



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: November 19, 2024

Agenda Item: 11M

Submitted By: Public Works

Prepared By: David Rebensdorf, Public Works Director

Subject:

CONSIDERATION OF A RESOLUTION APPROVING THE SAN CLEMENTE LAND OUTFALL (PC 10) ASSET TRANSFER AND DISSOLUTION AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

Fiscal Impact:

None; the purchase price for the transfer of the Land Outfall is \$0 and the City has been responsible for the operation and the maintenance since the pipeline was constructed.

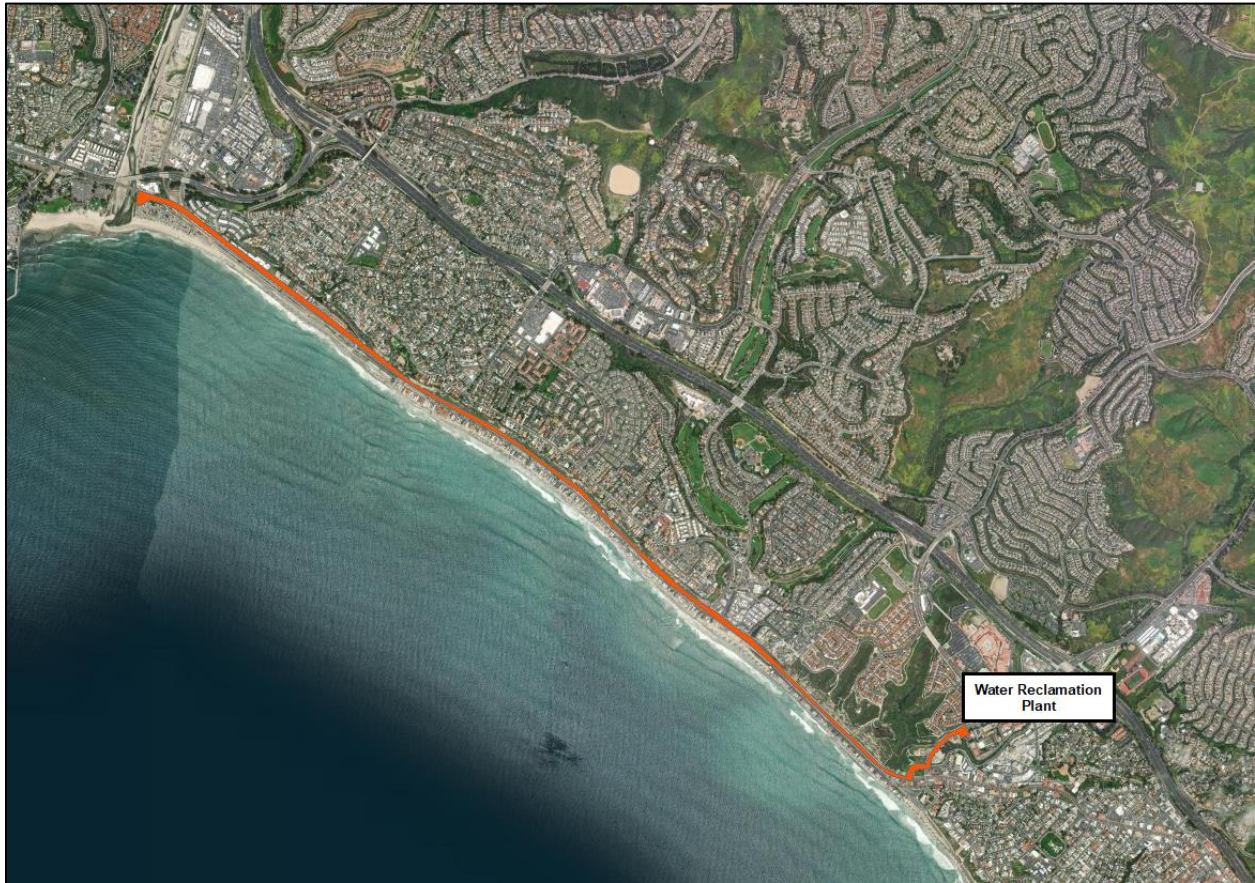
Summary:

SOCWA is a regional Joint Powers Authority providing for the operation, maintenance and permitting for three wastewater treatment plants and two ocean outfalls in South Orange County. Seven member agencies (El Toro Water District, Emerald Bay Service District, City of Laguna Beach, Moulton Niguel Water District, City of San Clemente, Santa Margarita Water District, and South Coast Water District) have varying levels of ownership in the regional facilities known as Project Committees (PC). San Clemente is a member of the San Juan Creek Ocean Outfall (PC 5) where the City discharges its treated wastewater approximately two miles offshore from Dana Point. The San Clemente Land Outfall (PC 10) is currently owned by SOCWA, but the City is responsible for the operation and maintenance.

