

**DUBLIN SAN RAMON SERVICES DISTRICT
Board of Directors**

NOTICE OF SPECIAL MEETING

TIME: 6:00 p.m.
PLACE: Regular Meeting Place
7051 Dublin Boulevard, Dublin, CA

DATE: Tuesday, October 22, 2013

AGENDA

(NEXT RESOLUTION NO. 48-13)

(NEXT ORDINANCE NO. 331)

Our mission is to provide reliable water and wastewater services to the communities we serve in a safe, efficient and environmentally responsible manner.

BUSINESS:

REFERENCE

	<u>Recommended Action</u>	<u>Anticipated Time</u>
1. <u>CALL TO ORDER</u>		
2. <u>PLEDGE TO THE FLAG</u>		
3. <u>ROLL CALL</u> – Members: Benson, Duarte, Halket, Howard, Vonheeder-Leopold		
4. <u>PUBLIC COMMENT</u> (MEETING OPEN TO THE PUBLIC)		
<p>At this time those in the audience are encouraged to address the Board on any item of interest that is within the subject matter jurisdiction of the Board and not already included on tonight’s agenda. Comments should not exceed five minutes. Speakers’ cards are available from the District Secretary and should be completed and returned to the Secretary prior to addressing the Board. The President of the Board will recognize each speaker, at which time the speaker should proceed to the lectern, introduce him/herself, and then proceed with his/her comment.</p>		
5. <u>BOARD BUSINESS</u>		
A. Approve Fifth Supplemental Agreement to Agreement for Wastewater Disposal Services between City of Pleasanton and Dublin San Ramon Services District and Provide Direction to DERWA Representatives regarding DERWA – Pleasanton Agreement	District Engineer	Approve by Resolution 10 min
6. <u>CLOSED SESSION</u>		
A. Conference with Real Property Negotiator – Pursuant to Government Code Section 54956.8 Property: Water Supply Agency Negotiator: Bert Michalczyk, General Manager David Requa, Assistant General Manager/District Engineer John Archer, Interim Financial Services Manager Dan Gallagher, Operations Manager Carl P.A. Nelson, General Counsel		5 min

BUSINESS:

REFERENCE

	<u>Recommended Action</u>	<u>Anticipated Time</u>
Negotiating Parties: City of Pleasanton Under Negotiation: Terms and Conditions		
B. Conference Involving a Joint Powers Agency Pursuant to Government Code Section 54956.96 (DSRSD-EBMUD Recycled Water Authority (DERWA)) Discussion Will Concern: Conference with Real Property Negotiator – Pursuant to Government Code Section 54956.8 Property: Water Supply Contract Negotiating Parties: City of Pleasanton & DERWA Under Negotiation: Price & Terms Local Agency Representatives of Joint Powers Agency Board: Director Halket Director Vonheeder-Leopold Other Attendees: Bert Michalczyk, General Manager David Requa, Assistant General Manager/District Engineer John Archer, Interim Financial Services Manager Dan Gallagher, Operations Manager Carl P.A. Nelson, General Counsel		5 min
C. Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to paragraph (2) for (3) of subdivision (d) of Government Code Section 54956.9: One case		5 min

7. REPORT FROM CLOSED SESSION

8. ADJOURNMENT

BOARD CALENDAR*

<u>Committee & Board Meetings</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
DERWA	October 28, 2013	6:00 p.m.	District Office
Regular Board Meeting	November 5, 2013	6:00 p.m.	District Office

*Note: Agendas for regular meetings of District Committees are posted not less than 72 hours prior to each Committee meeting at the District Administrative Offices, 7051 Dublin Boulevard, Dublin, California

All materials made available or distributed in open session at Board or Board Committee meetings are public information and are available for inspection at the front desk of the District Office at 7051 Dublin Blvd., Dublin, during business hours, or by calling the District Secretary at (925) 828-0515. A fee may be charged for copies. District facilities and meetings comply with the Americans with Disabilities Act. If special accommodations are needed, please contact the District Secretary as soon as possible, but at least two days prior to the meeting.



**Dublin San Ramon Services District
Summary & Recommendation**

Reference District Engineer	Type of Action Approve Agreement	Board Meeting of October 22, 2013
Subject Approve Fifth Supplemental Agreement to Agreement for Wastewater Disposal Services between City of Pleasanton and Dublin San Ramon Services District and Provide Direction to DERWA Representatives regarding DERWA-Pleasanton Agreement		
<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Minute Order	<input checked="" type="checkbox"/> Resolution
<input type="checkbox"/> Ordinance	<input type="checkbox"/> Informational	<input type="checkbox"/> Other
REPORT: <input type="checkbox"/> Verbal	<input type="checkbox"/> Presentation	<input checked="" type="checkbox"/> Staff
D. Requa		<input type="checkbox"/> Board Member

Recommendation:

The District Engineer recommends the Board of Directors approve, by Resolution, the Fifth Supplemental Agreement to Agreement for Wastewater Disposal Services between City of Pleasanton and Dublin San Ramon Services District and, by motion, provide direction to the DERWA delegates to approve the DERWA-Pleasanton Agreement.

Summary:

To facilitate the implementation of DSRSD-EBMUD Recycled Water Authority (DERWA), the District entered into the Third Supplemental Agreement with the City of Pleasanton (“City”) to clearly define the District’s right to recycle wastewater emanating from the District service area and the City’s right to recycle wastewater emanating from the Pleasanton service area. The agreement was necessary to demonstrate to EBMUD that the District had clear title to effluent for recycling. However, District effluent quantity is not adequate to meet the demand of DERWA on peak days. The Third Supplemental Agreement also gave the District the right to utilize up to 2.5 mgd of Pleasanton effluent through December 31, 2009. This was subsequently extended to December 31, 2011 with approval of the Fourth Supplemental Agreement.

The Fifth Supplemental Agreement allows the District to utilize any Pleasanton effluent not being utilized by the City. The City is in the final completion stages of planning for a Pleasanton recycled water distribution system. The Fifth Supplemental Agreement also provides for the District and the City to share distribution facilities to the extent practicable to improve efficiency with cost reimbursement proportional to use. Finally, the District and the City water enterprise funds will be reimbursed with avoided LAVWMA disposal cost from the regional operating fund proportional to the amount of effluent each entity recycles.

In parallel with the Fifth Supplemental Agreement, the City of Pleasanton and DERWA have developed an agreement under which DERWA will provide wholesale recycled water to the City for distribution within Pleasanton. The City will pay the capital costs of facilities required by DERWA to provide the recycled water including buy-in costs. The City will also pay the same unit cost for recycled water received as EBMUD and DSRSD pay for recycled water produced from the Regional Wastewater Treatment Plant. The Agreements conform to all the direction previously received from the Board including that the agreements taken together do not result in any subsidy of the Pleasanton recycled water program by DERWA or DSRSD. Use of recycled water by the City of Pleasanton improves the reliability of the Tri-Valley potable water supply.

The Fifth Supplemental Agreement will not become effective unless and until DERWA has approved the DERWA-Pleasanton Agreement, Pleasanton has approved both agreements, and Pleasanton has completed California Environmental Quality Act (CEQA) for their project.

Committee Review			Legal Review	Staff Review		
COMMITTEE	DATE	RECOMMENDATION	Yes	ORIGINATOR	DEPARTMENT	REVIEWED BY
---	---	---		D. Requa	Engineering	
ATTACHMENTS <input type="checkbox"/> None						
<input checked="" type="checkbox"/> Resolution	<input type="checkbox"/> Minute Order	<input type="checkbox"/> Task Order	<input type="checkbox"/> Staff Report	<input type="checkbox"/> Ordinance		
<input checked="" type="checkbox"/> Cost See Attachment 1	<input type="checkbox"/> Funding Source A. B.	Attachments to S&R 1. Costs Associated with Recycled Water Agreements 2. DERWA-Pleasanton Agreement 3.				

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF DIRECTORS OF DUBLIN SAN RAMON SERVICES DISTRICT APPROVING FIFTH SUPPLEMENTAL AGREEMENT TO AGREEMENT FOR WASTEWATER DISPOSAL SERVICES BETWEEN CITY OF PLEASANTON AND DUBLIN SAN RAMON SERVICES DISTRICT

WHEREAS, pursuant to the Agreement for Wastewater Disposal Services dated November 3, 1992 (Basic Agreement), as amended and supplemented by agreements dated September 2, 1997, December 5, 2000, and November 19, 2002, Dublin San Ramon Services District (“District”) provides wastewater treatment and disposal services of sewage emanating from the sewerage service area of the City of Pleasanton (“City”); and

WHEREAS, the Third Supplemental Agreement, dated November 19, 2002 (Third Supplemental Agreement), granted the City sole control of secondary treated wastewater effluent produced from sewage emanating from the sewerage service area of the City; and

WHEREAS, the Third Supplemental Agreement granted the District the right to use of up to 2.5 million gallons per day of secondary treated wastewater effluent produced from sewage emanating from the sewerage service area of the City, from the effective date of the Third Supplemental Agreement through December 31, 2009, for District use in the production of recycled water; and

WHEREAS, the Fourth Supplemental Agreement granted the District the right to use the said secondary effluent through December 31, 2011; and

WHEREAS, the City desires to implement a recycled water program; and

WHEREAS, both the District and the City desire to work cooperatively to maximize the use of all secondary treated wastewater effluent for recycling to improve the reliability of the Tri-Valley water supply; and

Res. No. _____

WHEREAS, District and City desire to share use of recycled water distribution facilities when practical to minimize operating costs.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF DUBLIN SAN RAMON SERVICES DISTRICT, a public agency located in the counties of Alameda and Contra, as follows:

The Board President and District Secretary are hereby authorized and directed to execute, and to attest thereto, respectively, the Fifth Supplemental Agreement to Agreement for Wastewater Disposal Services (Exhibit "A") for and on behalf of the District.

