

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.15
(ID # 4295)

MEETING DATE:

Tuesday, May 23, 2017


FROM : EXECUTIVE OFFICE:

SUBJECT: EXECUTIVE OFFICE: Lake Elsinore Aeration and Mixing System (LEAMS) License Agreement between the County of Riverside, Elsinore Valley Municipal Water District, City of Lake Elsinore, and the Lake Elsinore San Jacinto Watershed Authority. Districts 1/3/5 [\$0].

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and approve the attached Exclusive License Agreement for Excess Offset Credits Generated by the Lake Elsinore Aeration and Mixing System (LEAMS); and
2. Authorize the Chairman of the Board of Supervisors to execute the Agreement.

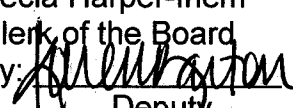
ACTION: Policy


Steve C. Horn 5/8/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: May 23, 2017
xc: EO

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	16/17 – 21/22

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The County of Riverside (County), City of Lake Elsinore (City), and Elsinore Valley Municipal Water District (District) are individual member agencies of the Lake Elsinore and San Jacinto Watersheds Authority (Authority). The Authority is a joint powers public agency formed for implementing programs and projects to rehabilitate and improve water quality in Lake Elsinore and Canyon Lake and the watersheds that are tributary to these lakes. The annual costs to operate and maintain LEAMS is shared equally between the County, City, and District pursuant to a separate Agreement for the Operation and Maintenance of LEAMS to be considered this same day.

The Santa Ana Regional Water Quality Control Board (Regional Board) adopted a Total Maximum Daily Load (TMDL) to improve water quality in Lake Elsinore by controlling the amount of nutrients in the lake. The County, City, and District, and numerous other stakeholders identified in the TMDL are obligated to limit their nutrient contributions (called "loads") to Lake Elsinore. Based on experience to date, the operation of LEAMS typically generates more offset credits than the three member agencies need in order to assure their own compliance with the TMDL's nutrient load restrictions. Therefore, the County, City, and District desire to license some of the excess offset credits to other stakeholders named in the TMDL so that these other stakeholders may rely on said credits to meet their own TMDL compliance obligations. The license fee to other stakeholders is proposed for \$300 per credit. Supporting documentation on how this fee was calculated is attached as Exhibit A.

Given the relatively large number of stakeholders that may be interested in licensing excess offset credits to meet their own TMDL compliance obligations, the County, City, and District determined it would be more efficient to administer all licensing-related activity through the Authority. The attached Agreement describes the Terms and Conditions under which the County, City, and District agree to license excess offset credits to other stakeholders named in the TMDL using the Authority as their exclusive agent. The license agreement was previously considered and approved by the Lake Elsinore and San Jacinto Watersheds Board of Directors on April 19, 2017. The elected bodies of both the City and the District are anticipated to consider this item on this same date or shortly thereafter.

County Counsel has approved the agreement as to form.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Impact on Residents and Businesses

Operation of the LEAMS systems has proven beneficial to the water quality of Lake Elsinore. No new fees, taxes, or bond indebtedness are proposed as part of this agreement.

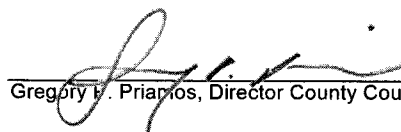
SUPPLEMENTAL

Additional Fiscal Information

All expenses incurred by the Authority to market and administer the LEAMS offset credit licensing program shall be reimbursed solely from the sale of offset credit licenses. The Authority is entitled to retain a sum, not to exceed \$20,000 in the first year of this License Agreement and not to exceed \$12,000 in any subsequent year of the attached Agreement, from the proceeds received from gross sales before remitting an equal remainder to the County, City, and District. It is anticipated that as other jurisdictions license offset credits for their individual TMDL compliance that this would result in lowering the cost of the associated O&M Agreement for the County.


Alex Gann

5/15/2017



Gregory E. Priamos, Director County Counsel

5/11/2017

EXHIBIT A



How was the \$300/hour license fee determined?