SOCWA was formed in 2001 when the South East Regional Reclamation Authority (SERRA), Aliso Water Management Agency (AWMA) and South Orange County Reclamation Authority (SOCRA) consolidated to meet the wastewater needs of approximately 500,000 homes and businesses across South Orange County. The original agencies were initially formed to take advantage of regional federal grants for the expansion of wastewater facilities in South Orange County, including the expansion of the City's Water Reclamation Plant, San Clemente Land Outfall (PC 10), and construction of the San Juan Creek Ocean Outfall (PC 5) in the early 1990's.

SOCWA member agencies, including the City, have been evaluating the various agreements over the past few years and considering certain modifications to ownership and services. The San Clemente Land Outfall is being recommended to have ownership transferred from SOCWA to the City because the City is the only member of PC 10 and is contractually obligated for its operation and maintenance. This land outfall consists of a 30-inch ductile iron pipeline approximately four miles long. Taking ownership of the pipeline will not change the City's Sewer operating position and will reduce the number of assets owned by SOCWA as part of the cleanup of the various agreements.

San Clemente Land Outfall Location Map



Background:

The San Clemente Land Outfall was funded and built as part of a regional project to convey treated wastewater from the City's Water Reclamation Plant on Avenida Pico to the San Juan Creek Ocean Outfall in Dana Point. The facility conveys treated wastewater from the City's Water Reclamation Plant and the City is responsible for operation and maintenance. In an effort to find efficiencies at SOCWA, it was recommended to transfer ownership of the asset to the City and remove it from SOCWA's inventory of assets since the City is the only project participant in PC 10. On November 7, 2024, the SOCWA Board of Directors voted to approve dissolving PC 10, transferring the San Clemente Land Outfall to the City and authorizing a bill of sale of \$0 for the asset.

The City currently funds the San Clemente Land Outfall and SOCWA from the Sewer Operating Fund and Sewer Other Agency Depreciation Reserves. Staff is recommending ownership acceptance and continued operation and maintenance. Typical maintenance of the pipeline consists of exercising valves and inspection of air vacuum releases along with annual inspection of the cathodic protection system installed by the City in the mid 2000's to reduce soil side corrosion. While it is possible the City may reclaim all of its treated wastewater for recycled water use for irrigation purposes or direct potable reuse in the future, the San Clemente Land Outfall is necessary during plant reuse outages and heavy rain events when wastewater flows exceed plant reclamation capacity.

Council Options:

- Adopt Resolution No. 24-185, approving the San Clemente Land Outfall (PC 10) Asset Transfer and Dissolution Agreement and authorizing the City Manager to execute the Agreement.
- Modify and adopt Resolution No. 24-185.
- Provide alternative direction.
- Deny approval of the Agreement.

Environmental Review/Analysis:

This action is not a project as defined by the California Environmental Quality Act because it changes ownership in an existing facility.

Recommended Actions:

Staff Recommendation

Staff recommends that the City Council adopt Resolution No. 24-185, which would approve and authorize the City Manager to execute the San Clemente Land Outfall (PC 10) Asset Transfer and Dissolution Agreement (Attachment 2).

Attachments:

1. Resolution No. 24-185
2. San Clemente Land Outfall (PC 10) Asset Transfer and Dissolution Agreement

Notification:

None.

RESOLUTION NO. 24-185

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING THE SAN CLEMENTE LAND OUTFALL (PC 10) ASSET TRANSFER AND DISSOLUTION AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, South Orange County Water Authority (SOCWA) is a regional Joint Powers Authority providing for the operation, maintenance and permitting for three wastewater treatment plants and two ocean outfalls in South Orange County; and

WHEREAS, the City is one of seven member agencies within SOCWA, including: El Toro Water District, Emerald Bay Service District, City of Laguna Beach, Moulton Niguel Water District, Santa Margarita Water District, and South Coast Water District; and

WHEREAS, SOCWA was formed in 2001 when the South East Regional Reclamation Authority (SERRA), Aliso Water Management Agency (AWMA) and South Orange County Reclamation Authority (SOCRA) consolidated to meet the wastewater needs of approximately 500,000 homes and businesses across South Orange County; and

WHEREAS, the City utilizes the San Clemente Land Outfall (PC 10) for conveyance of treated wastewater to the San Juan Creek Ocean Outfall (PC 5); and

WHEREAS, the City is the only member of PC 10 and is currently obligated for operation and maintenance of the San Clemente Land Outfall and desires to take ownership of the facility.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby find, determine and resolve as follows:

SECTION 1. That the above recitations are true and correct and incorporated fully herein.

SECTION 2. That the City Council approves the San Clemente Land Outfall (PC 10) Asset Transfer and Dissolution Agreement, and authorizes and directs the City Manager to execute such Agreement in a form substantially similar to that presented to the City Council on November 19, 2024 with any minor or non-substantive changes or corrections approved by the City Attorney.

