope of Work obligations of the Members under this Addendum are concluded and releasing the Members, according to terms to be provided in the letter, from liability and performance of further Work to cleanup and/or abate Nutrients in the Impaired Water Bodies. Issuance of a No Further Action letter may require a

public notice period under applicable public participation provisions in Water Code sections 13307.1 and/or 13307.5.

13. California Environmental Quality Act (CEQA). The Members shall coordinate with the RWQCB and Non-Members to determine the applicability of the California Environmental Quality Act (“CEQA”) to the various phases of the Scope of Work being performed by Members. To the extent CEQA applies to any phase of the Scope of Work, actions necessary to comply with CEQA shall be pursued by the Members in coordination with the RWQCB, and in coordination with Non-Members as necessary and appropriate.

14. Payment of Administrative Costs. The Members shall reimburse the RWQCB for its reasonable costs associated with administration of this Addendum (“Administrative Costs”). Administrative Costs shall not include RWQCB’s costs or expenses in undertaking any enforcement or negotiated action against Non-Members or in administering the performance of Work by Non-Members. The RWQCB will provide the Members with a quarterly detailed accounting of the RWQCB’s accrued Administrative Costs. The Members may provide notice of any challenge to the quarterly bill for Administrative Costs by letter mailed to RWQCB Executive Officer within sixty (60) days after the Members receive the quarterly bill. If the Members dispute a bill, or any part thereof, they shall first attempt to informally resolve the dispute with the RWQCB Executive Officer. If the dispute cannot be resolved with the Executive Officer, the Members may formally request dispute resolution with regard to the billing in accordance with the process for Dispute Resolution under Section 15 of this Addendum. If the dispute pertains to only a portion of the costs included in the billing, the Members shall pay all costs which are not in dispute.

The payment of undisputed Administrative Costs shall be made by the Members by check within ninety (90) days after receipt of the bill. The check shall be disbursed to the State Board according to instructions provided by the State Board. A copy of the transmittal letter and a copy of the check shall be sent to the RWQCB at:

California Regional Water Quality Control Board, San Diego Region
9174 Sky Park, Suite 100
San Diego, California 92123-4353

Attention: Chiara Clemente

If a bill is not paid by the Members within ninety (90) days after it is sent by the RWQCB, the Members may be deemed to be in default of this Addendum. Bills for Administrative Costs shall be mailed to:

City of San Marcos
San Marcos, CA 92069
Attention: Erica Ryan

15. Dispute Resolution. Unless otherwise expressly provided for in this Addendum, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Addendum. However, the procedures set forth in this Section shall not apply to actions by RWQCB to enforce obligations that have not been disputed in accordance with this Section or to the RWQCB determination to terminate this Addendum pursuant to Section 33 of this Addendum.

(a) Notice of Dispute. Any dispute which arises under or with respect to this Addendum shall in the first instance be the subject of informal negotiations between the Members and RWQCB's Executive Officer. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. A Notice of Dispute must be received by the non-disputing party(ies) within sixty (60) days of a party becoming aware of the action or inaction that is the subject of the dispute. After such time, the action or inaction is not subject to dispute or administrative or judicial review. The period for informal negotiations shall not exceed sixty (60) days from the time the Notice of Dispute is first received, unless such time period is modified by written agreement of the parties to the dispute.

(b) Statements of Position. In the event that the parties cannot resolve a dispute by informal negotiations under Section 15(a), then the position advanced by the RWQCB's Executive Officer shall be considered binding unless, within sixty (60) days after the conclusion of the informal negotiation period, the Members shall serve on the Assistant Executive Officer, who has not previously been involved in the activities of the Members or the Work in this matter (the "Independent Hearing Officer"), a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Members. Within sixty (60) days after receipt of the Members' Statement of Position, the RWQCB's Executive Officer will serve on the Members, with a copy to the Independent

Hearing Officer, its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the RWQCB. Within ten (10) days after receipt of the RWQCB's Executive Officer's Statement of Position, the Members may submit a Reply. An administrative record of the dispute shall be maintained by the RWQCB and shall contain all statements of position, including supporting documentation or other evidence, submitted pursuant to this Section.

(c) Administrative Decision. The Independent Hearing Officer shall issue a final administrative decision resolving the dispute that shall be based on the administrative record compiled pursuant to Section 16(b). The decision shall be rendered by the Independent Hearing Officer within sixty (60) days of receipt of the Executive Officer's Statement of Position, or the Members' Reply, whichever is later, and the decision shall be binding upon the Members, subject only to the right of the Members to seek administrative and judicial review of the administrative decision pursuant to Sections 16(d) and 16(e).

(d) Review by the RWQCB. Any administrative decision made pursuant to Section 16(c) shall be reviewable in a public meeting by a quorum of the RWQCB, provided that a motion for reconsideration of the decision is filed by the Members with the RWQCB within thirty (30) days of receipt of the Independent Hearing Officer's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Addendum. Within twenty (20) days of receipt of the Members' motion for reconsideration, the RWQCB's Executive Officer may file a response to the Members' motion. In proceedings on any dispute that is accorded review on the administrative record under applicable principles of law, the Members shall have the burden of demonstrating that the Independent Hearing Officer's decision is not supported by substantial evidence or otherwise not in accordance with law. In the event that a dispute is accorded review on the administrative record under applicable principles of law, reconsideration of the Independent Hearing Officer's decision shall be on the administrative record compiled pursuant to Section 16(b).

(e) Review by the State Board and Judicial Review. Review of action or inaction by the RWQCB on the motion for reconsideration may be sought at the State Board, by petition. A decision by the RWQCB on the

Members' motion for reconsideration shall constitute an "action" of the RWQCB within the meaning of 23 CCR Section 2050. Should the RWQCB not issue a decision on the Members' motion for reconsideration of the Independent Hearing Officer's determination, the failure to do so shall constitute a "failure to act" of the RWQCB within the meaning of 23 CCR Section 2050. The Members may petition such "action" or "failure to act" to the State Board for review in accordance with applicable law. Following State Board action on the petition, which may include a review of the matter or a denial of the petition without such review, the Members may seek judicial review in accordance with applicable law.

(f) Interim Effect of Dispute Resolution Invocation. The invocation of Dispute Resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Members under this Addendum unless the RWQCB agrees otherwise or unless so ordered by the State Board or a court of competent jurisdiction.

16. Covenant Not to Sue by RWQCB. Subject to Section 15 and subsections (a) and (b) of this Section 16, and for as long as the Members are in good faith substantially complying with the obligations of this Addendum, and in consideration for the Scope of Work that will be performed and the payments that will be made by the Members under the terms of this Addendum, the RWQCB covenants not to sue, take enforcement action, or take other administrative action against the Members relating to the Matters Addressed, as described in Section 1(f) hereof. The RWQCB's covenant not to sue the Members shall take effect upon the Effective Date, and shall extend only to the Members or former Members who entered into settlement agreements with the Members as approved pursuant to Section 28 of this Addendum, and their respective governing bodies, directors, council members, supervisors, officers (whether or not elected), employees, contractors, consultants, representatives, successors and assigns, and does not extend to any Non-Member or Terminated Member as of the effective date of such Member's termination from this Addendum, or any other person or entity who might otherwise be potentially responsible for causing or contributing to Nutrient impairment in the Impaired Water Bodies who does not become a Member under the Agreement and who is not a signatory to this Addendum. Further, the RWQCB covenant not to sue shall be subject to the following:

(a) Rights Against Third Parties. Nothing in this Section shall limit the RWQCB's rights against any Non-Member, Terminated Member or third person or entity, including, without limitation, the RWQCB's right to sue, take enforcement action, or take any other administrative action against any

such party. Subject to discussion with and concurrence by a majority vote of the Members, it shall not be a violation of this Covenant Not to Sue for the RWQCB to issue an enforcement order under Water Code sections 13205, 13267, and 13000, et seq. to a Member(s) provided that concurrent with issuance of the enforcement order the RWQCB agrees not to enforce the terms of said enforcement order in recognition of the Member's existing and continued voluntary, good faith participation in the Agreement.

(b) Reservation of Rights. The RWQCB covenant not to sue does not pertain to any matter other than Matters Addressed, as defined in Section 1(f) of this Addendum, and the RWQCB reserves all rights against the Members with respect to all other matters, including but not limited to, the following:

- (i) Claims based on a failure, after a reasonable opportunity to cure, by the Members to meet a material requirement of this Addendum;
- (ii) The criminal liability of any Member;
- (iii) For the violation by the Members of any local, state or federal water quality law, rule, or regulation, by any act or omission other than an act or omission arising out of or in connection with the Matters Addressed as defined in Section 1(f) of this Addendum;
- (iv) The right of the RWQCB to compel the Members to amend the Scope of Work, or any phase or sub-phase of the Scope of Work, if information concerning the Nutrient impairment in the Impaired Water Bodies, previously unknown or reasonably unavailable to the RWQCB at the Effective Date is discovered by RWQCB, and which if known to RWQCB at the Effective Date would have materially affected RWQCB's approval of the Scope of Work as set forth in Exhibit B.
- (v) The right of the RWQCB to assert that the Members are jointly and severally liable for the Scope of Work and/or the Work.

