



# SAN ANTONIO WATER COMPANY

## BOARD OF DIRECTORS MEETING

Tuesday, June 15, 2021

5:00 p.m.

In the Upland City Hall Council Chambers  
460 N. Euclid Avenue, Upland, CA 91786

The San Antonio Water Company encourages public participation during our Board Meetings. Attendance at meetings is preferred. Recognizing that an adjustment period is appropriate for recently lifted pandemic restrictions and ongoing individual concerns, emails or phoned-in comments are also acceptable.

If you wish to provide comments by phone, please email [blee@sawaterco.com](mailto:blee@sawaterco.com) at least two hours in advance of the meeting with your phone number and item you wish to comment on. Company staff will call you when the item comes up for discussion and you will be placed on speaker to address the Board.

Public comments regarding upcoming agenda items can be emailed to the Company at [blee@sawaterco.com](mailto:blee@sawaterco.com). Comments received by email at least two hours prior to the start of the meeting will be read at the appropriate time during the meeting.

- Call to Order
- Salute to the Flag

1. Recognitions and Presentations:

2. Additions-Deletions to the Agenda:

3. Shareholder-Public Testimony:

This is the time for any shareholder or member of the public to address the board members on any topic under the jurisdiction of the Company, which is on or not on the agenda. Please note, pursuant to the Brown Act the board is prohibited from taking actions on items not listed on the agenda. For any testimony, speakers are requested to keep their comments to no more than four (4) minutes, including the use of any visual aids, and to do so in a focused and orderly manner. Anyone wishing to speak is requested to voluntarily fill out and submit a speaker's form to the manager prior to speaking.

4. Consent Calendar Items:

All items listed hereunder are considered to be routine and there will be no separate discussion of these items unless members of the board request specific items to be removed from the consent calendar for separate action. All items listed or remaining will be voted upon in a single action.

- A. Approval of Board Meeting Minutes  
Regular Meeting Minutes of May 18, 2021
- B. Planning, Resources, and Operations Committee (PROC) Meeting Minutes  
No meeting minutes to report
- C. Administration and Finance Committee (AFC) Meeting Minutes  
Meeting minutes of March 23, 2021
- D. Financial Statement  
Income Statement and Balance Sheet for April 30, 2021
- E. Investment Activity Report  
Monthly Report of Investments Activity.
- F. Water Production and Consumption  
Monthly water production and consumption figures.
- G. Prominent Issues Update  
Status summaries on certain on-going active issues.

Agenda Print Date: 6/9/2021

#### H. Projects and Operations Update

Status summaries on projects and operations matters.

#### I. Groundwater Level Patterns [Quarterly in January, April, July, and October]

Tracking patterns of groundwater elevations relative to ground surface.

#### J. Conservation Program Update [Quarterly in January, April, July, and October]

Update on SAWCo's existing water conservation programs

#### K. Correspondence of Interest

### 5. Board Committee – Delegate Report:

#### A. PVPA Representative Report

Verbal report by representative.

#### B. Six Basins Representative Report

Verbal report by representative.

#### C. Chino Basin Representative Report

Verbal report by representative.

#### D. Cucamonga Basin Representative Report

Verbal update by representative.

#### E. Administration and Finance Committee (AFC) Chairman's Report

Verbal update on meeting held May 25, 2021.

#### F. Planning, Resources, and Operations Committee (PROC) Chairman's Report

No meeting to report.

#### G. Office Feasibility Study Ad Hoc Committee

No meeting to report.

### 6. General Manager's Report on Activities

#### A. 401K Reinstatement and Proposed Changes

Review proposed changes to 401k plan and consider AFC's recommendation.

#### B. Update to Purchasing Policy

Review revision update to policy and consider AFC's recommendation.

#### C. Reserve Funds Policy

Review current policy and consider AFC's recommendation.

#### D. Cell Tower Lease on Well 19 Property

Review and authorize General Manager to sign lease.

#### E. Facilities Tour

Discuss available dates

#### F. COVID Response

Verbal update

### 7. Closed Session: None

### 8. Director's Comments and Future Agenda Items:

#### Adjournment:

*The next regular Board Meeting will be held on Tuesday, July 20, 2021 at 5:00 p.m.*

**NOTE:** All agenda report items and back-up materials are available for review and/or acquisition by calling the Company Office (909) 982-4107 (139 No. Euclid Avenue, Upland, CA) during regular office hours, Monday through Thursday [7:00 am – 11:30 am & 12:30 pm – 5:00 pm] and alternating Fridays [7:00 am – 11:30 am & 12:30 pm – 4:00 pm] and on the company's website [www.sawaterco.com](http://www.sawaterco.com). The agenda is also available for review and copying at the Upland Public Library located at 450 N. Euclid Avenue.

**POSTING STATEMENT:** On June 10, 2021 a true and correct copy of this agenda was posted at the entry of the Company's Office (139 No. Euclid Avenue), on the public bulletin boards at 450 No. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall), and on the Company's website.

# SAN ANTONIO WATER COMPANY

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## MINUTES OF THE SAN ANTONIO WATER COMPANY

### Tuesday, May 18, 2021

An open meeting of the Board of Directors of the San Antonio Water Company (SAWCo) was held virtually and called to order at 5:00 p.m. on the above date. Directors present were Tom Thomas, Will Elliott, Rudy Zuniga, Bob Cable, Kati Parker, and Bill Velto. Also in attendance were City of Upland Public Works Director Braden Yu and SAWCo's General Manager Brian Lee, Assistant General Manager Teri Layton, and Senior Administrative Specialist Kelly Mitchell. Director Thomas presided.

1. Recognitions and Presentations: None.
2. Additions-Deletions to the Agenda: None.
3. Shareholder-Public Testimony: None.
4. Consent Calendar Items:
  - A. Approval of Board Meeting Minutes  
Regular Meeting Minutes of April 20, 2021.
  - B. Planning, Resources and Operations Committee (PROC) Meeting Minutes  
Meeting minutes of February 23, 2021.
  - C. Administration and Finance committee (AFC) Meeting Minutes  
No meeting minutes to report.
  - D. Financial Statement  
Income Statement and Balance Sheet for March 31, 2021.
  - E. Investment Activity Report  
Monthly Report of Investments Activity.
  - F. Water Production and Consumption  
Monthly water production and consumption figures.
  - H. Prominent Issues Update  
Status summaries on certain on-going active issues.
  - I. Projects and Operations Update  
Status summaries on projects and operations matters.
  - J. Groundwater Level patterns [Quarterly in January, April, July, and October]  
Tracking patterns of groundwater elevations relative to ground surface.
  - K. Conservation Program Update [Quarterly in January, April, July, and October]  
Update on SAWCo's existing water conservation programs
  - L. Correspondence of Interest

Mr. Lee presented some pictures of the Reservoir 9 project included in Item 4I and explained the work that took place replacing and rerouting the 24-inch pipeline. There was question on what happens to the pipeline easement now that SAWCo has abandoned the waterline. Staff will be quitclaiming it to the property and contacting legal counsel to determine whether that absolves the Company of any future liability.

Director Velto advised Mr. Lee to look at Civil Code Section 1542. Mr. Lee talked about the possibility of slurry sealing in the old line to prevent future problems.

Mr. Lee presented a picture of Burt Street where the area over the newly installed pipeline has been repaved. After 28 days a slurry seal will be put over the top of the entire street which will even out the color of the pavement.

Director Elliott moved and Director Parker seconded to approve the Consent Calendar as presented. Motion carried unanimously.

5. Board Committee – Delegate Report:

**A. Pomona Valley Protective Association (PVPA) Representative’s Report** – Director Thomas reported on the PVPA meeting held on May 12<sup>th</sup>. Very little water spreading has taken place this year due to lack of rain. The City of Pomona has begun weed abatement of PVPA properties.

Regarding the National Recreation Area bill, PVPA is still in attempts to get their private land removed from the bill. The City of Claremont would still like to put a kiosk at the entrance to the Claremont Wilderness Park. The PVPA attorney is working with them to get an agreement for the use of the location on PVPA owned property.

The City of Upland July 4<sup>th</sup> event includes fireworks that are located just south of PVPA land. The PVPA Board feels the area is safe and there should be no cause for fire concerns.

The PVPA website has been recently updated.

**B. Six Basins Representative Report** – Ms. Layton informed the Board about the Six Basins meeting held on April 28<sup>th</sup>. Water Utility Superintendent, Tommy Hudspeth, attended the meeting as the alternate. The main topic of discussion was the objection letter the City of Pomona penned on behalf of PVPA regarding PVPA owned land that would be affected by the proposed San Gabriel Mountains National Recreation Area.

**C. Chino Basin Representative Report** – Mr. Lee reported the annual budget is currently being discussed. The Appropriative Pool is reviewing it line by line and making recommendations to the watermaster. More discussion will take place at the Committee meeting later in the week.

Regarding the Agricultural Pool vs. the Appropriative Pool, the judge will issue a final ruling in 10 days to allow time for the Agricultural Pool to submit a brief explaining why they believe past rules of the watermaster should apply in this instance. The Agricultural Pool submitted this document earlier in the day and now the Appropriative Pool will generate a response. If the judge rules consistent with his tentative ruling, an appeal by the Agricultural Pool is anticipated.

**D. Cucamonga Basin Representative Report** – Ms. Layton stated the working group met virtually on May 4<sup>th</sup>. The Term of Reference document is closer to being signed as it has worked its way through some committees at Cucamonga Valley Water District (CVWD) and their staff will now walk their general manager through the document for signature.

The working group has also been participating in interviews with interested engineering consultants. Statements of Qualifications (SOQ) were due by May 11<sup>th</sup>. Management is reviewing these SOQs and discussions will take place at the June 1<sup>st</sup> meeting. A short list of qualified consultants will then be generated, and each sent a Request for Proposal (RFP).

**E. Administration and Finance Committee (AFC) Chairman’s Report** – No meeting to report.

**F. Planning, Resources, and Operations Committee (PROC) Chairman’s Report** – Director Elliott reported an update of current projects was provided at the recent PROC meeting. The Committee has brought to the Board for approval, Item 6B regarding abandonment of surplus property. He encouraged SAWCo to continue being a good member of the community by keeping properties they own looking good.

**G. Office Feasibility Study Ad Hoc Committee** – No meeting to report.

6. General Manager’s Report on Activities:

**A. Transfer of Funds** – Mr. Lee stated staff is currently modernizing company reserve policies. At this time, a transfer of funds from Operating Reserves to Depreciation & Obsolesces Reserves is needed. Prior policy would require this transfer be made at the end of the calendar year. As part of

modernizing reserve policies, staff will be recommending the policy allow for these types of transfers throughout the year as needed.

Mr. Lee recommended the Board ratify prior transfer of \$1.6 million from Operating Reserves to Depreciation & Obsolesces Reserves and recommend additional transfer of LAIF Operating Reserve \$1,822,529.98 to Depreciation & Obsolescence Reserves.

Director Cable moved and Director Zuniga seconded to ratify prior transfer of \$1.6 million from Operating Reserves to Depreciation & Obsolesces Reserves and to approve additional transfer of LAIF Operating Reserve \$1,822,529.98 to Depreciation & Obsolescence Reserves. Motion carried unanimously.

**B. Abandonment of Surplus Property** – Mr. Lee explained the two surplus properties being discussed were booster stations once used to move water northward from Well 18. They were abandoned when the 210 freeway was built. Well 18 was also decommissioned at that time. Staff does not see any opportunity for revenue generation from these sites and would instead like to demolish the facilities and quitclaim the 15<sup>th</sup> Street property to the City of Upland for additional green space in Magnolia Park and the San Antonio Avenue property to the adjacent homeowner(s).