ADOPTED by the Board of Directors of Dublin San Ramon Services District, a public agency in the State of California, counties of Alameda and Contra Costa, at its special meeting held on the 22nd day of October 2013, and passed by the following vote:

AYES:

NOES:

ABSENT:

Dawn L. Benson, President

ATTEST: _____
Nancy G. Hatfield, District Secretary

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**FIFTH SUPPLEMENTAL AGREEMENT
TO
AGREEMENT FOR WASTEWATER DISPOSAL SERVICES**

This Agreement made and entered into this ____ day of _____, 2013, by and between the **CITY OF PLEASANTON**, a municipal corporation (City) and the **DUBLIN SAN RAMON SERVICES DISTRICT**, a public agency of the State of California (District or DSRSD); collectively the “Parties”;

WITNESSETH:

WHEREAS, the Parties entered into that certain Agreement entitled Agreement for Wastewater Disposal Services dated November 3, 1992, (hereinafter defined as the “Basic Agreement”), by which the Parties’ obligations for wastewater treatment and disposal are provided; and

WHEREAS, supplemental agreements may be made to the Basic Agreement pursuant to Paragraph 17 thereof; and

WHEREAS, the Parties entered into that certain Supplemental Agreement entitled Third Supplemental Agreement to Agreement for Wastewater Disposal Services dated November 19, 2002, (hereinafter referred to as the “Third Supplemental Agreement”) by which the Parties agreed to certain terms and conditions related to the use of secondary effluent originating in each Party’s service area; and

WHEREAS, the Parties entered into that certain Supplemental Agreement entitled Fourth Supplemental Agreement to Agreement for Wastewater Disposal Services dated November 3, 2009 (hereinafter referred to as the “Fourth Supplemental Agreement”) by which the Parties agreed to further terms and conditions related to the use of secondary effluent originating in each Party’s service area; and

WHEREAS, because the Parties share the same potable water supply, water recycling by either party enhances the reliability of the potable water supply for both Parties; and

WHEREAS, the use of Recycled Water by the Parties helps reduce demand for fresh water diversions from the Delta and reduces discharges of treated wastewater

effluent in to the San Francisco Bay; and

WHEREAS, the Parties financially benefit from water recycling by avoiding variable costs to dispose of treated wastewater through the Livermore-Amador Valley Water Management Agency (LAVWMA); and

WHEREAS, District, through its participation in the DSRSD-EBMUD Recycled Water Authority (DERWA), has planned, designed and constructed and now operates and maintains a joint Recycled Water program in conjunction with its partner agency, the East Bay Municipal Utility District, which program includes facilities for the treatment, storage, and transmission of Recycled Water; and

WHEREAS, District has planned, designed and constructed and now operates and maintains a Recycled Water Program that includes facilities for the storage and distribution of Recycled Water within the District's water service area; and

WHEREAS, as set forth in the Third Supplemental Agreement, "[t]he parties agree it is in their best interests to jointly identify and implement ways to recycle water"; and

WHEREAS, City desires to develop a Recycled Water Program to deliver Recycled Water to selected current and future customers within the City; and

WHEREAS, City intends to concurrently enter into an agreement with DERWA entitled Agreement to Provide Recycled Water Treatment and Delivery Services (the "DERWA-City Agreement") that will become effective concurrent with the Effective Date of this Agreement and under which DERWA would, pursuant to the July 28, 2003, Water Supply Agreement between DSRSD, DERWA and EBMUD, cause DSRSD to provide Recycled Water from the Recycled Water Treatment Facility for the City Recycled Water Program; and

WHEREAS, City has requested District's assistance, and the District desires to assist City, in the initial permitting of a City Recycled Water Program; and

WHEREAS, the Parties desire to integrate supply, operation, and facilities of the Recycled Water Programs in a manner that is in the best interests of the customers of both Parties and DERWA.

WHEREAS, this agreement helps to define a stable and finite project or program description that will facilitate completion of California Environmental Quality Act ("CEQA")

review pursuant to Cal. Pub. Res. Code section 21000 et seq., and is conditioned upon the Parties' completion of CEQA review.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Effective Date.** This Agreement shall become operative (the Effective Date), subject to the completion of CEQA review as set forth in Section 14, upon: (a) approval and execution by the Parties; and (b) approval and execution of the DERWA-City Agreement. The Effective Date of this Agreement shall be the latter of the date by which this Agreement is fully executed or the date on which the DERWA-City Agreement is fully executed. This Agreement shall automatically terminate if the DERWA-City Agreement terminates for any reason.
2. **Definitions.** For purposes of this Agreement, the following words, terms and phrases shall have the following meanings when capitalized. Other words, terms and phrases shall have the same meaning as provided in the Basic Agreement and appropriate supplements.
 - a. **DERWA** – The DSRSD-EBMUD Recycled Water Authority, a Joint Powers Authority comprised of Dublin San Ramon Services District and East Bay Municipal Utility District.
 - b. **EBMUD** – East Bay Municipal Utility District.
 - c. **Secondary Effluent** – The treated wastewater produced by the Regional Sewerage Facilities owned and operated by the District to treat wastewater for discharge to LAVMWA, which treated wastewater meets the effluent limitations and other conditions imposed by the National Pollutant Discharge Elimination System (NPDES) Permit governing the discharge of wastewater by the District's Regional Sewerage Facilities. This supersedes the definition set forth in Section 2.H of the Third Supplemental Agreement.
 - d. **City Secondary Effluent** – The Secondary Effluent produced from the treatment of wastewater that the District receives from City. This supersedes the definition set forth in Section 2.A of the Third Supplemental Agreement.
 - e. **Recycled Water** – Secondary Effluent that is further treated to a quality that meets or exceeds the requirements for unrestricted use pursuant to Title 22,

California Code of Regulations, Division 4, Environmental Health, Chapter 3, Water Recycling Criteria or successor regulations for non-potable water intended for unrestricted use. This is the same Recycled Water that is produced by DSRSD and supplied to DERWA pursuant to the July 28, 2003 Water Supply Agreement between DSRSD, DERWA and EBMUD (“Water Supply Agreement”) and that is delivered by DERWA to the DSRSD Recycled Water Program and to the EBMUD Recycled Water Program, respectively, pursuant to the July 28, 2003 Agreement for the Sale of Recycled Water by DERWA to DSRSD and EBMUD (“Water Sales Agreement”). This supersedes the definition set forth in Section 2.I of the Third Supplemental Agreement.

- f. **Recycled Water Program** – A complete stand-alone utility to deliver Recycled Water to customers, including all permitting, facilities, operations, policies and procedures. The DERWA Recycled Water Program consists of Recycled Water treatment, pumping, transmission and storage facilities through which Recycled Water is or will be delivered to the District and EBMUD Recycled Water Programs and through a portion of which it is contemplated by and in accordance with this Agreement and the DERWA-City Agreement that Recycled Water will be delivered to the City Recycled Water Program. The District Recycled Water Program consists of distribution system pipelines, reservoirs and pump stations. The City Recycled Water Program is planned to consist of distribution system pipelines and a reservoir.
- g. **Recycled Water Treatment Facility** – The sand filtration/ultraviolet light disinfection treatment plant together with DERWA Recycled Water Pump Station No 1 (PSR 1), all located at 7051 Johnson Drive in Pleasanton, California. The Recycled Water Treatment Facility referred to in this Agreement is the same as the “Recycled Water Treatment Plant” defined in the DERWA-City Agreement. The Recycled Water Treatment Facility comprises a portion, but not all of, (a) the facilities defined in the Water Sales Agreement as “Facilities, Tertiary Treatment Plant,” and (b) the facilities defined in the Water

Supply Agreement as the “Tertiary Treatment Plant Facilities.”