17. Covenant Not to Sue by the Members.

(a) Member Covenant Not To Sue RWQCB. Subject to the provisions of Section 15 (Dispute Resolution), and for as long as the Members are in good faith substantially complying with the obligations of

this Addendum, the Members, and each of them, hereby covenant not to sue and agree not to assert any claims or causes of action against the RWQCB or its officers and employees regarding any of the Matters Addressed in this Addendum.

(b) Limitations. This covenant not to sue shall not apply in the event that the RWQCB commences a cause of action or issues an order pursuant to RWQCB's reservation of rights set forth in Section 16 against a Member, but only to the extent that the Member's claims arise from the material facts or law that are the basis of relief the RWQCB is seeking pursuant to the applicable Section 16 RWQCB reservation of rights.

(c) Reservation of Rights.

(i) This covenant not to sue shall not apply to the right of the Members to assert that joint and several liability does not apply under the California Water Code or any other statute, regulation, judicial decision, or to the Members' obligations under this Addendum.

(ii) The Members reserve, and this Addendum is without prejudice to, claims against the RWQCB, for money damages for personal injury (including injury, disease, or death) or property damage (including loss or loss of use) caused by the negligent act or omission, recklessness, or willful misconduct of any employee of the RWQCB while acting within the scope of his or her office, or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. However, any such claim against the RWQCB shall not include a claim for any damages to the extent caused by the negligent, reckless, or intentional acts or omissions of any person, including any consultant or contractor, who is not a RWQCB or SWRCB employee; nor shall any such claim include a claim based on RWQCB's approval or oversight of the Scope of Work or the Work overall, or any phase or sub-phase of the Work for which the Members are responsible under this Addendum. The foregoing does not constitute a waiver of sovereign immunity or a waiver of any other defenses that the RWQCB may assert.

18. Further Actions Necessary to Protect Public. Except as specifically provided in this Addendum, nothing in this Addendum shall limit the power and authority of the RWQCB to take, direct, or order all actions necessary to protect

public health, safety, or welfare, to protect the environment, or to prevent, cleanup, abate, remediate or minimize an actual or threatened release or discharge of hazardous substances, waste, pollutants, or contaminants in, on, at, or from the Creek and/or Lake. Further, nothing herein shall prevent the RWQCB from seeking legal or equitable relief to enforce the terms of this Addendum.

19. Waiver of Equitable Defenses. In any administrative or judicial proceeding initiated by the RWQCB to enforce this Addendum, the Members shall not contest their obligation to comply with this Addendum; provided, however, that nothing in this Section affects the enforceability of the covenants not to sue and/or Reservation of Rights set forth in Sections 16 and 17. In such proceedings, the Members may raise any defenses that are relevant to the issue of whether or not they have complied with the terms of the Addendum.

20. Tolling Agreement. The RWQCB and the Members agree that all statutes of limitations applicable as of the Effective Date to any rights, claims, causes of action, counterclaims, cross-claims, administrative claims or actions, and/or defenses with respect to the Matters Addressed that the RWQCB could assert against the Members or the Members could assert against the RWQCB as of the Effective Date shall be tolled for the period between the Effective Date and the Tolling Termination Date (as defined below), and this tolling period shall be excluded from all computations of any applicable period of limitations. Such potentially applicable statutes of limitations that are tolled by this Addendum include, without limitation, any applicable time limits within which an action may be commenced against the RWQCB under the provisions of the California Tort Claims Act, including, without limitation, §945.6 of the California Government Code. The Tolling Termination Date shall mean the date upon which the Tolling Agreement provided for herein terminates. The Tolling Termination Date, unless otherwise extended, shall be the earlier of: (a) sixty (60) days after the termination of this Addendum pursuant to Section 32 due to a breach of the Addendum by the Members; (b) sixty (60) days after final termination of this Addendum by the RWQCB pursuant to Section 33 of this Addendum; or (c) sixty (60) days after the issuance of a No Further Action Letter as described under Section 12 of this Addendum.

21. Contribution Protection. With regard to claims for contribution against one or more of the Members raised by any Non-Member, the RWQCB agrees that the Members, and each of them, have earned certain protection from such contribution actions or claims related to the Matters Addressed in this Addendum, provided the RWQCB can legally provide such protection. As and for such protection to the maximum extent practicable, the RWQCB agrees to provide

without charge to the Members requested support to the affected Members in their defense, counterclaim, and/or cross claim against any contribution claim or action raised by any Non-Member and arising out of or related to the Matters Addressed. Unless the RWQCB elects to do so, such reasonable support shall not include the RWQCB becoming a party in any judicial or administrative proceeding; and, shall include cooperating with the affected Member to provide requested evidence the affected Member deems reasonably necessary for such defense, counterclaim, or cross complaint. Such evidence shall consist of evidence reasonably available to RWQCB, such as declarations of RWQCB staff and publicly-available documents in the RWQCB files pertaining to proceedings affecting San Marcos Creek and/or Lake San Marcos.

22. Member Reservation of Rights Against Non-Member Parties. Nothing in this Addendum shall be construed to create any rights in, or grant any cause of action to, any Non-Member. The Members hereby expressly reserve, and this Addendum preserves and is without prejudice to, any and all rights and remedies (including, but not limited to, any right to contribution, indemnification and/or reimbursement), defenses, claims, demands, and causes of action that the Members, or any of them, may have with respect to any Non-Member regarding any matter whatsoever.

23. No Admission of Liability. While the Members have shown a high level of cooperation in responding to the water quality conditions existing in the Impaired Water Bodies, and as a tenet of this voluntary process, neither the execution of this Addendum or the Agreement, nor the actions undertaken or to be undertaken by a Member in performance of either the Agreement or this Addendum, shall in any way constitute or otherwise be construed as an admission of any fact, liability or responsibility in any way related to the Matters Addressed or any water quality or other conditions existing or threatened in the Impaired Water Bodies. The Members expressly retain the right to controvert, deny, and fully defend against any claim, demand, penalty, cause of action, or proceeding of whatsoever kind or nature made or brought, specifically including a claim that joint and several liability applies to the Member under this Addendum, in any administrative, judicial, or other forum, by any federal, state, or local governmental agency having jurisdiction or by any organization or person, arising out of or in any way in connection with the Matters Addressed or any water quality or other conditions in the Impaired Water Bodies

24. Notification of RWQCB Regarding Claims for Contribution. The Members agree that with respect to any suit or claim for contribution brought by them for matters related to this Addendum, they will notify RWQCB in writing at

least sixty (60) days prior to the initiation of any legal action. The Members also agree that with respect to any suit or claim for contribution brought against them for matters related to this Addendum, they will notify RWQCB in writing of such suit or claim within fifteen (15) days of service of the complaint or other claim on the Members, or any of them. In addition, the Members shall notify the RWQCB within ten (10) days of service or receipt of any motion for summary judgment, within ten (10) days of receipt of any order from a court setting a case for trial, and provide reasonable prior notice for ex parte hearings or injunctive actions.

25. No Waiver of RWQCB Claims. Except as provided in this Addendum, in any subsequent administrative or judicial proceeding initiated by the RWQCB for injunctive relief, recovery of response costs, or other relief relating to the Matters Addressed or allowed by this Addendum, neither the RWQCB nor the Members shall assert, or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the RWQCB or the Members in the subsequent proceeding were or should have been brought in the instant case.

26. Termination and Satisfaction. This Addendum shall not terminate until the earlier of (a) termination of this Addendum pursuant to Section 32 due to a breach of the Addendum by the Members; (b) final termination of this Addendum by the RWQCB pursuant to Section 33 of this Addendum; or (c) the RWQCB issues a No Further Action Letter or similar document evidencing the completion of the Scope of Work as described in Section 12 and achievement of the Project Purpose as set forth in Section 4 hereof for which the Members are obligated pursuant to this Addendum. Upon the earlier of these events, this Addendum shall be terminated except for the provisions of Sections 21, 23, 25, 27, 28, and 31, and such other continuing rights and obligations of the parties under this Addendum.

27. Government Liabilities. The State of California, including the RWQCB, shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the Members or their contractors, consultants, or representatives in carrying out the Scope of Work or other activities pursuant to this Addendum; and, the State of California, including the RWQCB, shall not be construed as a party to any contract entered into by the Members with contractors, consultants, or representatives for the purpose of carrying out Scope of Work activities pursuant to this Addendum or for any other purpose.

28. De Minimis Settlements. As long as there are three or more Members to the Agreement and this Addendum at the time that those Members with the power

to vote pursuant to the Agreement agree in writing upon a *de-minimis* Settlement in respect of a Member(s), the Members may then submit the proposed *de-minimis* settlement to the RWQCB for approval. A *de-minimis* settlement shall be based on credible evidence that a Member(s) should be released from the Agreement and this Addendum because its responsibility for the Scope of Work and the Work overall is *de minimis*. If, based on the credible evidence presented to the RWQCB, the RWQCB concurs with the proposed *de-minimis* settlement because it appears on the basis of such credible evidence that the effects of the discharge and/or Other Causal or Contributing Factors for which the proposed *de minimis* Member(s) are responsible are minimal in quantity and/or impact when compared with the aggregate effects of all other discharges and/or Other Causal or Contributing Factors for which the proposed *de minimis* Member(s) are not responsible, then the proposed *de minimis* settlement shall be deemed approved. The *de-minimis* Member(s), upon meeting its obligations under the *de-minimis* settlement agreement, shall be entitled to all of the benefits and protections afforded Members under this Agreement, such as, the RWQCB Covenant Not to Sue, Contribution Protection, and the right to receive a No Further Action Letter at the time a No Further Action Letter is provided to Members under Section 12. Similarly, the *de minimis* Member(s) shall remain obligated to the RWQCB and the remaining Members under Sections 17, 19, 20, and 25.