Director Cable moved and Director Velto seconded to authorize the General Manager to execute a not-to-exceed \$80,000 contract with CP Construction for the demolition of the two surplus properties and to acquire demolition permits from the City of Upland. Motion carried unanimously.

**C. COVID Response** – Mr. Lee informed the Board that staff plans on holding an in-person Board meeting for the June monthly Board meeting. Mandates from the governor of California are scheduled to be lifted on June 15<sup>th</sup> which happens to be the date of SAWCo’s June Board meeting. Staff also plans to facilitate the Board tour of facilities in June. The office is currently operating with 3 staff members in office and 2 working remotely. In June this will change to 4 staff members in office and 1 working remotely. The office has been open to the public with modified hours.

7. Closed Session: None

8. Director’s Comments and Future Agenda Items: Director Cable stated, as a San Antonio Heights resident, the work done on the streets after waterline replacement looks phenomenal.

Director Thomas inquired about the status of the new meter install. Mr. Lee updated the Board on the final stages of the meter install project and the steps to be taken in order to present the program to the shareholders.

Director Thomas advised the next Board meeting is scheduled for Tuesday, June 15<sup>th</sup> at 5 p.m.

Adjournment:

With no further business to discuss the meeting was adjourned at 5:25 p.m.

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Assistant Secretary  
Brian Lee

SAN ANTONIO WATER COMPANY  
ADMINISTRATION and FINANCE COMMITTEE (AFC)  
MINUTES  
March 23, 2021

An open meeting of the Administration and Finance Committee (AFC) of the San Antonio Water Company (SAWCo) was held virtually and called to order at 3:02 p.m. on the above date as noticed. Committee Members present were José Sanchez, Bob Cable, Rudy Zuniga, and Tom Thomas. Also in attendance were SAWCo's General Manager Brian Lee and Assistant General Manager Teri Layton.

1. Recognitions and Presentations: Mr. Lee recognized that this is Director Sanchez's last AFC meeting. He thanked Director Sanchez for his time and expertise as the chairman of the Committee.
2. Additions-Deletions to the Agenda: None.
3. Public Comments: None.
4. Approval of Committee Meeting Minutes: Director Zuniga moved and Director Cable seconded to approve the meeting minutes of January 26, 2021. Motion carried unanimously.
5. Administrative and Financial Issues:
  - A. **Financial Reporting** – Director Sanchez asked for any comments on the mock-up financial statements included in the agenda packet. Director Thomas felt the reports were a little easier to understand than the current reports utilized. Director Cable felt the reports were more straight forward.

Director Sanchez mentioned the fact the reports are in monthly, quarterly, and annual increments; however, utility billing takes place every two months. Therefore, generating a quarterly report might only make sense one time per year due to no revenue being reported. He suggested the quarterly report not be generated as it is of little value. There were talks of triannual reporting; however, it was determined it would not provide much more information than the year-to-date.

Director Sanchez recommended moving forward with the monthly income statement, the year-to-date, and the year-to-date balance sheet reports as presented in Item 5A.

Director Cable moved and Director Sanchez seconded to move forward with the monthly income statement, the year-to-date, and the year-to-date balance sheet reports as presented in Item 5A. Motion carried unanimously.

Mr. Lee advised the next step is to ensure SAWCo's accounting software can generate these types of statements in the format presented so that they are auditable.

- B. **Reserve Fund Targets** – Mr. Lee reviewed SAWCo policy on fund targets which provides broad targets such as 90 to 180 days or 5% to 20%. Mr. Lee would like to put dollar amounts to these fund targets. Director Sanchez agreed and stated it should be part of the budget process each year. He felt it advantageous to have a separate target ratios monthly report showing actual reserve to targeted reserve.

Discussion regarding what the report should include and how it should be laid out followed. Staff will develop a draft report and present it to the Board for review, adjustments, and determination on whether it should be included in every Board meeting agenda packet.

- C. *Buy Back Policy for Vacation and Sick Leave*** – Ms. Layton reminded the Committee that at the last AFC meeting they considered several of staff's recommendations regarding employee benefits. Vacation and sick leave benefits were deferred for further research.

Vacation buyback is offered by several local water agencies such as West Valley Water District, The City of Upland, and Cucamonga Valley Water District (CVWD). Each agency requires a set amount of vacation to remain on the books, a set amount to be utilized each year, and a set amount that can be bought back.

After considerable discussion, Director Sanchez moved and Director Cable seconded to recommend the Board approve allowing for half the number of hours of vacation taken by an employee during the year to be bought back by the employee so long as 40 hours of vacation remained on the books for said employee with the buyback commencing in November of each year. Motion carried unanimously.

Ms. Layton advised the Committee of other local water agencies such as CVWD, Monte Vista Water District, and East Valley Water District that offer sick leave buyback as an employee benefit and described the differences between the plans.

After considerable discussion, Director Cable moved and Director Zuniga seconded to recommend the Board approve 50% payout of sick leave to employees that retire from SAWCo. Motion carried unanimously.

- D. *Salary Table Adjustment*** – Mr. Lee reported this item is a yearly review of the cost of living based on the Consumer Price Index (CPI) for Riverside/San Bernardino/Ontario for Urban Wage Earners and Clerical Worker (CPI-W). From January 2020 to January 2021 there was an increase in the CPI of 2.4%. As such, he proposes the AFC recommend the Board approve adjusting SAWCo's salary tables upward by 2.4%. Mr. Lee reminded the AFC that increasing salary ranges does not automatically raise employee pay. Employees at the bottom of their salary range will see an increase to the newly adjusted base pay and those employees at the top of their pay range will have the opportunity for a merit increase during their annual performance evaluation. There are currently no employees that will receive an automatic increase to their pay.

Director Cable moved and Director Sanchez seconded to recommend the Board approve adjusting SAWCo's salary tables upward 2.4% based on the Riverside/San Bernardino/Ontario for Urban Wage Earners and Clerical Worker (CPI-W) change from January 2020 to January 2021. Motion carried unanimously.

- E. *Workers Compensation Insurance*** – Director Thomas stated the increase in premiums is equal to the increase in payroll.

Director Cable moved and Director Zuniga seconded to recommend the Board approve the automatic renewal of SAWCo's Workers' Compensation Insurance with Cal-Mutual JPRIMA The Zenith, a Fairfax Insurance Company for 5/1/2021 to 5/1/2022 at an annual premium of \$15,371. Motion carried unanimously.

- F. COVID Response** – Mr. Lee stated there was nothing new to report since the update at the Board meeting held the previous week.

Director Sanchez recommended staff investigate the possibility of water utility employees being cleared to receive the COVID-19 vaccinations as they provide a critical service. Ms. Layton advised the Committee that the vaccine is now available for field staff but is not yet available for office staff. All employees were made aware of this status change.

6. Closed Session: None.
7. Committee Comments and Future Agenda Items: Director Thomas congratulated Director Sanchez for his hard work during his last meeting as Chair of the AFC. Director Sanchez replied he couldn't have done it without staff and offered his expertise for future questions regarding the financials.
8. Adjournment: Seeing no further business, the meeting was adjourned at 4:12 p.m.

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Assistant Secretary  
Brian Lee





San Antonio Water Company, CA

Item 4D

# Income Statement Group Summary

For Fiscal: 2021 Period Ending: 04/30/2021

IncomeStatement	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	Budget Remaining
<b>Category: 4 - Income</b>					
<b>SubCategory: 40 - Shareholder Revenue</b>					
1185 - Domestic Water Income (Base)	301,000.00	301,000.00	35,061.82	62,674.68	238,325.32
1215 - Domestic Water Income (Supplemental)	148,000.00	148,000.00	32,837.39	58,901.48	89,098.52
1220 - Domestic Water Income (Tier 3)	104,000.00	104,000.00	52,655.13	92,373.93	11,626.07
1230 - Domestic Water Income (Readi/Chrg)	200,000.00	200,000.00	33,475.86	66,999.52	133,000.48
1235 - Domestic Water Availability Charge (WAC)	60,000.00	60,000.00	10,198.02	20,405.30	39,594.70
1245 - Municipal Water Income (Base)	3,100,000.00	3,100,000.00	247,320.51	770,908.55	2,329,091.45
1268 - Municipal Water Income (Readi/Chrg)	80,000.00	80,000.00	6,400.00	26,100.00	53,900.00
1274 - Misc Water Income (Base)	220,000.00	220,000.00	15,500.59	39,385.30	180,614.70
1275 - Misc Water Income (Supplemental)	126,000.00	126,000.00	179.41	1,170.76	124,829.24
1276 - Munnicipal Water Availability Charge (WAC)	477,000.00	477,000.00	39,738.00	158,952.00	318,048.00
1280 - Misc Water Income (Tier 3)	15,000.00	15,000.00	0.00	0.00	15,000.00
1288 - Misc Water Income (Readi/Chrg)	23,000.00	23,000.00	1,860.00	7,460.00	15,540.00
1290 - Misc Water Availability Charge (WAC)	24,000.00	24,000.00	1,922.00	7,688.00	16,312.00
1295 - Dormant Water Availability Charge (WAC)	54,000.00	54,000.00	8,681.56	17,380.34	36,619.66
1300 - Sale of Water/From Storage	0.00	0.00	0.00	180,000.00	-180,000.00
1400 - Stock Transfer	5,000.00	5,000.00	540.00	1,530.00	3,470.00
1410 - Late/Re-establishment Fee	4,000.00	4,000.00	105.00	205.00	3,795.00
1430 - Stock Certificate Storage and Handling Fee	0.00	0.00	40.00	80.00	-80.00
<b>SubCategory: 40 - Shareholder Revenue Total:</b>	<b>4,941,000.00</b>	<b>4,941,000.00</b>	<b>486,515.29</b>	<b>1,512,214.86</b>	<b>3,428,785.14</b>
<b>SubCategory: 42 - Non-Shareholder Revenue</b>					
1725 - Misc. Income	2,000.00	2,000.00	282.74	1,681.20	318.80
1750 - Service/Litigation Agreements	0.00	0.00	48.99	247.15	-247.15
1753 - Ground Lease Income	54,000.00	54,000.00	7,515.84	23,889.36	30,110.64
1755 - Interest Earned	90,000.00	90,000.00	5,642.14	10,097.67	79,902.33
1785 - Gain on Sale of Asset	344,000.00	344,000.00	0.00	0.00	344,000.00
<b>SubCategory: 42 - Non-Shareholder Revenue Total:</b>	<b>490,000.00</b>	<b>490,000.00</b>	<b>13,489.71</b>	<b>35,915.38</b>	<b>454,084.62</b>
<b>Category: 4 - Income Total:</b>	<b>5,431,000.00</b>	<b>5,431,000.00</b>	<b>500,005.00</b>	<b>1,548,130.24</b>	<b>3,882,869.76</b>
<b>Category: 5 - O &amp; M Expense</b>					
<b>SubCategory: 50 - Operating Facilities</b>					
2175 - Facility Related Field Labor	225,000.00	225,000.00	28,814.45	71,204.08	153,795.92
2235 - Repairs to Facilities and Equipment	300,000.00	300,000.00	6,734.58	124,763.01	175,236.99
2265 - Power-Gas & Electric (utilities)	600,000.00	600,000.00	52,330.24	133,724.38	466,275.62
<b>SubCategory: 50 - Operating Facilities Total:</b>	<b>1,125,000.00</b>	<b>1,125,000.00</b>	<b>87,879.27</b>	<b>329,691.47</b>	<b>795,308.53</b>
<b>SubCategory: 51 - Operating Activities</b>					
2475 - Customer Service	85,000.00	85,000.00	10,016.95	30,842.70	54,157.30
2498 - Conservation	20,000.00	20,000.00	0.00	7,675.00	12,325.00
<b>SubCategory: 51 - Operating Activities Total:</b>	<b>105,000.00</b>	<b>105,000.00</b>	<b>10,016.95</b>	<b>38,517.70</b>	<b>66,482.30</b>
<b>SubCategory: 52 - Other Operating Expense</b>					
2205 - Non-Facility Related Labor	75,000.00	75,000.00	6,061.46	17,866.67	57,133.33
2210 - O & M - All Other	3,800.00	3,800.00	0.00	830.13	2,969.87
2295 - Supplies (Inventory & Tools Expense)	10,000.00	10,000.00	854.74	3,269.22	6,730.78
2565 - Depreciation/Amortization	903,000.00	903,000.00	77,951.65	311,919.13	591,080.87
2715 - Property Taxes	220,000.00	220,000.00	103,791.47	103,791.47	116,208.53
2805 - Water Resource Mgmt.	200,000.00	200,000.00	3,395.01	27,778.14	172,221.86
<b>SubCategory: 52 - Other Operating Expense Total:</b>	<b>1,411,800.00</b>	<b>1,411,800.00</b>	<b>192,054.33</b>	<b>465,454.76</b>	<b>946,345.24</b>
<b>Category: 5 - O &amp; M Expense Total:</b>	<b>2,641,800.00</b>	<b>2,641,800.00</b>	<b>289,950.55</b>	<b>833,663.93</b>	<b>1,808,136.07</b>
<b>Category: 6 - G &amp; A Expense</b>					
<b>SubCategory: 60 - Personnel</b>					
2115 - Administrative Services	290,000.00	290,000.00	33,694.35	96,071.39	193,928.61