- h. **Recycled Water Transmission System** – The DERWA pumping, pipeline and storage facilities that receive Recycled Water from the Recycled Water Treatment Facility, and which DERWA now uses to deliver Recycled Water to the District’s and EBMUD’s respective Recycled Water Distribution Systems, and which in the future will also deliver Recycled Water to the City’s Recycled Water Distribution System in accordance with the terms of this Agreement and the City-DERWA Agreement.
 - i. **Recycled Water Distribution System** – The various District, EBMUD, and, in the future, City pipelines that convey Recycled Water from the Recycled Water Transmission System to the respective end-user customers of each retail agency.
 - j. **Tassajara Reservoir** – The rectangular concrete reservoir with an 8 million gallon capacity and a finished floor elevation of 491 feet, located below surface grade at 5450 Tassajara Road in Dublin, California, that is owned and operated by the City.
3. **Integration Benefit.** Integrating the District and the City Recycled Water Programs pursuant to this Fifth Supplemental Agreement initially benefits the District Recycled Water Program more than it benefits the City Recycled Water Program, so within thirty (30) days of the effective date of this Fifth Supplemental Agreement, the District shall pay the City a lump sum of one hundred and twenty five thousand dollars (\$125,000), which funds shall not originate from any of the District’s Regional Sewer Funds (to which the City contributes as specified in the Basic Agreement).
4. **Use of Secondary Effluent.** The Parties shall maximize the recycling of Secondary Effluent produced by the Regional Sewerage Facilities for beneficial use. Notwithstanding Section 9(b) of the Basic Agreement, District shall have the right to utilize—for supplying to DERWA pursuant to the Water Supply Agreement (as defined above) for delivery by DERWA, pursuant to the Water Sales Agreement (as defined above), to the DSRSD Recycled Water Program and to the

EBMUD Recycled Water Program—any City Secondary Effluent not being used or needed for the production of Recycled Water for use or delivery by the City Recycled Water Program. In accordance with Section 7.c.iii, City shall operate Tassajara Reservoir in a manner that maximizes the availability of Recycled Water for use in the City Recycled Water Program and the DSRSD Recycled Water Program by reducing peak daily demand for Recycled Water directly delivered from the Recycled Water Treatment Facility.

5. **Recycled Water Program Support.** District shall assist City with the initial permitting and initial support needed for the City to use Recycled Water to irrigate all or portions of Val Vista Park as City may decide. Said support shall be limited to reasonable amounts of District staff time for consultations and furnishing existing written materials such as District Recycled Water Use Guidelines and Requirements, District standard construction and inspection standards and drawings and site supervisor training for City staff at Val Vista Park. In addition, the District shall cooperate and assist the City in permitting Recycled Water usage at Val Vista Park under the District's existing Recycled Water Permit. City shall reimburse District the direct cost of providing requested support.
6. **Third Party Funding Cooperation.** The Parties shall work cooperatively to lobby and apply for future State and Federal grants and loans for future funding of the Parties' respective Recycled Water Programs. The Parties shall also work cooperatively to encourage Zone 7 to equitably participate in the future funding of the Parties' Recycled Water Programs.
7. **Operation Coordination and Facility Integration.**
 - a. **General.** In accordance with this section, the Parties shall integrate facilities and coordinate operation of their Recycled Water Distribution Systems to reasonably minimize peak daily demand for direct delivery of Recycled Water from the Recycled Water Treatment Facility and to reasonably maximize the beneficial use of Recycled Water.
 - b. **Operation Coordination.** The Parties shall develop a plan for coordinated operation of their Recycled Water Distribution Systems to the extent necessary,

which coordinated operation shall include the use of storage in Tassajara Reservoir to reasonably minimize peak daily demand for direct delivery of Recycled Water from the Recycled Water Treatment Facility.

c. **Facility Integration.**

i. **General.** The Parties shall integrate the facilities identified herein into the Parties' respective Recycled Water Programs so as to reasonably maximize the use of capacity of said facilities that is currently unused in an equitable manner as specified herein.

ii. **Microfiltration / Ultraviolet Disinfection Treatment.**

1. The District shall make excess capacity in its microfiltration and its associated ultraviolet disinfection ("MF/UV") facilities available to produce Recycled Water for the District Recycled Water Program or the City Recycled Water Program.
2. Commencing with the 2014 irrigation season neither the District nor Pleasanton shall be required to separately make any lease payments towards the costs related to the construction of the MF/UV facilities, in return for use of these facilities.
3. The District and City agree that DSRSD shall cause DERWA to apportion the non-replacement operating costs of the MF/UV facilities among EBMUD, DSRSD and Pleasanton in relation to deliveries to each party of recycled water processed by the MF/UV facilities.
4. Pleasanton shall pay a proportionate share of MF/UV replacement expenditures for items with a cost of less than \$100,000 each, based on deliveries to Pleasanton in relation to total Recycled Water deliveries to DSRSD, EBMUD and Pleasanton in that Fiscal Year.
5. Pleasanton shall pay 50% of the non-EBMUD share of MF/UV replacement expenditures for items with a cost of greater than \$100,000 each.

iii. **Tassajara Reservoir Storage.** City shall operate Tassajara Reservoir in a manner that reasonably minimizes the peak daily demand of the City

Recycled Water Program for direct delivery of Recycled Water from the Recycled Water Treatment Facility. The City shall make excess Tassajara Reservoir storage available to the District for the District Recycled Water Program, with such excess varying over time according to the City Recycled Water Program needs. District shall pay all capital costs of connecting the Tassajara Reservoir to the District Recycled Water Distribution System and shall pay annually an excess storage use lease payment comprising the actual operation, maintenance and replacement cost in proportion to District use of the Tassajara Reservoir. The excess storage use lease payment shall be \$89.58 per million gallons of Recycled Water for each day Recycled Water is stored in the Tassajara Reservoir for District use. The basis of the calculation of the District's excess storage lease payment to City is presented in Exhibit A; City shall maintain a water storage accounting system to facilitate calculation of the excess storage use lease payment due from District. City shall deliver an excess storage use lease payment invoice to District on or by December 31 of each calendar year. Within thirty (30) days after City delivers the annual excess storage use lease payment invoice, District shall pay to City the full invoice amount.

- iv. **Recycled Water Pipeline.** The District shall make excess capacity in that certain 24-inch pipeline segment located generally in Dublin Boulevard and shown in Exhibit B that runs from approximately Tassajara Creek to south of Interstate 580 in Fallon Road (Recycled Water Pipeline) available to the City for its Recycled Water Program. City shall pay all capital costs of connecting the Pipeline to the City Recycled Water Distribution System and shall pay annually a Recycled Water Pipeline lease payment comprising the actual operation, maintenance and replacement cost in proportion to City use. The Recycled Water Pipeline lease payment shall be \$16.71 per million gallons of Recycled Water transported through the Recycled Water Pipeline for City use. The basis of the calculation of the lease payment is presented in Exhibit C; District shall maintain a Recycled Water Pipeline use

accounting system to facilitate calculation of the Recycled Water Pipeline lease payment due from City. District shall deliver a Recycled Water Pipeline lease payment invoice to City on or by December 31 of each calendar year. Within thirty (30) days after District delivers the Recycled Water Pipeline lease payment invoice, City shall pay to District the full invoice amount. District shall deposit said lease payments to the Regional Expansion Fund.

- v. **LAVWMA**. The Pleasanton Recycled Water Program and the District Recycled Water Program will result in avoided cost savings associated with the disposal of treated Secondary Effluent to San Francisco Bay. Similarly, Recycled Water use in EBMUD's service area delivered via the DERWA Recycled Water Program will also result in avoided cost savings associated with the disposal of treated Secondary Effluent to San Francisco Bay. Accordingly, avoided cost savings shall be credited to the Parties as follows.
1. Commencing upon initial Recycled Water deliveries to City by DERWA, for use at Val Vista Park the District shall pay to the City, from the District's Regional Enterprise Fund, an amount equal to the avoided cost of wastewater disposal through the LAVWMA system that is the result of Recycled Water delivered by the City Recycled Water Program for beneficial use during the preceding year.
 2. Commencing on the Effective Date of this Fifth Supplemental Agreement, the District shall, at its option, pay to or credit its Local or Water Enterprise Fund from its Regional Enterprise Fund, an amount equal to the avoided cost of wastewater disposal through the LAVWMA system as the result of Recycled Water delivered by the District Recycled Water Program during the preceding year.
 3. Commencing on the Effective Date of this Fifth Supplemental Agreement, the District shall retain in its Regional Enterprise Fund, an amount equal to the avoided cost of wastewater disposal through the

LAVWMA system as the result of Recycled Water delivered by DERWA to the EBMUD Recycled Water Program during the preceding year.

4. The avoided cost of wastewater disposal through the LAVWMA system shall be calculated by multiplying the respective volume of Recycled Water delivered to the City, District, or EBMUD Recycled Water Programs, as the case may be, by the unit cost for disposal via LAVWMA as determined by the annual use and cost reconciliation prepared by LAVWMA. The unit cost shall be derived based upon the total actual variable costs divided by the total combined flow). A sample calculation is shown in Exhibit D.

8. Dispositions of Earlier Supplemental Agreements.

- a. **Third Supplemental Agreement.** All terms and conditions of the Third Supplemental Agreement remain in effect except:
 - i. **Section 3.** Section 3 of the Third Supplemental Agreement is hereby terminated in its entirety on the effective date of this Agreement;
 - ii. **Section 5(a).** The second sentence of Section 5(a) of the Third Supplemental Agreement is hereby terminated in its entirety on the effective date of this Agreement;
 - iii. **Section 6(b).** Subsections 6(b)(ii) and 6(b)(iii) of the Third Supplemental Agreement are hereby terminated in their entirety on the effective date of this Agreement; and
 - iv. **Section 9(b).** Section 9(b) of the Third Supplemental Agreement is hereby terminated in its entirety on the effective date of this Agreement.
- b. **Fourth Supplemental Agreement.** The Fourth Supplemental Agreement is terminated in its entirety on the effective date of this Agreement

- 9. Agreement Integration.** This Fifth Supplemental Agreement constitutes the entire agreement between the parties regarding the subject matter hereof. Nothing herein contained shall be deemed a limitation upon the parties to enter into further supplemental agreements. In the event of conflicting language between this Fifth

Supplemental Agreement on the one hand, and the Basic Agreement, or any other prior Supplementary Agreement or Agreements on the other hand, the terms and conditions of this Fifth Supplemental Agreement shall govern. Except to the extent specified herein or modified hereby, all terms, conditions and provisions of the Basic Agreement, as previously supplemented, shall remain in full force and effect.

