

DUPLICATE

AGREEMENT

THIS AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter referred to as "San Diego", SANTA FE IRRIGATION DISTRICT, a California irrigation district, hereinafter referred to as "SANTA FE", and SAN DIEGUITO WATER DISTRICT, a California irrigation district, hereinafter referred to as "SAN DIEGUITO". Santa Fe and San Dieguito are referred to collectively as "Districts".

RECITALS

- A. Santa Fe and San Dieguito, and their predecessors in interest have acquired rights to local water collected in Lake Hodges pursuant to contracts with the owners of Lake Hodges since the Hodges Dam was constructed.
- B. San Diego, Santa Fe and San Dieguito entered into an agreement on December 20, 1956 relating to the settlement of certain disputes then existing among them and providing, among other matters, for a fixed quantity of water to be provided to the Districts at local water costs.
- C. As a result of changed circumstances, San Diego, Santa Fe and San Dieguito entered into an agreement effective April 1, 1969 a copy of which is on file in the Office of the City Clerk as Document Number 728946 (the "1969 Agreement") pursuant to which the Districts purchased from San Diego the San Dieguito Reservoir and Dam including the conduit (flume) from the weir at Lake Hodges to the Reservoir, the 30" water transmission line originating at the San Diego County Water Authority Aqueduct and all appurtenances necessary for the operation of those facilities. The April 1, 1969 Agreement also established rights and duties of the parties with respect to the sale and purchase of Local Water collected in Lake Hodges for a contract term expiring on September 30, 2019.
- D. The April 1, 1969 Agreement memorialized a property right owned by the Districts to Local Water collected in Lake Hodges. It rescinded and superseded all prior agreements, and is the document which currently establishes the rights of the parties.
- E. San Diego, the San Diego County Water Authority, and the Olivenhain Municipal Water District now contemplate the development of an Emergency Storage Project which will result in the reoperation of Lake Hodges in combination with a newly developed reservoir called the Mt. Israel Reservoir. This project is estimated to increase the local yield of Lake Hodges from an average of approximately 5,769 acre feet per year to approximately 11,400 acre feet per year. Given this contemplated reoperation of Lake Hodges, San Diego, San Dieguito and Santa Fe desire to restate and redefine their rights and obligations concerning Local Water in Lake Hodges.

- F. Whether the Emergency Storage Project is constructed or not, in order for San Diego to use Local Water from Lake Hodges, San Diego must construct a project to transport said Local Water.
- G. This Agreement is intended to rescind all previous agreements among the parties and restate their respective rights with respect to Lake Hodges.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the terms and conditions set forth below and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, San Diego, San Dieguito and Santa Fe agree as follows:

- 1. Unless otherwise defined herein, the following words shall have the meanings indicated:
 - A. "Local Water" means all water collected in Lake Hodges from any source other than water transported through the San Diego County Water Authority Aqueducts, provided that Local Water shall include "Evaporative Make Up Water".
 - B. "Imported Water" means water transported through the San Diego County Water Authority Aqueducts but excludes "Evaporative Make Up Water."
 - C. "Water Contract Year " means the period from October 1 of any given year through September 30 of the Following Year.
 - D. "Evaporative Make Up Water" means all water credited by the San Diego County Water Authority as Local Water under Lake Hodges Improvement Project.
 - E. "Lake Hodges Improvement Project" means a project to transfer and/or store Local Water which involves the construction of infrastructure necessary to pipe and transport water to reservoirs, and which is projected to increase the average annual yield of Lake Hodges. Lake Hodges Improvement Project may be the Emergency Storage Project described in Recital E above or another project constructed to enable San Diego to use Local Water.
 - F. "Local Water Credit" means an amount of water to which the Districts are entitled to purchase but which they did not purchase in any Water Contract Year pursuant to paragraph 4 below.

