

## INTER-AGENCY SEWAGE AGREEMENT

This Inter-Agency Sewage Agreement ("Agreement") is entered into as of September 1, 2001, by and between Eastern Municipal Water District ("EMWD") and the City of Hemet ("CITY").

### RECITALS

A. EMWD is a municipal water district, organized and existing under the Municipal Water District Act of 1911, as amended.

B. CITY is a municipal corporation, organized and existing under the general laws of the State of California. CITY's boundaries and sphere of influence, as may be amended from time to time, are currently located entirely within the boundaries of EMWD, and are depicted in Exhibit "A" attached hereto and incorporated herein by reference.

C. EMWD and CITY both have the power to acquire, construct, and operate facilities for the collection, treatment, and disposal of sewage of their respective areas and inhabitants.

D. On or about June 14, 1963, EMWD and CITY entered into an Inter-Agency Sewage Agreement ("1963 Agreement") to set forth the terms under which the collection, transmission, treatment, disposal, and reclamation of sewage originating within the CITY was to be handled. By its terms, the 1963 Agreement expires in 2003.

E. EMWD currently provides sewer collection service for approximately 6,050 equivalent dwelling units ("EDU's") within the CITY's boundaries and sphere of influence.

F. CITY currently provides sewer collection service for approximately 17,405 EDU's within its boundaries and sphere of influence.

G. A dispute has arisen between the parties regarding interpretation of the 1963 Agreement with respect to sewer collection service in areas annexed by CITY after 1963, and on or about November 19, 1998, CITY initiated an action entitled City of Hemet v. Eastern Municipal Water District, Riverside Superior Court Case No. RIC 320617 ("Lawsuit").

H. The parties now wish to resolve their differences regarding interpretation of the 1963 Agreement and to set forth new terms under which the collection, transmission, and treatment of sewage originating within the CITY shall be handled currently and beyond the expiration of the 1963 Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, the parties agree as follows:

1. **INCORPORATION OF RECITALS.** The Recitals set forth above are incorporated into and are a part of this Agreement.

2. **TERM.** This Agreement shall be effective as of the date first written above, and shall remain in effect for thirty (30) years thereafter.

3. **CITY'S RIGHTS AND OBLIGATIONS.**

a. CITY shall have the exclusive right to provide sewer collection service within the area depicted in Exhibit "B-1" and described in Exhibit "B-2" attached hereto and incorporated herein by reference ("CITY Service Area").

b. Notwithstanding Section 3.a above, EMWD may install and operate collection systems or individual sewer connections for locations within the CITY Service Area if CITY refuses to provide collection service to such locations pursuant to its generally applicable rules and regulations.

c. CITY shall transfer to EMWD all sewer collection accounts, and title to any related collection facilities, located within the areas described in Exhibit "C" and depicted in Exhibit "B-1" attached hereto and incorporated herein by reference.

4. **EMWD'S RIGHTS AND OBLIGATIONS.**

a. EMWD shall have the exclusive right to provide sewer collection service outside the CITY Service Area.

b. EMWD shall have the exclusive right to provide transmission and treatment service for sewage originating both inside and outside the CITY Service Area.

c. Notwithstanding Sections 4.a and 4.b above, CITY may install and operate collection systems or individual sewer connections for locations outside the CITY Service Area, and may provide for the transmission and/or treatment of sewage collected from such collection systems or individual sewer connections, if EMWD refuses to provide collection, transmission, or treatment service to such locations pursuant to its generally applicable rules and regulations.

d. EMWD shall transfer to CITY all sewer collection accounts, and title to any related collection facilities, located within the areas described in Exhibit "D" and depicted in Exhibit "B-1" attached hereto and incorporated herein by reference.

5. **IMPACT FEE.**

a. The parties recognize that there is currently a disparity in the sewer service charges imposed upon customers receiving sewer collection service from EMWD within CITY's boundaries and sphere of influence and customers receiving sewer collection service from CITY. This disparity includes charges for impacts on CITY's infrastructure.

b. In order to address this disparity and attempt to equalize sewer service charges for all EMWD and CITY customers, CITY may adopt and impose an impact fee ("Impact

Fee") upon all EMWD sewer collection customers located within the CITY boundaries and sphere of influence. Upon any future annexations by CITY, the Impact Fee would apply to EMWD sewer collection customers located in the newly annexed areas.

c. The amount of the Impact Fee shall not at any time exceed twenty percent (20%) of the collection, transmission, and treatment charges imposed by EMWD upon customers located within the CITY boundaries and sphere of influence.

d. EMWD shall collect the Impact Fee as part of its regular billing and collection procedures, and shall remit the Impact Fees collected to CITY on a monthly basis.

6. **1963 AGREEMENT SUPERCEDED.** This Agreement is intended to supercede the 1963 Agreement, including any and all amendments thereto, in its entirety. Upon execution of this Agreement, the 1963 Agreement, including any and all amendments thereto, shall terminate and be of no further force or effect.