29. Future Cooperation By the RWQCB. The RWQCB and the Members recognize that the Members represent a subset of those persons, entities, and agencies that may be responsible for causing or contributing to Nutrient impairment in the Impaired Water Bodies. The RWQCB agrees to compel response actions including, without limitation, investigative studies, abatement, and/or clean-up actions, as it determines to be appropriate in the exercise of its discretion, under Water Code Sections 13225, 13267, and/or 13300 et seq., and as appropriate, to pursue recovery of future response or oversight costs and penalties against persons, political subdivisions, and other organizations not a party to the Agreement and this Addendum (i.e., Non-Members) whose discharges and/or other acts or omissions have caused, permitted, or contributed to Nutrient impairment in the Lake and/or the Creek, where the RWQCB determines that sufficient information exists to warrant such action and that such action is consistent with its statutory authority. The RWQCB agrees to work in good faith to provide the Members with reasonable access to documents concerning unlawful discharges of Nutrients into, and other causal or contributing acts or omissions responsible for Nutrient impairment in the Lake and/or the Creek.

30. Communications. All approvals and decisions of the RWQCB regarding submittals and notifications related to the Impaired Water Bodies by any person or entity will be communicated to the Members in writing by the Executive Officer or his designee within a reasonable time, but in no event longer than thirty (30) days after receipt of such information. No informal advice, guidance, suggestions or comments by the RWQCB regarding reports, plans, specifications, schedules or any other writings by the Members shall be construed to relieve the Members of their collective obligation to obtain such formal approvals as may be required by this Addendum.

31. Record Retention. Unless otherwise provided for in this Addendum, all data, reports and other documents shall be preserved by the Members for a minimum of five (5) years after the conclusion of all of the Scope of Work under this Addendum. If the RWQCB requests that some or all of these documents be preserved for a longer period of time, the Members shall either comply with that request and deliver the documents to the RWQCB, or permit the RWQCB, at its own costs, to copy the documents prior to destruction. The Members shall notify the RWQCB in writing, at least thirty (30) days prior to destroying any documents prepared pursuant to this Addendum.

32. Event of Default.

Each of the following occurrences constitutes an Event of Default by the Members under this Addendum:

- (a) Any representation of the Members set forth in this Addendum, or otherwise delivered by a Member to RWQCB pursuant to this Addendum, which is false in any material respect when so made or furnished;
- (b) Work Group's failure to perform any material part of its obligations under this Addendum.

Upon the occurrence of an Event of Default, which is not cured by the Members within sixty (60) days (or such longer period if such default is not reasonably capable of being cured within such sixty (60) day period) after the date on which written notice of the Event of Default has been given to the Members by RWQCB, then RWQCB may exercise any right, power or remedy available to it under this Addendum, or otherwise available at law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate this Addendum upon written notice to Members, in which event RWQCB has no further obligations hereunder. No courses of dealing on the part of RWQCB or

delay or failure on the part of RWQCB, that is consistent with state law, to exercise any right will operate as a waiver of such right or otherwise prejudice RWQCB's rights, powers or remedies. RWQCB's decision to terminate this Agreement under subsection (b) is not subject to claim or dispute under Section 15. In the event RWQCB terminates the Addendum under this Section 32, RWQCB may make an equitable adjustment in the future Work required of the Members to achieve the Project Purpose taking into account the following:

- (c) The Scope of Work performed up to the effective date of termination.
- (d) The Members' collective and individual actual and reasonable costs of terminating any ongoing Work and the Members' collective and individual actual and reasonable costs of performing the Scope of Work completed up to the effective date of termination.
- (e) The amount of any Administrative Costs paid by the Members.
- (f) Any amounts for Administrative Costs owing by the Members to RWQCB under the terms of this Addendum.

33. RWQCB Termination of Addendum and Removal of Member(s).

(a) Termination of Addendum. In the event the RWQCB reasonably determines that further implementation of this Addendum will preclude achievement of the Project Purpose, as described in Section 4 hereof, the RWQCB may terminate this Addendum. However, the RWQCB agrees to provide at least sixty (60) days prior written notice to the Members of its intent to terminate the Addendum and the RWQCB's basis for taking such action, and to give the Members a reasonable opportunity to be heard and to present evidence in opposition to such action and to controvert the basis and evidence for the RWQCB's intended action. A determination by the RWQCB's Executive Officer to terminate this Addendum under Section 33 is final upon expiration of 60 days following the notice of intent to terminate unless one or more Members seek reconsideration of the Executive Officer's determination by the RWQCB. A decision by the RWQCB to uphold the Executive Officer's determination is final and is not subject to State Water Board or judicial review. Upon final RWQCB termination of this Agreement, the RWQCB has no further obligations hereunder.

(b) Removal of Member(s) from Addendum. In the event that the RWQCB reasonably determines that continued participation by a Member(s)

under the terms of this Addendum is interfering with or impeding the effective achievement of the Project Purpose, as described in Section 4 hereof, the RWQCB may terminate said Member(s) from this Addendum. Termination of a Member(s) under this Section 33(b) may not be used by the RWQCB as the basis for a decision to terminate the Addendum under Section 33(a). The RWQCB agrees to provide at least thirty (30) days prior written notice to the Member(s) of its intent to terminate said Member's or Members' further participation in this Addendum and the RWQCB's basis for taking such action and to provide the Member(s) with a reasonable opportunity to be heard and to present evidence in opposition to the RWQCB's intended action. The RWQCB's Executive Officer's decision to terminate a Member's or Members' participation in this Addendum under Section 33 is final upon expiration of thirty (30) days following the notice of intent to terminate unless the Member(s) seek reconsideration of the Executive Officer's determination by the RWQCB. A decision by the RWQCB to uphold the Executive Officer's determination is final and is not subject to State Water Board or judicial review. Upon final RWQCB termination of a Member's or Members' participation in this Addendum, the RWQCB has no further obligations under this Addendum to the Terminated Member(s).

34. General Provisions.

(a) Full Authority. Each of the Members executing this Addendum represents and warrants that it/he/she has the right, power, and authority to execute this Addendum, that all approvals on its part have been obtained to fully authorize and bind said Member under this Addendum, and further represents and warrants that it/he/she has the exclusive right to prosecute, compromise, and agree to the matters set forth herein, and that it has not sold, assigned, conveyed, or otherwise transferred such right. In addition, each Member shall delegate a representative having the responsibility and authority to implement the Scope of Work and this Addendum on behalf of such Member.

(b) Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgement or affidavit, if required, any and all documents and writings that may be necessary or proper to achieve the purposes of this Addendum.

(c) Statement of Compliance. Within thirty (30) days following any written request by the RWQCB or the Members, the recipient shall

execute and deliver a statement certifying that this Addendum is unmodified and in full force and effect or, if there have been modifications hereto, that this Addendum is in full force and effect as modified, that there are no current uncured defaults under this Addendum, and any other information reasonably requested.

(d) No Agency. It is expressly agreed that, in carrying out this Addendum, no relationship of principal and agent shall ever exist between or among the parties hereto.

(e) Entire Agreement. This Addendum sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings, or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Addendum. To the extent this Addendum conflicts with any prior agreements, this Addendum shall control.

(f) Incorporation of Recitals. The recitals to this Addendum, above, are hereby incorporated herein and made a part hereof.

(g) Construction of Addendum. This Addendum is the product of arms-length negotiations between and among the parties and their respective attorneys. Each of the parties hereto expressly acknowledges and agrees that this Addendum shall be deemed to have been mutually prepared so that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Addendum. The paragraph and section headings used in this Addendum are for reference only and shall not affect the construction of this Addendum.

(h) Notices. All notices called for pursuant to this Addendum shall be given in writing by personal delivery, or recognized overnight delivery service which obtains the signature of the addressee or its agent as evidence of delivery, or confirmed electronic transmission or telecopy/facsimile. All such notices or communications shall be deemed to have been given and received on the first to occur of: (i) actual receipt by the respective addressees listed below; or (ii) the date of delivery by recognized overnight delivery services; and/or (iii) upon receipt by the sender of electronic confirmation of delivery of such notices or communications sent by

telecopy/facsimile or e-mail. A party may change its address by giving written notice thereof to the other in accordance with the provisions of this section.

MEMBERS:

City of San Marcos
1 Civic Center Drive

San Marcos, CA 92069
ATTN: Ms. Erica Ryan

WITH A COPY TO:

John J. Lormon, Esq.
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101-4469

RWQCB:

San Diego Regional Water Quality Control Board
9174 Sky Park, Suite 100
San Diego, CA 92123-4353
ATTN: Mr. David Gibson, Executive Officer

WITH A COPY TO:

State Water Resources Control Board
Office of Chief Counsel
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353PO Box 100
Sacramento, CA 95812-0100
ATTN: San Diego RWQCB Counsel

(i) Representations As To Due Execution. The parties represent and warrant to each other that this Addendum has been duly executed and appropriately authorized by all required governmental and other authorizations.