- G. "Local Water Credit Balance" means the cumulative amount of water which the Districts or San Diego were entitled to purchase but which they did not purchase.
- H. "1969 Agreement" shall have the meaning assigned thereto in Recital C above.
- I. "Districts" means the Santa Fe Irrigation District and the San Dieguito Water District.
- J. "Weir" means the Lake Hodges Flume Weir as described on Exhibit "A" attached hereto and made a part hereof.
- K. "Flume" means the Lake Hodges Canal commencing at the Weir and ending at the San Dieguito Reservoir.
- L. "Control Facility at Badger Filtration Plant" means that flow control facility described on Exhibit "A" attached hereto and made a part hereof by reference.

2. The parties hereby rescind all previous agreements among them with respect to Lake Hodges, and specifically abrogate, set aside and nullify all their respective rights under such agreements, including, but not limited to, the 1969 Agreement among the three parties.

3. Until such time as the operation of the Lake Hodges Improvement Project commences, the Parties agree as follows:

- A. San Diego will sell to Districts all of the Local Water collected in Lake Hodges if the water is requested by Districts, provided that Local Water in Lake Hodges may be sold by San Diego to any other person, firm, corporation or agency if the following conditions exist:
 - i. There is contained in Lake Hodges at the time water is delivered to such other entity a quantity of Local Water in excess of the quantities San Diego is required to furnish Districts for the remainder of the Water Contract Year during which such sale is to be made; and
 - ii. There will be in storage in Lake Hodges available for the exclusive use of Districts at the end of said Water Contract Year not less than 8,300 acre feet of usable water; and
 - iii. The water is put to beneficial use by the purchaser.

San Diego may also release water from Lake Hodges in emergency to prevent or reduce flood or threat of flood damage.

- B. Districts shall pay San Diego for all Local Water delivered at the rate of \$31.00 per acre foot, which represents the current cost per acre foot to San Diego of operating and maintaining Lake Hodges, excluding the cost of recreation, including depreciation calculated on the straight line method. This price shall remain effective through September 30, 1999, which period coincides with the end of the Water Contract Year. On or prior to the end of each succeeding two year period the amount payable by Districts to San Diego per acre foot for Local Water during the succeeding two (2) year period, shall be calculated. The cost per acre foot payable during each particular succeeding two (2) year period shall be determined as follows:
- i. Calculate the total cost of operating and maintaining Lake Hodges during the immediately preceding two year period, plus the cost of capital improvements and repairs to Lake Hodges and Lake Hodges Dam during such two year period amortized over the useful life of the improvement, plus depreciation calculated on the straight line method divided by the total number of acre feet of Local Water sold by San Diego during the immediately preceding two year period.
 - ii. For purposes of calculating depreciation, the present depreciated value of Lake Hodges is agreed to be \$307,093.
 - iii. San Diego shall keep accurate records of all costs which it incurs related to Lake Hodges and of all Local Water sold to others than Districts, which records shall be available at all reasonable times for inspection by authorized representatives of the Districts.
- C. Districts shall determine the rates of delivery of water to the Districts pursuant to this Agreement in order to meet their respective requirements, and to discharge their obligation to provide potable water to their respective customers.
- D. Measurement and delivery of water by San Diego to Districts shall be as follows:
- i. At the head of an open conduit immediately downstream from Lake Hodges Dam as shown on Exhibit "A," hereinafter referred to as "the Weir."
 - ii. San Diego shall at its expense maintain the Weir in as good condition and repair at all times as is possible by the exercise of ordinary care. Districts shall have the right to inspect the Weir and test it for accuracy with a representative of San Diego at reasonable times during business hours with reasonable notice, and the right, if it shall

be so desired, to have a representative present at any test or reading of said meter by San Diego.

