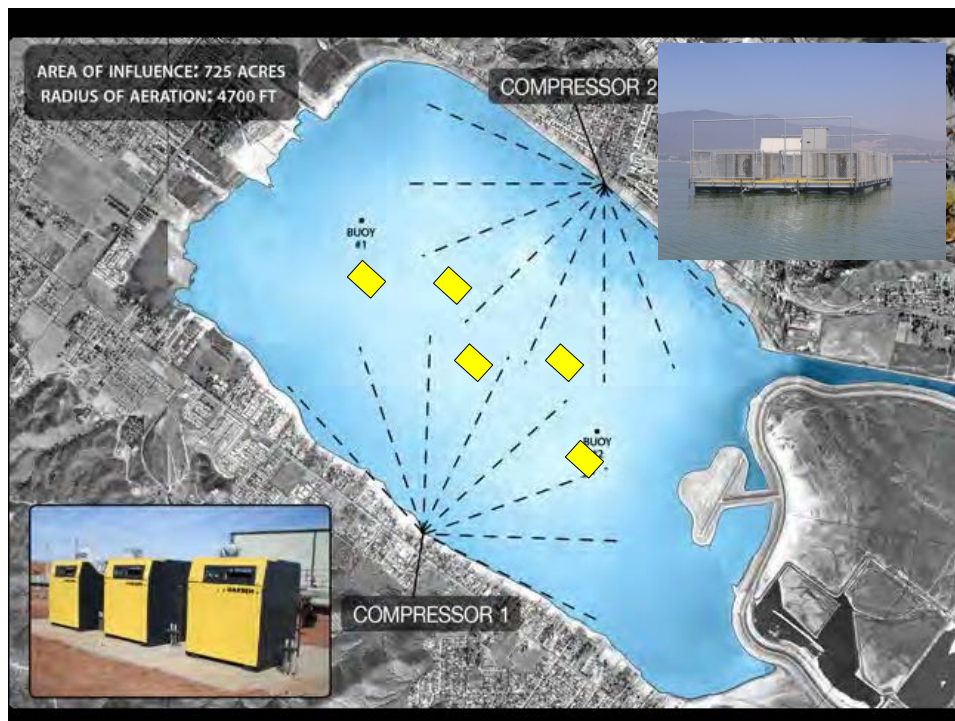


Lake Elsinore Aeration and Mixing System (LEAMS)

2016 Excess Offset Credit Annual Accounting Report



Prepared for: Operators of LEAMS

April 2018

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Purpose

The purpose of this report is to fulfill the obligation of the Lake Elsinore and San Jacinto Watersheds Authority (LESJWA) to provide an annual Lake Elsinore Aeration and Mixing System (LEAMS) accounting report. This report details for calendar year 2016, the total number of offset credits available, the number of offset credits allocated to the Operators and the number and unit cost for each credit licenses sold to other stakeholders with TMDL compliance obligations, as well as all fees collected for these credit licenses sold in calendar year 2016, and all marketing and administration expenses for that same calendar year.

It is intended, following receipt of this accounting report, the Operators shall provide LESJWA with detailed instructions on how to disperse the net proceeds from the sale of the 2016 LEAMS offset credit licenses.

Background

LEAMS was designed and constructed by LESJWA using funding available through the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond Act of 2000. Completed in 2006, ownership of LEAMS was turned over to Elsinore Valley Municipal Water District (EVMWD), the City of Lake Elsinore and Riverside County identified collectively as the “Operators” to be operated and maintained as a joint project.

LEAMS consists of an aeration system operated by EVMWD and a Mixing System operated by the City of Lake Elsinore, which operated in tandem are intended to improve water quality in Lake Elsinore by improving the average concentration of dissolved oxygen (DO) in the water column. The system accomplishes this using a combination of shoreline compressors that disperse air from perforated pipelines anchored to the bottom of the lake and slow-turning propellers of an axial flow water pump mixing system located at five docking stations (4 axial flow pumps per station) around the high speed zone of the lake. The aeration system releases air bubbles from the pipeline perforations which rise to the surface and disperse air and oxygen. The axial flow pump mixing system turns propellers submerged below the docking stations and push high oxygenated surface water to the bottom of the lake which is low in dissolved oxygen where it will be reaerated, naturally.

When the TMDL was adopted, the Regional Board acknowledged that operation of LEAMS was expected to reduce internal phosphorus loads originating from lake bottom sediments by 35% or approximately 11,606 kg/yr.¹ Subsequent studies, conducted at the direction of the Regional Board, also demonstrated that the operation of LEAMS, based upon 2,000 hrs/yr. of operation, reduced the total mass of nitrogen in Lake Elsinore by an average of approximately 53,616 kg/yr.² Once the release of nutrients from lake bottom sediments are accounted for this results

¹ California Regional Water Quality Control Board - Santa Ana Region Res. No. R8-2004-0037 (Dec. 20, 2004).

² Dr. Alex Horne (U.C. - Berkeley). Nitrogen Offsets Produced by Artificial Water Column Mixing by Aeration Bubble Plumes in Lake Elsinore, CA. Dec. 3, 2012. Note: estimated nitrogen conversion/removal efficiency assumes that LEAMS operates a minimum of 2,000 hours/year. This is now a requirement in EVMWD's NPDES discharge permit.

in approximately 7,000 kg/year in phosphorus and 44,000 kg/year in nitrogen removal capacity is available as credits.

LEAMS Agreement to License Excess Offset Credits

The Exclusive License Agreement for Excess Offset Credits Generated by the Lake Elsinore Aeration & Mixing System (LEAMS Program), **Attachment A**, provides a mechanism for Operators of LEAMS (County of Riverside, City of Lake Elsinore and Elsinore Valley Municipal Water District) to market any excess offset credits generated by LEAMS to other stakeholders with TMDL compliance obligations, as defined in the Operation and Maintenance Agreement for LEAMS (Operators Agreement), **Attachment B**.