(j) Severability. It is agreed that if any terms, covenants, or provisions of this Addendum shall be illegal or unenforceable, such illegality

or unenforceability shall not invalidate the entire Addendum, but this Addendum shall be construed as if the provision containing the illegal or unenforceable part were not a part hereof.

(k) Continuing Effect. This Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(l) Choice of Law. This Addendum shall be interpreted in accordance with and governed in all respects by the laws of the State of California, without regard to any conflict of laws provisions.

(m) Amendment. This Addendum may only be amended by a written document executed by all parties hereto, and the Exhibits may be amended by the signatories to those Exhibits, as applicable.

(n) Counterparts. This Addendum may be executed in any number of counterparts.

IN WITNESS WHEREOF, we have signed this Addendum.

SAN DIEGO REGIONAL WATER QUALITY
CONTROL BOARD

By: Dawn W. R.
Its: Executive Officer

Dated: June 17, 2011

COUNTY OF SAN DIEGO

By: _____
Its: _____

Dated: _____, 2011

or unenforceability shall not invalidate the entire Addendum, but this Addendum shall be construed as if the provision containing the illegal or unenforceable part were not a part hereof.

(k) Continuing Effect. This Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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(n) Counterparts. This Addendum may be executed in any number of counterparts.

IN WITNESS WHEREOF, we have signed this Addendum.

SAN DIEGO REGIONAL WATER QUALITY
CONTROL BOARD

By: _____
Its: _____

Dated: _____, 2011

COUNTY OF SAN DIEGO

By: R. P. Peay
Its: PCO
Dated: 6/13, 2011

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL.

BY Jean Peak
SENIOR DEPUTY

CITY OF SAN MARCOS

By: _____

Its: _____

Paul Malone
City Manager

Dated: June 21, 2011

CITY OF ESCONDIDO

By: _____

Its: _____

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____

Its: _____

Dated: _____, 2011

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: _____

Its: _____

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: _____

Its: _____

Dated: _____, 2011

CITY OF SAN MARCOS

By: _____
Its: _____

Dated: _____, 2011

CITY OF ESCONDIDO

By: _____
Its: _____

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: Bruce Gil
Its: Deputy District Director, Environmental
Dated: 6/21, 2011

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: _____
Its: _____

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: _____
Its: _____

Dated: _____, 2011

CITY OF SAN MARCOS

By: _____
Its: _____

Dated: _____, 2011

CITY OF ESCONDIDO

By: _____
Its: _____

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____
Its: _____

Dated: _____, 2011

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: 
Its: Assistant Superintendent, Business Services

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: _____
Its: _____

Dated: _____, 2011

CITY OF SAN MARCOS

By: _____
Its: _____

Dated: _____, 2011

CITY OF ESCONDIDO

By: _____
Its: _____

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____
Its: _____

Dated: _____, 2011

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: _____
Its: _____

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: 
Its: GENERAL MANAGER

Dated: JUL 9 7, 2011

EXHIBIT A

Carlsbad Watershed Management Area

Carlsbad WMA

SECTION 5

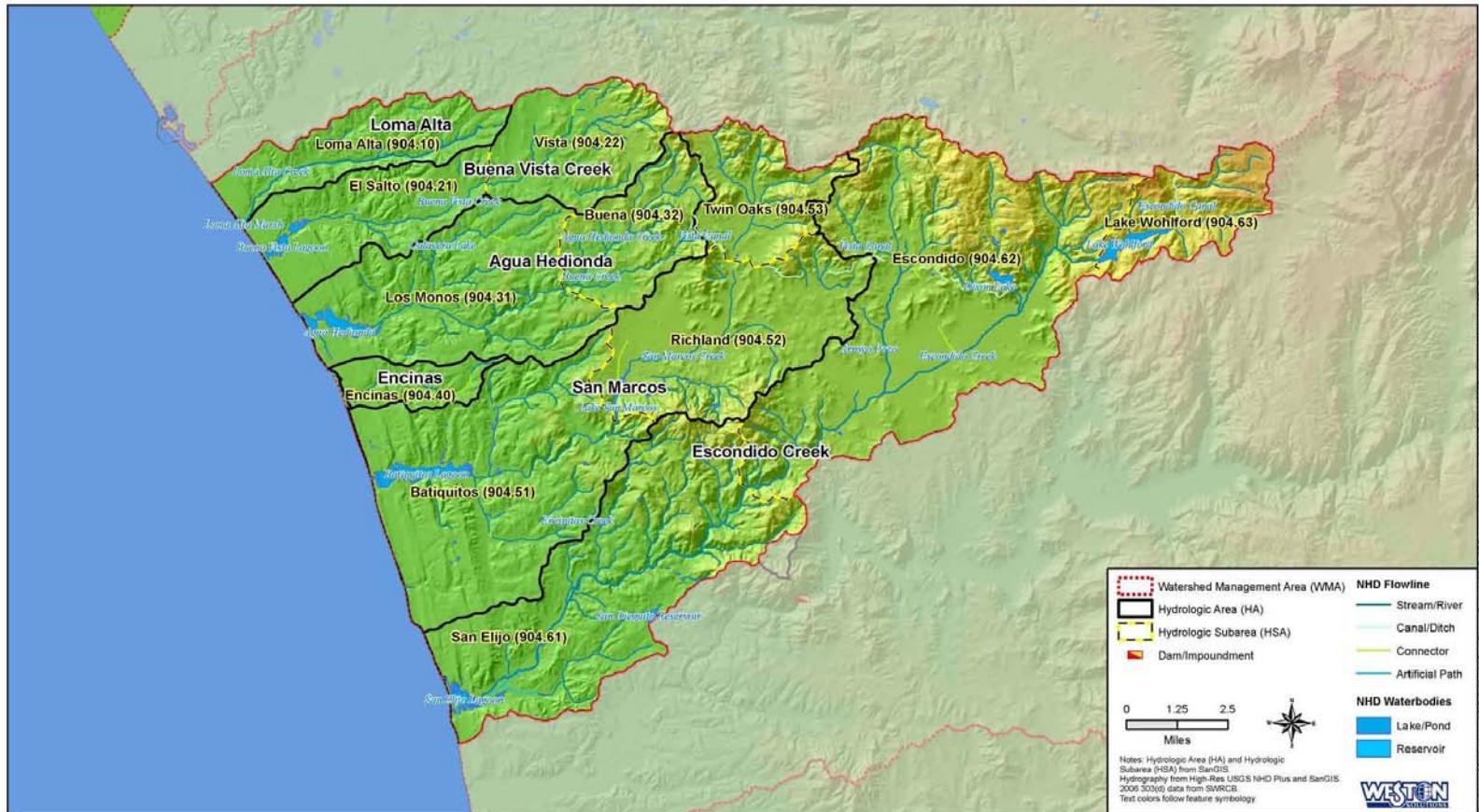


Figure 5-1. Carlsbad Watershed Management Area

EXHIBIT B

Scope of Work Diagnostics Phase as of June 8, 2011¹

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
Phase I				
Watershed, QAPP, Work Plan, and Public Participation Plan – Tasks A, B,				
A	Develop Draft and Final Public Participation Plan by Lead Agency (San Marcos)	Provide Public Opportunity for comment, review of draft work products resulting in diagnostics	✓	
1	<i>Draft</i>	<i>Develop Draft Public Participation Plan</i>	✓	
2	<i>Final</i>	<i>Prepare Final Public Participation Plan</i>	✓	
B	Develop Work Plan and QAPP-	Provide Detailed Scope of Work on How Tasks Will be completed for Regulatory and Public Review and Develop Standardized Data Protocols	✓	
1	Draft Work Plan for Regulatory and Public Review and Comment	Prepare Draft Work Plan and Scope of Work	✓	
2	Develop Draft and Final QAPP (Surface Water, Water Quality, and Groundwater - if required – Contingency Task L) Monitoring Plan (SWAMP) For Monitoring and Research Tasks	Standardized Data Collection Protocols	✓	
3	Final Work Plan	Prepare Final Approved Work Plan Posted for Public	✓	

Notes:

¹ Schedule Start Date commences when Addendum B is Fully Executed.

² The Participation Agreement (“PA”) Work Group consists of Members - San Marcos, County, Caltrans, SMUSD, and VWD; and Non-Members –the City of Escondido.

³ Other Parties, that sign on to the PA after the PA is executed by all initial Members, are expected to work cooperatively with the Members and other Non-Members as a part of the Work Group.

⁴ CDC/La Jolla Development Group. The Executive Officer of the RWQCB has indicated he intends to draft an Enforcement Order to the Lake San Marcos Owner for RWQCB consideration. This column is included in the event that such an Enforcement Order is issued.