- E. Santa Fe shall be entitled to receive 57 1/3% and San Dieguito shall be entitled to receive 42 2/3% of the first 7,500 acre feet of water supplied in any given Water Contract Year pursuant to this Agreement. If an amount in excess of 7,500 acre feet of water is supplied to Districts within any given year, each District shall be entitled to receive 50% of such excess. San Diego shall have no responsibility or obligation as between the Districts to meter or allocate water supplied to Districts or to otherwise ensure that there has been compliance with the provisions contained in this paragraph.
- F. San Diego shall bill each District monthly for water supplied by San Diego through the Weir during the preceding calendar month. Each District shall pay to San Diego the amount due San Diego for water so furnished each District within thirty (30) calendar days after receipt of such bill.
- G. San Diego will operate Lake Hodges and all of its facilities, and such operation shall conform to the requirements of all local, state and federal laws and regulations concerning the quality of local water collected in water storage reservoirs. San Diego will use its best efforts to ensure that polluted water from any source is not collected in Lake Hodges. Except as provided in this paragraph, San Diego does not make any assurances concerning water quality.
- H. The Districts' right to the delivery and purchase of Local Water collected in Lake Hodges as provided in paragraph 3 above is a property right which was purchased by the Districts for valuable consideration. The extent of such property right is defined and limited by the terms of this Agreement.

4. Upon commencement of the operation of Lake Hodges Improvement Project the Parties agree as follows:

- A. Prior to commencing construction of Lake Hodges Improvement Project San Diego shall project an average annual yield of Local Water in Lake Hodges. Said projected average annual yield shall be based upon the construction and design operation of Lake Hodges Improvement Project. Said projection shall be performed by the City and approved by Districts. Subject to the processes and procedures specified herein, in the event the Lake Hodges Improvement Project's average annual yield of Local Water is projected to be 11,400 acre feet or more, all Local Water shall be divided one-half to San Diego and one-half to Districts. In the event the projected average annual yield of Local Water is less than 11,400 acre feet the Local Water shall be divided so as to allocate an average annual yield to Districts of 5,700 acre feet per year.

- B. During the first Water Contract Year after commencement of the operation of Lake Hodges Improvement Project, San Diego will deliver and sell to Districts all of the Local Water requested by Districts up to 5,700 acre feet, including all water delivered pursuant to paragraph 3 above. All remaining Local Water in that Water Contract Year shall belong to San Diego.
- C. Beginning with the first Water Contract Year after commencement of the operation of Lake Hodges Improvement Project, if such Project's average annual yield of Local Water is projected to be 11,400 acre feet or more, all Local Water shall be divided one-half to San Diego and one-half to Districts. San Diego shall deliver and sell to the Districts their one-half of the amount of Local Water collected in Lake Hodges during the preceding Water Contract Year if said Local Water is requested by Districts. If a portion of said Local Water is not requested by Districts, it shall become a Local Water Credit as described in and subject to the provisions of paragraph 4H hereof. Whatever the actual amount of Local Water in any given Water Contract Year, except as otherwise provided in paragraph D below, it shall be shared as provided above, without any cap or floor.
- D. In the event Lake Hodges Improvement Project is constructed or operated so that the projected average yield of Local Water is less than 11,400 acre feet per year, the percentage of water which San Diego shall deliver and sell to Districts shall be adjusted to allow for an average annual yield to Districts of 5,700 acre feet per year. The percentage splits will be determined by a calculation of anticipated average yield to be performed by San Diego and approved by Districts. For example, if the design and operation of Lake Hodges Improvement Project has a projected average annual yield of 10,000 acre feet per year, the percentages would be 57% to Districts and 43% to San Diego.
- E. Notwithstanding paragraph 4C, if the average annual yield of Local Water becomes less than 11,400 acre feet due to operational constraints required by any regulatory authority having jurisdiction, or due to the siltation of the reservoir, then all Local Water shall continue to be divided one-half to San Diego and one-half to Districts.
- F. The point of delivery and measurement for Local Water purchased after commencement of the operation of Lake Hodges Improvement Project shall be the Weir as described in paragraph 3D if wheeled through the Flume. For all water delivered through Lake Hodges Improvement Project the point of delivery and measurement shall be the Control Facility located at the Badger Filtration Plant as described on Exhibit "A" attached hereto, and by this reference incorporated herein. For all water delivered through Lake Hodges

Improvement Project, the Districts shall pay San Diego a delivery charge equal to San Diego's cost.