- 1) The total cost of LEAMS operation is approximately \$500,000/year.
- 2) LEAMS must operate a minimum of 2,000 hours/year.
- 3) Therefore, the baseline O&M cost is about \$250/hour ($\$500,000 / 2000 \text{ hrs.}$)
- 4) The three original project partners need a total of 1,280 hours/year to meet their own compliance obligations.
- 5) $1,280 \text{ hours} * \$250/\text{hr.} = \$320,000/\text{year}$ (\$106,667 each).
- 6) $\$500,000 - \$320,000 = \$180,000$
- 7) Estimated number of offset credit hours likely to be sold = 600 hours/year
- 8) $\$180,000 / 600 \text{ hours} = \300 per offset credit hour.

Why do licensees pay a higher hourly rate than the three original project partners?

- 1) Because the original project partners must bear 100% of the cost and 100% of the risk of operating the project for a full year (2,000) before licenses are offered for sale.
- 2) Because the original project partners have no guarantee regarding the number of offset credit hours likely to be licensed.
- 3) Because the original project partners provided nearly \$1,000,000 in capital cost to help construct the project.
- 4) Because the original project partners bore 100% of the operating costs for the first 8 years of the project and incurred 100% of the expense associated with validating the effectiveness of LEAMS (and, thus, the availability of offset credits).

**AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF THE LAKE ELSINORE AERATION AND MIXING SYSTEMS (AGREEMENT)**

THIS AGREEMENT is made by and among the COUNTY OF RIVERSIDE (COUNTY), the CITY OF LAKE ELSINORE (CITY) and the ELSINORE VALLEY MUNICIPAL WATER DISTRICT (DISTRICT). The COUNTY, CITY and DISTRICT are sometimes collectively referred to individually as "PARTY" and collectively as the "PARTIES."

RECITALS

- A. The COUNTY, CITY and DISTRICT are Member Agencies of the Lake Elsinore and San Jacinto Watersheds Authority (LESJWA). LESJWA is a joint powers public agency formed for the purpose of implementing programs and projects to rehabilitate and improve water quality in Lake Elsinore and Canyon Lake and the rivers and streams that are tributary to these lakes.
- B. The STATE OF CALIFORNIA and U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) have determined that water quality in Lake Elsinore is impaired by elevated concentrations of nitrogen and phosphorus (aka nutrients) that contribute to excess algae growth in the lake. Excess algae tends to deplete dissolved oxygen levels in the lake which, in turn, increases the risk of fish kills. In addition, too much algae interferes with and detracts from beneficial uses in and near Lake Elsinore. These adverse effects severely impact tourism in the area and hurt the regional economy.
- C. In 2004, the SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD (REGIONAL BOARD) adopted a Total Maximum Daily Load (TMDL) to restore and protect the beneficial uses of Lake Elsinore by controlling and restricting the discharge of nutrients to the lake. The REGIONAL BOARD named the COUNTY, CITY and DISTRICT as three of several agencies responsible for implementing the TMDL.
- D. To improve water quality in Lake Elsinore, the PARTIES designed, constructed and operate two large in-lake remediation projects: the Axial Flow Water Pump Destratification System and the Lake Elsinore Phase II Aeration System constructed in 2004 and 2007, respectively. Both systems are intended to improve water quality by increasing dissolved oxygen concentrations in the lake and are collectively referred to as the Lake Elsinore Aeration and Mixing System (LEAMS).

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- E. When it adopted the TMDL, the REGIONAL BOARD determined that long-term operation of LEAMS would improve dissolved oxygen concentrations in Lake Elsinore. This, in turn, would also reduce internal phosphorus loads released from the lake bottom sediments by 35% or approximately 11,606 kilograms per year. The Regional Board recognizes this reduction in phosphorus loads as an offset credit that can be used to demonstrate compliance with the load reduction requirements specified in the TMDL.
- F. The CITY holds title to the Axial Flow Water Pump Destratification System. The DISTRICT holds title to the Lake Elsinore Phase II Aeration System. All three PARTIES share equally the annual cost of operating and maintaining both systems. Therefore, all offset credits generated by LEAMS are owned collectively and exclusively by the PARTIES as tenants-in-common.
- G. Operation of LEAMS generates more offset credits than the PARTIES need in order to demonstrate their own individual compliance with the pollutant load reductions specified in TMDL. Therefore, the PARTIES desire to share some of these excess offset credits with other responsible agencies named in the TMDL, that have similar obligations to reduce nutrient loads to Lake Elsinore, through a limited licensing arrangement.
- H. The PARTIES previously formed a Technical Oversight Committee (TOC) to oversee operation and maintenance of LEAMS. The PARTIES intend to continue relying on the TOC to implement this AGREEMENT.
- I. The PARTIES have previously entered into several previous short-term agreements to govern the operation and maintenance (O&M) of LEAMS and to share the associated implementation costs. This AGREEMENT is intended to supersede and replace all previous agreements with one integrated, long-term O&M contract between and among the PARTIES.
- J. The purpose of this AGREEMENT is to describe the roles and responsibilities of the CITY, COUNTY and DISTRICT; the distribution of offset credits to each of the PARTIES; and the terms and conditions for licensing excess offset credits to other responsible agencies named in the TMDL.
- K. The PARTIES believe that long-term operation of LEAMS will improve water quality and protect beneficial uses in Lake Elsinore. Doing so will enhance recreational opportunities and the overall economy of the region. In addition, the PARTIES rely on LEAMS to demonstrate compliance with certain TMDL requirements. Consequently, entering into a long-term agreement to operate and maintain LEAMS is in the best interests of the PARTIES and their respective constituencies.