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
Phase II				
Watershed Model Data Assessment and Collection (Non-lake) – Tasks C, D				
C	Watershed Model Existing Data Input Assessment and Additional Data Collection	Identify and Collect Data for Watershed Model	✓ <i>(PA Work Group to Coordinate overall consultant model effort(s)/data submittal with other parties)</i>	<i>(provide required data to consultant preparing model under Tasks D and E and lake Data Inputs from Phase V)</i>
1	Surface Water Additional Data Required for Model (TBD)	Provide Missing Data to Model	✓	
2	Assess Water Quality Data Gaps for Watershed Model and Compile. Specify Additional Data Required	Provide Missing Data to Model	✓	
3	Obtain Water Quality Additional Data Required for Model (TBD)	Provide Missing Data to Model	✓	
4	Quantify Surface Inflow/Outflow of Lake (Assumes 10 sites around Lake, continuous monitoring, equipment purchase)	Understand Water Budget Identify Surface and Groundwater Influences to Determine Source Loads of Nutrients	✓	
5	Quantify Nutrient Concentrations in Surface Inflows/Outflows	Collect Field Data - (4 dry/3 wet at Task 5 at 10 Locations)	✓	
6	Quantify Atmospheric Deposition of Nutrients(3 samplers; 10 samples each (30 total); plus data management/analysis)	Determine other Sources of Nutrient Loading of Lake	✓	
TASK I-5	Lake Bathymetry for Watershed Model – will be conducted in Phase II by either PA Work Group OR Lake San Marcos Owner – To be Discussed with RWQCB prior to proceeding	See Task I-5	✓	

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
7	Assess Existing Groundwater Data Available and Adequacy for tasks D or L Identify Data Gaps for Tasks D or L. Review result with RWQCB and Determine if Contingency Task is Required based on existing data assessment and recommendation report.	<i>Determine if enough Existing groundwater data is available and adequate to Conduct Task D or if Project Specific Data is required</i>	✓	
D	Determine Groundwater Quality/Quantity into Lake	Determine Groundwater Influence Nutrient Load to Lake Assessment Simple Calculations based on existing data	✓ (PA Work Group to Coordinate overall consultant model effort(s)/data submittal with other parties)	(provide required data to consultant preparing model under Tasks D and E)
1	Simple Calculations based on existing data	Determine Groundwater Influence Nutrient Load to Lake Based on Existing Available Data	✓	
2	Calculate Groundwater Nutrient Budget	Calculate Groundwater Nutrient Budget based on existing available data	✓	
3	Calculate Groundwater External Nutrient Loading	Calculate Groundwater External Nutrient Loading	✓	

Phase III
Watershed Model and Diagnostics- Tasks E, F, G

E	Surface Water Model	Develop Watershed Model for Assessment of Water Balance and Nutrient Loading (internal and external) to Creek and Lake	✓ (PA Work Group to Coordinate overall consultant model effort(s)/data submittal with other parties)	(provide required data to consultant preparing model under Tasks C and D)
1	Surface Water (Hydrological) Concept Model Development (Surface Water Data: Surface Elevations, Runoff Rates) US EPA Model (TetraTech)	Develop Correct Inputs to model to assess external nutrient loads	✓	
2	Refine Conceptual Model	Input Additional/Missing Data to Refine Model	✓	

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
F	Water Quality Model (Use EPA Model - TetraTech)		✓ <i>(PA Work Group to Coordinate overall consultant model effort(s)/data submittal with other parties)</i>	<i>(provide required data to consultant preparing model under Tasks C and D)</i>
1	Concept Model - Surface Water Quality	Develop Correct Inputs to model to assess external nutrient loads	✓	
2	Refine Concept Model- Water Quality Inputs	Input	✓	
3	Calibrate and Validate Surface Water Model	Run Model to Determine surface flow input	✓	
4	Quantify Groundwater Inflow/Outflow	<i>Run Model with Data Results from Task F</i>	✓	
G	Understand Nutrient Budget	Identify Surface and Groundwater Influences into Lake to Determine Source Loads of Nutrients	✓	
1	Calibrate and Validate Surface Water Model	Calibrate and Validate Model Data	✓	
2	Calculate External Nutrient Loadings (Quarterly)	Calibrate and Validate Model Data	✓	

PHASE IV
Deliverables and Reports - Watershed Diagnostics

H	Deliverables/Reports	Summary of Work	✓	
1	Draft Report with Clean Up and Implementation Plan	Prepare draft report of findings from all work in Diagnostics phase for review	✓	
2	Draft Summary Review of Findings for Public Review	Opportunity for Public Review and Input on Preliminary Findings	✓	
3	Present alternatives and Recommendations	Prepare presentation	✓	
4	Final Report with Clean Up and Implementation Plan	Prepare Final Report	✓	
5	Deliverables/Reports	Summary of Work	✓	

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
Phase V – In Lake Processes and Lake Management - QAPP, Work Plan, In Lake Diagnostics and Biological Measurements, Lake Management Data, and Analysis of Data Report – To Be Conducted Concurrently with other Phases				
<i>Note – Tasks Denoted by a ⚡ are Data Gaps Recommended by Dr. Anderson's Final Report , Water Quality Management in Lake San Marcos Analysis of Available Data Final Report February 2010 (Dr. Anderson Report) – Gaps in Understanding i-v pgs 13 and 14. Other Tasks are related to implementing those Data Gaps (ie QAPP, Work Plan). Tasks Denoted by a ⚪ are generalized needs identified by the Dr. Anderson Report ⚪) – Gaps in Understanding item v pg 14</i>				
1	Understand In-Lake Process	Determine Internal Nutrient Loading of Lake	✓	
1	Develop Draft QAPP and Monitoring Plan (SWAMP) and Work Plan For In Lake Only Processes Data Collection and Lake Management Tasks I, J, K	Standardized Data Collection Protocols	✓	
2	Review Draft Work Plan and QAPP by RWQCB and PA Work Group	Approval by RWQCB/ PA Work Group	✓	
3	Final Draft Work Plan and QAPP		✓	
4⚡	Depth profiling (2 vertical profiler systems with pH, EC, DO, temp, Turb) and Quarterly oversight of Task - sonde maintenance, data management.	Collect Seasonal Lake Data	✓	
5⚡	Determine Depth and Volume of Accumulated Sediment (Sub-bottom and bathymetric survey conducted at the same time)	Understand Internal Loading and Recycling of Lake Nutrients	✓	
6⚡	Contributions from Shallow Sediments	Understand Internal Loading and Recycling of Lake Nutrients	✓	
7⚡	Sediment Chemistry	Understand Internal Loading and Recycling of Lake Nutrients	✓	
8⚡	Core Sediment Samples	Understand Internal Loading and Recycling of Lake Nutrients	✓	
9⚡	Water Chemistry - In-lake Sampling	Understand Seasonal Lake Water Quality	✓	

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
10●	Biological Measurement - Biomass	Determine Biological influence of Nutrient Internal Loading – Determine ecology and food web of lake and influence on sediment recycling	✓	
11●	Biological Measurement - Lake Flora	Determine Biological influence of Nutrient Internal Loading determine influence on sediment recycling and water quality	✓	
12●	Fish and wildlife study	Determine Biological influence of Nutrient Internal Loading – determine influence on sediment recycling and water quality	✓	
13●	Food Web - Trophic Study	Determine Biological influence of Nutrient Internal Loading - evaluate zooplankton community effect on water column and sediment recycling	✓	
J	Understand Lake/Golf Course Well Use and Management	Determine External and Internal Loading Influence and Sources of Nutrients at Lake	✓	
1●	Assess and Summarize Groundwater Pumping Records from Water Rights Permit From Lake	Understand Groundwater Budget	✓	
2●	Assess and Summarize Recreational Use Records(Boating) At Lake	Understand potential influences to internal recycling and sediment influence on Lake Water Quality	✓	
3●	Assess and Summarize Other Available Lake and Use Management Records	Understand potential influences to internal recycling of lake sediment	✓	
4	Interpret Lake Data and Estimate Affect on Nutrient Budget	Understand potential influences to internal recycling	✓	

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
K	Lake Only Data Analysis and Interpretation	Identify Direct Internal and External Sources of Nutrient Loading to Lake (i.e. Immediate vicinity of Lake)	✓	
1♦	Direct Lake water quantity inputs: groundwater vs. surface water sources, including seasonal and annual variation	Understand seasonal effects to various sources of influence to lake	✓	
2♦	Relative proportions of different sources of groundwater, including seasonal and annual variation directly influencing lake levels	Understand groundwater influence to nutrient loading into Lake	✓	
3♦	Relative loadings of N and P from various external sources to Lake, including seasonal and annual variation	Understand influences to nutrient loading	✓	
4⊗	Amount of accumulated sediment in Lake; historical decrease in Lake water storage volume	Understand potential influences to internal recycling	✓	
5⊗	Amounts of N and P in Lake sediment reservoir	Understand potential influences to internal recycling	✓	
6⊗	Seasonal patterns in Lake thermal stratification; estimated frequency of Lake turnover	Understand potential influences to internal recycling	✓	
7♦	Relative importance of external vs. in-Lake sources of N and P	Understand nutrient budget for lake	✓	
8⊗	Historical patterns in Lake sediment chemistry based on core samples	Understand potential influences to internal recycling	✓	
9⊗	Estimated quality of sediment that would be released from the Lake if water is released from the lower Dam outlet (based on core sample results)	Understand potential influences to internal recycling	✓	

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
10★	Biological condition of Lake, effects of current nutrient conditions on biota, and effects of fish and wildlife on current nutrient levels	Understand influences to nutrient loading	✓	
11	Draft Summary Review of Findings and Lake Management Recommendations for Public Review	Opportunity for Public Review and Input on Preliminary Findings	✓	
12	Final Summary Review of Findings and Lake Management Recommendations		✓	