- G. Districts shall pay San Diego for all water purchased in accordance with the provisions of Paragraph 3B, provided that the calculation of the costs of operating and maintaining Lake Hodges shall not include any costs incurred as part of the operation of Lake Hodges Improvement Project. The provisions of paragraphs 3C, 3D as to measurement of deliveries, 3E, 3F and 3G shall also apply to deliveries of Local Water after commencement of the operation of Lake Hodges Improvement Project.
- H. Credits for Local Water to which Districts own an entitlement but which is not purchased in any given Water Contract Year shall be the subject of a Local Water Credit Balance. The Districts' Local Water Credit Balance is that water which the Districts were entitled to purchase but which they did not purchase in any Water Contract Year. The Districts' Local Water Credit shall be reduced to account for evaporative and other losses in the amount of nine percent (9%) per year. Districts may draw on that Local Water Credit Balance by purchasing water represented by that Local Water Credit Balance from San Diego at Local Water prices at any time. Districts shall not receive credit for water which overflows Lake Hodges Dam or water which San Diego is otherwise unable to use or store in a facility other than Lake Hodges. In the event water overflows the Lake Hodges Dam it shall not be considered Local Water. In the event Districts purchase Local Water in any given Water Contract Year which is in excess of its Local Water Credit Balance, San Diego shall have a Local Water Credit Balance. In that event San Diego may draw on that Local Water Credit Balance by purchasing water represented by that Local Water Credit Balance from Districts at Local Water prices at any time. An example of the application of this Local Water Credit Balance is attached hereto as Exhibit C and by this reference incorporated herein.
- I. On or before October 1 of each year Districts shall provide San Diego with an estimate of projected Local Water use by the Districts for the forthcoming Water Year.
- J. In the event San Diego or any party acting on San Diego's behalf seeks to deposit reused water in Lake Hodges or in wells near Lake Hodges said water shall not be considered Local Water for purposes of this Agreement and the parties shall agree upon a formula to enable San Diego to receive credit for said reused water.

5. Upon commencement of the operation of Lake Hodges Improvement Project the right described in Paragraph 3H above shall terminate and be replaced with the Districts' right to delivery and purchase of all Local Water collected in Lake Hodges as provided in Paragraph 4 above as a

property right which was purchased by the Districts for a valuable consideration. In the event Lake Hodges Improvement Project is not constructed, Districts' property right shall be that right described in Paragraph 3H above. The extent of such property right is defined and limited by the terms of this Agreement.

6. If any provision of this Agreement shall for any reason be held illegal or ultra vires as to San Diego, the remaining portions of this Agreement shall at the option of either District remain in full force and effect as to San Diego and such Districts; if any provision of this Agreement shall for any reason be held illegal or ultra vires as to either District, the remaining portions of this Agreement shall at the option of San Diego remain in full force and effect as to such District and San Diego. If this Agreement shall be held illegal or ultra vires in its entirety as to any party, then the contracts heretofore existing between the Parties hereto shall continue in full force and effect as if this Agreement had never been executed, and none of the rights of any party hereto shall be in any manner affected by the execution of this Agreement.

7. San Diego shall operate and maintain Lake Hodges and Lake Hodges Dam in strict accordance with all state, federal and local laws and regulations and will make all reasonable efforts to maintain and repair Lake Hodges and Lake Hodges Dam to continue operations in order to maintain the maximum projected annual average yield of Local Water.