7. **MUTUAL RELEASE AND DISMISSAL OF LAWSUIT.**

a. Each party agrees to and does hereby forever release, acquit, and discharge each other party from any and all actions, causes of action, claims, demands, damages, costs, expenses, and compensation of any kind whatsoever arising out of or related to the 1963 Agreement and any matters which were raised, or could have been raised, in the Lawsuit. The parties further agree that all rights under California Civil Code section 1542 and any similar law of any state or territory of the United States are hereby expressly waived. Section 1542 reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

b. Notwithstanding Section 7.a above, if the Impact Fee is declared by a court of competent jurisdiction to be in violation of article XIII D of the California Constitution, added by the 1996 initiative measure Proposition 218, or if this Agreement is declared by a court of competent jurisdiction to be null and void for any reason, then this Agreement shall immediately terminate and each party shall be restored to its legal position existing as of the day before the effective date of this Agreement, including all rights, claims, and defenses existing as of that date.

c. CITY shall promptly dismiss the Lawsuit, and each party shall bear its own costs and attorneys' fees.

8. **COORDINATION OF EFFORTS.** The parties agree to coordinate and jointly approve all public relations efforts, including press releases, in connection with the implementation of this Agreement and the adoption of the Impact Fee.

9. **INSPECTION OF RECORDS.** Each party shall have the right, at reasonable times and upon reasonable notice, to inspect the records and books maintained by the other insofar as the same are relevant to operations under this Agreement.

10. **PRETREATMENT PROGRAM.** EMWD is the approved pretreatment program and implements programmatic functions as defined in Title 40 Code of Federal Regulations Part 403, including but not limited to: (i) update user survey; (ii) issue permit to users; (iii) conduct inspections, sampling, and analysis; (iv) take all appropriate enforcement actions; and (v) perform any other technical or administrative duties the parties deem appropriate. CITY agrees to receive approval from EMWD before allowing any new connection to CITY's sewer collection system. CITY may impose stricter requirements or undertake additional programmatic functions upon executing a reasonable document between the parties to this Agreement.

11. **GENERAL PROVISIONS.**

a. The parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement.

b. Neither party's failure to insist on strict performance of any of the terms or conditions of this Agreement, or to exercise any right, remedy, or privilege, or any waiver of any breach hereunder, shall thereafter be deemed a subsequent waiver of any other terms, conditions, or rights, remedies, or privileges, whether of the same or similar type. No party will be deemed to have waived any rights under this Agreement unless the waiver is made in writing and signed by the waiving party or that party's duly authorized representative. All rights and remedies provided for under this Agreement are cumulative.

c. This Agreement contains the final and complete agreement between the parties with respect to the matters herein discussed and supersedes all previous communications and agreements between them, either oral or written, to the extent such prior communications and agreements are not consistent with this Agreement.

d. Any notice to be given or to be served upon either party hereto in connection with this Agreement must be in writing and shall be deemed to have been given and received: (i) when delivered in person to the recipient named below; (ii) three (3) days after it is sent by certified or registered mail, return receipt requested, or two (2) days after it is sent by Federal Express or similar overnight courier, postage prepaid and addressed to the party for whom it is intended, at that party's address specified below; or (iii) on the date of delivery by facsimile transmission to the recipient named below. All notices shall be addressed as follows:

If to EMWD:

General Manager  
Eastern Municipal Water District  
P.O. Box 8300  
Perris, CA 92572-8300  
facsimile: 909/929-0257

With a copy to:

Redwine and Sherrill  
1950 Market Street  
Riverside, CA 92501  
facsimile: 909/684-9583

If to CITY:

City Manager  
City of Hemet  
445 East Florida Avenue  
Hemet, CA 92543  
facsimile: 909/765-3785

With a copy to:

Burke, Williams & Sorensen, LLP  
3403 Tenth Street, Suite 300  
Riverside, CA 92501  
facsimile: 909/788-5785

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

e. This Agreement and its provisions shall in all respects be interpreted, construed, enforced, and governed by and under the laws of the State of California, without regard to its conflict of laws principles.

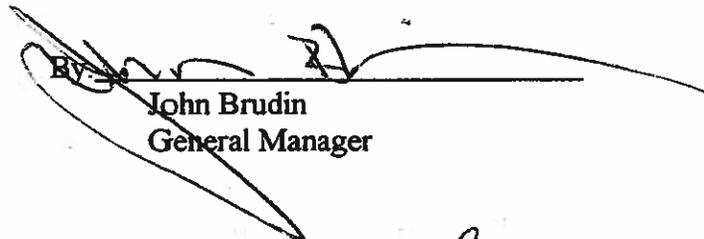
f. This Agreement may be modified only by another written instrument duly authorized and executed by both parties.

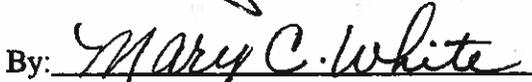
g. The language in all parts of this Agreement shall in all respects be construed as a whole according to its fair meaning, and not strictly for or against either party. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement.

h. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached without impairing the legal effect of the signatures thereon, provided such signature page is attached to any other counterpart identical to the first counterpart except having signature pages executed by other parties to this Agreement attached thereto.

i. Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named parties.

**EASTERN MUNICIPAL WATER DISTRICT**

By:   
John Brudin  
General Manager

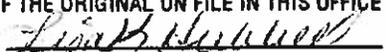
By:   
Mary C. White  
Secretary

**CITY OF HEMET**

By:   
Steve Temple  
City Manager

**ATTEST:**

By:   
Liana Keltner  
Deputy  
Clerk

THE FOREGOING INSTRUMENT IS A CORRECT  
COPY OF THE ORIGINAL ON FILE IN THIS OFFICE  
ATTEST   
CITY CLERK, CITY OF HEMET, CALIFORNIA  
Sept 28 20 01

**EXHIBIT "A"**  
**City of Hemet Boundaries and Sphere of Influence**