Phase VI

CONTINGENCY TASK – ADDITIONAL GROUNDWATER DATA AND GROUNDWATER MODEL TO OCCUR INSTEAD OF TASK D

This task will not be initiated until review and assessment of findings from Task by RWQCB and PA Work Group are inconclusive

L★ ●	Develop Groundwater Model	Determine Groundwater Influence Nutrient Load to Lake Based on Modeling and focused Data Collection	✓	
1	Select Groundwater Module(s)	<i>Identify appropriate EPA Ground water modules for nutrient load</i>	✓	
2	Conceptual Groundwater Model	Develop data inputs for concept groundwater model	✓	
3	Refine Conceptual Model	Refine data sets for groundwater model and Assess Ground Water Data needed to complete model inputs.	✓	
4★ ●	<i>Gather Additional Field Data Required for Model Completion</i>	Based on Data, gather current field data to complete refined concept model.	✓	
5★ ●	Differentiate Groundwater Sources into lake – Groundwater Quality	Identify Groundwater Nutrient Sources into lake (legacy Agriculture, existing Agriculture, other)	✓	
6★ ●	Differentiate Groundwater Quality /quantity into Lake	Determine Groundwater quality and quantity inputs into lake	✓	
7	Understand Ground Water Budget into Lake	- Calibrate/Validate Groundwater Model	✓	

Task No.	Task Description	Objective	PA Work Group ^{2,3} Scope of Work	Lake San Marcos Owner(s) ⁴ Scope of Work
8 ●	Understand Groundwater Nutrient Budget Into lake – Collect Field Data	Quantify Nutrient Concentrations in Groundwater inflow/outflow	✓	
9	Understand Groundwater Nutrient Budget -	Calibrate and Validate Groundwater Module	✓	
10	Calculate Groundwater External Loading		✓	

Lake San Marcos Diagnostics Phase Estimated Schedule

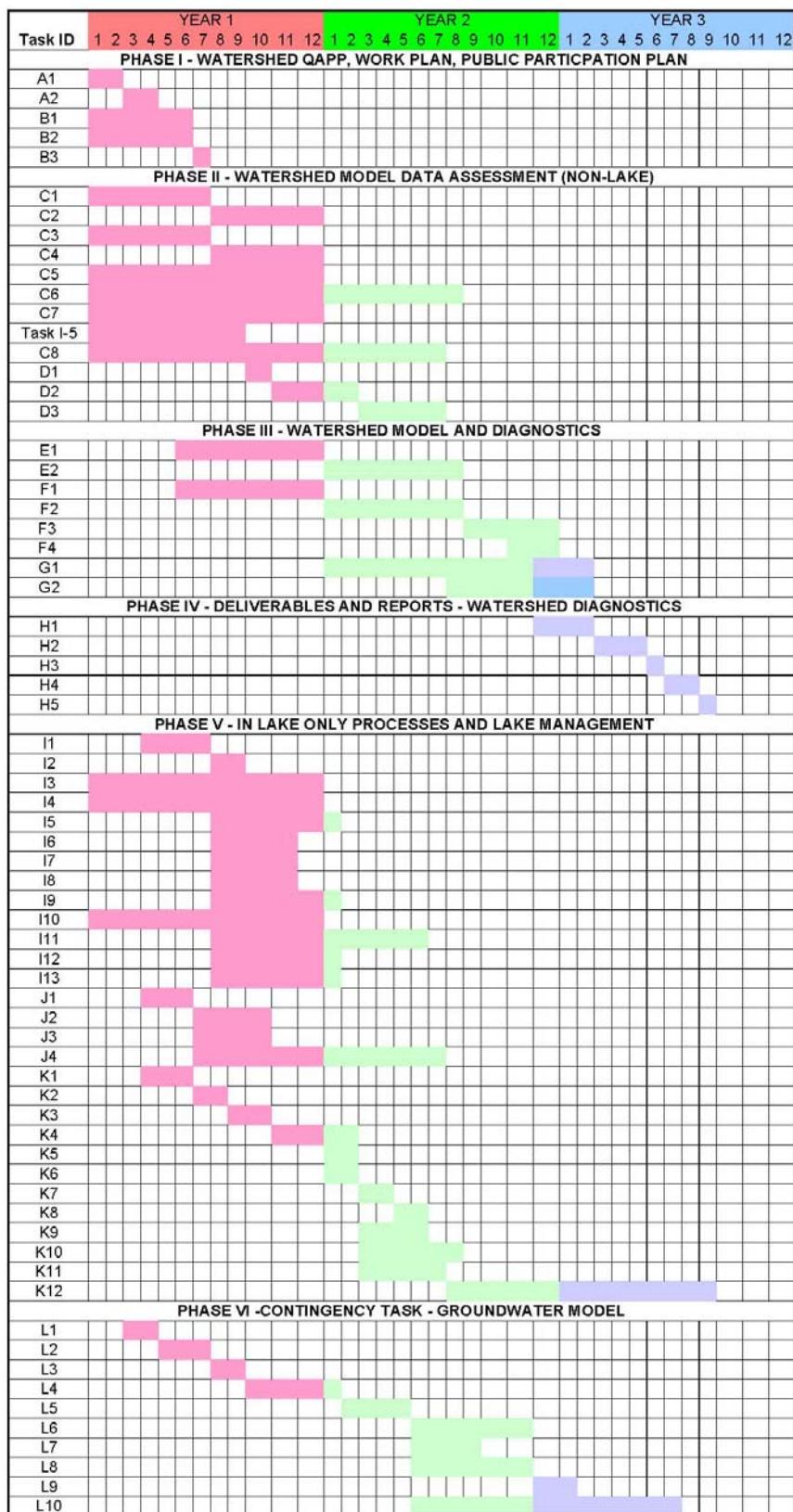


EXHIBIT C

Scope of Work Amendment Form

The Scope of Work attached to Addendum B is hereby amended as of this
____ day of _____, 20____, by the following changes:

IN WITNESS WHEREOF, we have signed this Amendment to the Scope of Work attached as Exhibit B to Addendum B.

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

By: _____
Its: _____

Dated: _____, 20____

**ADDENDUM C
TO THE PARTICIPATION AGREEMENT**

**SAN MARCOS UNIFIED SCHOOL DISTRICT
PROVISIONS**

**ADDENDUM C
TO THE PARTICIPATION AGREEMENT**

San Marcos Unified School District Provisions

The Participation Agreement (herein called the "Agreement") is hereby amended by this Addendum C (the "Addendum"). This Addendum is entered into this _____ day of December 2010 by and between the undersigned political subdivisions of the State of California, municipalities, other organizations, and individuals (herein collectively comprising the "Members"), and the SAN MARCOS UNIFIED SCHOOL DISTRICT ("SMUSD"), to provide the following conditions:

1. SMUSD shall be joined as a Member pursuant to Section 5.2 of the Agreement vested in all the rights and obligations of Members under the Agreement; and, subject only to the provisions of Paragraph 2 of this Addendum, SMUSD agrees to be bound by and to fully comply with all the terms and conditions of the Agreement.

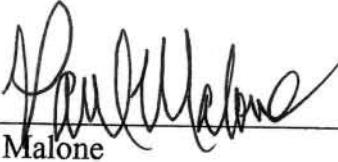
2. Notwithstanding anything in the Agreement to the contrary, SMUSD's total Shared Costs, calculated as its Interim Allocation under Section 8.2 of the Agreement, shall equal the sum of \$4,000 per year for the first two years that SMUSD is a Member under the Agreement. SMUSD shall make two payments of Four Thousand Dollars (\$4,000) each to the City of San Marcos, the Program Manager under the Agreement, the first of which shall be due by March 31, 2011 and the second of which shall be due by January 31, 2012. These payments shall constitute payment in full for SMUSD's Section 8 Shared Cost obligations for the first two years that SMUSD is a Member under the Agreement. In the event that SMUSD continues its membership in the Agreement after the first two years, SMUSD's obligation to make future payments of Shared Costs, beginning in the third year that SMUSD is a Member under the Agreement shall be determined in accordance with all the terms and conditions of the Agreement including, without limitation, Section 8 thereof.

3. The San Diego Regional Water Quality Control Board (the "Regional Board") will execute Addendum B (providing that Members will not be subject to enforcement actions by the Regional Board for past discharges alleged to have caused or contributed to Nutrient impairment in Lake San Marcos or San Marcos Creek).

4. The execution of Addendum B by the Regional Board is a condition precedent to the enforceability of the Agreement against SMUSD.

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Addendum.

