

SECTION 8.3 – EXHIBIT A
AGENCY INTERCONNECTIONS SAMPLE AGREEMENT

**AGREEMENT FOR EMERGENCY INTERCONNECTIONS
BETWEEN OTAY WATER DISTRICT
AND
HELIX WATER DISTRICT**

This Agreement is made and entered into as of _____, 2010, by and between Otay Water District, a Municipal Water District organized and existing pursuant to Water Code Section 71000 et seq, (hereinafter “Otay”) and Helix Water District, an Irrigation District organized and existing under the Irrigation District Law of the State of California, Water Code Section 20500 et seq, (hereinafter referred to as “Helix”). Otay and Helix are collectively referred to herein as the “Parties.”

RECITALS

- A. Otay and Helix are member agencies of the San Diego County Water Authority (hereinafter referred to as “Authority”), and are retail water purveyors that receive water from the Authority.
- B. Authority is the regional wholesale water purveyor organized and existing under the County Water Authority Act of the State of California (Chapter 45, Water Code-Appendix).
- C. Otay and Helix desire by this Agreement, provide emergency water service connections to each other; such water service connections are not and shall not be used to provide a supplemental or additional water supply to meet the growth in demand not already addressed in the Water Resource Master Plans for either Party.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. Delivery. In emergency situations, as defined below in Section 1 (a), Helix and Otay shall supply treated water through their facilities to the interconnections located in Gillespie Drive and Del Rio Road, County of San Diego as shown in Exhibit A, attached hereto and incorporated herein, when requested by either party pursuant to the terms of this Agreement. Both Parties shall use their best efforts to provide 24 hours written advance notice of the need for such emergency interconnection and in all cases shall notify the supplying Party prior to actual use. The supplying Party shall operate the interconnection.
 - a. “Emergency”, Defined. An “emergency” is defined as any sudden unexpected occurrence that significantly reduces available water so as to jeopardize the health and/or safety of the public.
 - b. “Surplus Capacity”, Defined. “Surplus Capacity” is defined as the amount of water, as determined by Helix and Otay, in excess of the amount necessary to satisfy the demand of the Helix and Otay systems.
- 2. Ability to Supply Water. Neither District guarantees that Surplus Capacity, as defined above in Section 1(b), will be available at the time an emergency situation occurs. To the extent that Surplus Capacity is available, in the sole discretion of the supplying Party with no undue burden on its water consumers, the receiving Party may utilize the interconnection(s) described in Exhibit A to the extent of such availability.

3. Design and Construction. Helix agrees that Otay shall initially fund all costs of the design and construction of the emergency interconnections, subject to reimbursement by Helix, in the proportion set forth below, upon completion of all work related to the interconnections as set forth herein. The design and specifications shall conform to the Water Agency Standards (WAS). Items that are not covered by the WAS, shall be subject to Otay's and Helix's mutual approval. Otay shall act as the lead agency for purposes of the California Environmental Quality Act. Otay shall furnish all materials and hire a contractor to perform all construction work necessary to make all connections, in accordance with approved plans and specifications. Upon completion, Otay shall provide Helix with "As-built" record drawings of the interconnection and provide any amendments to these drawings as they are developed. Upon 100% completion of the work, Otay shall bill Helix for 50% of all costs incurred. Payment shall be made by Helix within 30 days of receipt of invoice.
4. Estimation of Quantity of Water Delivered. If water is to be delivered under the terms of this Agreement, the estimated quantity of water to be delivered and duration shall be mutually agreed upon by the two Parties prior to its delivery.
5. Payment for Water Delivered. If water is delivered under the terms of this Agreement, the supplying Party will report the amount of water that has been supplied through a meter to the receiving Party and to the Authority for credit within ten (10) calendar days of receipt of delivered water. The Authority will bill this amount to the receiving party and credit this amount to the supplying party. The cost of the water delivered through the emergency interconnection shall be the Authority's treated water rate in effect at the time of delivery.
6. Maintenance. Otay and Helix shall be responsible for the maintenance and operation costs of the valve(s) connecting to their respective systems as shown in Exhibit A, attached hereto and incorporated herein. Maintenance, repair, or operation costs for the interconnection facility shall be the responsibility of the party identified in the Exhibits. Each District shall be solely responsible for any costs associated with its respective pipeline leading up to the interconnection, and responsible for 50% of all costs of any repair, relocation, abandonment, or modification of the connection itself (vault, meter, etc.).
7. Water Quality. Neither District warrants the quality of treated water delivered through any emergency interconnection established pursuant to this Agreement.
8. Access. During the term of this Agreement, authorized representatives of both Parties shall be granted access to the facilities and property of the other party for the purpose of establishing emergency interconnections pursuant to this Agreement.
9. Indemnification. Each party shall be responsible for the willful misconduct and negligent acts or omissions of its officers, directors, agents, employees, and subcontractors. Each party shall indemnify, hold harmless, and defend the other from and against all claims, demands, and liabilities for bodily injury, property damage, or other damages caused by the willful or negligent act or omission of the indemnifying party or its officer, directors, agents, employees, or subcontractors.
10. Term. The term of this Agreement shall be from the date of its execution for a period of ten (10) years ("Term"), unless terminated prior to that time pursuant to the terms of this Agreement. The Agreement may be extended for one (1) additional and successive ten (10) year period, or such term as may be mutually agreed upon by the Parties based upon Helix and Otay's needs. Either Helix or Otay may exercise this option by providing written notice to the other District, one hundred and eighty (180) days prior to the expiration of the term of this Agreement. The renewal of the Agreement shall require the approval of the Board of Directors of both the Otay Water District and Helix Water District, which approval shall not unreasonably be withheld. Following the renewal term, the Parties may negotiate an additional extension of this Agreement if such an extension meets the needs of the Parties and as may be mutually agreed upon in writing by the Parties.
11. Integration. This Agreement and any and all Exhibits to it, represents the entire understanding of the Parties as to those matters contained in it, and supersedes and cancels any prior oral or written understandings, promises or representations with respect to those matters covered in it. This Agreement may not be modified or altered except in writing signed by both Parties.

12. Laws, Venue, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.
13. Termination. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. In the event of termination, Helix and Otay will be responsible for 50% each of the total costs of disconnecting or removing connections. Salvaged metering devices, valves, and hardware shall remain the property of the District that is responsible as shown in Exhibit A.
14. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, and return receipt requested, postage prepaid, addressed to:

General Manager, Otay Water District 2554 Sweetwater Springs Blvd. Spring Valley, CA 91978-2096	General Manager, Helix Water District 7811 University Avenue La Mesa, CA 91941-4927
-------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------

and shall be effective upon receipt thereof.
15. Severability. In the event any one of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision(s) shall be replaced by a mutually acceptable provision which being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.
16. Assignment. In no event shall this Agreement be assigned by either party without first obtaining the prior written consent of the other party.
17. Waiver. No covenant, term or condition of this Agreement shall be deemed to be waived by any party hereto unless such waiver is in writing and executed by the party making the waiver. No waiver of any breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition contained herein.
18. Execution of Agreement. This Agreement shall not be deemed to have been accepted and shall not be binding upon either District until duly authorized officers of both parties have executed it. This agreement may not be modified or altered except in writing, signed by both Parties.
19. Amendment of Agreement. Either Helix or Otay may give notice that they wish to amend this Agreement at any time with thirty (30) calendar days written notice. Any amendments will have to be mutually agreed upon by both Helix and Otay in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

By: _____ [Name], General Manager Otay Water District	By: _____ [Name], General Manager Helix Water District
-------------------------------------------------------------	--------------------------------------------------------------

Approved as to form:

By: _____