Through this Agreement, Operators may sell excess offset credits generated by LEAMS to offset annual O&M costs. The annual O&M budget for LEAMS, including a contingency fund for future repair & replacement costs is estimated at approximately \$500,000 per year. LEAMS O&M costs are shared equally among the three cost-sharing partners. In 2016, O&M expenditures for LEAMS totaled \$285,326. A summary of annual LEAMS O&M costs for FYE 2015 through 2017 are presented in **Table 1**. A detailed breakdown of annual O&M costs to each operator is available in **Attachment C**.

Table 1: LEAMS Annual O&M Costs FYE 2015 through 2017

	FYE 2015 Annual O&M Costs	FYE 2016 Annual O&M Costs	FYE 2017 Annual O&M Costs
Lake Aeration Project O&M	\$149,494	\$188,160	\$169,988
Lake Mixing Project O&M	\$126,735	\$93,162	\$63,960
Total LEAMS O&M Costs	\$276,229	\$281,322	\$233,948

Each the City of Lake Elsinore and EVMWD maintain Contingency Funds to cover extraordinary and unforeseen expenses for their respective components of LEAMS. Additionally, this Contingency fund may be used by the Operators to replace, expand or otherwise enhance the Aeration System when mutually agreed. A summary of annual contributions by each operator to their respective Contingency Fund for FYE 2015 through 2017 are presented in **Table 2**. A detailed breakdown of Contingency Fund contributions and withdrawals for each operator are available in **Attachment C**.

Table 2: LEAMS Reserve Fund Balance FYE 2015 through 2017

	FYE 2015 Annual Reserve Fund balance	FYE 2016 Annual Reserve Fund balance	FYE 2017 Annual Reserve Fund balance
Lake Aeration Project Reserve	\$459,992	\$547,992	\$635,992
Lake Mixing Project Reserve	\$178,051	\$232,093	\$284,769
Total LEAMS Reserve Fund Balance	\$638,043	\$780,085	\$920,761

LEAMS Offset Credits are estimated based upon 2,000 hours per year of operation of the system, which generates an estimated 7,000 kg/yr. of phosphorus and 44,000 kg/yr. of nitrogen, as shown in **Table 3**.

Table 3: 2016 LEAMS Credit Hours Generated (Gross)

	Operation Hours	Phosphorus kg/yr.	Nitrogen kg/yr.
Total Nutrient Offset Credits Generated*	2,000	7,000	44,000

* 2016 Nutrient Offset Credits estimated, Dr. Horne; December, 2012

Operators reserve the offset credits generated by the operation of LEAMS to meet their own TMDL compliance obligations. In 2016 the first 1,320 hours of LEAMS operation were reserved to the Operators as detailed in **Table 4**.

Table 4: 2016 LEAMS Credit Hours Reserved to Operators

	Operation Hours	Phosphorus kg/yr.	Nitrogen kg/yr.
Credits Reserved to Offset EVMWD's Recycled Water	1,114	3,899	24,508
Credits Reserved by Riverside County for Urban Runoff	162	567	3,564
Credits Reserved by City of Lake Elsinore for Urban Runoff	44	154	968
Total Reserved Credits to Operators	1,320	4,620	29,040

In 2016, offset credits generated by the remaining 680 hours of operation, as detailed in **Table 5**, are available for licensing to other stakeholders with TMDL compliance obligations.

Table 5: 2016 LEAMS Credit Hours Excess (Available to License)

	Operation Hours	Phosphorus kg/yr.	Nitrogen kg/yr.
Nutrient Offset Credits Available to License	680	2,380	14,960

Through the LEAMS Agreement, stakeholders with TMDL compliance obligations (specifically LE&CL TMDL Task Force Stakeholders) may purchase available nutrient offset credits to demonstrate compliance with the Waste Load Allocations ("WLA") or Load Allocations ("LA") specified in the TMDL.

LEAMS offset credits are available for purchase, in one hour increments, for a one-time fee of \$300.00 per hour of LEAMS operation. This fee is based upon the required hours of operation of LEAMS estimated at no less than 2,000 hours per year. Through this agreement, each hour of LEAMS operation conveys 3.5 kg of phosphorus reduction credit and 22 kg of nitrogen reduction credit. The demand for annual LEAMS Offset Credits was estimated based upon the needs of the individual stakeholders to address their compliance obligations. 2016 LEAMS credit hours licensed to LE&CL TMDL stakeholders are detailed in **Table 6**.

Table 6: 2016 LEAMS Credit Hours Excess Licensed to LE&CL TMDL Stakeholders

Stakeholders	Operation Hours	Phosphorus kg/yr.	Nitrogen kg/yr.	Offset Credit Fees Collected
City of Canyon Lake	17	60	374	\$ 5,100
City of Hemet	47	165	1,034	\$ 14,100
City of Moreno Valley	128	448	2,816	\$ 38,400
City of Murrieta	3	11	66	\$ 900
City of Perris *	48	168	1,056	\$ 14,124
City of Riverside	5	18	110	\$ 1,500
City of San Jacinto	1	4	22	\$ 300
City of Menifee	128	448	2,816	\$ 38,400
City of Wildomar	32	112	704	\$ 9,600
San Jacinto Agricultural Operators **	0	0	0	\$ -
CALTRANS	10	35	220	\$ 3,000
March Air Reserve Base Joint Powers Authority	5	18	110	\$ 1,500
US Air Force (March Air Reserve Base)	3	11	66	\$ 900
	427	1,498	9,394	\$ 127,824

* City of Perris provided an alternative contribution amount of \$14,124 (from \$18,300)

** San Jacinto Agricultural Operators contribution held in escrow account until issue with San Jacinto CWAD is resolved

The operators have designated LESJWA as the exclusive agent to market and administer any excess offset credits generated by LEAMS to other stakeholders with TMDL compliance obligations. LESJWA has full and complete responsibility for marketing the licenses for LEAMS credits and for collecting and remitting required license fees to the Operators. In 2016, the total number of Offset License Credits hours sold to other stakeholders with TMDL compliance obligations was 426 hours, which corresponded to \$127,824 in Offset Credit fees.