## Income Statement

For Fiscal: 2021 Period Ending: 04/30/2021

IncomeStatement	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	Budget Remaining
2130 - Development/Water Svc. App.	1,000.00	1,000.00	0.00	0.00	1,000.00
2325 - Payroll Taxes	80,000.00	80,000.00	8,940.48	28,154.74	51,845.26
2355 - Worker's Compensation Insurance	15,000.00	15,000.00	0.00	545.00	14,455.00
2385 - Benefit Pay (Vac., sick, etc.)	185,000.00	185,000.00	12,526.61	60,548.97	124,451.03
2415 - Benefit Insurance (Pension,Life,Medical,Vision etc	250,000.00	250,000.00	23,342.76	83,393.87	166,606.13
2430 - Benefit Administrative Services	3,000.00	3,000.00	0.00	0.00	3,000.00
<b>SubCategory: 60 - Personnel Total:</b>	<b>824,000.00</b>	<b>824,000.00</b>	<b>78,504.20</b>	<b>268,713.97</b>	<b>555,286.03</b>
<b>SubCategory: 61 - Other</b>					
2445 - Office/IT Support	63,000.00	63,000.00	3,042.25	13,283.19	49,716.81
2505 - Directors Fees & Expense	34,000.00	34,000.00	3,000.00	12,750.00	21,250.00
2535 - Liability Insurance	30,000.00	30,000.00	35,510.00	35,510.00	-5,510.00
2595 - Communication	40,000.00	40,000.00	1,809.84	20,048.95	19,951.05
2625 - Dues & Publications	3,000.00	3,000.00	0.00	1,277.95	1,722.05
2655 - Outside Services	30,000.00	30,000.00	416.53	10,196.69	19,803.31
2745 - Income Tax Expense	14,000.00	14,000.00	0.00	11,856.00	2,144.00
2775 - Accounting	70,000.00	70,000.00	6,343.16	38,640.66	31,359.34
2776 - Legal	250,000.00	250,000.00	19,539.30	84,295.76	165,704.24
2790 - Human Resources Expense	45,000.00	45,000.00	6,353.03	14,614.45	30,385.55
2865 - All other	35,000.00	35,000.00	992.55	2,370.91	32,629.09
<b>SubCategory: 61 - Other Total:</b>	<b>614,000.00</b>	<b>614,000.00</b>	<b>77,006.66</b>	<b>244,844.56</b>	<b>369,155.44</b>
<b>Category: 6 - G &amp; A Expense Total:</b>	<b>1,438,000.00</b>	<b>1,438,000.00</b>	<b>155,510.86</b>	<b>513,558.53</b>	<b>924,441.47</b>
<b>Total Surplus (Deficit):</b>	<b>1,351,200.00</b>	<b>1,351,200.00</b>	<b>54,543.59</b>	<b>200,907.78</b>	

### Fund Summary

Fund	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	Budget Remaining
10 - 10	1,351,200.00	1,351,200.00	54,543.59	200,907.78	1,150,292.22
<b>Total Surplus (Deficit):</b>	<b>1,351,200.00</b>	<b>1,351,200.00</b>	<b>54,543.59</b>	<b>200,907.78</b>	

# Balance Sheet

## Account Summary

As Of 04/30/2021



San Antonio Water Company, CA

Account	Name	Balance
<b>Fund: 10 - 10</b>		
<b>Assets</b>		
<b>BalSubCategory: 10 - Cash</b>		
<a href="#">10-00-00-10100-00000</a>	Petty Cash	250.00
<a href="#">10-00-00-10201-00000</a>	Checking Account-8431	1,047,690.30
<a href="#">10-00-00-10300-00000</a>	Savings-Money Market	206,159.66
<a href="#">10-00-00-10400-00000</a>	Savings-CD Accounts	20,000.00
<a href="#">10-00-00-10415-00000</a>	D&O Checking Account	730,865.10
<a href="#">10-00-00-10438-00000</a>	Depre/Obsolescence Res (LAIF)	4,138,442.36
	<b>Total BalSubCategory 10 - Cash:</b>	<b>6,143,407.42</b>
<b>BalSubCategory: 11 - Accounts Receivable</b>		
<a href="#">10-00-00-11100-00000</a>	Accounts Receivable-Domestic	170,701.75
<a href="#">10-00-00-11200-00000</a>	Accounts Receivable-Municipal	308,942.52
<a href="#">10-00-00-11250-00000</a>	Accounts Receivable-Misc.	25,487.19
<a href="#">10-00-00-11260-00000</a>	Accounts Receivable - Dormant	9,920.78
<a href="#">10-00-00-11275-00000</a>	Contra Accounts Receivable - Unapplic	-13,644.14
<a href="#">10-00-00-11300-00000</a>	Accounts Receivable-Other	219,257.82
<a href="#">10-00-00-11301-00000</a>	Note Receivable	1,032,000.00
	<b>Total BalSubCategory 11 - Accounts Receivable:</b>	<b>1,752,665.92</b>
<b>BalSubCategory: 12 - Inventory</b>		
<a href="#">10-00-00-12100-00000</a>	Inventories-Materials & Supply	91,451.90
	<b>Total BalSubCategory 12 - Inventory:</b>	<b>91,451.90</b>
<b>BalSubCategory: 13 - Prepaid</b>		
<a href="#">10-00-00-13100-00000</a>	Prepaid Insurance	8,868.75
<a href="#">10-00-00-13105-00000</a>	PREPAID POSTAGE	369.00
<a href="#">10-00-00-13200-00000</a>	Prepaid State Franchise Tax	144.00
	<b>Total BalSubCategory 13 - Prepaid:</b>	<b>9,381.75</b>
<b>BalSubCategory: 14 - Investments</b>		
<a href="#">10-00-00-14150-00000</a>	P.V.P.A. Investment	1.00
<a href="#">10-00-00-14151-00000</a>	457B Plan Investment	38,622.51
	<b>Total BalSubCategory 14 - Investments:</b>	<b>38,623.51</b>
<b>BalSubCategory: 15 - Property, Plant, &amp; Equipment</b>		
<a href="#">10-00-00-15100-00000</a>	Land & Water Rights	920,161.26
<a href="#">10-00-00-15110-1507J</a>	Work in Progress "Proj J"	72,466.00
<a href="#">10-00-00-15110-1602U</a>	Work in Progress	1,023,074.94
<a href="#">10-00-00-15110-1901</a>	Work In Progress	772,053.80
<a href="#">10-00-00-15110-2001</a>	Work In Progress	999,817.47
<a href="#">10-00-00-15110-2002</a>	Work In Progress	129,428.57
<a href="#">10-00-00-15110-2003</a>	Work In Progress	617,155.69
<a href="#">10-00-00-15110-2004</a>	Work In Progress	51,828.34
<a href="#">10-00-00-15110-2101</a>	Work In Progress	54.21
<a href="#">10-00-00-15110-2104</a>	Work In Progress	9,520.00
<a href="#">10-00-00-15150-00000</a>	Buildings & Site Improvements	1,746,624.52
<a href="#">10-00-00-15200-00000</a>	Wells-Shafts, Bldgs, & Equip	4,887,026.90
<a href="#">10-00-00-15250-00000</a>	Boosters-Bldgs & Equip	2,448,690.30
<a href="#">10-00-00-15300-00000</a>	Reservoirs	3,081,787.33
<a href="#">10-00-00-15350-00000</a>	Tunnels, Forebay, & Ponds	1,587,111.19
<a href="#">10-00-00-15400-00000</a>	Spreading Works-Cucamonga Wash	54,859.53
<a href="#">10-00-00-15410-00000</a>	Spreading Works-SanAntonio Wsh	50,235.18
<a href="#">10-00-00-15450-00000</a>	Pipelines	16,441,208.14
<a href="#">10-00-00-15500-00000</a>	Autos & Equipment	513,205.56
<a href="#">10-00-00-15550-00000</a>	Tools	106,751.11
<a href="#">10-00-00-15600-00000</a>	Telemetry System	600,886.90

**Balance Sheet**

Account	Name	Balance
<a href="#">10-00-00-15650-00000</a>	Office Equipment	523,769.10
<a href="#">10-00-00-15990-00000</a>	Accumulated Depreciation	-13,768,884.09
<b>Total BalSubCategory 15 - Property, Plant, &amp; Equipment:</b>		<b>22,868,831.95</b>
<b>BalSubCategory: 16 - Other Assets</b>		
<a href="#">10-00-00-16100-00000</a>	Documents & Studies	906,358.61
<a href="#">10-00-00-16100-1905</a>	WIP- Master Plan and Asset Managemen	90,492.72
<a href="#">10-00-00-16100-2105</a>	WIP-2020 URBAN WATER MANAGEMI	285.51
<a href="#">10-00-00-16100-2106</a>	WIP- WATER INFRASTRUCTURE ACT	12,923.01
<a href="#">10-00-00-16990-00000</a>	Accumulated Amortization	-697,438.97
<b>Total BalSubCategory 16 - Other Assets:</b>		<b>312,620.88</b>
<b>Total Assets:</b>		<b>31,216,983.33</b>
		<u><u>31,216,983.33</u></u>