SECTION 3. That City staff is authorized and directed to execute such other documents and take such other and further actions as may be necessary and proper to accomplish the purposes of this resolution.

SECTION 4. That the City Clerk shall certify to the passage and adoption

of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of _____, 2024.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 24-185 was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

Elizabeth A. Mitchell, City Attorney

SAN CLEMENTE LAND OUTFALL (PC 10)
ASSET TRANSFER AND DISSOLUTION AGREEMENT

This SAN CLEMENTE LAND OUTFALL (PC 10) ASSET TRANSFER AND DISSOLUTION AGREEMENT (“Agreement”), dated [REDACTED], 2024, is by and between the City of San Clemente, a California municipal corporation (“CSC”), and South Orange County Wastewater Authority, a California Joint Powers Authority (“SOCWA”), who may collectively be referred to herein as the “Parties” and each individually as a “Party.”

DEFINITIONS

When used in this Agreement, including any exhibits, amendments and schedules hereto, the following terms shall have the meanings ascribed to them as set forth below:

- “AAA” is defined as set forth in Section 11.1 of this Agreement.
- “Agreement” is defined as set forth in the Preamble of this Agreement.
- “Assumed Liabilities” is defined as set forth in Section 3.1(a) of this Agreement.
- “Claims Notice” is defined as set forth in Section 10.1(c) of this Agreement.
- “Closing Date” shall refer to the date set forth in Section 1.2 of this Agreement.
- “Dispute” is defined as set forth in Section 11.1 of this Agreement.
- “Excluded Assets” is defined as set forth in Section 3.2 of this Agreement.
- “Excluded Liabilities” is defined as set forth in Section 3.1(b) of this Agreement.
- “Force Majeure” is defined as set forth in Section 11.6 of this Agreement.
- “Indemnified Party” is defined as set forth in Section 10.1(c) of this Agreement.
- “Indemnifying Party” is defined as set forth in Section 10.1(c) of this Agreement.
- “JAMS” is defined as set forth in Section 11.1 of this Agreement.
- “Joint Powers Agreement” shall refer to the “Joint Exercise of Powers Agreement Creating South Orange County Wastewater Authority, dated July 1, 2001”.
- “Liability Claim” is defined as set forth in Section 10.1(c) of this Agreement.
- “Member Agencies” shall refer to the members of SOCWA as of the date of this Agreement, to include CSC, South Coast Water District, Emerald Bay Services District; City of Laguna Beach, Santa Margarita Water District, Moulton Niguel Water District, and El Toro Water District. Any individual agency of the Member Agencies may be referred to as a “Member Agency”.

- “Outfall” shall refer to the San Clemente Land Outfall, the approximately 4.4 mile long, 14 MGD capacity land outfall pipeline, inclusive of improvements and fixtures, which carries treated wastewater from the City of San Clemente Reclamation Plant northwesterly to the junction with the Ocean Outfall, located primarily within the Pacific Coast Highway as depicted in **Exhibit “1”** to the Bill of Sale attached hereto and incorporated herein by reference as **Exhibit “A”**.
- “Party/Parties” is defined as set forth in the Preamble of this Agreement.
- “PC” shall refer to a Project Committee which is formed when a SOCWA project or facility involves less than all of the Member Agencies, and the specific Member Agencies form a Project Committee for the responsibility to construct, operate and maintain the project or facility.
- “PC 10” shall refer to a SOCWA Project Committee formed to construct, maintain, and own and operate the Outfall.
- “PC 10 Member” shall refer to CSC, the sole Member Agency of PC 10 who owns 100% of the capacity in and who controls the project or facility which is held in SOCWA’s name for the benefit of the PC 10 Member.

RECITALS

- A. SOCWA is currently comprised of the Member Agencies.
- B. The Member Agencies are all parties to the Joint Powers Agreement.
- C. When a SOCWA project or facility involves less than all of the Member Agencies, a PC is formed for the responsibility to construct, operate and maintain the project or facility.
- D. The PC 10 Member controls the project or facility which is held in SOCWA’s name for the benefit of the PC 10 Member.
- E. PC 10 was formed to construct, maintain, and own and operate the Outfall.
- F. SOCWA currently owns and operates the Outfall for the benefit of the PC 10 Member.
- G. CSC is the only PC 10 Member and owns 100% of the Outfall capacity rights. As a result, SOCWA’s ongoing ownership and operation of the Outfall is no longer necessary or beneficial to the Parties.
- H. SOCWA and the PC 10 Member have agreed to transfer the Outfall to CSC and CSC has agreed to accept the transfer of the Outfall subject to the terms provided herein.
- I. The Parties agree that there shall be no transfer of nor change in capacity rights in the Outfall and that all capacity rights in the Outfall shall remain unchanged following the asset

transfer provided for by this Agreement. CSC has agreed to accept the Outfall subject to the existing capacity rights in the Outfall.