NOW, THEREFORE, in consideration of the facts recited above, and the covenants, conditions and promise contained herein, the PARTIES set forth their mutual agreements.

AGREEMENT

1. **General Obligations.** Subject to all of the provisions of this AGREEMENT, the PARTIES hereby agree to the following:
 - a. **Implement the AGREEMENT through the Technical Oversight Committee:** As a means of ensuring the most optimal operation of LEAMS in order to maximize its benefits, the PARTIES agree to implement the Agreement through the previously established TOC. The TOC shall consist of one knowledgeable representative appointed by each PARTY. Each designated representative shall serve as a member of the TOC at the pleasure and expense of the PARTY making the appointment. The TOC shall meet at such times and places as its members may agree upon; but, shall convene at least once each year (in March or April) to review and approve a budget for the coming fiscal year (July 1st – June 30th). The primary duties of the TOC are to: (i) oversee the operations and maintenance of activities related to LEAMS; (ii) develop and refine parameters, processes and procedures needed to maximize the efficiency and effectiveness of LEAMS; (iii) develop and approve an annual operating budget; (iv) review actual expenses compared to the approved budget; (v) establish a method for calculating the number of offset credits available, the number of offset credits needed by the PARTIES to assure their own TMDL compliance, and the number of offset credits that may be available for licensing to other stakeholders named in the TMDL; (vi) as well as the annual fee to license any available credits.
 - b. **Financial Contribution:** The PARTIES agree to share equally the reasonable cost of managing, operating, monitoring, maintaining, repairing and replacing LEAMS in accordance with an annual budget approved by the PARTIES. Such costs include all reasonable expenses associated with collecting, analyzing and reporting data related to the operation and effectiveness of LEAMS that is required by federal or state authorities.
 - c. **Cooperation:** The PARTIES shall cooperate with one another to implement this AGREEMENT and shall not unreasonably withhold such cooperation in a manner that interferes with effective operation and maintenance of LEAMS.
 - d. **Notification:** The PARTIES shall notify one another as soon as practicable, in writing or by phone, whenever they become aware of any fact or circumstance that could adversely affect normal operation of LEAMS and which may jeopardize the availability of sufficient offset credits to assure the PARTIES ability to comply with any related TMDL requirements.

2. **DISTRICT's Obligations.** Subject to all of the provisions of this AGREEMENT, the DISTRICT hereby agrees to:
- a. **Hold Title to the Lake Elsinore Phase II Aeration System (Aeration System):** To continue holding title to the Aeration System for the term of this AGREEMENT.
 - b. **Provision of Services:** To provide, or cause to be provided, all labor, tools, equipment, vehicles, materials, supplies and qualified personnel necessary to manage, operate, monitor, maintain and repair the Aeration System in accordance with the annual budget approved by the PARTIES and the Standard Operating Procedures (SOP) established by the TOC.
 - c. **Regulatory Compliance:** To comply with the federal and state statutes, rules, regulations and other requirements governing the Aeration System, and all direction given by the TOC.
 - d. **Monitoring and Remote Access to Data:** To continue operating and maintaining the sampling and monitoring program that, among other things, measures dissolved oxygen concentrations and water temperature in Lake Elsinore in the manner specified by the TOC and approved by the REGIONAL BOARD. To supply a remote access internet site for displaying and summarizing the aforementioned monitoring data that is accessible by the PARTIES. This internet site shall include real-time data for the most recent 24 hours and shall be restricted to viewing purposes only (i.e. data cannot be revised or altered by a remote viewer). The real-time file will be updated approximately every 15 minutes unless the monitoring system is undergoing maintenance or repairs. In addition, all data collected by the monitoring system will be stored in a database maintained by the DISTRICT and accessible to the PARTIES on an FTP website.
 - e. **Reports:** To prepare and submit annual reports summarizing the operation, maintenance and monitoring activities and other matters of interest as agreed by the PARTIES or otherwise required by federal or state authorities. At a minimum, the DISTRICT shall provide a report summarizing the daily hours of operation for the Aeration System. The DISTRICT shall also provide such other written or oral reports regarding the operation and maintenance of the Aeration System as may be reasonably requested by any of the other two PARTIES.