**Liability**

<b>BalSubCategory: 13 - Prepaid</b>		
<a href="#">10-00-00-20650-00000</a>	Deferred Revenue Deposit	3,216.00
<b>Total BalSubCategory 13 - Prepaid:</b>		<b>3,216.00</b>
<b>BalSubCategory: 20 - Short-term less than 1 year</b>		
<a href="#">10-00-00-20100-00000</a>	Trade Accounts Payable	58,914.65
<a href="#">10-00-00-20111-00000</a>	Wages Payable	120.22
<a href="#">10-00-00-20115-00000</a>	D&O Trade Accounts Payable	438,911.77
<a href="#">10-00-00-20150-00000</a>	Employee Pension Payable	27.75
<a href="#">10-00-00-20210-00000</a>	FICA Withheld	18.60
<a href="#">10-00-00-20220-00000</a>	Medicare Withheld	4.36
<a href="#">10-00-00-20240-00000</a>	SDI Withheld	1.80
<a href="#">10-00-00-20600-00000</a>	Water Hydrant Meter Deposit	850.00
<a href="#">10-00-GN-20820-00000</a>	Accrued Vacation Payable	20,404.60
<a href="#">10-00-OP-20820-00000</a>	Accrued Vacation Payable	24,818.57
<b>Total BalSubCategory 20 - Short-term less than 1 year:</b>		<b>544,072.32</b>
<b>BalSubCategory: 21 - Long-term more than 1 year</b>		
<a href="#">10-00-00-20152-00000</a>	457B Deferred Comp Liability	38,622.51
<a href="#">10-00-00-21500-00000</a>	Unclaimed Credits	614,939.12
<a href="#">10-00-00-22100-00000</a>	Deferred Gain	1,029,178.33
<b>Total BalSubCategory 21 - Long-term more than 1 year:</b>		<b>1,682,739.96</b>
<b>Total Liability:</b>		<b>2,230,028.28</b>

**Equity**

<b>BalSubCategory: 30 - Stockholder equity</b>		
<a href="#">10-00-00-30200-00000</a>	Contributed Capital - Ext. Fee	447,258.02
<a href="#">10-00-00-30210-00000</a>	Contr. Property, Plant & Equip	2,432,256.77
<a href="#">10-00-00-30300-00000</a>	Capital Account	1,500,000.00
<a href="#">10-00-00-30310-00000</a>	Unissued Capital Stock	-861,100.00
<a href="#">10-00-00-30400-00000</a>	Retained Earngs-Brd Designated	5,436,069.53
<a href="#">10-00-00-30410-00000</a>	Retained Earnings-Unrestricted	19,831,562.95
<b>Total BalSubCategory 30 - Stockholder equity:</b>		<b>28,786,047.27</b>
<b>Total Beginning Equity:</b>		<b>28,786,047.27</b>
Total Revenue		1,548,130.24
Total Expense		1,347,222.46
<b>Revenues Over/Under Expenses</b>		<b>200,907.78</b>
<b>Total Equity and Current Surplus (Deficit):</b>		<b>28,986,955.05</b>

**Total Liabilities, Equity and Current Surplus (Deficit):** 31,216,983.33

**Monthly Investment Activity Summary - Compiled from Banking Statements for Correlation with Monthly Financials**

Institution	Type of Investment	Date of Maturity	Rate of Interest	Account Balance as of 4/30/2021	Reserves		
					Operating	Depreciation & Obsolescence	Modernization
Citizens Business Bank (CBB)	*Checking (old)	N/A	No Interest	-	-		
Citizens Business Bank (CBB)	*Checking (new)	N/A	No Interest	1,047,690.30	1,047,690.30		
Citizens Business Bank (CBB)	*D&O Checking	N/A	No Interest	730,865.10		\$ 730,865.10	
Citizens Business Bank	Pref. Money Mrkt	N/A	0.10%	206,159.66	\$ 206,159.66		
Local Agency Investment Fund	LAIF	N/A	0.339%	4,138,442.36	\$ 1,822,529.98	\$ 1,625,153.38	\$ 690,759.00
Golden State Business Bank	12 Month C.D.	October 15, 2021	0.50%	20,000.00	\$ 20,000.00		
			<b>TOTAL:</b>	\$ 6,143,157.42	\$ 3,096,379.94	\$ 2,356,018.48	\$ 690,759.00

Item 4E

2021 Production

CHINO BASIN	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Yearly Production Rights = 1232	48.22%	48.22%	48.22%	48.27%	48.27%	48.29%	-	-	-	-	-	-	-
Well #12 - inactive	-	-	-	-	-	-	-	-	-	-	-	-	-
Well #15 - Domestic	0.26	-	-	0.21	-	-	-	-	-	-	-	-	0.47
Well #16 - Domestic	0.38	-	-	0.35	-	-	-	-	-	-	-	-	0.73
Well#18 - inactive	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Subtotal</b>	<b>0.63</b>	-	-	<b>0.57</b>	-	-	-	-	-	-	-	-	<b>1.20</b>
<b>CUCAMONGA BASIN</b>	<b>Jan-21</b>	<b>Feb-21</b>	<b>Mar-21</b>	<b>Apr-21</b>	<b>May-21</b>	<b>Jun-21</b>	<b>Jul-21</b>	<b>Aug-21</b>	<b>Sep-21</b>	<b>Oct-21</b>	<b>Nov-21</b>	<b>Dec-21</b>	<b>THIS YEAR</b>
Yearly Production Rights = 5938 (1438 10-yr Average Spread)	6.36%	10.93%	16.24%	26.51%	39.28%	45.61%	54.45%	62.87%	71.37%	79.90%	88.43%	96.97%	-
Well #2	116.28	106.84	119.05	110.77	111.87	-	-	-	-	-	-	-	564.81
Well #3	0.36	-	-	0.30	-	-	-	-	-	-	-	-	0.66
Well#19 - inactive	-	-	-	-	-	-	-	-	-	-	-	-	-
Well #22	9.59	12.37	14.41	33.01	44.77	-	-	-	-	-	-	-	114.16
Well #24	82.97	-	-	291.70	362.60	-	-	-	-	-	-	-	737.26
Well #31	1.60	-	-	0.44	6.56	-	-	-	-	-	-	-	8.60
Well #32 - Domestic	-	-	-	-	-	-	-	-	-	-	-	-	-
Upl. # 15 (SAWCo's Rts)	166.97	152.06	181.80	173.52	232.59	-	-	-	-	-	-	-	906.94
<b>Subtotal</b>	<b>377.76</b>	<b>271.27</b>	<b>315.27</b>	<b>609.74</b>	<b>758.39</b>	-	-	-	-	-	-	-	<b>2,332.43</b>
Upl. # 15 (WECWCo's Rts) Memo Only	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>SIX BASINS</b>	<b>Jan-21</b>	<b>Feb-21</b>	<b>Mar-21</b>	<b>Apr-21</b>	<b>May-21</b>	<b>Jun-21</b>	<b>Jul-21</b>	<b>Aug-21</b>	<b>Sep-21</b>	<b>Oct-21</b>	<b>Nov-21</b>	<b>Dec-21</b>	<b>THIS YEAR</b>
Yearly Production Rights = 932	9.99%	19.26%	29.56%	39.46%	49.43%	59.22%	69.51%	79.31%	89.51%	99.37%	109.56%	119.24%	-
Well #25-A	-	-	-	-	-	-	-	-	-	-	-	-	-
Well #26	43.34	39.01	42.64	39.52	41.51	-	-	-	-	-	-	-	206.02
Well 27-A	49.74	47.43	53.37	52.72	51.47	-	-	-	-	-	-	-	254.73
<b>Subtotal</b>	<b>93.09</b>	<b>86.44</b>	<b>96.01</b>	<b>92.24</b>	<b>92.98</b>	-	-	-	-	-	-	-	<b>460.75</b>
<b>TOTAL PUMPED</b>	<b>471.48</b>	<b>357.71</b>	<b>411.27</b>	<b>702.54</b>	<b>851.37</b>	-	-	-	-	-	-	-	<b>2,794.37</b>
<b>GRAVITY FLOW</b>	<b>Jan-21</b>	<b>Feb-21</b>	<b>Mar-21</b>	<b>Apr-21</b>	<b>May-21</b>	<b>Jun-21</b>	<b>Jul-21</b>	<b>Aug-21</b>	<b>Sep-21</b>	<b>Oct-21</b>	<b>Nov-21</b>	<b>Dec-21</b>	<b>THIS YEAR</b>
V screen	185.92	206.08	236.83	190.51	158.15	-	-	-	-	-	-	-	977.50
backwash from city treatment plant	0.47	0.44	0.57	0.49	0.47	-	-	-	-	-	-	-	2.43
San Antonio Tunnel (forebay)	217.65	172.74	169.73	169.47	181.36	-	-	-	-	-	-	-	910.95
Frankish & Stamm Tunnel 8"	-	-	-	0.01	-	-	-	-	-	-	-	-	0.01
San Ant. Tunnel Connect to City	-	-	-	-	-	-	-	-	-	-	-	-	-
Discharge to waste	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL GRAVITY</b>	<b>404.04</b>	<b>379.26</b>	<b>407.13</b>	<b>360.48</b>	<b>339.99</b>	-	-	-	-	-	-	-	<b>1,890.89</b>
<b>Monthly</b>													
San Antonio Tunnel	217.65	172.74	169.73	169.47	181.36	-	-	-	-	-	-	-	910.95
V Screen, Frankish & Stamm Tunnel and TP Backwash	186.39	206.51	237.40	191.01	158.63	-	-	-	-	-	-	-	979.94
<b>Gravity Production</b>	<b>404.04</b>	<b>379.26</b>	<b>407.13</b>	<b>360.48</b>	<b>339.99</b>	-	-	-	-	-	-	-	<b>1,890.89</b>
<b>Cumulative</b>													
San Antonio Tunnel	217.65	390.39	560.12	729.59	910.95	-	-	-	-	-	-	-	910.95
V Screen, Frankish & Stamm Tunnel and TP Backwash	186.39	392.91	630.31	821.31	979.94	-	-	-	-	-	-	-	979.94
<b>Gravity Production</b>	<b>404.04</b>	<b>783.30</b>	<b>1,190.43</b>	<b>1,550.90</b>	<b>1,890.89</b>	-	-	-	-	-	-	-	-
Purchased Water - Upl. City to Dom. Sys.	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Production</b>	<b>875.52</b>	<b>736.96</b>	<b>818.40</b>	<b>1,063.02</b>	<b>1,191.35</b>	-	-	-	-	-	-	-	<b>4,685.26</b>
<b>Total Cumulative Production</b>	<b>875.52</b>	<b>1,612.49</b>	<b>2,430.89</b>	<b>3,493.91</b>	<b>4,685.26</b>	-	-	-	-	-	-	-	-
<b>Domestic Production</b>	<b>Jan-21</b>	<b>Feb-21</b>	<b>Mar-21</b>	<b>Apr-21</b>	<b>May-21</b>	<b>Jun-21</b>	<b>Jul-21</b>	<b>Aug-21</b>	<b>Sep-21</b>	<b>Oct-21</b>	<b>Nov-21</b>	<b>Dec-21</b>	<b>THIS YEAR</b>
Domestic Production	218.28	172.74	169.73	170.03	181.36	-	-	-	-	-	-	-	912.14
Irrigation Production	657.24	564.22	648.67	892.99	1,009.99	-	-	-	-	-	-	-	3,773.11
<b>RainFall (Inches)</b>	<b>Jan-21</b>	<b>Feb-21</b>	<b>Mar-21</b>	<b>Apr-21</b>	<b>May-21</b>	<b>Jun-21</b>	<b>Jul-21</b>	<b>Aug-21</b>	<b>Sep-21</b>	<b>Oct-21</b>	<b>Nov-21</b>	<b>Dec-21</b>	
RainFall (Inches)	3.31	0.03	1.52	0.88	-	-	-	-	-	-	-	-	-
<b>Cumulative (Inches)</b>	<b>3.31</b>	<b>3.34</b>	<b>4.86</b>	<b>5.74</b>	<b>5.74</b>	-	-	-	-	-	-	-	-