CITY OF SAN MARCOS

By: 

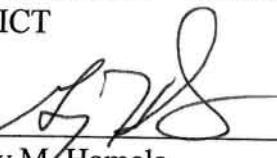
Paul Malone

Its: City Manager

Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: 2/28, 2011

SAN MARCOS UNIFIED SCHOOL
DISTRICT

By: 

Gary M. Hamels

Its: Assistant Superintendent of
Business Services

Address: 255 Pico Avenue, Suite 250
San Marcos, CA 92069

Dated: Feb 24, 2011

**ADDENDUM “D”
TO THE PARTICIPATION AGREEMENT**

**CALIFORNIA DEPARTMENT OF TRANSPORTATION
PROVISIONS**

**ADDENDUM D
TO THE PARTICIPATION AGREEMENT**

California Department of Transportation Provisions

The Participation Agreement (herein called the “Agreement”) is hereby amended by this Addendum D (the “Addendum”). This Addendum is entered into this ____ day of June 2011 by and between the undersigned political subdivisions of the State of California, municipalities, other organizations, and individuals (herein collectively comprising the “Members”), and the CALIFORNIA DEPARTMENT OF TRANSPORTATION (“Caltrans”), to provide the following conditions:

1. Caltrans shall be joined as a Member pursuant to Section 5.2 of the Agreement vested in all the rights and obligations of Members under the Agreement; and, subject only to the provisions of Paragraph 2 of this Addendum, Caltrans agrees to be bound by and to fully comply with all the terms and conditions of the Agreement.

2. By reason of constraints in California law and the California Constitution, Caltrans funds are subject to Legislative appropriation and availability of funds. By virtue of this Addendum “D” Caltrans encumbers and commits an amount not to exceed \$10,000.00 as its portion of the Shared Costs for Fiscal Year 2010-2011 (July 1 to June 30) and an additional \$10,000 for Fiscal Year 2011-2012 and no further funding will be available to address the Caltrans obligations assumed under the Agreement unless this Addendum “D” is amended by Caltrans and the Members to reflect a new enhanced funding limit. Matters pertaining to the availability of funds for Caltrans’ performance of the Agreement, as described above, shall in no way affect or limit the scope of Caltrans’ obligations under the Agreement apart from its ability to contribute funds to meet such obligations. Caltrans shall exercise reasonable efforts to obtain funding to meet its funding obligations under the Agreement once such obligations can be determined. Caltrans’ and the other Members’ funding obligations may be determined in phases along with the implementation of successive phases of the Work and Caltrans agrees to use reasonable efforts to make funding available to meet its obligations for such Work phases. Once Caltrans’ Final Allocation is determined, then it will revise the dollar amount requested to address Caltrans’ obligations, and its fair share of liability as determined, under the Agreement. Further financial participation is expressly contingent on further Legislative appropriation.

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Addendum.

CITY OF SAN MARCOS

By: Paul Malone
Paul Malone
Its: City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: JUNE 21, 2011

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: _____
Bruce April
Its: Deputy District Director
Address: 4050 Taylor Street, MS 130
San Diego, CA 92110

Dated: _____, 2011

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Addendum.

CITY OF SAN MARCOS

By: _____
Paul Malone
Its: City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: Bruce April 242
Bruce April
Its: Deputy District Director
Address: 4050 Taylor Street, MS 130
San Diego, CA 92110

Dated: 6/21, 2011

**ADDENDUM E
TO THE PARTICIPATION AGREEMENT**

COUNTY OF SAN DIEGO PROVISIONS

**ADDENDUM E
TO THE PARTICIPATION AGREEMENT**

County of San Diego Provisions

The Participation Agreement (the “Agreement”) is hereby amended by this Addendum E (the “Addendum”). This Addendum is entered into this 24th day of February, 2011 by and between the undersigned political subdivisions of the State of California, municipalities, other organizations, and individuals (collectively, the “Members”), and the COUNTY OF SAN DIEGO (“County”), to provide the following conditions:

1. The County shall be joined as a Member pursuant to Section 5.2 of the Agreement, vested in all the rights and obligations of a Member under the Agreement; and, subject to the provisions of this Addendum, the County agrees to be bound by and to fully comply with all the terms and conditions of the Agreement.

2. Notwithstanding anything in the Agreement to the contrary, the County’s status as a Member under the Agreement shall terminate automatically, without further action of the County, upon completion of the Diagnostic Work, as described in Section 6.14 of the Agreement. For purposes of this Agreement, the Diagnostic Work shall be deemed complete upon the Members receiving written notice from the RWQCB that all such Diagnostic Work has been satisfactorily completed. Whether the termination of the County’s status as a Member under the Agreement shall occur before or after the Final Allocation, or any modification thereof, as described in Section 8.4 of the Agreement, the County shall remain liable for its Shared Costs for the Diagnostic Work assessed pursuant to the Interim and Final Allocations provided under Sections 8.2, 8.4, and 8.8 of the Agreement. The County shall pay its portion of any Shared Costs for which they are liable pursuant to this Agreement no later than sixty (60) days following receipt of the Members’ assessment therefore. Provided the County shall have fully paid its portion of the Shared Costs for the Diagnostic Work, and otherwise met its obligations under the Agreement in respect of such Diagnostic Work, the County may again join the Agreement as a New Member under Section 5.2 thereof.

3. Notwithstanding anything in the Agreement to the contrary, the County’s Interim Allocation of the Shared Costs for the Diagnostic Work under Section 8.2 of the Agreement shall equal the sum of \$50,000 per year for the first two years that the County is a Member under the Agreement; and, to meet such Interim Allocation obligations the County shall make two payments of Fifty Thousand Dollars (\$50,000) each to the City of San Marcos, the Program Manager under the Agreement, the first of which payments shall be due by July 1, 2011, and the second of which payment shall be due by July 1,

2012. These payments shall constitute payment in full for the County's Interim Allocation of the Shared Costs for the Diagnostic Work incurred by the Members for the first two years the County is a Member under the Agreement. The County's obligation to make future payments of Shared Costs, whether made under an Interim Allocation or Final Allocation, beginning in the third year of the County's membership in the Agreement shall be determined in accordance with all the terms and conditions of the Agreement including, without limitation, Section 8 thereof.

4. Section 8.14 of the Agreement defines "Incurred Transactional Costs" as "substantial resources" contributed to "the solicitation of Members and the negotiation and development of this Agreement, the Administrative Agreement with the Regional Board, and Common Interest Agreement," by a Member. By executing this Addendum, the Members agree the County shall have no obligation to pay, or provide a credit for, any portion of any other Member's Incurred Transactional Costs, and shall receive no reimbursement for its Incurred Transactional Costs as of the effective date of this Addendum. The Members agree to waive their right to recover Incurred Transactional Costs, as against the County, in recognition of the County's agreement to waive its right to recover its own Incurred Transactional Costs and incurred Shared Costs as of the effective date of this Addendum; the County has estimated those combined costs at \$245,000."

5. Section 2.1(o) of the Agreement defines "Shared Costs" as "all costs authorized by the Members in accordance with the provisions of this Agreement, including but not limited to the Work as [defined] in Section 6.14, legal, technical, administrative and other costs reasonably necessary to achieve the Purpose of the Agreement." Such costs, subject to vote of the Members, may be subject to reimbursement to the Members by cash payment or credit as provided in Section 2.1(o) of the Agreement. However, the County shall not be reimbursed for any Shared Costs incurred prior to the effective date of this Addendum.

6. The County executes this Addendum and joins the Agreement as a Member provided the RWQCB Executive Officer executes Addendum B; and, the execution of Addendum B by the RWQCB is a condition precedent to the enforceability of the Agreement against the County.

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Addendum.

CITY OF SAN MARCOS

By: Paul Malone

Paul Malone
Its: City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: June 21, 2011

COUNTY OF SAN DIEGO

By: Richard Crompton

Richard Crompton
Its: Director, Department of Public
Works
Address: County Operations Center
5500 Overland Avenue
Suite 310
San Diego, CA, 92123

Dated: _____, 2011

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Addendum.

CITY OF SAN MARCOS

By: _____

Paul Malone
Its: City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: _____, 2011

COUNTY OF SAN DIEGO

By: _____

Its: *PCO*
Address: *County of San Diego
500 North Island Avenue
Suite 5100
San Diego, CA 92101*

Dated: 10/13, 2011

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL.

BY *David T. Hale*
SENIOR DEPUTY

**ADDENDUM F
TO THE PARTICIPATION AGREEMENT**

VALLECITOS WATER DISTRICT

PROVISIONS

ADDENDUM F
TO THE PARTICIPATION AGREEMENT

Vallecitos Water District Provisions

The Participation Agreement (herein called the "Agreement") is hereby amended by this Addendum F (the "Addendum"). This Addendum is entered into this 9th day of March 2011 by and between the undersigned political subdivisions of the State of California, municipalities, other organizations, and individuals (herein collectively comprising the "Members"), and the VALLECITOS WATER DISTRICT ("VWD"), to provide the following conditions:

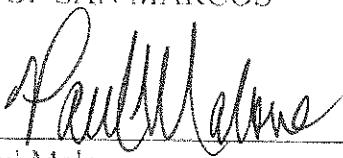
1. VWD shall be joined as a Member pursuant to Section 5.2 of the Agreement vested in all the rights and obligations of Members under the Agreement; and, subject only to the provisions of Paragraph 2 of this Addendum, VWD agrees to be bound by and to fully comply with all the terms and conditions of the Agreement.

2. Notwithstanding anything in the Agreement to the contrary, VWD's total Shared Costs, calculated as its Interim Allocation under Section 8.2 of the Agreement, shall equal the sum of \$4,000 per year for the first two years that VWD is a Member under the Agreement. VWD shall make two payments of Four Thousand Dollars (\$4,000) each to the City of San Marcos, as the Program Manager under the Agreement, the first of which shall be due by March 31, 2011 and the second of which shall be due by March 31, 2012. These payments shall constitute payment in full for VWD's Section 8 Shared Cost obligations for the first two years that VWD is a Member under the Agreement. VWD's obligation to make future payments of Shared Costs, beginning in the third year that VWD is a Member under the Agreement shall be determined for Shared Costs arising after February 24, 2013, in accordance with all the terms and conditions of the Agreement including, without limitation, Section 8 thereof. Nothing in this Addendum F shall in any way limit VWD's right at any time to Withdraw from the Agreement pursuant to Section 5.5.