- f. **Budget:** To prepare, in cooperation with the TOC, and submit an annual proposed budget for continued operation and maintenance of the Aeration System in the forthcoming fiscal year (July 1st to June 30th). Said budget must be submitted to the CITY and COUNTY for review and approval no later than 90 days (March 1st) prior to the commencement of the new fiscal year. The budget shall estimate the expenditures necessary to operate and maintain the Aeration System in good working order. The budget should include a contingency fund, as agreed to by the TOC, to cover extraordinary and unforeseen expenses or to be used to replace, expand or otherwise enhance the Aeration System when mutually agreed. A template form for the budget proposal is attached as Exhibit 3 to this AGREEMENT. In the event that a budget acceptable to all PARTIES is not obtained prior to the start of the fiscal year, the DISTRICT shall continue to operate and maintain the Aeration system to the fullest extent possible, subject to the reasonable discretion and available resources of the DISTRICT and at the level of expenditure authorized by the most recently approved budget, and the PARTIES shall fund such budget until a new budget is approved. The DISTRICT may draw upon any available contingency funds that have been set aside in prior years, to support on-going operation of the Aeration System while a new budget is being reviewed and approved.
- g. **Cost Accounting:** To provide a financial statement itemizing and summarizing all expenses and charges incurred to operate and maintain the Aeration System for each calendar year. The DISTRICT will provide the financial statement at the same time the budget proposal is submitted on March 1st of each year. A template form for the financial statement is attached as Exhibit 4 to this AGREEMENT. The DISTRICT shall maintain copies of receipts as necessary to substantiate all cost accounting for a period of not less than 3 years after the expense is incurred and shall provide copies to PARTIES upon request.
- h. **Books and Records:** Maintain, and retain for a period of not less than three (3) years following the termination of this AGREEMENT, full and accurate books and accounts in accordance with the practices established by or consistent with those utilized by the Controller of the State of California for public agencies. Such books and accounts shall be maintained on a fiscal year basis (July 1st to June 30th). Such books and accounts shall be maintained by the DISTRICT as public records. All books and records developed in association with prior agreements between the PARTIES to share O&M costs for the Aeration System shall also continue to be preserved in accordance with the same terms and conditions specified for similar books and records generated in support of this AGREEMENT.

- i. **Inspection:** To permit inspection of the Aeration System by representatives of the COUNTY, CITY, LESJWA or other federal or state regulatory authorities upon request.
- j. **Safety:** The DISTRICT shall be responsible for the safety of all persons and property relative to the Aeration System. This responsibility shall be continuous and not be limited to normal working hours. The DISTRICT's duty to ensure safety shall include, without limitation, the placement of warning signs and markers (e.g. buoys and lights) to protect the Aeration System and all persons working or recreating in Lake Elsinore and along its shoreline (safety activities). Because the CITY has rights and responsibilities related to recreation on Lake Elsinore that are separate from those of the DISTRICT, including but not limited to enforcement of CITY ordinances and the Lake Elsinore Lake Use Guidelines, the DISTRICT shall coordinate all safety activities undertaken pursuant to this AGREEMENT, to the maximum extent practicable prior to commencing such activities. The PARTIES acknowledge that it may be necessary, from time to time, to modify existing CITY ordinances and the Lake Use Guidelines in order for the DISTRICT to implement necessary safety activities. The cost of such modifications, when needed, shall be shared equally among the PARTIES.