2021 Consumption

<b>DOMESTIC</b>	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Dom. Sys. - Base	61.06	32.19	65.32	53.12	100.91	-	-	-	-	-	-	-	312.60
Dom. Sys. - Supplemental	10.29	23.50	9.82	32.58	9.11	-	-	-	-	-	-	-	85.30
Dom Sys - Tier 3	4.81	20.39	4.48	29.01	2.83	-	-	-	-	-	-	-	61.52
Dom. Sys. - Del. to Upland(24th/Campus)	33.91	28.44	31.25	35.94	22.70	-	-	-	-	-	-	-	152.25
Dom. Sys. -Del. To Upland ( Well 16/15)	-	-	-	0.35	-	-	-	-	-	-	-	-	0.35
Dom. Sys. - Del. to Upland(24th/Mtn)-installed 4/2/19	-	-	-	-	-	-	-	-	-	-	-	-	-
Tunnel meter to the Upland	-	-	-	-	-	-	-	-	-	-	-	-	-
Discharge to waste	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL</b>	<b>110.07</b>	<b>104.52</b>	<b>110.87</b>	<b>151.00</b>	<b>135.55</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>612.02</b>

Truck Loads - note only crosswall projects	-	-	-	-	-	-	-	-	-	-	-	-	-
Well 32 Hydrant Mtr. - note only( started 8/6/18)Crosswalls	-	-	-	-	-	-	-	-	-	-	-	-	-

Irr. Note only Del. to MVWD(wheeled through Upland)	35.64	-	-	-	-	-	-	-	-	-	-	-	35.64
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<b>IRRIGATION</b>	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Irrig. Sys.-Upland(Pump & Rec'd) (City W#15)	166.97	152.06	181.80	173.52	232.59	-	-	-	-	-	-	-	906.94
Irrig. Sys. - Upl. City - Tier 1	297.99	268.16	296.42	535.74	596.17	-	-	-	-	-	-	-	1,994.47
Irrig. Sys. - Upl. City - Tier 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Monte Vista - Tier 1	85.54	46.00	49.90	47.40	37.90	-	-	-	-	-	-	-	266.74
Irrig. Sys. - Monte Vista - Tier 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Ont. City - Tier 1	44.20	40.70	44.30	42.00	33.70	-	-	-	-	-	-	-	204.90
Irrig. Sys. - Ont. City - Tier 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Cucamonga Valley - Tier 1	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Cucamonga Valley - Tier 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Holiday Rock Co - Tier 1	14.52	14.52	14.29	18.22	22.86	-	-	-	-	-	-	-	84.41
Irrig. Sys. - Holiday Rock Co - Tier 2	0.85	0.43	-	-	2.23	-	-	-	-	-	-	-	3.51
Irrig. Sys. - Holiday Rock Co - Tier 3	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Red Hill Golf Course - Tier 1	8.86	11.88	13.85	30.66	37.72	-	-	-	-	-	-	-	102.97
Irrig. Sys. - Red Hill Golf Course - Tier 2	-	-	-	0.75	5.11	-	-	-	-	-	-	-	5.86
Irrig. Sys. - Red Hill Golf Course - Tier 3	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Red Hills HOA - Tier 1	0.06	0.05	0.05	1.41	1.37	-	-	-	-	-	-	-	2.94
Irrig. Sys. - Red Hills HOA - Tier 2	-	-	-	0.11	-	-	-	-	-	-	-	-	0.11
Irrig. Sys. - Red Hills HOA - Tier 3	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrig. Sys. - Minor Irrigators - Tier 1	0.49	1.67	0.38	1.30	5.37	-	-	-	-	-	-	-	9.21
Irrig. Sys. - Minor Irrigators - Tier 2	-	-	-	0.12	1.58	-	-	-	-	-	-	-	1.70
Irrig. Sys. - Minor irrigators - Tier 3	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL</b>	<b>619.49</b>	<b>535.47</b>	<b>600.98</b>	<b>851.22</b>	<b>976.59</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,583.75</b>

<b>COMPANY TOTALS</b>	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
San Antonio Heights	76.16	76.08	79.62	114.71	112.85	-	-	-	-	-	-	-	459.42
City of Upland	498.87	448.65	509.48	745.55	851.46	-	-	-	-	-	-	-	3,054.01
Monte Vista Water District	85.54	46.00	49.90	47.40	37.90	-	-	-	-	-	-	-	266.74
City of Ontario	44.20	40.70	44.30	42.00	33.70	-	-	-	-	-	-	-	204.90
Cucamonga Valley Water District	-	-	-	-	-	-	-	-	-	-	-	-	-
Holiday Rock Company	15.38	14.95	14.29	18.22	25.09	-	-	-	-	-	-	-	87.92
Red Hills Golf Course	8.86	11.88	13.85	31.41	42.83	-	-	-	-	-	-	-	108.83
Red Hill HOA	0.06	0.05	0.05	1.51	1.37	-	-	-	-	-	-	-	3.04
Minor Irrigators	0.49	1.67	0.38	1.42	6.95	-	-	-	-	-	-	-	10.91
<b>TOTAL</b>	<b>729.57</b>	<b>639.99</b>	<b>711.86</b>	<b>1,002.22</b>	<b>1,112.14</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,195.76</b>

<b>IRRIGATORS</b>	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Irrigator Emberton	0.03	0.05	0.04	0.58	0.47	-	-	-	-	-	-	-	1.18
Irrigator McMurray	-	-	-	-	-	-	-	-	-	-	-	-	-
Irrigator Mistretta	-	-	-	-	0.65	-	-	-	-	-	-	-	0.65
Irrigator Nisbit	-	-	-	-	1.12	-	-	-	-	-	-	-	1.12
Irrigator Scheu	-	0.75	-	-	4.00	-	-	-	-	-	-	-	4.75
Irrigator Pfister	0.46	0.87	0.34	0.84	0.72	-	-	-	-	-	-	-	3.22



2021 Spread and Storage

Cucamonga Basin	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
23rd St. (Meter) - Basin 6 - A	50.37	2.54	0.04	0.01	5.78	-	-	-	-	-	-	-	58.75
15th Street Basin	-	-	-	-	-	-	-	-	-	-	-	-	-
Basin 3 meter (23rd street Clock)	60.00	69.10	83.48	51.39	41.12	-	-	-	-	-	-	-	305.09
Frankish & Stamm Tunnel to Basin 3	-	-	-	0.01	-	-	-	-	-	-	-	-	0.01
Vscreen via Frankish & Stamm Meter to Basin 3	-	-	-	-	-	-	-	-	-	-	-	-	-
PRV Station (res 1)(basin 6)	0.32	-	-	-	-	-	-	-	-	-	-	-	0.32
<b>Monthly Spread</b>	<b>110.69</b>	<b>71.64</b>	<b>83.53</b>	<b>51.41</b>	<b>46.90</b>	-	-	-	-	-	-	-	<b>364.16</b>
<b>Cumulative Spread</b>	<b>110.69</b>	<b>182.33</b>	<b>265.86</b>	<b>317.27</b>	<b>364.16</b>	-	-	-	-	-	-	-	-

Six Basins	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
<b>Monthly Spread</b>	<b>33.29</b>	<b>17.80</b>	<b>17.24</b>	<b>9.08</b>	<b>10.63</b>	-	-	-	-	-	-	-	<b>88.04</b>
<b>Cumulative Spread</b>	<b>33.29</b>	<b>51.09</b>	<b>68.33</b>	<b>77.41</b>	<b>88.04</b>	-	-	-	-	-	-	-	-

Note: City of Upland Well Exercising may contribute to spread

Note: Maximum end of year storage limit: 2,000 AF

Previous Storage	1,953.00	1,970.87	1,979.90	1,978.80	1,973.31	-	-	-	-	-	-	-	-
Spread	33.29	17.80	17.24	9.08	10.63	-	-	-	-	-	-	-	-
Unused Monthly OSY	(15.42)	(8.77)	(18.34)	(14.57)	(15.31)	-	-	-	-	-	-	-	-
<b>Current Storage Estimate</b>	<b>1,971</b>	<b>1,980</b>	<b>1,979</b>	<b>1,973</b>	<b>1,969</b>	-	-	-	-	-	-	-	-

932 yearly OSY = 77.67 monthly OSY

Chino Basin	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
<b>Monthly Spread</b>	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cumulative Spread</b>	-	-	-	-	-	-	-	-	-	-	-	-	-

Local Supplemental Account (Spreading)*	3,923.25	3,923.25	3,923.25	3,923.25	3,923.25	-	-	-	-	-	-	-	-
Carry Over Account	1,232.00	1,232.00	1,232.00	1,232.00	1,232.00	-	-	-	-	-	-	-	-
Excess Carry Over Account*	1,433.40	1,535.44	1,638.10	1,740.77	1,842.87	-	-	-	-	-	-	-	-
Preemptive Replenishment Account	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Storage</b>	<b>6,588.65</b>	<b>6,690.69</b>	<b>6,793.35</b>	<b>6,896.02</b>	<b>6,998.12</b>	-	-	-	-	-	-	-	-
Spread	-	-	-	-	-	-	-	-	-	-	-	-	-
Unused Monthly OSY	102.04	102.67	102.67	102.10	102.67	-	-	-	-	-	-	-	-
<b>Current Storage Estimate*</b>	<b>6,691</b>	<b>6,793</b>	<b>6,896</b>	<b>6,998</b>	<b>7,101</b>	-	-	-	-	-	-	-	-

1,232 yearly OSY = 102.67 monthly OSY

\* Does not include yearly storage losses calc of 0.07%

Company Wide	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
<b>Monthly Spread</b>	<b>143.98</b>	<b>89.44</b>	<b>100.77</b>	<b>60.49</b>	<b>57.52</b>	-	-	-	-	-	-	-	<b>452.20</b>
<b>Cumulative Spread</b>	<b>143.98</b>	<b>233.42</b>	<b>334.18</b>	<b>394.68</b>	<b>452.20</b>	-	-	-	-	-	-	-	-
<b>Total Current Storage Estimate</b>	<b>8,662</b>	<b>8,773</b>	<b>8,875</b>	<b>8,971</b>	<b>9,069</b>	-	-	-	-	-	-	-	-

Meter to spread ponds (NOTE ONLY)	97.77	51.50	-	8,209.55	89.72	-	-	-	-	-	-	-	8,448.54
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# 2021 GW Production Rights

Yearly %	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
	8%	17%	25%	33%	42%	50%	58%	67%	75%	83%	92%	100%

**Cucamonga Basin Production**

Yearly Production Rights = 5938 (4,500AF + 1438AF 10-yr Average Spread)

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Production	377.76	271.27	315.27	609.74	758.39	-	-	-	-	-	-	-	-
Cumulative Production	377.76	649.03	964.30	1,574.04	2,332.43	-	-	-	-	-	-	-	<b>2,332.43</b>
Cumulative Production Rights	494.85	989.69	1,484.54	1,979.39	2,474.23	-	-	-	-	-	-	-	<b>5,938</b>
<b>% of Production Rights*</b>	<b>6.36%</b>	<b>10.93%</b>	<b>16.24%</b>	<b>26.51%</b>	<b>39.28%</b>	<b>45.61%</b>	<b>54.45%</b>	<b>62.87%</b>	<b>71.37%</b>	<b>79.90%</b>	<b>88.43%</b>	<b>96.97%</b>	<b>39.3%</b>

**Six Basins Production**

Yearly Production Rights = 932AF

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Production	93.09	86.44	96.01	92.24	92.98	-	-	-	-	-	-	-	-
Cumulative Production	93.09	179.53	275.53	367.77	460.75	-	-	-	-	-	-	-	<b>460.75</b>
Cumulative Production Rights	77.68	155.35	233.03	310.70	388.38	-	-	-	-	-	-	-	<b>932</b>
<b>% of Production Rights*</b>	<b>9.99%</b>	<b>19.26%</b>	<b>29.56%</b>	<b>39.46%</b>	<b>49.43%</b>	<b>59.22%</b>	<b>69.51%</b>	<b>79.31%</b>	<b>89.51%</b>	<b>99.37%</b>	<b>109.56%</b>	<b>119.24%</b>	<b>49.4%</b>

**Chino Basin Production**

Note: Chino Basin production rights are calculated from July through June.