NOW, THEREFORE, for and in consideration of the promises and mutual agreements, benefits, representations, warranties and covenants of the Parties contained herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, SOCWA and CSC agree as follows:

ARTICLE 1
INCORPORATION, CLOSING AND CLOSING DATE

1.1 Incorporation. The Preamble, “Definitions” and “Recitals” provisions hereof are incorporated herein by reference as if set forth herein at length and in full.

1.2 Closing and Closing Date. The closing of this transaction shall occur when all of the documents and exhibits in the table of PC 10 Asset Transfer Agreements, attached hereto and incorporated herein as “Table 1” have been fully executed and delivered to all Parties, as set forth more fully in Article 6. The Parties have agreed to work together to satisfy all the conditions required to close this transaction such that the Closing Date shall be on [REDACTED].

ARTICLE 2
TRANSFER OF ASSETS AND DISSOLUTION OF PC 10

2.1 Transfer of Assets. SOCWA currently operates the Outfall for the benefit of CSC as the PC 10 Member. Effective on the Closing Date, SOCWA shall transfer all of its rights, title and interest in all of the assets of the Outfall controlled, held or managed by SOCWA, in “as is” condition and subject to any and all existing rights and encumbrances, as provided in the “Bill of Sale” attached hereto and incorporated herein by this reference as **Exhibit “A.”**

2.2 Assignment of Rights. SOCWA, with the consent and approval of the PC 10 Member, agrees to assign to CSC any easements or other real property rights to the extent necessary for CSC to use and access the Outfall.

2.3 Unchanged Capacity Rights. There shall be no transfer, assignment, termination, modification or other change in existing capacity rights to discharge treated wastewater in the Outfall as a result of the transfer of assets provided for by this Agreement. SOCWA transfers the Outfall subject to the existing capacity rights in the Outfall and CSC agrees to accept the Outfall subject to the existing capacity rights in the Outfall. These existing capacity rights in the Outfall, effective as of the Closing Date, are allocated as follows:

San Clemente Land Outfall (PC 10) Capacity Allocation	
City of San Clemente	100%

2.4 Dissolution of PC 10. In conjunction with the transfer of the assets described herein, SOCWA and the PC 10 Member agree to dissolve PC 10 as of the Closing Date. At the next regularly scheduled meeting after the Closing Date, SOCWA and the PC 10 Member agree

to submit to their respective legislative bodies for consideration for adoption the PC 10 Dissolution Resolution attached hereto and incorporated herein by reference as **Exhibit “B.”**

ARTICLE 3
ASSUMED LIABILITIES AND EXCLUDED LIABILITIES

3.1 Assumed Liabilities and Excluded Liabilities. The purpose of this section is to specify the liabilities that are assumed and excluded.

(a) Assumed Liabilities. On the Closing Date, SOCWA shall assign to CSC and CSC shall assume the debts, liabilities and obligations arising from the ownership, operation, maintenance and compliance of the Outfall, including any regulatory permits, easements and licenses issued for the Outfall. CSC shall remain liable for its proportional share of costs and liabilities related to the Outfall that arose or accrued during CSC’s time as a PC 10 Member and prior to the Closing Date, whether such liabilities were known or unknown. The aforementioned collectively constitute the “Assumed Liabilities”.

(b) Excluded Liabilities. Except for the Assumed Liabilities and as expressly set forth in this Agreement, CSC shall not assume or be liable for any of the debts, obligations or liabilities of SOCWA, or any PC 10 Member other than itself, prior to the Closing Date. CSC will not be responsible for paying, performing or discharging any liability of any PC 10 Member, other than itself, or of SOCWA, of whatever nature, whether known or unknown, absolute, contingent, presently in existence or arising from matters that occurred prior to the Closing Date, and whether or not related to the assets, all of which liabilities shall be retained by and remain obligations and liabilities solely of the PC 10 Member and/or SOCWA, as the case may be, and shall be paid, performed, discharged and otherwise satisfied by the PC 10 Member and/or SOCWA, as the case may be, promptly as and when due. The PC 10 Member and/or SOCWA, as the case may be, shall remain responsible for all of their respective proportional liabilities that relate to matters that occurred all or in part prior to the Closing Date, including the following (collectively, the “Excluded Liabilities”):

(i) all liabilities in any way arising out of or relating or incidental or attributable to the ownership or operation of the asset, or attributable to events, circumstances or periods occurring, on or prior to the Closing Date, including all notes payable and any third-party claims (including by governmental authorities) brought after the Closing Date but attributable to events, circumstances or periods occurring, all or in part on or prior to the Closing Date;

(ii) all such liabilities for a failure to comply with any law, permit or order attributable to events, circumstances or periods occurring, all or in part on or prior to the Closing Date;

(iii) all liabilities arising out of any contract or permit attributable to events, circumstances or periods occurring, all or in part on or prior to the Closing Date;