3. **CITY's Obligations.** Subject to all of the provisions of this AGREEMENT, the CITY hereby agrees to:

- a. **Hold Title to the Axial Flow Water Pump Destratification System (Mixing System):** To continue holding title to the Mixing System for the term of this AGREEMENT.
- b. **Provision of Services:** To provide, or cause to be provided, all labor, tools, equipment, vehicles, materials, supplies and qualified personnel necessary to manage, operate, monitor, maintain and repair the Mixing System in accordance with the annual budget approved by the PARTIES and the SOP established by the TOC.
- c. **Regulatory Compliance:** To comply with the federal and state statutes, rules, regulations and other requirements governing the Mixing System, and all direction given by the TOC.

- d. **Reports:** To prepare and submit annual reports summarizing the operation, maintenance and monitoring activities and other matters of interest as agreed by the PARTIES or otherwise required by federal or state authorities. At a minimum, the CITY shall provide a report summarizing the daily hours of operation for the Mixing System. The CITY shall also provide such other written or oral reports regarding the operation and maintenance of the Mixing System as may be reasonably requested by any of the other two PARTIES.

- e. **Budget:** To prepare, in cooperation with the TOC, and submit an annual proposed budget for continued operation and maintenance of the Mixing System in the forthcoming fiscal year (July 1st to June 30th). Said budget must be submitted to the DISTRICT and COUNTY for review and approval no later than 90 days (March 1st) prior to the commencement of the new fiscal year. The budget shall estimate the expenditures necessary to operate and maintain the Mixing System in good working order. The budget should include a contingency fund, as agreed to by the TOC, to cover extraordinary and unforeseen expenses or to be used to replace, expand or otherwise enhance the Mixing System when mutually agreed. A template form for the budget proposal is attached as Exhibit 3 to this AGREEMENT. In the event that a budget acceptable to all PARTIES is not obtained prior to the start of the fiscal year, the CITY shall continue to operate and maintain the Mixing System to the fullest extent possible, subject to the reasonable discretion and available resources of the CITY and at the level of expenditure authorized by the most recently approved budget, and the PARTIES shall fund such budget until a new budget is approved. The CITY may draw upon any available contingency funds that have been set aside in prior years to support on-going operation of the Mixing System while a new budget is being reviewed and approved.

- f. **Cost Accounting:** To provide a financial statement itemizing and summarizing all expenses and charges incurred to operate and maintain the Mixing System for each calendar year. The CITY will provide the financial statement at the same time the budget proposal is submitted on March 1st of each year. A template form for the financial statement is attached as Exhibit 4 to this AGREEMENT. The CITY shall maintain copies of receipts as necessary to substantiate all cost accounting for a period of not less than 3 years after the expense is incurred and shall provide copies to PARTIES upon request.

- g. **Books and Records:** Maintain, and retain for a period of not less than three (3) years following the termination of this AGREEMENT, full and accurate books and accounts in accordance with the practices established by or consistent with those utilized by the Controller of the State of California for public agencies. Such books and accounts shall be maintained on a fiscal year basis (July 1st to June 30th). Such books and accounts shall be maintained by the CITY as public records. All books and records developed in association with prior agreements between the PARTIES to share O&M costs for the Mixing System shall also continue to be preserved in accordance with the same terms and conditions specified for similar books and records generated in support of this AGREEMENT.
- h. **Inspection:** To permit inspection of the Mixing System by representatives of the COUNTY, DISTRICT, LESJWA or other federal or state regulatory authorities upon request.
- i. **Safety:** The CITY shall be responsible for the safety of all persons and property relative to the Mixing System. This responsibility shall be continuous and not be limited to normal working hours. The CITY's duty to ensure safety shall include, without limitation, the placement of warning signs and markers (e.g. buoys and lights) to protect the Mixing System and all persons working or recreating in Lake Elsinore and along its shoreline (safety activities). Because the CITY has rights and responsibilities related to recreation on Lake Elsinore that are separate from those of the DISTRICT, including but not limited to enforcement of CITY ordinances and the Lake Elsinore Lake Use Guidelines, the CITY shall coordinate all safety activities undertaken pursuant to this AGREEMENT, to the maximum extent practicable prior to commencing such activities. The PARTIES acknowledge that it may be necessary, from time to time, to modify existing CITY ordinances and the Lake Use Guidelines in order for the DISTRICT to implement necessary safety activities. The CITY shall not unreasonably withhold such modifications and will grant temporary authorization for the DISTRICT to implement necessary safety activities pending formal revision of related ordinances or Lake Use Guidelines for Lake Elsinore.