All expenses incurred by LESJWA to market and administer the LEAMS offset credit licensing program shall be reimbursed solely from the sale of offset credit licenses. In 2016, the first year of this License Agreement, expenses incurred by LESJWA to market and administer the LEAMS offset credit totaled \$20,000 resulting in net proceeds of \$107,824, as shown in **Table 7**, to be dispersed among the Operators as equal shares of \$35,941.

Table 7: 2016 LEAMS Agreement Net Proceeds

	LESJWA Administrative Budget	LESJWA Administrative Expenditures	Total Offset Credit Fees Collected	Offset Credit Net Proceeds to Operators	Equal Share Distribution of Proceeds
2016 Net Proceeds to LEAMS Operators	\$20,000	\$20,000	\$127,824	\$107,824	\$35,941

LEAMS Agreement Implementation schedule detailing the various deliverables and due dates is included as **Attachment D**.

**Attachment A: Exclusive License Agreement for Excess Offset Credits Generated by the Lake Elsinore
Aeration & Mixing System (LEAMS Program)**

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- 45 g. The Santa Ana Regional Water Quality Control Board ("Regional Board") adopted
- 46 a Total Maximum Daily Load ("TMDL") to improve water quality in Lake Elsinore
- 47 by controlling the amount of nutrients in the lake. The CITY, DISTRICT, COUNTY,
- 48 and numerous other stakeholders identified in the TMDL are obligated to limit
- 49 their nutrient contributions (called "loads") to Lake Elsinore.
- 50
- 51 h. When the TMDL was adopted, the Regional Board acknowledged that operation
- 52 of LEAMS was expected to reduce internal phosphorus loads originating from
- 53 lake bottom sediments by 35% or approximately 11,606 kg/yr. Subsequent
- 54 studies, conducted at the direction of the Regional Board, also demonstrated
- 55 that the operation of LEAMS was reducing the total mass of nitrogen in Lake
- 56 Elsinore by an average of approximately 53,616 kg/yr.
- 57
- 58 i. The Regional Board requires the DISTRICT to conduct additional studies, once
- 59 every three years, to reevaluate and confirm the overall effectiveness of LEAMS
- 60 at reducing nutrient concentrations in Lake Elsinore. The results are submitted
- 61 in a formal written report to the Regional Board. After the Regional Board
- 62 accepts that report, the nutrient reductions generated by LEAMS are considered
- 63 approved "offset credits" provided LEAMS is operated in accordance with the
- 64 requirements of the DISTRICT's NPDES permit.
- 65
- 66 j. LEAMS is generally required to operate no less than 2,000 hours per year.
- 67 Therefore, on average, each hour of LEAMS operation generates approximately
- 68 3.5 kg of phosphorus reduction credits and 22 kg of nitrogen reduction credits.
- 69
- 70 k. All credits generated by the operation of LEAMS are the exclusive property of the
- 71 OPERATORS, and are owned in joint tenancy by the OPERATORS, and may not be
- 72 sold or transferred without the unanimous written consent of the OPERATORS.
- 73
- 74 l. The Regional Board allows LEAMS credits to be used to demonstrate compliance
- 75 with the Waste Load Allocations ("WLA") or Load Allocations ("LA") specified in
- 76 the TMDL. The Regional Board recognizes LEAMS as an approved offset program
- 77 provided that LEAMS is operated in accordance with the DISTRICT's NPDES
- 78 permit.
- 79
- 80 m. Based on experience to date, the operation of LEAMS typically generates more
- 81 offset credits than the OPERATORS need in order to assure their own compliance
- 82 with the TMDL's nutrient load restrictions. Therefore, the OPERATORS desire to
- 83 license some of the excess offset credits to other stakeholders named in the
- 84 TMDL so that these other stakeholders may rely on said credits to meet their
- 85 own TMDL compliance obligations subject to the review and approval of the
- 86 Regional Board.
- 87

- 88 n. Given the relatively large number of stakeholders that may be interested in
89 licensing excess offset credits to meet their own TMDL compliance obligations,
90 the OPERATORS determined it would be more efficient to administer all
91 licensing-related activity through the AUTHORITY.
92
- 93 p. This document describes the Terms and Conditions under which the OPERATORS
94 agree to license excess offset credits to other stakeholders named in the TMDL
95 using the AUTHORITY as their exclusive agent.
96

97 TERMS AND CONDITIONS

98 1) THE AUTHORITY AS EXCLUSIVE AGENT

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- 101 a. The OPERATORS hereby designate the AUTHORITY as their exclusive agent to
102 market and administer limited-used licenses for any excess offset credits
103 generated by LEAMS to other stakeholders with TMDL compliance obligations.
104 The AUTHORITY shall have full and complete responsibility for marketing the
105 licenses for LEAMS credits and for collecting and remitting required license fees
106 to the OPERATORS.
107
- 108 b. All expenses incurred by the AUTHORITY to market and administer the LEAMS
109 offset credit licensing program shall be reimbursed solely from the sale of offset
110 credit licenses. The AUTHORITY is entitled to retain a sum, not to exceed
111 \$20,000 in the first year of this License Agreement and not to exceed \$12,000 in
112 any subsequent year of this License Agreement, from the proceeds received
113 from gross sales before remitting the remainder to the OPERATORS.
114
- 115 c. In the event that the proceeds received from gross sales are insufficient to
116 reimburse the AUTHORITY's expenses, as described above, the OPERATORS have
117 no obligation to compensate the AUTHORITY for any difference or deficiency.
118
- 119 d. The AUTHORITY shall have primary responsibility for filing annual reports to the
120 Regional Board detailing and summarizing the disposition of all LEAMS offset
121 credits. The AUTHORITY shall provide a copy of all such reports to the
122 OPERATORS at the same time these reports are submitted to the Regional Board.
123 The DISTRICT shall continue to have primary responsibility for developing the
124 documentation required to confirm the validity of the offset credits generated
125 by LEAMS and for reporting this information to the Regional Board in accordance
126 with the DISTRICT's NPDES permit.
127
- 128 e. Any person, municipality, corporation, government agency or other legal entity
129 acquiring a valid license from the AUTHORITY shall hereinafter be referred to as
130 a LICENSEE.