10. **Successors.** This Agreement, and the duties, obligations, and rights of the parties shall be binding upon, and inure to the benefit of, their successors.
11. **Indemnification.** Either Party purchasing Recycled Water produced from Secondary Effluent agrees to defend, indemnify, and hold the other Party harmless from and against any and all claims, demands, or liability associated with such purchase or the use of Recycled Water by the indemnifying Party or its retail customers; provided that City's obligations under this Section 11 do not apply to the extent that the claimants were exposed to water produced by DSRSD and delivered to the City by DERWA that did not meet or exceed the standards established by the California Department of Public Health according to Title 22 of the California Code of Regulations or successor regulations for non-potable water intended for unrestricted use. Except as the parties hereto may otherwise agree in writing, no Regional Funds shall be used to defend or satisfy any claims or costs associated with the purchase or the use of such Recycled Water by that Party or its retail customers. Notwithstanding any other provision of this Agreement, including section 12, the provisions of this Section 11 shall survive the termination of this Agreement.
12. **Severability.** Except as specified in the next sentence, the provisions of this Agreement are severable, such that if any paragraph, sentence, clause, phrase, or other provision of this Agreement, or the application thereof to either party, or to any other person or circumstance is, for any reason, held invalid or otherwise rendered ineffectual or unenforceable by a court of competent jurisdiction, said invalid portion shall be deemed severable and the remainder of the agreement or the application thereof to the other party or to other persons shall not be affected thereby. Notwithstanding the previous sentence, the provisions of Sections 3, 4, 7,

and 8 are material and are collectively indispensable to this Agreement, and if one or more of such provisions are held invalid or otherwise rendered ineffectual or unenforceable, this Agreement will fail to fulfill its purposes and will thereby terminate in its entirety without any further action of any of the parties. Should this Agreement be terminated pursuant to the preceding sentence [or in any manner other than the mutual consent of the Parties], City shall reimburse to District one-tenth of the amount specified in Section 3 for each of the first ten years of the term of this Agreement that City Secondary Effluent not being used for the production of Recycled Water for use or delivery by the City Recycled Water Program is not made available for the DSRSD Recycled Water Program. For example, if the Agreement is terminated during the third year after the effective date of this Agreement, City would be obligated to repay \$87,500 to District. ($\$125,000 - \$37,500 (\$12,500 \times 3) = \$87,500$).

13. **Paragraph Headings.** Paragraph and subparagraph headings contained herein are for convenience only and shall not be deemed to amend, or affect the interpretation of, the paragraph or subparagraphs headed thereby.
14. **CEQA Compliance.** Despite all the preceding provisions of this Agreement, the legal effectiveness of the Agreement is contingent on the Parties' completion of CEQA review.
 - a. City shall perform the role of lead agency in completing CEQA review for the City's Recycled Water Program, including the project to expand the DERWA Recycled Water Program by 1.9 MGD to provide Recycled Water for the City's Recycled Water Program, and District shall perform the role of a responsible agency. DSRSD will cooperate with City and with any environmental consultant retained by City to assist with the CEQA review, and provide the technical information in its custody or control regarding the DERWA Recycled Water Program and Recycled Water supply as reasonably needed for the completion of the CEQA review. Except for the District's effort described in the preceding sentence, City shall pay all costs of the CEQA review.

- b. If completion of CEQA review identifies any significant adverse environmental effects from the City's Recycled Water Program, the Parties retain full discretion to disapprove this Agreement or to revise this Agreement as necessary to implement any feasible mitigation measures or alternatives that would avoid or reduce such significant effects as provided by CEQA; provided that District's discretion to disapprove or revise this Agreement shall be limited to responding to any significant adverse environmental effects that lie within District's legal jurisdiction as a responsible agency under CEQA. District will reasonably cooperate with City regarding the implementation of any feasible mitigation measures, mitigation monitoring or alternatives adopted in the final CEQA review, but under no circumstances shall District be responsible for the costs of implementing any mitigation measures, mitigation monitoring or alternatives that are adopted to avoid or reduce significant effects caused by the City Recycled Water Program. City shall pay the costs of implementing all mitigation measures, mitigation monitoring or alternatives that are adopted to avoid or reduce significant effects caused by the City Recycled Water Program.
- c. If any third party brings a legal challenge to the CEQA review conducted under this Section, City shall undertake the defense thereof at its sole expense, and shall indemnify, defend, and hold harmless District, and District's officers, employees, and agents, from any cost or expense, including attorney's fees, and costs incurred therein. District and City have a common interest in completing legally defensible CEQA review and in defending the CEQA review completed under this Section. District shall cooperate with City in defending the CEQA review completed under this Section.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first hereinabove written.

CITY OF PLEASANTON,
a municipal corporation

DUBLIN SAN RAMON SERVICES DISTRICT,
a public agency of the State of California

By: _____
Jerry Thorne, Mayor

By: _____
Dawn L. Benson, President

ATTEST:

ATTEST:

By: _____
Karen Diaz, City Clerk

By: _____
Nancy Hatfield, District Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Jonathan P. Lowell, City Attorney

By: _____
Carl P. Nelson, District Counsel

Exhibit A
Tassajara Reservoir Lease Basis

Original Construction Cost	\$ 4,112,000
Engineering (estimate)	<u>\$ 411,200</u>
Total	\$ 4,523,200
Amortized Capital Cost	\$ 261,577
Capacity MG	8
Interest rate	4%
Life years	30
Annual capacity Available MG	2,920
Lease cost per MG used	\$89.58

**Exhibit C
CWR Pipeline Lease Basis**

Pipeline Project (cost incurred from January 21, 1997)			
Station	187.25 to 272.25		
		<u>Total</u>	<u>Allocated</u>
Segment 2	175.75 to 249.75		
Used	187.25 to 249.75		
	Segment Allocation		84.5%
	Engineering	\$ 446,679	\$ 377,263
	Construction	\$ 813,609	\$ 687,170
	Total	\$ 1,260,288	\$ 1,064,432
Segment 3	249.75 to 261.25		
Used	249.75 to 261.25		
	Segment Allocation		100.0%
	Engineering	\$ 99,262	\$ 99,262
	Construction	\$ 191,362	\$ 191,362
	Total	\$ 290,624	\$ 290,624
Segment 4	261.24 to 301.25		
Used	261.25 to 272.25		
	Segment Allocation		27.5%
	Engineering	\$ 372,233	\$ 102,338
	Construction	\$ 802,988	\$ 220,767
	Total	\$ 1,175,221	\$ 323,105
		Grand Total	\$ 1,678,161
		Amortized Capital Cost	\$ 15,041
		Capacity gpm	5,000
		Interest rate	4.0%
		Life years	50
		Design Throughput peak day mgd	7.2
		Average day Recycled Water mgd	2.5
		Average Annual Throughput million gallons	900
		Lease Cost per MG transported	\$16.71

Exhibit D
LAVWMA Variable Cost Credits
(sample calculation)

Data from LAVWMA Annual Cost Reconciliation:

LAVWMA Flow (MG) 4,558

LAVWMA Variable Costs:

EBDA O&M Variable	\$ 191,843
Power	<u>1,223,068</u>
	<u>\$ 1,414,911</u>

Cost Per MG **\$ 310.42**

Recycled Water Deliveries To:	Units Delivered (AF)	0.32585 Convert to MG	Avoided Costs	Disposition
DSRSD	1,600	521	\$ 161,843	Disbursement from Regional Enterprise to DSRSD's Water or Local Sewer Fund
EBMUD	800	261	80,921	Cost savings enjoyed by Regional Enterprise
Pleasanton	<u>1,500</u>	<u>489</u>	<u>151,728</u>	Disbursement from Regional Enterprise to the City
	<u><u>3,900</u></u>	<u><u>1,271</u></u>	<u><u>\$ 394,492</u></u>	

Attachment 1 to S&R

Costs Associated with the Recycled Water Agreements

Fifth Supplemental The following costs and benefits that are associated with the Fifth Supplemental Agreement will accrue to the District’s water enterprise:

- The District will pay the City a onetime lump sum of \$125,000 for equalization of integration benefits over the life of the agreement - that cost will be apportioned between DSRSD and EBMUD such that the DSRSD cost will be approximately \$62,500 net;
- The District will pay the City \$89.58 for every million gallons of District recycled water stored in Tassajara reservoir - the estimated annual cost is \$500 per year when fully placed into operation;
- The City of Pleasanton will pay the District \$16.71 per million gallons for use of a District recycled water pipeline with available capacity so that the City of Pleasanton can serve the east side of Pleasanton - the estimated annual income to the District is \$1,350 when fully placed into operation.
- The District’s water enterprise will directly receive the benefit of the avoided cost of not pumping treated wastewater for disposal to San Francisco Bay (previously that benefit accrued to the regional wastewater enterprise) - the estimated annual avoided cost that will accrue to the benefit of the water enterprise will be \$162,000; and
- The District water enterprise will no longer be required to make lease payments for the use of the MF / UV system - the estimated annual avoided cost that will accrue to the benefit of the water enterprise will be \$43,100.