Yearly Production Rights = 1232AF

	Dec-19	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Production		0.63	-	-	0.57	-	-	-	-	-	-	-	-	1.20
Cumulative Production for 2020		0.63	0.63	0.63	1.20	1.20	-	-	-	-	-	-	-	-
<b>Water Year 20-21</b>														
Cumulative Production	593.50	594.13	594.13	594.13	594.70	594.70	-	-	-	-	-	-	-	594.70
Cumulative Rights	616.00	718.67	821.33	924.00	1,026.67	1,129.33	1,232.00	-	-	-	-	-	-	1,232.00
<b>% of Production Rights 19-20*</b>		<b>48.22%</b>	<b>48.22%</b>	<b>48.22%</b>	<b>48.27%</b>	<b>48.27%</b>	<b>48.29%</b>	-	-	-	-	-	-	-
<b>Water Year 21-22</b>														
Cumulative Production		-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Rights		102.67	205.33	308.00	410.67	513.33	616.00	-	-	-	-	-	-	1,232.00
<b>% of Production Rights 20-21*</b>		-	-	-	-	-	-	-	-	-	-	-	-	-

\* - Out months are Exponential Smoothing (ETS) forecasts based on basin production to date

## 2021 Production v Consumption

Yearly %	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
	8%	17%	25%	33%	42%	50%	58%	67%	75%	83%	92%	100%

### Consumption versus Entitlement, Company Wide **Active Shares**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	729.57	639.99	711.86	1,002.22	1,112.14	-	-	-	-	-	-	-	-
Cumulative Consumption	729.57	1,369.55	2,081.41	3,083.63	4,195.76	-	-	-	-	-	-	-	<b>4,195.76</b>
<i>Cumulative Entitlement (straight line)</i>	<i>1,047.68</i>	<i>2,095.37</i>	<i>3,143.05</i>	<i>4,190.73</i>	<i>5,238.41</i>	-	-	-	-	-	-	-	<b>12,572</b>
<b>% of Entitlement*</b>	<b>5.80%</b>	<b>10.89%</b>	<b>16.56%</b>	<b>24.53%</b>	<b>33.37%</b>	<b>39.46%</b>	<b>46.66%</b>	<b>53.67%</b>	<b>60.71%</b>	<b>67.76%</b>	<b>74.82%</b>	<b>81.88%</b>	<b>33.4%</b>

### Consumption versus Entitlement, Company Wide **Total Shares**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	729.57	639.99	711.86	1,002.22	1,112.14	-	-	-	-	-	-	-	-
Cumulative Consumption	729.57	1,369.55	2,081.41	3,083.63	4,195.76	-	-	-	-	-	-	-	<b>4,195.76</b>
<i>Cumulative Entitlement (straight line)</i>	<i>1,083.33</i>	<i>2,166.67</i>	<i>3,250.00</i>	<i>4,333.33</i>	<i>5,416.67</i>	-	-	-	-	-	-	-	<b>13,000</b>
<b>% of Entitlement*</b>	<b>5.61%</b>	<b>10.54%</b>	<b>16.01%</b>	<b>23.72%</b>	<b>32.28%</b>	<b>38.16%</b>	<b>45.13%</b>	<b>51.90%</b>	<b>58.71%</b>	<b>65.53%</b>	<b>72.36%</b>	<b>79.18%</b>	<b>32.3%</b>

### Production versus Consumption, Company Wide

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Production	875.52	736.96	818.40	1,063.02	1,191.35	-	-	-	-	-	-	-	4,685.26
Consumption	729.57	639.99	711.86	1,002.22	1,112.14	-	-	-	-	-	-	-	4,195.76
Spread	143.98	89.44	100.77	60.49	57.52	-	-	-	-	-	-	-	452.20
Total Consumption	873.55	729.42	812.62	1,062.71	1,169.66	-	-	-	-	-	-	-	4,647.96
Difference	1.98	7.54	5.78	0.30	21.69	-	-	-	-	-	-	-	37.29
<b>% of Production</b>	<b>0.2%</b>	<b>1.0%</b>	<b>0.7%</b>	<b>0.0%</b>	<b>1.8%</b>	<b>0.0%</b>	<b>0.00%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.8%</b>

### Production versus Consumption, Domestic System

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Production	218.28	172.74	169.73	170.03	181.36	-	-	-	-	-	-	-	<b>912.14</b>
Consumption	110.07	104.52	110.87	151.00	135.55	-	-	-	-	-	-	-	<b>612.02</b>
Monthly Difference	108.21	68.23	58.86	19.03	45.81	-	-	-	-	-	-	-	<b>300.13</b>
<b>% difference</b>	<b>98.30%</b>	<b>65.28%</b>	<b>53.08%</b>	<b>12.60%</b>	<b>33.79%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>49.0%</b>

### Production versus Consumption, Irrigation System

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Production	657.24	564.22	648.67	892.99	1,009.99	-	-	-	-	-	-	-	3,773.11
Addition from Domestic	108.21	68.23	58.86	19.03	45.81	-	-	-	-	-	-	-	300.13
Total Production	765.45	632.45	707.53	912.02	1,055.80	-	-	-	-	-	-	-	<b>4,073.24</b>
Consumption	763.47	624.91	701.75	911.71	1,034.11	-	-	-	-	-	-	-	<b>4,035.95</b>
Monthly Difference	1.98	7.54	5.78	0.30	21.69	-	-	-	-	-	-	-	37.29
<b>% difference</b>	<b>0.26%</b>	<b>1.21%</b>	<b>0.82%</b>	<b>0.03%</b>	<b>2.10%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.9%</b>

\* - Out months are Exponential Smoothing (ETS) forecasts based on consumption to date

# 2021 Consumption Analysis

Yearly %	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
	8%	17%	25%	33%	42%	50%	58%	67%	75%	83%	92%	100%

**COMPANY TOTALS**

**Active Shares**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	729.57	639.99	711.86	1,002.22	1,112.14	-	-	-	-	-	-	-	
Cumulative Consumption	729.57	1,369.55	2,081.41	3,083.63	4,195.76	-	-	-	-	-	-	-	<b>4,195.76</b>
Cumulative Entitlement	984.12	1,968.25	2,968.97	922.36	1,205.50	-	-	-	-	-	-	-	<b>12,572.19</b>
<b>% of Yearly Entitlement*</b>	<b>5.80%</b>	<b>10.89%</b>	<b>16.56%</b>	<b>24.53%</b>	<b>33.37%</b>	<b>39.46%</b>	<b>46.66%</b>	<b>53.67%</b>	<b>60.71%</b>	<b>67.76%</b>	<b>74.82%</b>	<b>81.88%</b>	<b>33.37%</b>

Shares 6,179

**COMPANY TOTALS**

**All Shares**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	729.57	639.99	711.86	1,002.22	1,112.14	-	-	-	-	-	-	-	
Cumulative Consumption	729.57	1,369.55	2,081.41	3,083.63	4,195.76	-	-	-	-	-	-	-	<b>4,195.76</b>
Cumulative Entitlement	1,083.33	2,166.67	3,250.00	4,333.33	5,416.67	-	-	-	-	-	-	-	<b>13,000.00</b>
<b>% of Yearly Entitlement*</b>	<b>5.61%</b>	<b>10.54%</b>	<b>16.01%</b>	<b>23.72%</b>	<b>32.28%</b>	<b>38.16%</b>	<b>45.13%</b>	<b>51.90%</b>	<b>58.71%</b>	<b>65.53%</b>	<b>72.36%</b>	<b>79.18%</b>	<b>32.28%</b>

Shares 6,389

**San Antonio Heights**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	76.16	76.08	79.62	114.71	112.85	-	-	-	-	-	-	-	
Cumulative Consumption	76.16	152.24	231.86	346.57	459.42	-	-	-	-	-	-	-	<b>459.42</b>
Cumulative Entitlement	68.48	136.95	215.53	303.12	410.89	-	-	-	-	-	-	-	<b>1,268.66</b>
<b>% of Yearly Entitlement*</b>	<b>6.00%</b>	<b>12.00%</b>	<b>18.28%</b>	<b>27.32%</b>	<b>36.21%</b>	<b>43.21%</b>	<b>51.06%</b>	<b>58.75%</b>	<b>66.46%</b>	<b>74.19%</b>	<b>81.92%</b>	<b>89.65%</b>	<b>36.21%</b>

Shares 624

**City of Upland**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	498.87	448.65	509.48	745.55	851.46	-	-	-	-	-	-	-	
Cumulative Consumption	498.87	947.52	1,457.00	2,202.55	3,054.01	-	-	-	-	-	-	-	<b>3,054.01</b>
Cumulative Entitlement	765.53	1,531.06	2,296.59	-	-	-	-	-	-	-	-	-	<b>9,186.38</b>
<b>% of Yearly Entitlement*</b>	<b>5.43%</b>	<b>10.31%</b>	<b>15.86%</b>	<b>23.98%</b>	<b>33.24%</b>	<b>39.25%</b>	<b>46.55%</b>	<b>53.63%</b>	<b>60.75%</b>	<b>67.88%</b>	<b>75.01%</b>	<b>82.15%</b>	<b>33.24%</b>

Shares 4,514.75

**Monte Vista Water District**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	85.54	46.00	49.90	47.40	37.90	-	-	-	-	-	-	-	
Cumulative Consumption	85.54	131.54	181.44	228.84	266.74	-	-	-	-	-	-	-	<b>266.74</b>
Cumulative Entitlement	56.04	112.08	168.12	224.16	280.20	-	-	-	-	-	-	-	<b>672.48</b>
<b>% of Yearly Entitlement*</b>	<b>12.72%</b>	<b>19.56%</b>	<b>26.98%</b>	<b>34.03%</b>	<b>39.66%</b>	<b>46.86%</b>	<b>53.63%</b>	<b>60.39%</b>	<b>67.19%</b>	<b>73.96%</b>	<b>80.72%</b>	<b>87.49%</b>	<b>39.66%</b>

Shares 331

**City of Ontario**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR
Consumption	44.20	40.70	44.30	42.00	33.70	-	-	-	-	-	-	-	
Cumulative Consumption	44.20	84.90	129.20	171.20	204.90	-	-	-	-	-	-	-	<b>204.90</b>
Cumulative Entitlement	50.06	100.13	150.19	200.25	250.32	-	-	-	-	-	-	-	<b>600.76</b>
<b>% of Yearly Entitlement*</b>	<b>7.36%</b>	<b>14.13%</b>	<b>21.51%</b>	<b>28.50%</b>	<b>34.11%</b>	<b>41.25%</b>	<b>47.90%</b>	<b>54.64%</b>	<b>61.38%</b>	<b>68.09%</b>	<b>74.80%</b>	<b>81.52%</b>	<b>34.11%</b>