131 **2) EXCLUSIVE LICENSES FOR EXCESS OFFSET CREDITS**

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- a. No later than April 15th of each year, the OPERATORS shall notify the AUTHORITY of the total number of excess offset credits, generated in the prior calendar year, that are being made available for license to other TMDL stakeholders. The AUTHORITY shall not offer any licenses for sale to others until officially notified by the OPERATORS that excess offset credits are available, the amount of nitrogen and phosphorus offset credit offered with each hour of LEAMS operation and the annual fee required for each license hour. All notices shall be in writing and directed as described in Section 5 of this License Agreement.
- b. Available excess offset credits shall be licensed in one hour blocks of LEAMS operating time. Each available credit hour will be individually identified based on the year the credit was generated and a unique sequential number (e.g. 2016-0129, 2019-0257, etc.). Each one hour block of LEAMS operating time represents a volume of phosphorus and nitrogen reduction credits for the year indicated by the block ID number as defined by the notification described in §2(a) above. For 2015 and 2016 each hour of LEAMS operation conveys 3.5 kg of phosphorus reduction credit and 22 kg of nitrogen reduction credit. However, the OPERATORS reserve the right to revise the credit/hour ratio in future years.
- c. The AUTHORITY is authorized to offer other TMDL stakeholders an exclusive license to purchase and use available LEAMS offset credits for any lawful purpose subject to all of provisions of this License Agreement. Each individually-numbered one hour block of LEAMS offset credits may be licensed for a one-time license fee of \$300.00. OPERATORS may also authorize the AUTHORITY to market licenses for unused excess credits generated in calendar years prior to 2016, and to offer pro-rated discounts for credits generated in calendar years 2009 through 2015, subject to the written approval by the OPERATORS.
- d. The AUTHORITY shall provide an annual accounting report detailing all fees collected for licenses sold in a given calendar year, and all marketing and administration expenses for that same calendar year, to the OPERATORS by January 31st of the following calendar year. Following receipt of this accounting report, the OPERATORS shall provide the AUTHORITY with detailed instructions on how to disperse the net proceeds from the sale of LEAMS offset credit licenses in the prior calendar year.

169 **3) SALE OF LICENSES FOR EXCESS OFFSET CREDITS**

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- a. Ownership of all LEAMS facilities and of all offset credits generated by these facilities shall remain with the OPERATORS. Only an exclusive license to use the credits, as part of an approved offset program, is being offered by the OPERATORS pursuant to this License Agreement.

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- b. The sale or purchase of LEAMS excess offset credits in any given year does not create an obligation to sell or buy licenses for LEAMS excess offset credits in any other year. OPERATORS may elect to increase or decrease the number of available LEAMS excess offset credits at their sole discretion. However, OPERATORS shall not retroactively reduce the number of LEAMS excess offset credit licenses available for sale in any given year below the number of licenses already sold for that same year.
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- c. LEAMS excess offset credit licenses may not be bought, sold, leased, loaned, borrowed or transferred except through the AUTHORITY acting as the Exclusive Agent for the OPERATORS. Any attempt to do so automatically and irrevocably invalidates each specific license involved without recourse to the LICENSEE.
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- d. Neither the OPERATORS or the AUTHORITY offer any warranty whatsoever regarding the use of LEAMS excess offset credits. It is the sole responsibility of each prospective LICENSEE to determine for itself and to its own satisfaction, through direct consultation with the Regional Board, how LEAMS excess offset credits may be lawfully used to demonstrate compliance with the TMDL or any related provisions of state and federal waste discharge requirements BEFORE purchasing any excess offset license. Prospective LICENSEES are expressly warned not to rely on any statements or representations made in this License Agreement without further confirmation by the Regional Board.
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- e. Although each excess offset credit block is governed by a license, only the Regional Board can determine the length of time any given block of excess offset credits may be used to compute compliance. The OPERATORS and the AUTHORITY make no representation or warranty concerning the length of time any given block of excess offset credits may be used for compliance.
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- f. Fees paid to license LEAMS excess offset credits are non-refundable.
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- g. OPERATORS prepare and approve annual operating budgets and summaries of actual annual expenses in accordance with their separate Operations and Maintenance Agreement for LEAMS (dated May 23, 2017). Copies of these accounting documents shall be provided to the AUTHORITY no later than 30 days after they have been approved by the OPERATORS.

- 213 h. Fees paid to license LEAMS excess offset credits shall become the sole property
214 of the OPERATORS. Said fees may be used to offset past or future LEAMS
215 operating expenses, effect LEAMS repairs, replace or expand LEAMS, held for a
216 LEAMS contingency, or any other lawful purpose related to LEAMS at the sole
217 discretion of the OPERATORS. The OPERATORS shall not be required to account
218 for the expenditure of any fees received from the sale of licenses for excess
219 offset credits.
220
- 221 i. The OPERATORS warrant that LEAMS was operated in accordance with
222 requirements established by the Regional Board and in a manner that they
223 reasonably believe generated the nutrient reduction credits now made available
224 for licensing by others. The operating reports, water quality monitoring data and
225 special studies used to support the estimated credit calculations are regularly
226 submitted to the Regional Board under penalty of perjury. A copy of all such
227 documents shall be provided to the AUTHORITY no later than 30 days after these
228 documents are submitted to the Regional Board.
229
- 230 j. Because the licenses offered are for excess offset credits generated by LEAMS in
231 the prior calendar year, the purchase of such licenses imposes no further
232 obligation on the LICENSEE to operate, maintain, fund or support LEAMS in any
233 other way. The OPERATORS, and not the AUTHORITY, bear sole responsibility for
234 affirming the validity of all offset credits declared and reported to the Regional
235 Board.
236
- 237 k. Because licenses are purchased for excess offset credits generated in the prior
238 calendar year, and the LICENSEES had no role or responsibility whatsoever for
239 the day-to-day operations of LEAMS, the LICENSEES are not liable for injury or
240 damages which may occur as a result of the actions or omissions of the
241 OPERATORS as these credits were being generated. The OPERATORS, and not
242 the AUTHORITY, shall indemnify and defend the LICENSEES against any and all
243 claims for injuries or damages related to the operation of LEAMS.
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- 245 l. OPERATORS are not responsible for any cost, expense, loss or other
246 consequential damages that may be incurred by LICENSEES in the event the
247 excess offset credit program is subsequently ruled invalid or illegal by any state
248 or federal regulatory agency or by a court of competent jurisdiction.
249
- 250 m. The AUTHORITY shall provide a full and complete copy of this License Agreement
251 to any prospective LICENSEE. Furthermore, each prospective LICENSEE must
252 provide written and dated confirmation that it has received, read and
253 understood the entirety of this License Agreement as a prerequisite condition for
254 purchasing a license for excess offset credits.
255