Cost Aspect	Basis	Benefit (Cost)
System integration benefit lump sum – negotiated lump sum amount	One time	(\$62,500)
Tassajara Reservoir Lease 5 MG annually at \$89.58 / MG	Annual	(\$500)
Pipeline Lease – 250 AF/year at \$16.71 / MG	Annual	\$1,350
Avoided cost benefit to water enterprise 520 MG annually at (\$310 / MG)	Annual	\$162,000
Elimination of lease payments for the use of the MF / UV system –lump sum	Annual	\$43,100
TOTAL	One Time Annual	(\$63,000) \$206,000

DERWA – Pleasanton Agreement The following costs and benefits associated with the DERWA Pleasanton Agreement will accrue to the District’s water enterprise:

- Pleasanton will pay the same unit cost and a proportionate share of replacement costs associated with recycled water deliveries from DERWA that DERWA charges to its Member Agencies; because fixed costs are spread over a larger volume of deliveries there will be a cost reduction to the District as a DERWA Member Agency – estimated to be \$29/AF for 1,600 AF deliveries when fully implemented;
- Pleasanton will buy into the existing DERWA facilities when those facilities are expanded by 1.9 MGD (Section 5.2) at an amount negotiated as \$788,910 per MGD of firm capacity. The Section 5.2 buy-in will be \$1,498,930 of which the District water enterprise share will be \$854,390;
- Pleasanton will buy into the existing DERWA facilities when those facilities are expanded beyond 11.6 MGD (Section 5.3) at an amount negotiated as \$788,910 per MGD of firm capacity. The size of the expansion is not known at this time. For the purposes of this estimate a 3 MGD expansion is assumed. In that case, the Section 5.3 buy-in would be \$2,366,730 of which the District water enterprise share would be 57% or \$1,498,930;

Cost Aspect	Basis	Benefit (Cost)
Savings from reduced Unit Costs	Annual	\$46,400
Buy-in to 1.9 MGD	One Time	\$854,390
Buy-in beyond 1.9 MGD (based on an estimated 3 MGD expansion)	One Time	\$1,498,930
TOTAL	One Time Annual	\$2,353,320 \$46,400

Net Total Benefit	
One Time	\$2,290,320
Annual	\$252,400

**AGREEMENT TO PROVIDE RECYCLED
WATER TREATMENT AND DELIVERY SERVICES**

By and between DERWA and the CITY OF PLEASANTON

This Agreement is entered into this ____ day of _____, 2013, by and between the DSRSD-EBMUD Recycled Water Authority, a joint powers authority organized and existing under Government Code sec. 6500 *et seq.* (hereinafter "DERWA") and the City of Pleasanton, a California municipal corporation (hereinafter "Pleasanton" or "City"), for the purpose of establishing the terms and conditions under which DERWA will provide Recycled Water treatment and delivery services to the City of Pleasanton.

RECITALS

WHEREAS, California is facing a water supply shortage and the State has identified the beneficial use of Recycled Water to supplement surface water and groundwater resources as a key component of a comprehensive solution to assist in meeting the future water requirements of the State; and

WHEREAS, Alameda County Flood Control and Water Conservation District, Zone 7, the wholesale water agency for the Dougherty and Livermore-Amador Valleys, has adopted a water supply master plan that identifies the beneficial use of Recycled Water for irrigation as a local solution for addressing the State water supply shortage affecting all Zone 7 water customers; and

WHEREAS, the Parties recognize the benefits of using Recycled Water for a variety of beneficial uses including landscape irrigation, construction water, industrial/commercial applications and agricultural irrigation, and acknowledge that such uses represent efficient management of the water resources of the Tri-Valley area and reduce the amount of treated wastewater pumped out of the Tri-Valley area for discharge into San Francisco Bay; and

WHEREAS, the Parties recognize the benefits of collaboration to expand the use of Recycled Water in the DERWA and Pleasanton service areas; and

WHEREAS, DERWA was created to maximize the amount of Recycled Water delivered while recovering its costs for a Recycled Water project it has developed to serve the Dougherty, San Ramon and Livermore-Amador Valleys, and has developed and constructed, and operates and maintains, a system to produce and distribute Recycled Water within the DERWA service area; and

WHEREAS, pursuant to the Water Supply Agreement dated 28 July 2003 between DERWA and the Dublin San Ramon Services District, a Community Services District ("DSRSD"), DSRSD committed to make available up to 6,420 acre-feet/year

(“AFY”) of Recycled Water, subject to availability of supply, for distribution within the DERWA service area; and

WHEREAS, DSRSD, pursuant to the Agreement for Sale of Recycled Water dated July 28, 2003, constructed and now owns the Recycled Water Treatment Plant that was jointly funded by DSRSD and the East Bay Municipal Utility District (“EBMUD”), and which is currently rated by the California Department of Public Health for a maximum daily capacity of 9.7 million gallons per day (“MGD”) of Recycled Water, of which it currently produces about 6 MGD maximum daily flow; and

WHEREAS, the Parties wish to enter into an agreement by which DERWA shall cause DSRSD to produce Recycled Water for delivery to Pleasanton for distribution by Pleasanton in its service area (“City Recycled Water Program”); and

WHEREAS, this agreement helps to define a stable and finite project or program description that will facilitate completion of California Environmental Quality Act (“CEQA”) review pursuant to Cal. Pub. Res. Code section 21000 *et seq.*, and is conditioned upon the Parties’ completion of CEQA review.

NOW, THEREFORE, in consideration of these Recitals and the terms, conditions and covenants contained herein, it is mutually understood and agreed as follows:

SECTION 1: DEFINITIONS

Unless the context otherwise requires, the following terms used in this Agreement shall have the meanings respectively ascribed thereto:

1.1 “Agreement” shall mean this Agreement to Provide Recycled Water Treatment and Delivery Services by and between DERWA and Pleasanton.

1.2 “Parties” shall mean Pleasanton and DERWA.

1.3 “Basic Agreement” shall mean the “Agreement for Wastewater Services” dated November 3, 1992 between Pleasanton and DSRSD, and supplements thereto.

1.4 “Point of Delivery” shall mean the location(s) of the billing meter and the point(s) at which responsibility and ownership for the Recycled Water transfers from DERWA to Pleasanton.

1.5 “Fifth Supplemental Agreement” shall mean the “Fifth Supplemental Agreement for Wastewater Services” between Pleasanton and DSRSD.

1.6 “Recycled Water” shall mean water treated to a quality that meets or exceeds the standards established by the California Department of Public Health according to Title 22 of the California Code of Regulations or successor regulations for non-potable water intended for unrestricted use. This is the same Recycled Water that is produced by DSRSD and supplied to DERWA pursuant to the July 28, 2003 Water

Supply Agreement between DSRSD, DERWA, and EBMUD (“Water Supply Agreement”), and delivered by DERWA to the DSRSD Recycled Water Program and to the EBMUD Recycled Water Program, respectively, by DERWA pursuant to the July 28, 2003 Agreement for the Sale of Recycled Water by DERWA to DSRSD and EBMUD (“Water Sales Agreement”).

1.7 “Val Vista Park” shall mean the 14.5 acre park within Pleasanton owned, operated, and maintained by Pleasanton, and located on property immediately adjacent to the Regional Treatment Plant.

1.8 “Recycled Water Treatment Plant” shall mean the sand filtration/ultraviolet light disinfection treatment plant, together with DERWA Recycled Water Pump Station No 1(PSR 1), all located at 7051 Johnson Drive, Pleasanton CA. This is the same as the “Recycled Water Treatment Facility” as defined in the Fifth Supplemental Agreement, and comprises a portion, but not all of, (a) the facilities defined in the Water Sales Agreement as “Facilities, Tertiary Treatment Plant,” and (b) the facilities defined in the Water Supply Agreement as the “Tertiary Treatment Plant Facilities.” Of the total 9.7 MGD peak day rated production capacity of the treatment plant as of the date of this Agreement, EBMUD has a right to 4.171 MGD, and DSRSD has a right to 5.529 MGD.

1.9 “Regional Treatment Plant” shall mean the wastewater treatment plant located at 7051 Johnson Drive, Pleasanton, CA owned and operated by DSRSD, as more particularly described in the Basic Agreement.

1.10 “Provisional Rate” shall mean the rate to be charged to Pleasanton for delivered Recycled Water based on the then-current year DERWA budgeted costs calculated as provided in Section 6 below, and including all Cost Elements identified in Section 1.12 below.

1.11 “Actual Rate” shall mean the actual rate to be charged to Pleasanton for delivered Recycled Water based on DERWA’s audited costs calculated as provided for in Section 6 below, and including all Cost Elements identified in Section 1.12 below.

1.12 “Cost Elements” as applied to the Provisional Rate and the Actual Rate shall include the following. An example of how the Cost Elements are calculated is included in Exhibit A (attached and incorporated by reference).

1.12.1 All direct costs expressed on a basis of dollar per acre-foot of Recycled Water for operation and maintenance associated with the production and delivery of Recycled Water.

1.12.2 A proportionate share of DERWA indirect costs including, but not limited to: management, insurance (to the extent insurance is related to the Recycled Water Treatment Plant), treasury, administrative support and all similar costs that are related to Recycled Water Treatment Plant and those conveyance facilities to the extent they are used to deliver Recycled Water to Pleasanton, with said proportion being deliveries to Pleasanton in relation to

total Recycled Water deliveries to DSRSD, EBMUD and Pleasanton in that Fiscal Year.