Shares 295

\* - Out months are Exponential Smoothing (ETS) forecasts based on consumption to date

# 2021 Consumption Analysis

<b>Yearly %</b>	<b>JAN</b>	<b>FEB</b>	<b>MAR</b>	<b>APR</b>	<b>MAY</b>	<b>JUN</b>	<b>JUL</b>	<b>AUG</b>	<b>SEPT</b>	<b>OCT</b>	<b>NOV</b>	<b>DEC</b>
	8%	17%	25%	33%	42%	50%	58%	67%	75%	83%	92%	100%

**Cucamonga Valley Water District**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR	Shares	
Consumption	-	-	-	-	-	-	-	-	-	-	-	-			4
Cumulative Consumption	-	-	-	-	-	-	-	-	-	-	-	-	-		
Cumulative Entitlement	-	-	-	-	-	-	-	-	-	-	-	-	8.14		
<b>% of Yearly Entitlement*</b>															

**Holiday Rock Company**

	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR	Shares	
Consumption	15.38	14.95	14.29	18.22	25.09	-	-	-	-	-	-	-			132
Cumulative Consumption	15.38	30.33	44.61	62.83	87.92	-	-	-	-	-	-	-	87.92		
Cumulative Entitlement	14.52	29.05	45.72	64.29	87.15	-	-	-	-	-	-	-	269.10		
<b>% of Yearly Entitlement*</b>	<b>5.71%</b>	<b>11.27%</b>	<b>16.58%</b>	<b>23.35%</b>	<b>32.67%</b>	<b>38.29%</b>	<b>45.23%</b>	<b>51.88%</b>	<b>58.65%</b>	<b>65.42%</b>	<b>72.19%</b>	<b>78.96%</b>	<b>32.67%</b>		

**Red Hills Golf Course**

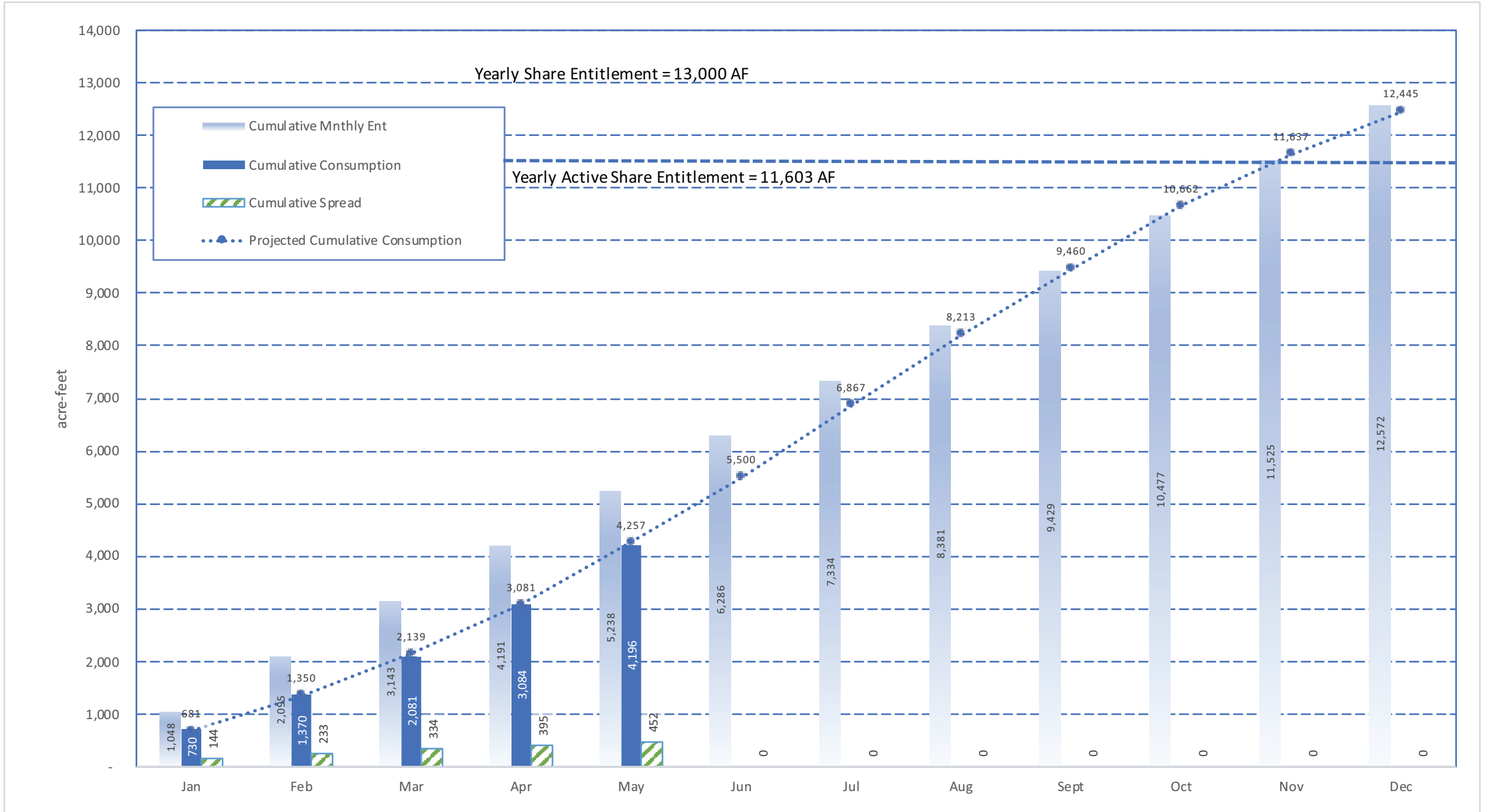
	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR	Shares	
Consumption	8.86	11.88	13.85	31.41	42.83	-	-	-	-	-	-	-			218
Cumulative Consumption	8.86	20.74	34.59	66.00	108.83	-	-	-	-	-	-	-	108.83		
Cumulative Entitlement	23.97	47.94	75.45	106.10	143.83	-	-	-	-	-	-	-	444.08		
<b>% of Yearly Entitlement*</b>	<b>2.00%</b>	<b>4.67%</b>	<b>7.79%</b>	<b>14.86%</b>	<b>24.51%</b>	<b>28.44%</b>	<b>34.54%</b>	<b>40.30%</b>	<b>46.13%</b>	<b>51.97%</b>	<b>57.82%</b>	<b>63.67%</b>	<b>24.51%</b>		

**Minor Irrigators**

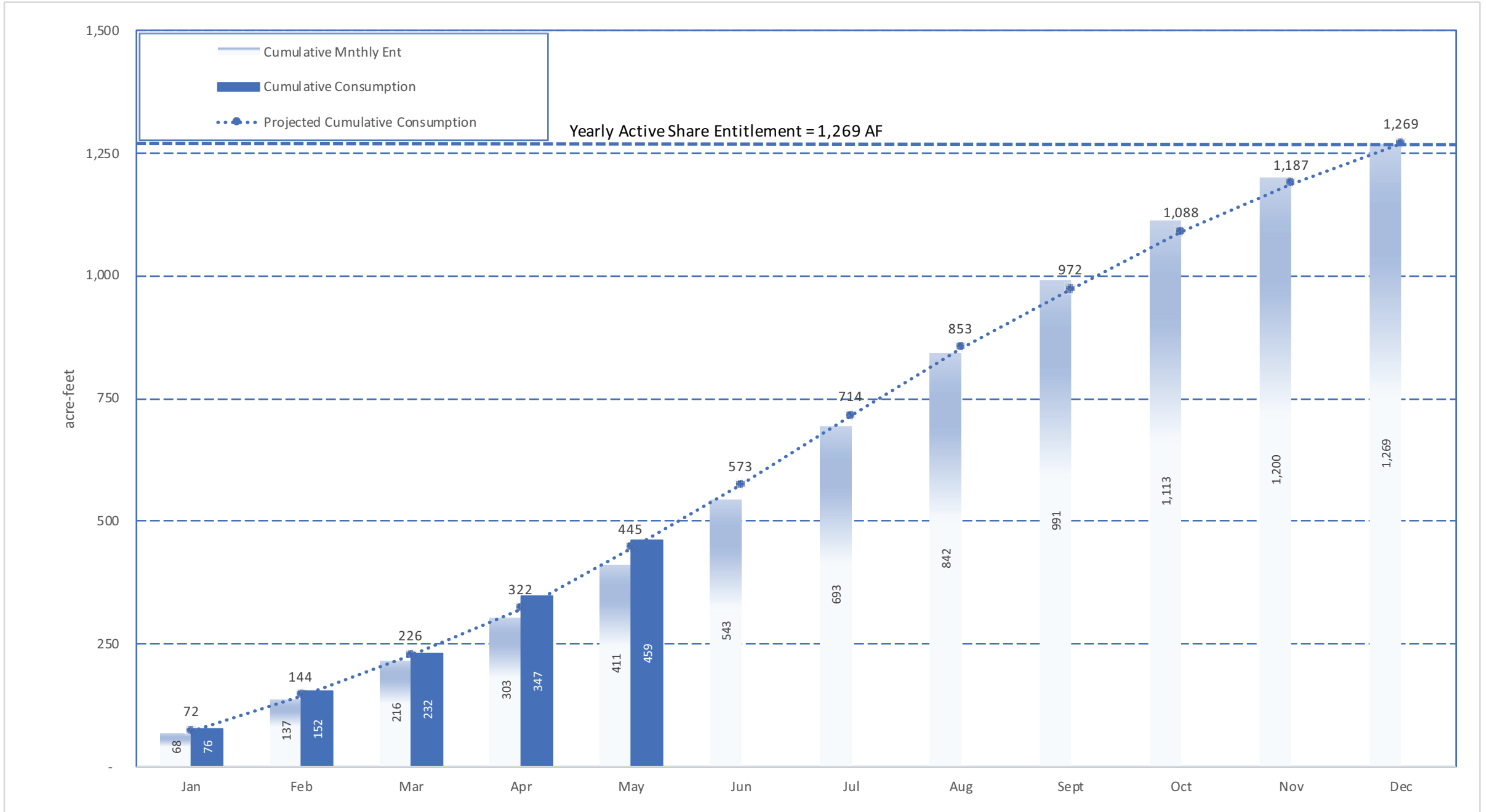
	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	THIS YEAR	Shares	
Consumption	0.49	1.67	0.38	1.42	6.95	-	-	-	-	-	-	-			50
Cumulative Consumption	0.49	2.17	2.54	3.97	10.91	-	-	-	-	-	-	-	10.91		
Cumulative Entitlement	5.52	11.04	17.37	24.43	33.11	-	-	-	-	-	-	-	102.25		
<b>% of Yearly Entitlement*</b>	<b>0.48%</b>	<b>2.12%</b>	<b>2.49%</b>	<b>3.88%</b>	<b>10.67%</b>	<b>11.28%</b>	<b>13.90%</b>	<b>16.16%</b>	<b>18.60%</b>	<b>21.04%</b>	<b>23.48%</b>	<b>25.91%</b>	<b>10.67%</b>		

\* - Out months are Exponential Smoothing (ETS) forecasts based on consumption to date