(iv) all indebtedness of any kind or nature of PC 10 Member, and all liabilities relating to any such indebtedness, including any such liabilities resulting from or relating to the consummation of the transactions contemplated by this Agreement;

(v) all liabilities arising from or relating or incidental or attributable to any product warranty or product liability claims relating to goods sold or services rendered, or any bodily injury, illness or death or loss or damage to property, whether or not covered by insurance, occurring all or in part on or prior to the Closing Date or relating to events, facts or circumstances existing or occurring all or in part on or prior to the Closing Date;

(vi) all liabilities to or in respect of any current or former owner, director, manager, officer, employee, contract employee, retiree, consultant, independent contractor, subcontractor, distributor or other agent of PC 10 Member and/or SOCWA, including for wages or other benefits, commission, bonuses (of any nature), sick pay, accrued vacation, workers' compensation, severance, retention, termination, change of control payments, equity grants or promises of equity grants or other payments, compensation or remuneration and all payroll taxes or withholding therefore, whether arising as a result of the consummation of the sale or otherwise, in each case including with respect to any employment, termination of employment, benefit plan, severance, compensation, incentive, insurance coverage, premium reimbursement and other similar arrangements of or with PC 10 Member or SOCWA and any claims or proceedings relating thereto that relate to events, facts or circumstances existing or occurring all or in part on or prior to the Closing Date;

(vii) all liabilities for any pending or threatened claim or proceeding existing all or in part prior to the Closing Date or arising from, relating or incidental or attributable to or otherwise in respect of the ownership or operation of the Outfall by PC 10 Member and/or SOCWA all or in part on or prior to the Closing Date or otherwise arising out of or attributable to any actions or omissions of PC 10 Member and/or SOCWA, including for third party claims; and

(viii) all liabilities arising out of or relating to liens, litigation or proceedings on or related to any of the assets that arose all or in part prior to the Closing Date.

3.2 Excluded Assets. Notwithstanding Section 3.1 or any other provision herein to the contrary, and for the avoidance of doubt, it is expressly understood that the assets being assigned, do not include, and SOCWA shall not sell, transfer, convey, assign or deliver to CSC, and CSC shall not acquire or assume, or have any obligation to acquire or assume, any of SOCWA's respective right, title or interest in or obligations to or under, any of the following (collectively, the "Excluded Assets"):

(a) any businesses, assets, properties, permits and contracts of SOCWA, except as specifically included in the Bill of Sale;

(b) all current and prior insurance policies of SOCWA and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(c) accounts receivable;

(d) accounts payable; and

(e) any asset, personal property, including intellectual property of SOCWA, unless specifically included in the Bill of Sale.

ARTICLE 4
CONSIDERATION FOR TRANSFER

4.1 Consideration. The transfer price of the Outfall, and SOCWA's administrative costs related to the transfer of Outfall to CSC, is Zero Dollars (\$0.00). The parties agree this purchase price is reasonable and appropriate in light of the fact that the CSC is the sole member of PC 10 and thus responsible for liabilities arising from the Outfall in any event.

ARTICLE 5
OPERATION OF ASSETS

5.1 Cooperation and Operation of Assets Prior to Closing. SOCWA shall cooperate with CSC in the turnover of the ownership, operation, and maintenance of the Outfall to CSC as needed to facilitate a successful transition. SOCWA shall comply with all reasonable requests by CSC in connection with assuming the operation and maintenance duties as shall be necessary to facilitate the orderly transition of duties from SOCWA to CSC. SOCWA shall provide CSC and CSC's respective representatives full access to, and copying of, all information, data and records relating to the Outfall, including any drawings, reports, and studies. Such documents shall include, but not be limited to: 1) all operating procedures and data regarding operation of the Outfall; 2) transfer and assignment of all easements and licenses; 3) such proprietary information that is utilized in the operation of the Outfall and is necessary or desirable for the continued operation; 4) rights and obligations under all contracts entered into in connection with the performance of its obligations under this Agreement or relating to the operation and maintenance of the Outfall and all permits applicable to the Outfall and held by SOCWA. Until the actual transfer of operations to CSC, SOCWA shall continue to operate the Outfall in accordance with applicable laws, regulations and prudent industry practices, and otherwise in accordance with the terms of this Agreement, and shall continue to perform its contractual and other obligations to and in respect to CSC's personnel and subcontractors. Further, SOCWA must promptly update CSC on any changes related to items 1-4 of this Section 5.1 should there be any changes which may affect this Agreement, or future agreements, or the operation of the Outfall.