- 256 n. The PARTIES are required to notify one another as soon as is reasonably possible
257 if and when either becomes aware of any change in conditions that may
258 materially and adversely affect the validity of the LEAMS excess offset credits or
259 the ability of LICENSEES to rely on such credits to meet TMDL compliance
260 obligations. The AUTHORITY is solely responsible for notifying each individual
261 LICENSEE as described below.
262
- 263 o. The AUTHORITY and each LICENSEE are required to notify one another as soon
264 as is reasonably possible if and when either becomes aware of any change in
265 conditions that may materially and adversely affect the validity of the LEAMS
266 offset credits or the ability of LICENSEES to rely on such credits to meet TMDL
267 compliance obligations. Individual LICENSEES may, but are not required to,
268 provide similar notice to other individual LICENSEES.
269
- 270 p. The AUTHORITY and all LICENSEES are entitled to inspect the LEAMS facilities
271 and may do so, upon request, at a time that is mutually convenient with the
272 OPERATORS.
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- 274 q. The OPERATORS are not entitled to reclaim any previously licensed excess offset
275 credits without written consent of the LICENSEE.
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278 4. GENERAL PROVISIONS

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- 280 a. **Jurisdiction.** This License Agreement shall be deemed to have been made in
281 Riverside County, California regardless of the order of the signatures of the
282 PARTIES affixed hereto. Any litigation or other legal proceedings which arise in
283 connection with this License Agreement shall be conducted in a federal or state
284 court located within or for Riverside County, California. All PARTIES hereby
285 waive any defenses or objections based on the Doctrine of Forum Non-
286 conveniens.
287
- 288 b. **Property Rights.** No property rights are created or changed by this License
289 Agreement.
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- 291 c. **Third Parties.** There are no third-party beneficiaries created, intended or
292 recognized by this License Agreement.
293
- 294 d. **Entire Agreement.** This written License Agreement constitutes the full and
295 complete agreement between PARTIES. This License Agreement supersedes any
296 and all previous agreements, either oral or written, between the PARTIES hereto
297 and contains all of the terms, conditions and agreements between the PARTIES
298 with respect to the subject matter of this License Agreement.

- 299 e. **Amendments.** This License Agreement may only be amended by written
300 consent of all PARTIES. However, the terms and conditions of any previously
301 issued license may not be revised retroactively without the additional written
302 consent of the LICENSEE.
303
- 304 f. **Regional Board Review.** A full and complete copy of this License Agreement has
305 been provided to the Regional Board staff for review to ensure consistency with
306 the assumptions and requirements of the TMDL and the Comprehensive
307 Nutrient Reduction Plan (CNRP). Any changes proposed by the Regional Board
308 must be approved, in writing, as formal amendments to this License Agreement.
309 All amendments to this License Agreement shall also be submitted to the
310 Regional Board for review.
311
- 312 g. **Cooperation.** The PARTIES agree to cooperate with one another to fulfill all
313 regulatory and contractual obligations related to this License Agreement. The
314 PARTIES further agree not to engage in any activities that undermine or
315 jeopardize the validity of the LEAMS offset credits or the related licenses offered
316 for sale to others.
317
- 318 h. **Waivers.** Failure to exercise any right or remedy related to this License
319 Agreement shall not be construed as a waiver of that right or remedy.
320
- 321 i. **Severability.** Any provision of this License Agreement that is subsequently found
322 to be unconstitutional, illegal, or otherwise unenforceable shall be deemed void
323 without subsequent effect on any of the remaining provisions in the License
324 Agreement which shall continue to be implemented as originally intended.
325
- 326 j. **Term.** This License Agreement shall expire on June 30, 2022 unless the PARTIES
327 agree, in writing, to extend that date. However, all licenses purchased prior to
328 the expiration date of this License Agreement shall remain valid.
329
- 330 k. **Default.** Failure by a Party to comply with and observe any of the conditions,
331 terms, or covenants set forth in this License Agreement, if such failure remains
332 uncured within thirty (30) days after written notice of such failure from the other
333 Party in the manner provided herein or, with respect to a default that cannot be
334 cured within thirty (30) days, if the Party in default fails to commence such cure
335 within such thirty (30) day period or thereafter fails to diligently and
336 continuously proceed with such cure to completion. However, if a different cure
337 period is specified under any other section of this License Agreement, then the
338 specific cure period shall control.
339