1.12.3 During the period beginning with the first delivery of Recycled Water to a Pleasanton customer other than Val Vista Park and continuing until Pleasanton acquires Firm Capacity,

a. A proportionate share of DERWA Replacement Expenditures for items with a cost of less than \$100,000 each, based on deliveries to Pleasanton in relation to total Recycled Water deliveries to DSRSD, EBMUD and Pleasanton in that Fiscal Year; and

b. For DERWA Replacement Expenditures for items with a cost greater than \$100,000 each, five percent (5%) of said expenditures.

1.12.4 After Pleasanton acquires Firm Capacity,

a. A proportionate share of the DERWA Replacement Expenditures for items with a cost of less than \$100,000 each, based on deliveries to Pleasanton in relation to total Recycled Water deliveries to DSRSD, EBMUD and Pleasanton in that Fiscal Year; and

b. For DERWA Replacement Expenditures for items with a cost greater than \$100,000 each, a proportionate share based on Pleasanton's proportionate share of the total allocated capacity rights in the RWTP.

1.13 "Firm Capacity" shall mean the Recycled Water production capacity acquired by Pleasanton when it pays for planning, design and construction of increased capacity in the Recycled Water Treatment Plant as provided in Section 5 below.

1.14 "DERWA Replacement Expenditures" shall refer to the amounts expended to replace equipment comprising a portion of the DERWA Program Facilities (as such Facilities are defined in the Water Sales Agreement), including studies, environmental documentation, predesign, design, construction management, force account, equipment acquisition, construction administration, construction, change orders, and administrative costs directly related to the equipment replacement.

SECTION 2: PURPOSES AND GOALS

The parties agree that the following are the purposes of this Agreement:

2.1 To maximize the use of wastewater effluent from the Regional Treatment Plant for recycling to the benefit of the Parties.

2.2 To facilitate Pleasanton's distribution of Recycled Water to Val Vista Park as a demonstration site as soon as reasonably possible.

2.3 To enable Pleasanton to distribute Recycled Water to more sites over time while developing capital resources and a sustainable rate structure.

SECTION 3: VAL VISTA PARK

3.1 Pleasanton intends to irrigate Val Vista Park with Recycled Water as a demonstration project to introduce Pleasanton citizens and staff to the use of Recycled Water in order to promote greater uses of Recycled Water in Pleasanton. DERWA shall cooperate with Pleasanton's efforts to obtain Recycled Water to irrigate Val Vista Park as soon as reasonably possible.

3.2 DERWA shall cause DSRSD to deliver up to 40 AFY of Recycled Water to Pleasanton at a Val Vista Point of Delivery for Pleasanton's use within Val Vista Park. The Recycled Water shall be delivered at a maximum daily delivery rate of 0.10 MGD, and at a peak hourly rate not to exceed 0.2 MGD.

3.3 Recycled Water shall be delivered to the Val Vista Park Point of Delivery selected by DERWA in consultation with Pleasanton and, if on DSRSD property, with DSRSD's concurrence.

3.4 Pleasanton shall be responsible for environmental compliance, permitting, site testing, customer service, installation, operation, and maintenance of all distribution piping, landscape irrigation systems, and related equipment and facilities within Val Vista Park and leading to Val Vista Park from the Val Vista Point of Delivery. Pleasanton shall be responsible for the cost of installation, maintenance, and replacement of a billing meter at the Val Vista Point of Delivery. The Parties understand that said meter will be maintained and owned by DERWA.

3.5 Pleasanton shall be billed for, and shall pay for, Recycled Water delivered pursuant to this Section 3 at the rates per acre-foot provided in Section 6 of this Agreement.

3.6 It is Pleasanton's intention to permit deliveries of Recycled Water to Val Vista Park as a demonstration project under the authority of the DSRSD Recycled Water Program according to the terms of San Francisco Bay Regional Water Quality Control Board Order 96-011, General Water Reuse Requirements for Municipal Wastewater and Water Agencies, or successor Recycled Water regulatory requirements. DERWA shall cooperate with Pleasanton in their efforts to seek coverage under said existing permit.

3.7 Should Pleasanton not proceed to Initial Recycled Water Service under Section 4 below, DERWA will continue to provide Recycled Water for Val Vista Park for the term of this Agreement, provided such service is not suspended by Pleasanton. Pleasanton may suspend Recycled Water Service for Val Vista Park by providing DERWA with a notice stating the date on which the suspension is to start. If such a suspension remains in effect for more than three (3) years, the DERWA delivery obligation specified in this Section 3 shall terminate.

SECTION 4: INITIAL RECYCLED WATER SERVICE

4.1 Upon Pleasanton connecting a Recycled Water customer other than Val Vista Park, Recycled Water delivery from DERWA to Pleasanton shall be through a Primary Point of Delivery located on the main recycled water line from the Recycled Water Treatment Plant, which point shall be selected by DERWA in consultation with Pleasanton and, if on DSRSD property with DSRSD's concurrence. Pleasanton shall install the Primary Point of Delivery in accordance with standards as determined by DERWA, including metering facilities. Pleasanton shall be responsible for the permitting, installation, operation, and maintenance of all distribution piping and related equipment and facilities downstream of the Primary Point of Delivery. DERWA shall be responsible for operation, maintenance, and replacement of the billing meter. Pleasanton shall pay the cost of installation, maintenance, and replacement of a billing meter at the Primary Point of Delivery. The Parties understand that said meter will be owned by DERWA. In addition, Pleasanton agrees to be responsible for servicing all customer connections to its Recycled Water distribution system and any other costs whatsoever associated with their deliveries of Recycled Water to their customers, except to the extent specified to the contrary in the indemnity provisions in Section 8.3, below.

4.2 DERWA is obligated to provide to Pleasanton initial Recycled Water service as follows:

4.2.1 Up to 500 AFY of Recycled Water, if needed by Pleasanton, until the earlier of December 31, 2020 or five (5) years from the date of first delivery of Recycled Water under this Section 4 (hereafter, "first delivery"). This quantity of Recycled Water shall include the 40 AFY at a 0.10 MGD maximum day delivery rate and a 0.20 MGD peak hourly delivery rate, as provided for Pleasanton's use at Val Vista Park pursuant to Section 3 of this Agreement.

4.2.2 Prior to the earlier of December 31, 2020 or five (5) years from the date of first delivery, Pleasanton may take more than the 500 AFY of Recycled Water referred to in Section 4.2.1 if DERWA determines that such additional Recycled Water is available.

4.2.3 After December 31, 2020 or five (5) years from the date of first delivery, whichever occurs first, DERWA shall be obligated to provide to Pleasanton only that quantity of Recycled Water that is available as determined by DERWA; DERWA shall not be obligated to provide the full 500 AFY to Pleasanton.

4.3 All deliveries to Pleasanton under this Section shall be made at the Points of Delivery defined above in Sections 3.2 and 4.1 of this Agreement. In addition, DERWA shall deliver to Pleasanton the actual Pleasanton Recycled Water needs, provided that the ratio of the maximum daily rate to actual annual average deliveries in any year shall not exceed a factor of 2.5 and further provided that the capacity of the Recycled Water Treatment Facilities being used to produce Recycled Water for Pleasanton, DSRSD and EBMUD is not exceeded by such deliveries to Pleasanton.

Pleasanton shall be billed for, and shall pay for, Recycled Water delivered to Pleasanton pursuant to this Section 4 at the rates per acre-foot provided in Section 6 of this Agreement.

4.4 In the event that Pleasanton's projected Recycled Water demand exceeds the amounts provided for in Section 4.2 above, Pleasanton shall initiate actions to reduce demand to an amount equal to or less than the amount provided for in Section 4.2.

SECTION 5: FIRM CAPACITY RECYCLED WATER SERVICE

5.1 DERWA shall cooperate with Pleasanton in the development of Pleasanton's long-term Recycled Water Program and shall increase its production of Recycled Water and deliver it to Pleasanton under the terms and conditions of this Section.

5.2 Expansion by 1.9 MGD

(a) Pleasanton shall pay a proportionate share, in relation to DSRSD and EBMUD, of planning, design and construction costs (including all force account and DERWA overhead as specified in sections 1.12.1 and 1.12.2 of this Agreement as the direct costs relate to the 1.9 MGD Expansion Project) associated with the project to expand by 1.9 MGD the rated production capacity of the current Recycled Water Treatment Plant as described herein (the "1.9 MGD Expansion Project").

(b) Upon written notice from Pleasanton of its desire to proceed with the 1.9 MGD Expansion Project, DERWA will cause DSRSD to commence the 1.9 MGD Expansion Project. The exact schedule for the Expansion Project shall be determined by DERWA with consideration given to Pleasanton's scheduling needs and any related DERWA construction or operating issues. DERWA shall use its best efforts to meet Pleasanton's requested schedule.

(c) The parties understand that the Recycled Water Treatment Plant has a current rated production capacity of 9.7 MGD and anticipate that it can be expanded by 1.9 MGD by the addition of a sixth filter, ultraviolet light disinfection demonstration testing, a recycled water high lift pump (which lift station expansion will be oversized by DERWA at DERWA's cost) and related improvements. The Parties understand that other facilities or activities may be identified during planning and design that may also be needed to successfully complete the 1.9 MGD Expansion Project.