8. In the event San Diego elects to terminate or substantially change operations of Lake Hodges so as to eliminate the ability of Districts to obtain Local Water, Districts shall have and are hereby conveyed an option to purchase Lake Hodges and Hodges Dam. Upon exercise of said option, Districts shall pay San Diego just compensation in accordance with laws, principles and definitions used in eminent domain proceedings conducted for the purpose of public acquisition of private property for public use.

9. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective parties.

10. This Agreement shall be in full force and effect for so long as Lake Hodges is operated.

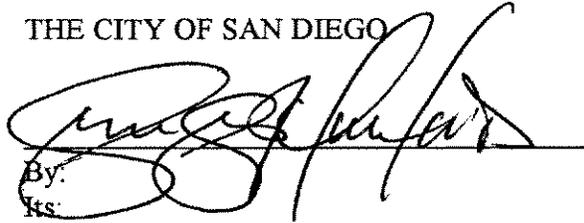
11. In the event qualified engineers and/or the state or federal government determine or order that the Lake Hodges Dam must be rebuilt or replaced in order for Lake Hodges operations to continue, San Diego shall have the right to rebuild and replace the Dam, or terminate Lake Hodges operations. In the event San Diego determines to rebuild or replace Lake Hodges Dam, Districts shall have an option to terminate this Agreement or extend this Agreement for so long as Lake Hodges is operated. In the event Districts exercise their option to extend the Agreement the price which Districts pay San Diego for Local Water as provided in Paragraph 3B or 4E shall be recalculated so as to reflect the full capital costs of rebuilding or replacing the Lake Hodges Dam by increasing the present depreciated value of Lake Hodges to include the full price of rebuilding or replacing Lake Hodges Dam. In the event San Diego exercises its right to terminate Lake Hodges operations Districts shall have and are hereby conveyed an option to purchase Lake Hodges property and rebuild or replace Lake Hodges Dam themselves. Upon exercise of said option, Districts shall

pay San Diego just compensation in accordance with laws, principles and definitions used in eminent domain proceedings conducted for the purpose of public acquisition of private property for public use.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

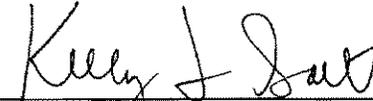
THE CITY OF SAN DIEGO

Dated: MAR 17 1998


By: _____
Its: _____

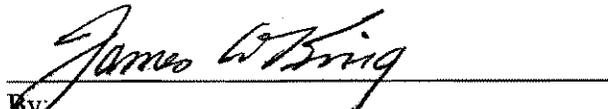
I hereby approved the form and legality of this Agreement this 19th day of March, 1998. CS

CASEY GWINN, CITY ATTORNEY

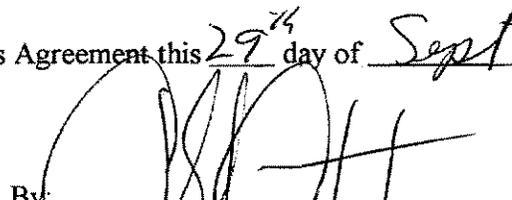
By: 
Kelly J. Salt, Deputy City Attorney

SANTA FE IRRIGATION DISTRICT

Dated: Sept 29, 1997


By: _____
Its: _____

I hereby approved the form and legality of this Agreement this 29th day of Sept, 1997.


By: _____
C. Michael Cowart, General Counsel for
Santa Fe Irrigation District

SAN DIEGUITO WATER DISTRICT

Dated: 10/08/97



By: John Davis
Its: Board President

I hereby approved the form and legality of this Agreement this 8th day of October,
1997.



By: Roger W. Krauel, Attorney for
San Dieguito Water District

EXHIBIT "A"

1. Lake Hodges Flume Weir

The Weir is located within a small block structure constructed at the easterly end of the "Lake Hodges Canal" commencing in the Southeast Quarter (SE 1/4) of the Northwest Quarter of Section 18, Township 13 South, Range 2 West of the subdivision of Rancho Santa Fe as per map thereof filed in the office of the County Recorder of San Diego County, California, on December 28, 1922, and numbered 1742.