- 340 i. **Independent Contractor.** In performing under this License Agreement, it is
341 mutually understood that the AUTHORITY is acting as an independent
342 contractor, and not as an agent of the OPERATORS. The OPERATORS shall have
343 no responsibility for payment to any contractor, subcontractor or supplier of the
344 AUTHORITY. Nothing herein contained shall be deemed to create an agency,
345 joint venture, partnership or franchise relationship between the PARTIES hereto,
346 or between the PARTIES and any contractor retained by the OPERATORS in
347 connection with the services provided under this License Agreement, or between
348 the PARTIES and any person or organization that purchases a license for excess
349 offset credit pursuant to this License Agreement.
350
- 351 m. **Authority and Requisite Action.** The individuals executing this License
352 Agreement (the "Signatories") covenant that they have the legal power, right
353 and authority to enter into this License Agreement and to bind their respective
354 principals/entities to the terms and conditions set forth herein. Furthermore,
355 the Signatories covenant that all requisite action has been taken by their
356 respective principals/entities in connection with the entering into this License
357 Agreement and the instruments referenced herein, and the consummation of
358 the transactions contemplated hereby.
359
- 360 n. **Maintenance and Inspection.** The AUTHORITY shall maintain complete and
361 accurate records with respect to all licenses and fees under this License
362 Agreement. All such records shall be clearly identifiable. The AUTHORITY shall
363 allow a representative of OPERATORS to examine, audit, and make transcripts or
364 copies of such records and any other documents created pursuant to this License
365 Agreement during normal business hours. The AUTHORITY shall allow inspection
366 of all work, data, documents, proceedings, and activities related to the License
367 Agreement for a period of three (3) years from the date of final payment under
368 this License Agreement.
369
- 370 o. **Prohibited Interests.** The AUTHORITY maintains and warrants that it has not
371 employed nor retained any company or person, other than a bona fide employee
372 working solely for the AUTHORITY, to solicit or secure this License Agreement.
373 Further, the AUTHORITY warrants that it has not paid nor has it agreed to pay
374 any company or person, other than a bona fide employee working solely for the
375 AUTHORITY, any fee, commission, percentage, brokerage fee, gift or other
376 consideration contingent upon or resulting from the award or making of this
377 License Agreement. For breach or violation of this warranty, OPERATORS shall
378 have the right to rescind this License Agreement without liability. For the term
379 of this License Agreement, no official, officer or employee of the OPERATORS,
380 during the term of his or her service with the OPERATORS, shall have any direct
381 interest in this License Agreement, or obtain any present or anticipated material
382 benefit arising therefrom.
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- p. **Dispute Resolution.** Any dispute which may arise by and between the parties to this License Agreement shall be submitted to non-binding mediation. Such mediation shall be conducted by any neutral, impartial mediation service that the Parties mutually agree upon, in writing, and in accordance with its rules in effect at the time of the commencement of the mediation proceeding.
- q. **Attorney's Fees.** The prevailing party in any action to enforce any provision of this License Agreement shall be entitled to its reasonable attorney's fees and costs.
- r. **Counterpart Execution.** This License Agreement may be signed in separate counterparts, each of which is an original and all of which, taken together, form one single binding document.

5. NOTIFICATIONS

- a. **All notifications made pursuant to this License Agreement shall be in writing.**
- b. **Notifications to the City of Lake Elsinore shall be directed to:**
 - Name: Grant Yates
 - Title: City Manager
 - Address: 130 S. Main Street
 - Addl. Address: _____
 - City, State, Zip: Lake Elsinore, CA 92530
 - Main Office Phone: (951) 674-3124
 - Email Address: gyates@lake-elsinore.org
 - Alternate Name: Nicole Dailey
 - Alternate Phone: (951)833-5497
 - Alternate Email: ndailey@lake-elsinore.org

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c. Notifications to Elsinore Valley Municipal Water District shall be directed to:
Name: _____
Title: _____
Address: _____
Addl. Address: _____
City, State, Zip: _____
Main Office Phone: _____
Email Address: _____
Alternate Name: _____
Alternate Phone: _____

d. Notifications to the County of Riverside shall be directed to:
Name: Steve Horn
Title: Principal Management Analyst
Address: 4080 Lemon Street, 4th Floor
City, State, Zip: Riverside, CA 92501
Main Office Phone: 951-955-1110
Email Address: shorn@rivco.org
Alternate Name: Alex Gann
Alternate Phone: 951-955-1110
Alternate Email: agann@rivco.org

e. All notifications to Lake Elsinore San Jacinto Watersheds Authority (LESJWA) shall be directed to:
Name: Mark Norton, PE.
Title: Authority Administrator
Address: 11619 Sterling Ave
Addl. Address: _____
City, State, Zip: Riverside CA 92503
Main Office Phone: 951.354.4221

452 Email Address: m.norton@saupa.org

453 Alternate Name: Rick Whelsel

454 Alternate Phone: 951.354.4222

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- f. The AUTHORITY shall maintain a directory of all past and present LICENSEES with current contact information similar to that shown above and distribute an updated copy of that directory at least once a year to the OPERATORS and the Regional Board.

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

466
467 For the CITY OF LAKE ELSINORE:

468
469 6-20-2017
470 Date



Mayor

471 Approved As To Form:
472 6-12-2017
473 Date



City Attorney

474
475 For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT (EVMWD)

476
477 _____
478 Date

President, Board of Directors

479 Approved As To Form:
480 _____
481 Date

Counsel for EVMWD

482
483 For the COUNTY OF RIVERSIDE

484
485 _____
486 Date

Chairman, Board of Supervisors

487 Approved As To Form:
488 _____
489 Date

Counsel for the County of Riverside

490
491 Attested:
492 _____
493 Date

Clerk for the Board of Supervisors

494
495 For the LAKE ELSINORE SAN JACINTO WATERSHEDS AUTHORITY

496
497 _____
498 Date

Chairman, Board of Directors

499 Approved As To Form
500 _____
501 Date

Counsel for LESJWA

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

471
472 **For the CITY OF LAKE ELSINORE:**

473
474 _____
475 Date Mayor

476 *Approved As To Form:*

477 _____
478 Date City Attorney

479
480 **For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT (EVMWD)**

481
482 _____
483 Date President, Board of Directors

484 *Approved As To Form:*

485 _____
486 Date Counsel for EVMWD

487
488 **For the COUNTY OF RIVERSIDE**

489
490 _____
491 Date Chairman, Board of Supervisors

492 *Approved As To Form:*

493 _____
494 Date Counsel for the County of Riverside

495
496 **Attested:**

497 _____
498 Date Clerk for the Board of Supervisors

499
500 **For the LAKE ELSINORE SAN JACINTO WATERSHEDS AUTHORITY**

501
502 _____
503 Date Chairman, Board of Directors

504 *Approved As To Form*

505 _____
506 Date Counsel for LESJWA

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

466
467 **For the CITY OF LAKE ELSINORE:**

468 _____
469 _____
470 Date Mayor

471 *Approved As To Form:*
472 _____
473 Date City Attorney

474
475 **For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT (EVMWD)**

476 _____
477 _____
478 Date President, Board of Directors

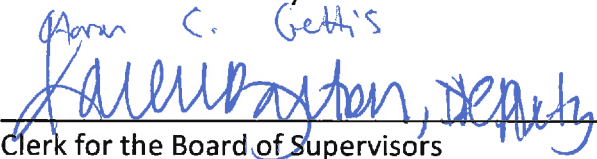
479 *Approved As To Form:*
480 _____
481 Date Counsel for EVMWD