ARTICLE 6
DELIVERABLES

6.1 Deliverables By All Signatories. The Parties named in each of the agreements listed in Table 1 shall timely return executed copies of the agreements and the deliverables in each as set forth in Table 1 in order to facilitate the closing prior to the Closing Date.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES OF ALL PARTIES

SOCWA and CSC hereby represent and warrant as to themselves and for the benefit of the other that each of the following statements is true and correct as of the date hereof and on the Closing Date:

7.1 Authorization/Valid and Binding Agreement. SOCWA and CSC each have the power and authority under its respective organizational documents or otherwise to execute and deliver this Agreement and the Exhibits hereto and to consummate the transactions contemplated hereby and thereby, and the execution, delivery and performance of this Agreement and the

ancillary agreements and the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action on the part of each of them. This Agreement and each ancillary agreement has been duly executed and delivered by SOCWA and CSC. This Agreement, each ancillary agreement and each other document delivered by the Closing Date constitutes a valid and legally binding agreement of SOCWA and CSC enforceable in accordance with its terms, except to the extent that enforcement hereof may be limited by: (a) bankruptcy, reorganization, moratorium, fraudulent conveyance or similar laws now or hereafter in effect relating to creditors' rights generally; and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). This Agreement and all of the documents referenced herein may be executed in counterparts and/or electronically (e.g., via DocuSign), each of which shall be deemed an original and all of which shall constitute one instrument. A faxed, .pdf, scanned or other electronic copy of the fully executed original version of this Agreement shall have the same legal effect as an executed original for all purposes.

7.2 Consents. All consents, approvals or authorizations required to be made or obtained by SOCWA and CSC in connection with (a) the execution and delivery of this Agreement and the ancillary agreements, (b) the consummation of the transactions contemplated hereby or thereby, and (c) the continuing validity and effectiveness immediately following the completion of the terms herein have been made, approved or received.

7.3 No Pending Disputes. None of the transfers contemplated in this Agreement are the subject of any pending dispute or proceeding of which CSC and/or SOCWA have received written notice, or to any party's knowledge, any threatened dispute or proceeding, with any governmental authority or third party and are available for immediate unimpaired use by the CSC.

7.4 Compliance. SOCWA (a) is not and has not been in material violation or default of any contract, law, permit or order to which it is a party, by which it is bound or otherwise with respect to its ownership, lease or operation of the Outfall, and (b) has not received any written or oral notice of any outstanding, pending or alleged material violation or default of, or citation for noncompliance with, any such contract, law, permit or order (i) with respect to its ownership, lease or operation of the Outfall, or (ii) that could reasonably be expected to (A) impair or delay the transactions contemplated by this Agreement and the ancillary agreements, (B) adversely impact the ownership or use of, or run with, follow or encumber, the Outfall after the Closing Date, or (C) adversely affect CSC's ownership of the Outfall after the Closing Date.

ARTICLE 8

COVENANTS AND AGREEMENTS OF THE PARTIES

8.1 Further Assurances. CSC and SOCWA shall, from time to time, at or after the Closing Date, execute and deliver such further instruments of conveyance and transfer and take such other actions as may be reasonably necessary to carry out the purposes and intentions of this Agreement.

ARTICLE 9
INDEMNIFICATION

9.1 General Indemnification by SOCWA. SOCWA shall indemnify, defend and hold harmless CSC from and against any and all claims (including third party claims) and losses arising or resulting from the following:

- (a) the failure by SOCWA to perform any of the covenants or agreements to be performed by SOCWA under this Agreement or any ancillary agreement; and
- (b) the Excluded Liabilities described in Section 3.1(b).

9.2 General Indemnification by CSC. CSC shall indemnify, defend and hold harmless SOCWA from and against any and all claims (including third party claims) and losses arising or resulting from the following:

- (a) any inaccuracy in or breach by CSC of any of its representations or warranty under this Agreement or any ancillary agreement;
- (b) any claim related to the Outfall after the Closing Date (except for claims related to SOCWA's obligations hereunder as limited hereby to the extent such claims arose or are related to matters that occurred all or in part prior to the Closing Date); and
- (c) the failure by CSC to perform any of the covenants or agreements to be performed by CSC under this Agreement or any ancillary agreement, including without limitation CSC's obligations under this Agreement.

ARTICLE 10
SURVIVAL; LIMITATIONS; REMEDIES

10.1 Survival.

(a) The representations and warranties of SOCWA and CSC made in this Agreement shall survive the consummation of the transactions contemplated hereby for six (6) months following the Closing Date.

(b) The Parties' indemnity obligations in Article 9, and otherwise with respect to any inaccuracy or breach of any representation, warranty, covenant or agreements under this Agreement or with respect to any claim or loss associated therewith shall terminate as of the expiration date of the survival period set forth herein for each such representation, warranty, covenant or agreement, except in each case as to matters for which a Claims Notice with respect to such claim or loss that has been delivered on or before such survival period expiration date as provided in Section 10.1(c). Any claim or loss pending on any such survival period expiration date for which a Claims Notice has been properly given in accordance with Section 10.1(c) on or before such survival period expiration date may continue to be asserted and indemnified against until finally resolved. Any litigation to resolve a claim shall be commenced within two (2) years of the Closing Date, or within two (2) years of when a claim is known or reasonably could be known.