3. The effectiveness of this Addendum F is subject to a condition precedent, namely, the execution of Addendum B by the San Diego Regional Water Quality Control Board (the "Regional Board") (providing that Members under the Agreement and Addendum B will not be subject to enforcement actions by the Regional Board for past discharges alleged to have caused or contributed to Nutrient impairment in Lake San Marcos or San Marcos Creek).

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Addendum.

CITY OF SAN MARCOS

By: 

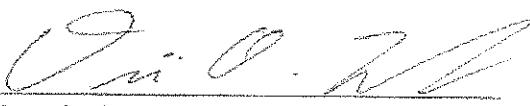
Paul Malone

Its: City Manager

Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: March ___, 2011

VALLECITOS WATER DISTRICT

By: 

Dennis O. Lamb

Its: General Manager

Address: 201 Vallecitos De Oro
San Marcos, CA 92069

Dated: March 9, 2011

ADDENDUM G TO PARTICIPATION AGREEMENT

WRAP-AROUND PROVISIONS

**ADDENDUM G
TO THE PARTICIPATION AGREEMENT**

Wrap-Around Provisions

The Participation Agreement among the Lake San Marcos Work Group (the "Agreement"), first executed April 29, 2010 by the City of San Marcos and since executed by other Members, is hereby amended by this Addendum G ("Addendum").

The purpose of this Addendum is to allow all Members to jointly execute the Agreement and Addenda C through G¹.

NOW THEREFORE, in consideration of the mutual covenants contained in this Addendum, for valuable consideration, the receipt and sufficiency of which is acknowledged by the Members, the Members agree as follows:

1. Agreement to be Bound. Because the Agreement and the Addenda were developed over time and signed by some, but not all of the Members, the Members desire now to join in this single document the signature of all Members to the Agreement and all existing Addenda. By executing this Addendum, the Members agree to be bound and assume the rights, benefits, duties, and obligations of the Agreement as modified by the Addenda.

2. Further Assurances. Each party to this Addendum will, at its own cost and expense, execute and deliver such further documents and instruments and will take such other action as may be reasonably required or appropriate to evidence or carry out the intent and purpose of this Addendum.

3. Entire Addendum. This Addendum constitutes the final, complete and exclusive statement between the Members pertaining to the terms and conditions of the Agreement and Addenda, and this Addendum supersedes all prior and contemporaneous understandings or agreement of the Members and is binding on and inures to the benefit of their respective heirs, representatives, successors and assigns.

4. Addendum. Any agreement made after the date of this Addendum is ineffective to modify, waive or terminate the Agreement and Addenda, in whole or in part, unless that agreement is in writing, is signed by the Members to this Addendum, and specifically states that the agreement modifies the Agreement or Addenda.

5. Governing Law. This Addendum will be governed by, and construed in accordance with, the laws of the State of California.

6. Consent of Existing Members. In reliance upon the foregoing, each signatory to this Addendum consents to be a Member under the Agreement, subject to modifications to the Agreement as provided for in the Addenda, and subject to the terms and conditions of the

¹Addendum A is for new Members who sign after the date of execution of Addendum G, and Addendum B is a stand alone agreement with the Regional Water Quality Control Board, San Diego Region that requires a separate signature.

Agreement and their respective Addendum, including all consents, rights, benefits, duties and obligations therein.

7. Authority to Execute and Bind. The undersigned warrant that they are Members under the Agreement and authorized to execute this Addendum on behalf of their respective entity.

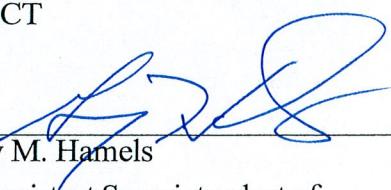
8. Due Diligence. Prior to signing this Addendum, the undersigned Members acknowledge having had a suitable opportunity to review with counsel of its choosing the Agreement and Addenda. No party has been induced to enter into this Addendum by, nor is any party relying on, any representations or warranty outside those expressly set forth in this Addendum.

9. Execution in Counterparts. This Addendum may be executed in any number of counterparts, each of which when so executed shall be deemed an original and all of which shall constitute together one and the same instrument, and shall be effective upon execution by all of the Members.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Member representative has executed this Addendum in San Diego County, California.

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: 

Gary M. Hamels

Its: Assistant Superintendent of Business Affairs
Address: 255 Pico Avenue
San Marcos, CA 92069

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: _____

Dennis Lamb

Its: General Manager
Address: 201 Vallecitos De Oro
San Marcos, CA 92069

Dated: _____, 2011

CITY OF SAN MARCOS

By: _____

Paul Malone

Its City Manager

Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____

Its: _____

Address: 4050 Taylor Street, MS 130
San Diego, CA 92110

Dated: _____, 2011

COUNTY OF SAN DIEGO

By: _____

Its: _____

Address: 5500 Overland Avenue
Suite 310
San Diego, CA 92123

Dated: _____, 2011

IN WITNESS WHEREOF, the undersigned Member representative has executed this Addendum in San Diego County, California.

SAN MARCOS UNIFIED SCHOOL
DISTRICT

By: _____

Katherine Tanner
Its: Executive Director of Facilities
Planning & Development
Address: 255 Pico Avenue
San Marcos, CA 92069

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: 

Dennis Lamb
Its: General Manager
Address: 201 Vallecitos De Oro
San Marcos, CA 92069

Dated: July 7, 2011

CITY OF SAN MARCOS

By: _____

Paul Malone
Its City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: _____

Its: _____
Address: 4050 Taylor Street, MS 130
San Diego, CA 92110

Dated: _____, 2011

COUNTY OF SAN DIEGO

By: _____

Its: _____
Address: 5500 Overland Avenue
Suite 310
San Diego, CA 92123

Dated: _____, 2011

IN WITNESS WHEREOF, the undersigned Member representative has executed this Addendum in San Diego County, California.

SAN MARCOS UNIFIED SCHOOL
DISTRICT

By: _____

Katherine Tanner
Its: Executive Director of Facilities
Planning & Development
Address: 255 Pico Avenue
San Marcos, CA 92069

Dated: _____, 2011

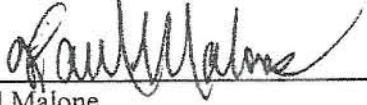
VALLECITOS WATER DISTRICT

By: _____

Dennis Lamb
Its: General Manager
Address: 201 Vallecitos De Oro
San Marcos, CA 92069

Dated: _____, 2011

CITY OF SAN MARCOS

By: 

Paul Malone
Its City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: _____

Its: _____
Address: 4050 Taylor Street, MS 130
San Diego, CA 92110

Dated: _____, 2011

COUNTY OF SAN DIEGO

By: _____

Its: _____
Address: 5500 Overland Avenue
Suite 310
San Diego, CA 92123

Dated: _____, 2011

IN WITNESS WHEREOF, the undersigned Member representative has executed this Addendum in San Diego County, California.

SAN MARCOS UNIFIED SCHOOL
DISTRICT

By: _____

Katherine Tanner
Its: Executive Director of Facilities
Planning & Development
Address: 255 Pico Avenue
San Marcos, CA 92069

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: _____

Dennis Lamb
Its: General Manager
Address: 201 Vallecitos De Oro
San Marcos, CA 92069

Dated: _____, 2011

CITY OF SAN MARCOS

By: _____

Paul Malone
Its City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: _____

Bruce April
Bruce April
Its: Deputy District Director-Environmental
Address: 4050 Taylor Street, MS 130242
San Diego, CA 92110

Dated: *6/21*, 2011

COUNTY OF SAN DIEGO

By: _____

Its: _____
Address: 5500 Overland Avenue
Suite 310
San Diego, CA 92123

Dated: _____, 2011

IN WITNESS WHEREOF, the undersigned Member representative has executed this Addendum in San Diego County, California.

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: _____

Katherine Tanner
Its: Executive Director of Facilities
Planning & Development
Address: 255 Pico Avenue
San Marcos, CA 92069

Dated: _____, 2011

VALLECITOS WATER DISTRICT

By: _____

Dennis Lamb
Its: General Manager
Address: 201 Vallecitos De Oro
San Marcos, CA 92069

Dated: _____, 2011

CITY OF SAN MARCOS

By: _____

Paul Malone
Its City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

Dated: _____, 2011

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____

Its: _____
Address: 4050 Taylor Street, MS 130
San Diego, CA 92110

Dated: _____, 2011

COUNTY OF SAN DIEGO

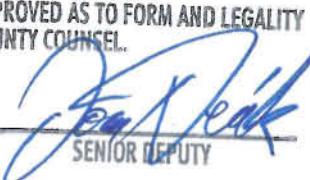
By: 

Its: PCO
Address: 3500 La Jolla Avenue
Suite 110
San Diego, CA 92110

Dated: 6/13, 2011

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY


SEAN PEAK