482
483 **For the COUNTY OF RIVERSIDE**

484 _____
485 MAY 23 2017
486 Date Chairman, Board of Supervisors

JOHN TAVAGLIONE

487 *Approved As To Form:*
488 5-10-17
489 Date Counsel for the County of Riverside
Aaron C. Gettis

490 _____
491 Attested:
492 MAY 23 2017
493 Date Clerk for the Board of Supervisors


494
495 **For the LAKE ELSINORE SAN JACINTO WATERSHEDS AUTHORITY**

496 _____
497 _____
498 Date Chairman, Board of Directors

499 *Approved As To Form*
500 _____
501 Date Counsel for LESJWA

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

471
472 **For the CITY OF LAKE ELSINORE:**

473 _____
474 _____
475 Date Mayor

476 *Approved As To Form:*

477 _____
478 Date City Attorney

480 **For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT (EVMWD)**

481 _____
482 _____
483 Date President, Board of Directors

484 *Approved As To Form:*

485 _____
486 Date Counsel for EVMWD

488 **For the COUNTY OF RIVERSIDE**

489 _____
490 _____
491 Date Chairman, Board of Supervisors

492 *Approved As To Form:*

493 _____
494 Date Counsel for the County of Riverside

496 Attested:

497 _____
498 Date Clerk for the Board of Supervisors

500 **For the LAKE ELSINORE SAN JACINTO WATERSHEDS AUTHORITY**

501 4/19/17 
502 _____
503 Date Chairman, Board of Directors

504 *Approved As To Form*

505 _____
506 Date Counsel for LESJWA

Attachment B: Agreement for the Operation and Maintenance of the Lake Elsinore Aeration and Mixing Systems (LEAMS) (Operators Agreement)

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

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

RECITALS

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **Miscellaneous Provisions**

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

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

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

- n. **Attorney's Fees.** In the event any of the PARTIES hereto shall bring an action to enforce any term of this AGREEMENT to recover any damages for and on account of any breach of any term or condition of this AGREEMENT, it is mutually agreed that the prevailing party in such action shall recover all costs thereof including reasonable attorneys' fees.

- o. **COUNTERPART EXECUTION.** This AGREEMENT may be executed simultaneously, or in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. The AGREEMENT may be signed by fax or scanned by email signature.

- p. **Effective Date.** This AGREEMENT is deemed effective upon execution by all of the PARTIES and, for budgeting and funding purposes, is retroactive to July 1, 2016.

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

[SIGNATURE PAGE(S) TO FOLLOW]

For the CITY OF LAKE ELSINORE:

Date



Mayor

Approved As To Form

6-12-2017



Counsel for the City of Lake Elsinore

Date

Attestation

6/20/17



City Clerk

Date

For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT

Date

President, Board of Directors

Approved As To Form

Date

Counsel for EVMWD

For the COUNTY OF RIVERSIDE

Date

Chairman, Board of Supervisors

Approved As To Form

Date

Counsel for the County of Riverside

Attested

Date

Clerk for the Board of Supervisors

For the CITY OF LAKE ELSINORE:

Date

Mayor

Approved As To Form

Date


Counsel for the City of Lake Elsinore

For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT

Date

5/17/17

President, Board of Directors



Approved As To Form

Date

5/11/17

Counsel for EVMWD



For the COUNTY OF RIVERSIDE

Date

Chairman, Board of Supervisors

Approved As To Form

Date

Counsel for the County of Riverside

Attested

Date

Clerk for the Board of Supervisors

For the CITY OF LAKE ELSINORE:

Date

Mayor

Approved As To Form

Date

Counsel for the City of Lake Elsinore

For the ELSINORE VALLEY MUNICIPAL WATER DISTRICT

Date

President, Board of Directors

Approved As To Form

Date

Counsel for EVMWD

For the COUNTY OF RIVERSIDE

MAY 23 2017
Date


Chairman, Board of Supervisors
JOHN TAVAGLIONE

Approved As To Form

5-10-2017
Date


Counsel for the County of Riverside
Aaron C. Gettis

Attested

MAY 23 2017
Date


Clerk for the Board of Supervisors

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Attachment C: Annual Operator Costs and Contingency Fund Contributions FYE 2015 through 2017

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FYE 2015
Budget

FYE 2015
Actual

FYE 2016
Budget

FYE 2016
Actual

FYE 2017
Budget

FYE 2017
Actual

County of Riverside Expenditures

Payments to Operator Partners

	FYE 2015 Budget	FYE 2015 Actual	FYE 2016 Budget	FYE 2016 Actual	FYE 2017 Budget	FYE 2017 Actual
Elsinore Valley Municipal Water District, Aeration Project Invoiced Total:	\$ -	\$ 97,422	\$ -	\$ 86,572	\$ -	\$ 85,586
Operations & Maintenance Costs:	\$ -	\$ 68,088	\$ -	\$ 57,238	\$ -	\$ 56,252
Reserve Fund Sources and Uses:	\$ -	\$ 29,334	\$ -	\$ 29,334	\$ -	\$ 29,334
City of Lake Elsinore, Mixing Project Invoiced Total:	\$ -	\$ 48,667	\$ -	\$ 48,667	\$ -	\$ 48,667
Total:	\$ -	\$ 146,089	\$ -	\$ 135,239	\$ -	\$ 134,253

**FYE 2015
Budget**

**FYE 2015
Actual**

**FYE 2016
Budget**

**FYE 2016
Actual**

**FYE 2017
Budget**

**FYE 2017
Actual**

Elsinore Valley Municipal Water District

Payments to Operator Partners

City of Lake Elsinore, Mixing Project Invoiced Total:	\$ -	\$ 48,667	\$ -	\$ 48,667	\$ -	\$ 48,667
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Lake Aeration Project

Operations & Maintenance Costs

Direct Labor:	\$ 19,089	\$ 21,926	\$ 27,586	\$ 10,345	\$ 28,918	\$ 12,095
Repairs - Material:	\$ 11,900	\$ 1,590	\$ 37,000	\$ 14,280	\$ 37,000	\$ 30,918
Repairs – Outside Services	\$ 82,000	\$ 38,650	\$ 82,000	\$ 34,500	\$ 82,000	\$ 25,879
Insurance:	\$ 408	\$ 408	\$ 404	\$ 381	\$ 404	\$ 381
Power:	\$ 90,000	\$ 86,920	\$ 130,000	\$ 128,654	\$ 135,000	\$ 100,715
Total:	\$ 203,397	\$ 149,494	\$ 276,990	\$ 188,160	\$ 283,322	\$ 169,988

Note: EVMWD bills versus the actual, the balance of remaining funds are NOT added to the project Contingency Fund.