3. **COUNTY's Obligations.** Subject to all of the provisions of this AGREEMENT, the COUNTY hereby agrees to:

- a. **Reports:** Coordinate and supervise LESJWA's preparation of an annual report to (i) estimate the number of offset credits generated by LEAMS in the prior year; (ii) estimate the number of offset credits needed by each of the PARTIES to maintain compliance with the TMDL and their respective NPDES discharge permits; and (iii) estimate the number of excess, unused offset credits that may be available for licensing to other stakeholders named in the TMDL. Report shall be distributed to all PARTIES by March 1st each year.

- b. **Coordinate with LESJWA** to license any excess, unused offset credits that the TOC elects to make available to other stakeholders named in the TMDL. However, all such licenses must be approved by unanimous consent of the TOC. Such consent shall not be unreasonably withheld.
- c. **Coordinate with the REGIONAL BOARD** to ascertain what documentation is required to: (i) corroborate the number of offset credits generated by LEAMS; (ii) corroborate the number of offset credits required by each of the PARTIES to ensure on-going compliance with the TMDL and their respective NPDES discharger permits; (iii) the number of offset credits that may be made available for licensing to other stakeholders named in the TMDL; and (iv) determine the duration and period for which a given set of offset credits remains valid for the purpose of demonstrating compliance with the TMDL load allocations or wasteload allocations.
- d. **Licensing Fees:** Make periodic recommendations to the TOC regarding reasonable fees to license excess, unused offset credits. The final fee structure must be approved by the TOC prior to entering into any licensing agreement with LESJWA or any other stakeholders named in the TMDL.

4. **Miscellaneous Provisions**

- a. **Independent Contractors:** The PARTIES shall perform all duties under this AGREEMENT as independent contractors and NOT as employees of one another.
- b. **Subcontractors:** The PARTIES may employ competent and qualified professionals, consultants and subcontractors as they deem necessary to fulfill their duties and obligations under this AGREEMENT provided that all related costs remain within the approved budget. Costs which exceed the approved budget must be approved, in advance, by the TOC unless said costs are required to address a bona fide emergency condition.
- c. **Assignment:** Neither this AGREEMENT nor any part of LEAMS may be assigned or otherwise transferred without prior written consent from all PARTIES.
- d. **Amendment:** This AGREEMENT may only be amended by mutual written agreement of all PARTIES. This AGREEMENT may not be amended by verbal agreement or through separate written agreements not contemplated within the AGREEMENT.

- e. **10-year Term:** The duty to meet all obligations and responsibilities identified in this AGREEMENT commences on the effective date shown on page 1 (above) and, unless subsequently extended by mutual written agreement of all PARTIES, terminates on June 30, 2027. During this term, no PARTY may abandon, sell, lease, dispose or substantially discontinue the use of LEAMS without prior written consent of all PARTIES.
- f. **Distribution of Surplus Funds:** If, upon termination of this AGREEMENT without extension, there are any unexpended funds in the custody and control of the PARTIES, including but not limited to any contingency or replacement funds, these funds shall be distributed to the PARTIES in proportion to the respective original contributions to such funds.
- g. **Early termination.** Any PARTY may terminate their participation in this AGREEMENT by providing one year's written notice to the other PARTIES. However, if a PARTY elects to terminate their participation prior to June 30, 2027 that PARTY forfeits and waives any claim for reimbursement of unexpended contingency and replacement funds collected in all prior years. In the event one PARTY elects an early termination, the other two PARTIES shall continue to implement the terms of this AGREEMENT but shall be absolved of any on-going duty or obligation to the departing PARTY.
- h. **Third Party Beneficiary.** The PARTIES acknowledge that the Lake Elsinore San Jacinto Watershed Authority (LESJWA) shall be a third-party beneficiary to this AGREEMENT in so far as reliable operation and maintenance of LEAMS is necessary to fulfill the terms and conditions set forth in any Exclusive License Agreement for Excess Offset Credits executed between the PARTIES and LESJWA. There are no other third party beneficiaries to this AGREEMENT.
- i. **Interpretation.** All provisions of this AGREEMENT shall be construed in a manner which best assures the long-term viability of LEAMS. All PARTIES share equal responsibility for drafting the language of this AGREEMENT.
- j. **Severability.** If any term, clause, sentence, provision, or paragraph of this AGREEMENT shall be held invalid, such invalidity shall not affect the other provisions of the AGREEMENT which can be given effect without the invalid provision, and to this end, the remainder of the AGREEMENT shall remain in full force and effect.