(d) The Parties shall work cooperatively at the technical, administrative and managerial levels to review the 1.9 MGD Expansion Project as it is being planned, designed and constructed and to address technical issues as they arise.

(e) Payment for Pleasanton's share of the cost of the 1.9 MGD Expansion Project (which cost is estimated to be \$1,740,000 as of the effective

date of this Agreement with Pleasanton's share estimated to be \$1,420,000 as of the effective date of this Agreement) shall be made by Pleasanton to DERWA in three installments as follows:

- One third at the time Pleasanton provides notice to DERWA to proceed with the 1.9 MGD Expansion Project;
- One third at the time DSRSD awards a construction contract for the 1.9 MGD Expansion Project; and
- One third at the time that the construction of the 1.9 MGD Expansion Project is fifty percent (50%) complete as reasonably determined by DSRSD.

At closeout of the 1.9 MGD Expansion Project DERWA shall provide Pleasanton with a full accounting of the cost of the 1.9 MGD Expansion Project along with a final billing or crediting reflecting actual costs incurred in relation to the three installment payments made by Pleasanton.

(f) Pleasanton shall pay a buy-in contribution of \$788,910 per MGD of firm capacity expressed on a peak day flow basis for the Expansion by the 1.9 MGD Expansion Project representing an agreed upon equitable contribution for the existing oversized facilities such as electrical, structural, pipes, controls, etc. that support the Expansion by the 1.9 MGD Expansion Project. The buy-in contribution shall thus be \$1,498,930. The buy-in contribution shall be due and payable by Pleasanton upon DSRSD's award of the contract to construct the 1.9 MGD Expansion Project. The buy-in contribution shall be remitted by Pleasanton directly to the DERWA Member agencies in the following amounts: DSRSD \$854,390; EBMUD \$644,540.

(g) After construction of the 1.9 MGD Expansion Project (but before the construction of any expansions beyond 11.6 MGD) and the satisfaction of all provisions of this Section 5.2, Pleasanton shall have a non-facility-specific interest in the Recycled Water Treatment Plant that is 16.38% of the rated capacity thereof. To the extent that deliveries are ever curtailed due to operational, regulatory, facility or other limitations, Pleasanton shall have a right to 16.38% of Recycled Water from the 11.6 MGD Recycled Water Treatment Plant.

5.3 Expansions Beyond 11.6 MGD

(a) If Pleasanton elects in the future to obtain additional Recycled Water production capacity at the Recycled Water Treatment Plant, beyond the 1.9 MGD Expansion Project, Pleasanton shall pay a proportionate share, in relation to DSRSD and EBMUD, of planning, design and construction costs (including all force account and DERWA overhead as specified in sections 1.12.1 and 1.12.2 of this Agreement as the direct costs relate to any Project to Further Expand Capacity) associated with any project or projects to increase the rated production capacity of the Recycled Water Treatment Plant beyond

11.6 MGD (the “Projects to Further Expand Capacity” or “Project to Further Expand Capacity”).

(b) Upon written notice from Pleasanton of its desire to proceed with any Project to Further Expand Capacity, DERWA will cause DSRSD to commence any Project to Further Expand Capacity. The exact schedule for any Project to Further Expand capacity shall be determined by DERWA with consideration given to Pleasanton’s scheduling needs and any related DERWA construction or operating issues. DERWA shall use its best efforts to meet Pleasanton’s requested schedule.

(c) Payment for Pleasanton’s share of the cost of any Project to Further Expand Capacity shall be made by Pleasanton to DERWA in three installments as follows:

- One third at the time Pleasanton provides notice to DERWA to proceed with any Project to Further Expand Capacity on the schedule provided by DERWA;
- One third at the time DSRSD awards a construction contract for any Project to Further Expand Capacity; and
- One third at the time that the construction of any Project to Further Expand Capacity is fifty percent (50%) complete as determined by DSRSD.

At closeout of any Project to Further Expand Capacity DERWA shall provide Pleasanton with a full accounting of the cost of the Project to Further Expand Capacity along with a final billing or crediting reflecting actual costs incurred in relation to the three installment payments made by Pleasanton.

(d) The Parties shall work cooperatively at the technical, administrative and managerial levels to review any Project to Further Expand Capacity as it is being planned, designed and constructed and to address technical issues as they arise.

(e) Pleasanton shall pay a buy-in contribution of \$788,910 per MGD of firm capacity expressed on a peak day flow basis for any Project to Further Expand Capacity representing an agreed upon equitable contribution for the existing oversized facilities such as electrical, structural, pipes, controls, etc. that support the Projects to Further Expand Capacity;. The buy-in contribution shall be due and payable by Pleasanton upon DSRSD’s award of the contract to construct any Project to Further Expand Capacity. The buy-in contribution shall be remitted by Pleasanton directly to the DERWA Member agencies in the following percentages: DSRSD 57%; EBMUD 43%.

(f) After construction of any Project to Further Expand Capacity and the satisfaction of all provisions of this Section 5.3, Pleasanton shall have a non-facility-specific interest in the Recycled Water Treatment Plant that is a

calculated percentage of the rated capacity of the Recycled Water Treatment Plant that represents Pleasanton's share of the costs borne by it under Section 5.2 and this Section 5.3. This percentage will be calculated as follows: The 1.9 MGD capacity previously put in place under Section 5.2 plus the capacity acquired under this section shall be divided by the sum of 11.6 MGD (the sum of 9.7 MGD and 1.9 MGD) plus the additional capacity that DERWA constructs under this Section 5.3. To the extent that deliveries are ever curtailed due to operational, regulatory, facility or other limitations, Pleasanton shall have a right to this percentage of the Recycled Water actually produced from the further expanded Recycled Water Treatment Plant. As a hypothetical example, if the Recycled Water Treatment Plant were further expanded by 1 MGD for Pleasanton, then Pleasanton would be entitled to 23% (the sum of 1.9 MGD plus 1 MGD divided by 12.6 MGD) of the Recycled Water produced by the further expanded Recycled Water Treatment Plant.

SECTION 6: BILLING AND PAYMENT

6.1 DERWA will bill Pleasanton and Pleasanton shall pay DERWA for all Recycled Water delivered to the Point of Delivery under this Agreement in accordance with this Section.

6.2 The DERWA Fiscal Year for billing and payment purposes ("Fiscal Year") is July 1 through June 30 of the following calendar year.

6.3 DERWA shall provide Pleasanton the Provisional Rate for the ensuing Fiscal Year by May 1 of each year. DERWA shall bill and Pleasanton shall pay on a monthly basis for all the Recycled Water delivered under any Section of this Agreement during the Fiscal Year based upon water meter records and the Provisional Rate.

6.4 DERWA shall reconcile the Provisional Rate to the Actual Rate after each Fiscal Year to account for variances between projected and actual expenses. Differences between the Provisional Rate and Actual Rate shall be credited or debited on the next regular billing following the determination of the Actual Rate.

6.5 The billing and payment of the Provisional and Actual Rates shall apply to all Recycled Water delivered under Sections 3, 4 and 5 above.

6.6 In addition to DERWA billing and Pleasanton payment for Cost Elements, as defined in Section 1.12 above, on an annual basis and within sixty (60) days after the end of the Fiscal Year, DERWA shall bill and Pleasanton shall pay and thereby contribute toward replacement funding related to the facilities benefiting Pleasanton, other than replacement costs included in Cost Elements (as defined above), as follows:

6.6.1 Upon commencement of DERWA deliveries to Pleasanton under Section 4, Pleasanton shall pay the share of the DERWA Replacement Expenditures defined in Sections 1.12.3 and 1.14 of this Agreement.

6.6.2 After acceptance of the 1.9 MGD Expansion Project in accordance with Section 5.2 of the Agreement (and continuing after acceptance of Projects to Further Expand Capacity in accordance with Section 5.3 of the Agreement), Pleasanton shall pay the share of the DERWA Replacement Expenditures defined in Sections 1.12.4 and 1.14 of this Agreement.

6.7 If Pleasanton fails, within thirty (30) days of receipt of the DERWA bill, to pay any amount billed by DERWA for Recycled Water service pursuant to any provision of this Section 6, DERWA may, after providing Pleasanton with thirty (30) days written notice, suspend Recycled Water service to Pleasanton. All other provisions of this agreement shall remain in full force and effect.

SECTION 7: PLANNING AND OPERATION COORDINATION

7.1 On or before March 1 of each year, Pleasanton will notify DERWA in writing of the planned Recycled Water delivery it will require in each of the subsequent five years.

7.2 On or before April 1 of each year, DERWA and Pleasanton shall meet to evaluate the amount of unused treatment capacity that will be available to Pleasanton for the ensuing five (5) years.

7.3 DERWA shall use best efforts to deliver Recycled Water of the quality, quantity, and pressure (40 to 120 pounds per square inch) at the Points of Delivery under the terms of this Agreement. However, the Parties recognize that for various reasons, including but not limited to the complexities of operating the Recycled Water Treatment Plant, the periodic need for planned and unplanned maintenance, and treatment facility upsets and acts of God, DERWA may periodically be unable to supply some or all of the demands of the connected Recycled Water customers. In such instances, DERWA agrees to notify Pleasanton of such potential shortages as soon as possible and to subsequently provide Pleasanton with a plan for restoration or repair of the treatment and delivery system at the earliest reasonable opportunity.