Reserve Fund Sources and Uses

Replacement Fund Reserve:	\$ 88,000	\$ 88,000	\$ 88,000	\$ 88,000	\$ 88,000	\$ 88,000
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Reserve Fund Balance

Total Replacement Fund Reserve:	\$ -	\$ 459,992	\$ -	\$ 547,992	\$ -	\$ 635,992
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FYE 2015
Budget

FYE 2015
Actual

FYE 2016
Budget

FYE 2016
Actual

FYE 2017
Budget

FYE 2017
Actual

City of Lake Elsinore

Payments to Operator Partners

	FYE 2015 Budget	FYE 2015 Actual	FYE 2016 Budget	FYE 2016 Actual	FYE 2017 Budget	FYE 2017 Actual
Elsinore Valley Municipal Water District, Aeration Project Invoiced Total:	\$ -	\$ 97,422	\$ -	\$ 86,572	\$ -	\$ 85,586
Operations & Maintenance Costs:	\$ -	\$ 68,088	\$ -	\$ 57,238	\$ -	\$ 56,252
Reserve Fund Sources and Uses:	\$ -	\$ 29,334	\$ -	\$ 29,334	\$ -	\$ 29,334
Total:	\$ -	\$ 97,422	\$ -	\$ 86,572	\$ -	\$ 85,586

Lake Mixing Project

Salaries & Benefits, Operations & Maintenance Costs

Direct Labor:	\$ -	\$ 86,812	\$ -	\$ 8,810	\$ -	\$ 4,506
Repairs - Material:	\$ -	\$ 1,106	\$ -	\$ 2,169	\$ -	\$ 21,696
Repairs – Outside Services	\$ 4,500	\$ 15,671	\$ 2,000	\$ 68,433	\$ 50,000	\$ 24,704
Insurance:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Power:	\$ 22,500	\$ 23,146	\$ 14,000	\$ 13,750	\$ 10,000	\$ 13,054
Total:	\$ 27,000	\$ 126,735	\$ 16,000	\$ 93,162	\$ 60,000	\$ 63,960

Reserve Fund Sources and Uses

Replacement Fund Reserve:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
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Reserve Fund (Fund 631) Balance

Total Replacement Fund Reserve:	\$ -	\$ 178,051	\$ -	\$ 232,093	\$ -	\$ 284,769
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Attachment D: LEAMS Program Implementation Schedule

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CY	FY	Date	LEAMS-related ACTIVITY
LEAMS Calendar Year 2016	FY2015-16	Jan., 2016	Task Force draft budget for FY16-17; est. CY2016 LEAMS credits needed
		Feb., 2016	
		Mar., 2016	Task Force final budget for FY16-17; incl. est. CY2016 LEAMS credit fees
		Apr., 2016	
		May, 2016	
		June, 2016	
	Fiscal Year 2016-2017	July, 2016	LESJWA sends out Task Force invoices for FY16-17
		Aug., 2016	
		Sep., 2016	
		Oct., 2016	Task Force members pay LESJWA invoices for FY16-17
		Nov., 2016	
		Dec., 2016	
LEAMS Calendar Year 2017	Fiscal Year 2017-2018	Jan., 2017	Task Force draft budget for FY17-18; est. CY2017 LEAMS credits needed
		Feb., 2017	
		Mar., 2017	Task Force final budget for FY17-18; incl. est. CY2017 LEAMS credit fees
		Apr., 2017	Partners certify credits generated & available for Calendar Year 2016
		May, 2017	LESJWA pays LEAMS Partners for 2016 credit licenses
		June, 2017	
LEAMS Calendar Year 2018	Fiscal Year 2017-2018	July, 2017	LESJWA sends out Task Force invoices for FY17-18
		Aug., 2017	LESJWA submits annual report for CY2016 LEAMS credits to Reg. Bd.
		Sep., 2017	
		Oct, 2017	Task Force members pay invoices for FY17-18
		Nov., 2017	
		Dec., 2017	
LEAMS Calendar Year 2018	Fiscal Year 2018-2019	Jan., 2018	Task Force draft budget for FY18-19; est. CY2018 LEAMS credits needed
		Feb., 2018	
		Mar., 2018	Task Force final budget for FY18-19; incl. est. CY2018 LEAMS credit fees
		Apr., 2018	Partners certify credits generated & available for Calendar Year 2017
		May, 2018	LESJWA pays LEAMS Partners for 2016 credit licenses
		June, 2018	
LEAMS Calendar Year 2018	Fiscal Year 2018-2019	July, 2018	LESJWA sends out Task Force invoices for FY18-19
		Aug., 2018	LESJWA submits annual report for CY2017 LEAMS credits to Reg. Bd.
		Sept. 2018	
		Oct., 2018	Task Force members pay invoices for FY18-19
		Nov., 2018	
		Dec., 2018	
LEAMS CY 2019	Fiscal Year 2018-2019	Jan., 2018	Task Force draft budget for FY18-19; est. CY2017 LEAMS credits needed
		Feb., 2018	
		Mar., 2018	Task Force final budget for FY18-19; incl. est. CY2018 LEAMS credit fees
		Apr., 2018	Partners certify credits generated & available for Calendar Year 2017
		May, 2018	LESJWA pays LEAMS Partners for 2017 credit licenses
		June, 2018	