- k. **Budget Authority.** All PARTIES acknowledge that final authority to accept and approve a final budget for LEAMS rests with their respective governing Boards, Commissions and Councils. Members of the TOC can make agreement to recommend specific budgets actions, but cannot bind, their respective governing authorities. Consequently, no budget shall be deemed final until it is approved by the governing authorities for each of the PARTIES.
- l. **Arbitration:** Any dispute which may arise by and between the PARTIES to this AGREEMENT shall be submitted to binding arbitration. Arbitration shall be conducted by the Judicial Arbitration and Mediation Services, Inc., or its successor, or any other neutral, impartial arbitration service that the PARTIES mutually agree upon in accordance with its rule in effect at the time of the commencement of the arbitration proceeding, and as set forth in this Paragraph. The arbitrator chosen must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. The arbitrator's decision and award are subject to judicial review by a Superior Court of competent venue and jurisdiction, only for material errors of fact or law. Upon a showing of good cause, the arbitrator may permit limited discovery in the arbitration proceeding. Unless the PARTIES enter into a written stipulation to the contrary, prior to the appointment of the arbitrator, all disputes shall first be submitted to non-binding mediation, conducted by the Judicial Arbitration and Mediation Services, Inc., or its successor, or any other neutral, impartial mediation service that the PARTIES mutually agree upon in accordance with its rules for such mediation.
- m. **Enforced Delay; Extension of Times of Performance:** In addition to specific provisions of this AGREEMENT, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this AGREEMENT shall be extended, where delays or defaults are due to war; terrorism, moratorium, insurrection, strikes; lockouts; riots; floods, earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargos; litigation; unusually severe weather; acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of the PARTIES); or any other cause(s) beyond the control or without the fault of the PARTY claiming an extension of time to perform, provided such cause would prevent the claiming PARTY from performing the provisions of this AGREEMENT. Notwithstanding any to the contrary in this AGREEMENT, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, or notice by the PARTY claiming such extension is sent to the other PARTIES with thirty (30) days of the commencement of the cause.

- n. **Attorney's Fees.** In the event any of the PARTIES hereto shall bring an action to enforce any term of this AGREEMENT to recover any damages for and on account of any breach of any term or condition of this AGREEMENT, it is mutually agreed that the prevailing party in such action shall recover all costs thereof including reasonable attorneys' fees.
- o. **COUNTERPART EXECUTION.** This AGREEMENT may be executed simultaneously, or in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. The AGREEMENT may be signed by fax or scanned by email signature.
- p. **Effective Date.** This AGREEMENT is deemed effective upon execution by all of the PARTIES and, for budgeting and funding purposes, is retroactive to July 1, 2016.

IN WITNESS WHEREOF, the PARTIES acknowledge their acceptance of this AGREEMENT by affixing their signature(s) below.

[SIGNATURE PAGE(S) TO FOLLOW]

463 IN WITNESS WHEREOF, the OPERATORS and the AUTHORITY have affixed their signatures and
464 caused this License Agreement to be effective as of the date shown on the first page of this
465 document:

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467 For the CITY OF LAKE ELSINORE:

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Date

Mayor

471 *Approved As To Form:*

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Date

City Attorney

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475 For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT (EVMWD)

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Date

President, Board of Directors

479 *Approved As To Form:*

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Date

Counsel for EVMWD

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483 For the COUNTY OF RIVERSIDE

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MAY 23 2017

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Date

Chairman, Board of Supervisors

487 *Approved As To Form:*

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5-10-17

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Date

Counsel for the County of Riverside

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Attested:

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MAY 23 2017

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Date

Aaron C. Gettis
Clerk for the Board of Supervisors

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495 For the LAKE ELSINORE SAN JACINTO WATERSHEDS AUTHORITY

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Date

Chairman, Board of Directors

499 *Approved As To Form*

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Date

Counsel for LESJWA