7.4 Prior to DERWA making deliveries to Pleasanton under any provision of this Agreement, Pleasanton shall have in place an alternate short term source of supplemental water for its Recycled Water customers, such as but not limited to potable water or an alternate source of water, in the event of an interruption or suspension of the Recycled Water supply.

7.5 Prior to DERWA making deliveries to Pleasanton under sections 4 and 5, Pleasanton shall be responsible for environmental documentation and for compliance with applicable laws and regulations regarding environmental protection for Pleasanton Recycled Water Facilities.

7.6 Pleasanton shall coordinate daily operation of its Recycled Water system with DSRSD to reduce the peak day demand on the Recycled Water Treatment Plant. The coordination shall include use of Pleasanton's Recycled Water storage to reduce peak day demand on the Recycled Water Treatment Plant.

7.7 The Parties will cooperate with regard to public relations and public outreach activities and programs related to Recycled Water service by DERWA to Pleasanton under this Agreement.

SECTION 8: GENERAL PROVISIONS

8.1 Each Party shall use its best efforts and work cooperatively and in good faith for the expedited completion of the objectives of this Agreement and the satisfactory performance of its terms.

8.2 In the event that any of the terms, covenants, or conditions of this Agreement or the application of any such term, covenant, or condition shall be held invalid as to any Party by any court of competent jurisdiction, all other terms, covenants, or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect unless any such court hold that those provisions are not separable from all other provisions of this Agreement.

8.3 Pleasanton agrees to indemnify, defend and hold DERWA and DSRSD harmless from any claims or costs associated with Recycled Water after the Recycled Water passes through either the Val Vista Point of Delivery or the Primary Points of Delivery; provided that Pleasanton's obligations under this Section 8.3 do not apply to the extent that the claimants were exposed to water produced by DERWA that did not meet or exceed the standards established by the California Department of Public Health according to Title 22 of the California Code of Regulations or successor regulations for non-potable water intended for unrestricted use.

8.4 Except for matters that are subject to section 8.3, each Party shall indemnify, defend, and hold harmless the other Party, and the officers, employees, and agents of the other Party, for any and all bodily injury or property damage loss, liability, or claim arising out of the negligent performance or willful misconduct by the indemnifying Party, its officers, employees, or agents, of any act contemplated by this Agreement.

8.5 In the event of any dispute regarding the implementation or interpretation of this Agreement, the Parties agree to negotiate in good faith to reach a mutually acceptable resolution and, if they fail to do so, to submit the dispute to mediation before resorting to any other available method of resolution.

8.6 Neither this Agreement nor any parts thereof shall be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld.

8.7 This Agreement may only be amended in writing, fully executed by the duly authorized representatives of the Parties.

8.8 Following the approval and execution of this Agreement by the Parties, this Agreement shall become effective, subject to the completion of CEQA review as set forth in Section 9, CEQA COMPLIANCE, as of the later of its execution by the Parties or

the effective date of the Fifth Supplemental Agreement, and as long as the Fifth Supplemental Agreement remains in effect and fully operative, this Agreement shall remain in full force and effect until July 24, 2043, or the termination of the Basic Agreement, whichever occurs earlier. Pleasanton shall notify DERWA in writing (1) of the date when the City's CEQA review is completed, and (2) of the date of execution of the Fifth Supplemental Agreement.

8.9 If not previously terminated, this Agreement may be renewed by the Parties at the end of the term hereof, so long as the Fifth Supplemental Agreement and the Basic Agreement, or successor agreements, remain in effect and fully operative. The negotiations toward such a renewal shall commence no sooner than January 1, 2040, or one (1) year before the effective date of termination of the Fifth Supplemental Agreement and the Basic Agreement, or successor agreements, whichever is earlier. The Parties hereto shall thereafter meet and confer and negotiate in good faith the terms to be applicable during the period of renewal of this Agreement. The renegotiation shall include, but not necessarily be limited to, the length of the renewal period, pricing and other economic elements of the furnishing by DERWA of Recycled Water to Pleasanton. The pricing and other economic elements shall be based on all aspects of Recycled Water economics, including but not limited to regulatory and liability aspects, the availability of water as a resource, the environmental value of recycling, the community value of recycling, and the value of water recycling as a method to achieve wastewater discharge benefits.

SECTION 9: CEQA COMPLIANCE

9.1 Despite all the preceding provisions of this Agreement, the legal effectiveness of the Agreement is contingent on the Parties' completion of CEQA review.

9.2 Pleasanton shall perform the role of lead agency in completing CEQA review for the City's Recycled Water Program, including the 1.9 MGD Expansion Project contemplated in Section 5.2, and DERWA shall perform the role of a responsible agency. Pleasanton shall also perform the role of lead agency in completing CEQA review for any Project to Further Expand Capacity, as contemplated in Section 5.3, provided that said project is being done for Pleasanton's sole benefit, in which case DERWA shall perform the role of a responsible agency. If Pleasanton has completed at least program-level CEQA review that addresses the impacts associated with the production and use of Recycled Water beyond the 11.6 MGD level resulting from the 1.9 MGD Expansion Project, the Parties anticipate that DERWA shall perform the role of lead agency in completing any further project-level CEQA review for Recycled Water production facilities associated with any Project to Further Expand Capacity as contemplated in Section 5.3, provided that such Project to Further Expand Capacity is being carried out for the benefit of both DERWA and Pleasanton, in which case the Parties anticipate that Pleasanton shall perform the role of a responsible agency. The Parties shall cooperate with each other and with any environmental consultant retained by either Party to assist with CEQA review, and provide the technical information in their custody or control as needed to complete CEQA review, including but not limited to information related to the Plant, secondary effluent and Recycled Water supply as

reasonably needed for the completion of the CEQA review. Except for the DERWA effort described in the preceding sentence, Pleasanton shall pay all costs of the CEQA review when it is acting as lead agency for the City's development of its Recycled Water Program. When DERWA is acting as lead agency, the costs of the CEQA review shall be shared by the Parties in relation to the relative capacity increase each Party is proposing for itself under Section 5.3.

9.3 If completion of CEQA review identifies any significant adverse environmental effects from the City's Recycled Water Program, the Parties retain full discretion to disapprove this Agreement or to revise this Agreement as necessary to implement any feasible mitigation measures or alternatives that would avoid or reduce such significant effects as provided by CEQA; provided that DERWA's discretion to disapprove or revise this Agreement shall be limited to responding to any significant adverse environmental effects that lie within DERWA's legal jurisdiction as a responsible agency under CEQA. DERWA will reasonably cooperate with Pleasanton regarding the implementation of any feasible mitigation measures, mitigation monitoring or alternatives adopted in the final CEQA review, but under no circumstances shall DERWA be responsible for the costs of implementing any mitigation measures, mitigation monitoring or alternatives that are adopted to avoid or reduce significant effects of the City's Recycled Water Program. Pleasanton shall pay the costs of implementing all mitigation measures, mitigation monitoring or alternatives that are adopted to avoid or reduce significant effects caused by the City Recycled Water Program.

9.4 If any third party brings a legal challenge to the CEQA review conducted under this Section, Pleasanton shall undertake the defense thereof at its sole expense, and shall indemnify, defend, and hold harmless DERWA, and DERWA's officers, employees, and agents, from any cost or expense, including attorney's fees, and costs incurred therein. DERWA and Pleasanton have a common interest in completing legally defensible CEQA review and in defending the CEQA review completed under this Section. DERWA shall cooperate with City in defending the CEQA review completed under this Section.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year set opposite the name of each of the Parties.

CITY OF PLEASANTON,
a municipal corporation

By: _____
Jerry Thorne, Mayor

Dated: _____, 2013

ATTEST:

By: _____
Karen Diaz, City Clerk

Dated: _____, 2013

APPROVED AS TO FORM:

By: _____
Jonathan P. Lowell, City Attorney

Dated: _____, 2013

DSRSD-EBMUD Recycled Water Authority,
a joint powers agency

By: _____
Frank Mellon, Chair

Dated: _____, 2013

ATTEST:

By: _____
Nancy Hatfield, Secretary

Dated: _____, 2013

APPROVED AS TO FORM:

By: _____
Robert Maddow, General Counsel

Dated: _____, 2013

EXHIBIT A
EXAMPLE PROVISIONAL RATE CALCULATION

<u>ITEM</u>	<u>AMOUNT</u>	<u>ADMINISTRATION ALLOCATION</u>
Production Costs		
Treatment (labor)	\$458,316.77	
Treatment (materials & supplies)	\$497,320.41	
PSR1 Maintenance	\$10,000.00	
PSR1 Power	\$110,880.00	
Total Treatment	<u>\$1,076,517.18</u>	
Administrative Costs		
DERWA Program Manager	\$90,919.00	
Treasurer	\$36,436.00	
Legal Counsel	\$1,613.00	
Secretary	\$8,637.00	
Total Administrative Costs	<u>\$137,605.00</u>	
Allocated Administrative Costs	<u>\$101,827.70</u>	74%
PROVISIONAL RATE		
Total Production Costs	\$1,178,344.88	
Acre Feet sold	2,775.20	
Pleasanton Provisional Rate (\$/af)	<u>\$424.60</u>	