2. Flow Control Facility

The Flow Control Facility known as San Diego County Water Authority's SD/SF 3 & 4 is located on property described as follows:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 13 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED NOVEMBER 19, 1880, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 10, THENCE SOUTH 89°24' 44" EAST 965.84 FEET ALONG THE SOUTH LINE OF SAID SECTION 10, (RECORD S89°49'57" E 936.97') TO THE CENTERLINE OF THE FIRST PIPELINE OF THE SECOND SAN DIEGO AQUEDUCT, THENCE CONTINUING ALONG THE SOUTH LINE OF SAID SECTION 10, SOUTH 89°24'44" EAST 16.27' TO THE EASTERLY LINE OF THE SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY AS GRANTED IN FILE/PAGE NO. 25440, RECORDED FEBRUARY 8, 1960 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, THENCE NORTH 22°10'50" WEST (RECORD N22°10'37" W) 344.32 FEET ALONG SAID EASTERLY SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE, NORTH 67°49' 10" EAST, 65.00 FEET; THENCE SOUTH 22° 10' 50" EAST, 78.00 FEET; THENCE SOUTH 00°04' 16" EAST 34.54 FEET; THENCE SOUTH 67°49'10" WEST, 52.00 FEET TO SAID EASTERLY SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE; THENCE ALONG SAID SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE, NORTH 22°10'50" WEST, 110.00 FEET TO THE TRUE POINT OF BEGINNING.

**POST LAKE HODGES IMPROVEMENT PROJECT
SYSTEM OF ENTITLEMENTS AND CREDITS
(AGREEMENT § 4H)**

EXHIBIT B

EXHIBIT B

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 | Year 11 |
|------------------------|--------|--------|--------|--------|--------|--------|--------|--------|---------|---------|---------|
| Local Water | 11,400 | 11,400 | 13,400 | 11,400 | 10,400 | 10,400 | 10,400 | 10,400 | 11,400 | 11,400 | 11,400 |
| Districts' Entitlement | 5,700 | 5,700 | 5,700 | 6,700 | 5,700 | 5,200 | 5,200 | 5,200 | 5,200 | 5,700 | 5,700 |
| Districts' Purchase | 5,700 | 5,700 | 5,700 | 5,700 | 5,700 | 5,700 | 5,700 | 5,700 | 5,700 | 5,200 | 5,700 |
| Credit | 0 | 0 | 0 | 1000* | 1000* | (500) | (500) | (500) | (500) | 500 | 0 |
| Credit Balance | 0 | 0 | 0 | 1,000* | 1,000* | 500* | 0 | (500)* | (1000)* | (500)* | (500)* |

* To be reduced by evaporative losses (§ 4(H))

+ San Diego buys 500 acre feet of water at "Local Water Prices" from Districts

(O-98-84)

ORDINANCE NUMBER O- 18474 (NEW SERIES)

ADOPTED ON MAR 17 1998

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SANTA FE IRRIGATION DISTRICT AND SAN DIEGUITO WATER DISTRICT RESTATING RIGHTS CONCERNING LOCAL WATER IN LAKE HODGES.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, an agreement with the Santa Fe Irrigation District and San Dieguito Water District restating rights concerning local water in Lake Hodges.

Section 2. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Kelly J. Salt
Kelly J. Salt
Deputy City Attorney

KJS:pev
2/5/98
Or.Dept:Wtr.
Aud.Cert:N/A
O-98-84
Form=o&t.frm

Passed and adopted by the Council of The City of San Diego on
MAR 17 1998 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS,
MCCARTY, VARGAS, MAYOR GOLDING

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: Roni A. Witzel, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18474 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on FEB 17 1998 and on MAR 17 1998.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: Roni A. Witzel, Deputy