(c) Notice of Asserted Liability; Defense; Settlement. As soon as is reasonably practicable after SOCWA on the one hand, or CSC, on the other hand, becomes aware of any claim

that such Party has hereunder that may result in a loss (a “Liability Claim”), such party (the “Indemnified Party”) will give written notice of such Liability Claim (a “Claims Notice”) to the Party obligated to indemnify hereunder (the “Indemnifying Party”); provided, that a Party shall not be liable for a Liability Claim for indemnification hereunder unless the Indemnified Party delivers such Claims Notice prior to the expiration of the applicable survival period set forth in Section 10.1 and in accordance with the procedures set forth in this Section 10.1(c) and such claim, if timely and properly made in accordance herewith, shall not be extinguished by reason of expiration of such applicable survival period. A Claims Notice must describe the Liability Claim in reasonable detail and must indicate the amount (estimated, if necessary and to the extent feasible) of the loss that has been or may be suffered by the Indemnified Party, and in the case of third-party claims for indemnification, shall also include copies of all papers served with respect thereto. Promptly but in any event within fifteen (15) business days after an Indemnified Party first learns of the commencement by a third party of any proceeding against it, such Indemnified Party shall, if a claim for indemnification is to be made by such Indemnified Party hereunder, give a Claims Notice to the Indemnifying Party of the commencement of such Proceeding, but no delay in or failure to give a Claims Notice by the Indemnified Party to the Indemnifying Party will adversely affect any of the other rights or remedies that the Indemnified Party has under this Agreement or alter or relieve the Indemnifying Party of its obligation to indemnify the Indemnified Party with respect to such third party claim to the extent that such delay or failure has not materially prejudiced the Indemnifying Party. If the Indemnifying Party does not assume the defense of a Liability Claim in accordance with Section 10.1(c), the Indemnified Party may continue to defend the Liability Claim. If the Indemnifying Party has assumed the defense of a Liability Claim as provided in this Section 10.1(c), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of the Liability Claim; provided, that if any of the litigation conditions ceases to be met or the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Litigation Claim, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable out of pocket costs or expenses paid or incurred in connection with such defense. The Indemnifying Party or the Indemnified Party, as the case may be, has the right to participate in (but not control), at its own expense, the defense of any Liability Claim that the other is defending as provided in this Agreement. The Indemnifying Party, if it has not assumed the defense of any Liability Claim as provided in this Agreement, may not, without the prior written consent of the Indemnified Party, consent to a settlement of, or the entry of any judgement arising from, any such Liability Claim that (i) does not include as an unconditional term thereof, the giving by the claimant or the plaintiff to the Indemnified Party of a complete release from all liability in respect of such Liability Claim, or (ii) grants any injunctive or equitable relief, or (iii) may reasonably be expected to have an adverse effect on the affected business of the Indemnified Party.

10.2 Exclusive Remedy/Express Negligence Rules. Each of the Parties agrees that from and after the Closing Date the sole and exclusive remedy of any Party hereto with respect to any and all losses arising out of this Agreement, including losses for claims based on breach of representation, shall be limited to the Indemnification provisions set forth in this Agreement.

ARTICLE 11

MISCELLANEOUS

11.1 Dispute Resolution. The Parties agree that the maintenance of a cooperative and mutually beneficial relationship between them is an important aspect of this Agreement and the successful operation and maintenance of the Outfall. The Parties therefore intend to provide means

for resolving any disputes, claims, or controversies that may arise during the course of this Agreement in an efficient manner to avoid resort to legal actions against one another, if feasible. Therefore, except for any claim or action filed by a nonparty to this Agreement, any dispute, claim, or controversy arising with respect to the interpretation of this Agreement or the performance of any Party shall be first submitted to a three-step dispute resolution process that includes, in sequence: (1) an informal meet and confer process between representatives designated by all the Parties, (2) mediation, and (3) non-binding arbitration. Except for any claim or action filed by a nonparty hereto, upon any dispute, claim, or controversy (“Dispute”) arising with respect to the interpretation of this Agreement, or the performance of any Party, which is not immediately resolved between the Parties, the Party asserting such Dispute may, within 30 days from the date the Dispute has arisen, serve written notice upon the others that a Dispute exists with respect to this Agreement, and each Party shall then within 14 days designate one or more representatives and shall establish a time and place at which to meet and confer in mutual good faith to resolve the Dispute. If, after a reasonable amount of time and effort have elapsed, a resolution of the Dispute has not been established to the mutual satisfaction of all Parties, any Party may then initiate a mediation process by serving a written notice of the election to mediate upon the other. In the event the election to mediate a Dispute is invoked by any Party, a request for mediation shall be filed within 30 days in the Office of the American Arbitration Association (“AAA”) in or nearest to Orange County, California and the mediation shall be initiated and conducted in accordance with the Commercial Rules of mediation of the AAA, or by any other method mutually agreeable to the Parties. Any statements made during mediation shall remain confidential and may not be disclosed without consent of all participants. In the event mediation does not resolve the Dispute, any Party may then elect arbitration by providing a written notice of such election to the other Parties. Such request must be mailed to the other Parties within 30 days following the conclusion of mediation. Upon serving written notice upon the other Parties, the request for arbitration shall be filed with the Judicial Arbitration and Mediation Services, Inc. (“JAMS”) and the arbitration shall be conducted in accordance with the JAMS Engineering and Construction Arbitration Rules & Procedures then in effect, unless all Parties mutually agree to an alternative method. The Parties agree the arbitration shall occur in Orange County, California. Neither the Parties nor the arbitrator may disclose the contents or results of the arbitration, except as may be required by law, without the prior written consent of all Parties. The Arbitrator shall award the prevailing party (as defined in *Code of Civil Procedure* §1032(a)(4)) their reasonable attorney’s fees and costs, to include the cost of the arbitration. The Parties may agree to be bound by the results of the arbitration and may agree that any award by or decision of an arbitrator shall be final. Nothing in this procedure shall prohibit the Parties from seeking other remedies available to them at law. During the course of any proceeding to resolve a Dispute, the Parties shall continue to perform any duties or obligations existing under the Agreement.

11.2 Publicity. The Parties, where possible, shall jointly plan and coordinate publicity and other releases concerning the transactions contemplated by this Agreement.

11.3 Governing Law. This Agreement and the ancillary agreements and all actions, causes of action, claims, cross-claims, third-party claims or proceedings of any kind (whether at law, in equity, in contract, in tort or otherwise) that may be based upon, arise out of or relate hereto and thereto, shall be governed by, and construed in accordance with, the laws of the State of California.

11.4 Entire Agreement; Amendments; Attachments. This Agreement, all Exhibits attached and incorporated hereto, and all agreements and instruments to be delivered by the Parties

pursuant hereto represent the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof. The Parties may amend or modify this Agreement, in such manner as may be agreed upon, only by a written instrument executed by all signatories.

11.5 Notices. All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been received only if and when (a) personally delivered, (b) on the third day after mailing, by United States first class, postage prepaid, by certified mail return receipt requested, (c) given by email transmission as set forth below, if any, or (d) one day after deposit with a reputable overnight courier, addressed in each case as follows:

To SOCWA: South Orange County Wastewater Authority
34156 Del Obispo Street
Dana Point, CA 92629
Attn: _____
By email to: _____

To CSC: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
Attn: David Rebensdorf, Public Works Director, City Engineer
By email to: RebensdorfD@san-clemente.org

11.6 Force Majeure. No Party shall be responsible for any delay or failure in complying with the terms of this Agreement where such delay or failure is due to acts or events beyond the reasonable control of the Party, including but not limited to fire, flood, hurricane/tornado, cyclone, explosion, labor strikes, labor disputes, picketing, lockout, transportation embargo or acts of God, civil riot or insurrection, terrorist acts, pandemic or epidemic, acts of the federal, state, or municipal government or any agency thereof or judicial action (collectively, “Force Majeure”), excluding such acts to the extent that the effect of such acts can be mitigated by the use of alternate sources, business continuity plans and other reasonable actions timely taken. In the event of Force Majeure, the Party affected by such Force Majeure event shall promptly give a written notice thereof to the other Party describing (a) the Force Majeure event, (b) the obligations which it is unable to perform due to such Force Majeure event, and (c) its projection of the expected period of delay or inability to perform due to such Force Majeure event. Notwithstanding the foregoing, the party unable to perform because of a Force Majeure event shall use reasonable good faith efforts to restore services or performance required by his agreement as soon as practicable, and if the Party suffering from the Force Majeure event is not able to perform within thirty (30) calendar days after the event giving rise to the excuse of Force Majeure, the other Party may terminate the Agreement without liability.

11.7 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

11.8 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

11.9 Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or provision had never been contained herein.

IN WITNESS WHEREOF, each of the Parties has executed or caused this Agreement to be executed and effective as of the day and year first above written.

“CSC”

City of San Clemente,
a California municipal corporation

“SOCWA”

South Orange County Wastewater District,
a California joint powers authority

By: _____
Name: Andy Hall
Title: City Manager

By: _____
Name: _____
Title: _____

By: _____
Name: Elizabeth Mitchell
Title: City Attorney

By: _____
Name: _____
Title: _____

TABLE 1 - PC 10 ASSET TRANSFER AGREEMENTS

<u>Exhibit</u>	<u>Title</u>	<u>Signatories</u>
A	Bill of Sale	CSC & SOCWA
B	Dissolution Resolution	SOCWA