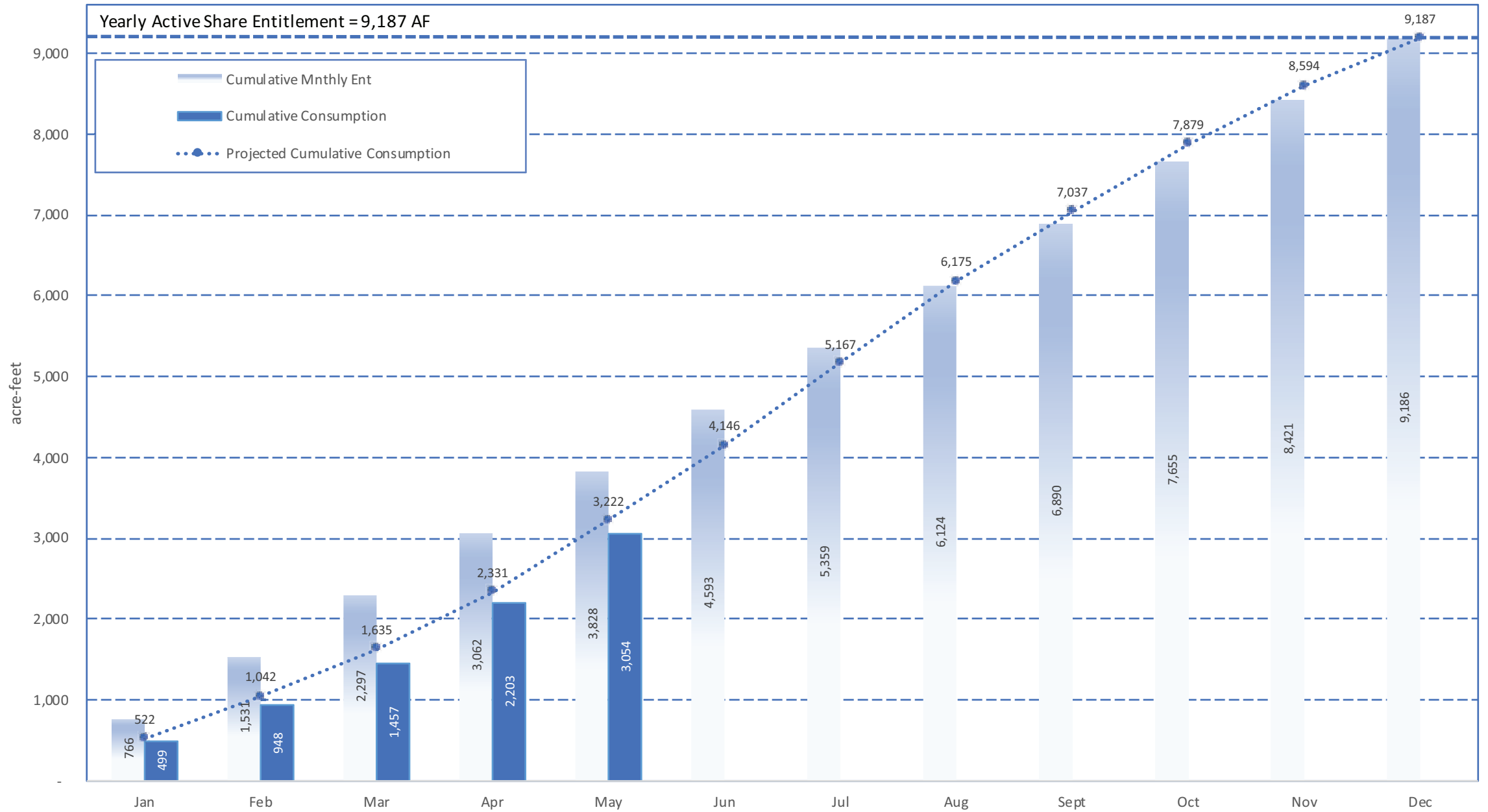
# 2021 Consumption Chart



# 2021 Domestic Consumption

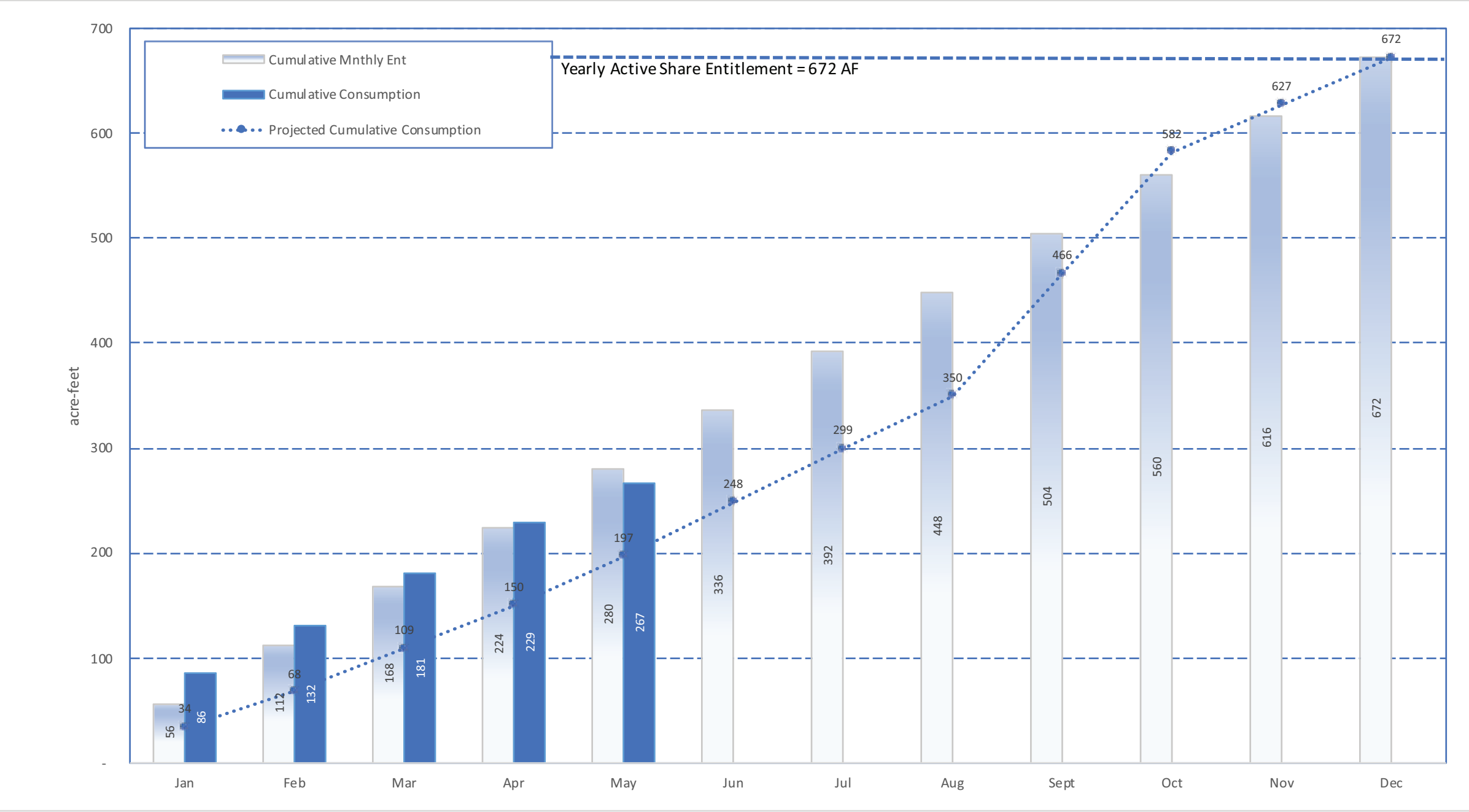


# 2021 Upland Consumption

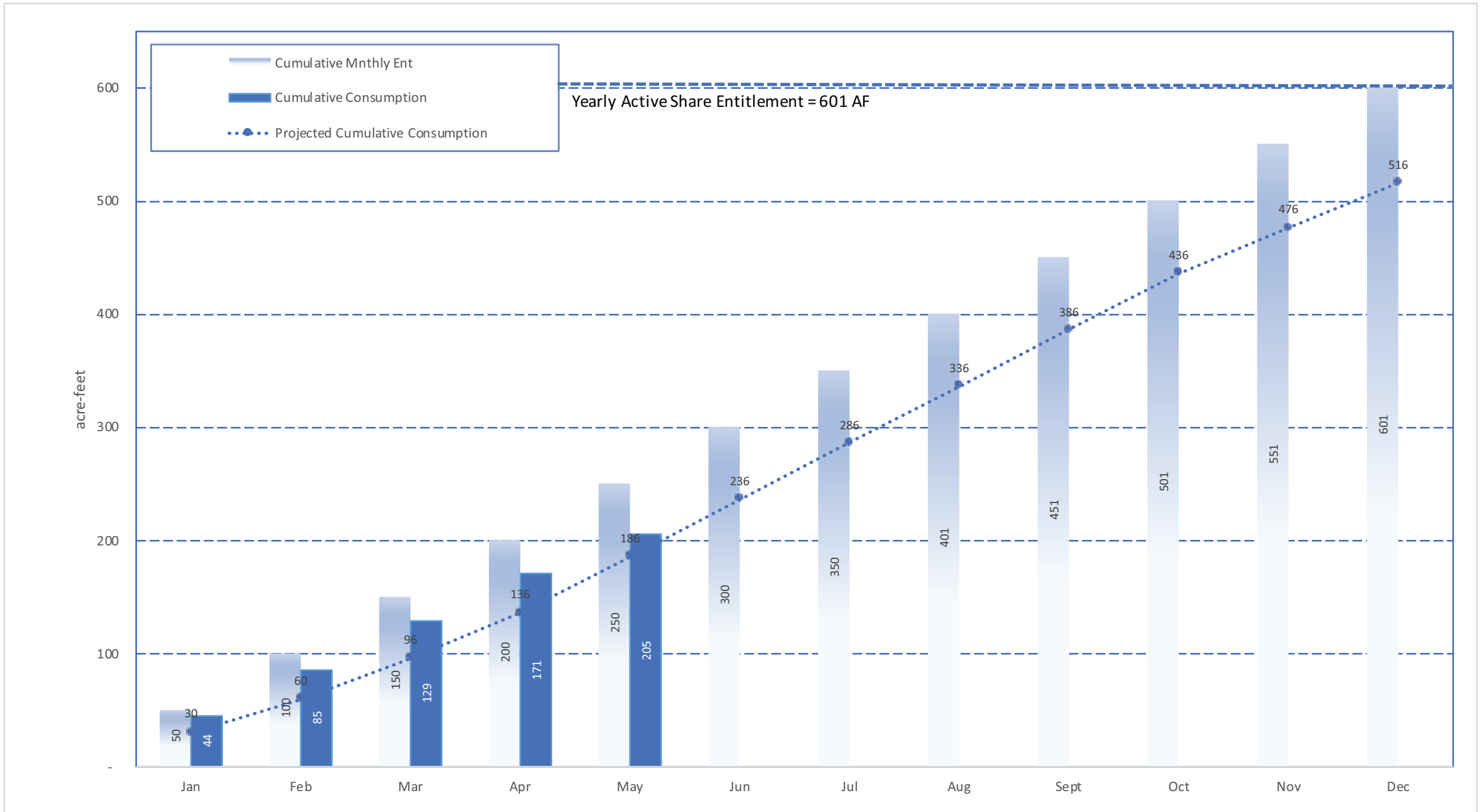




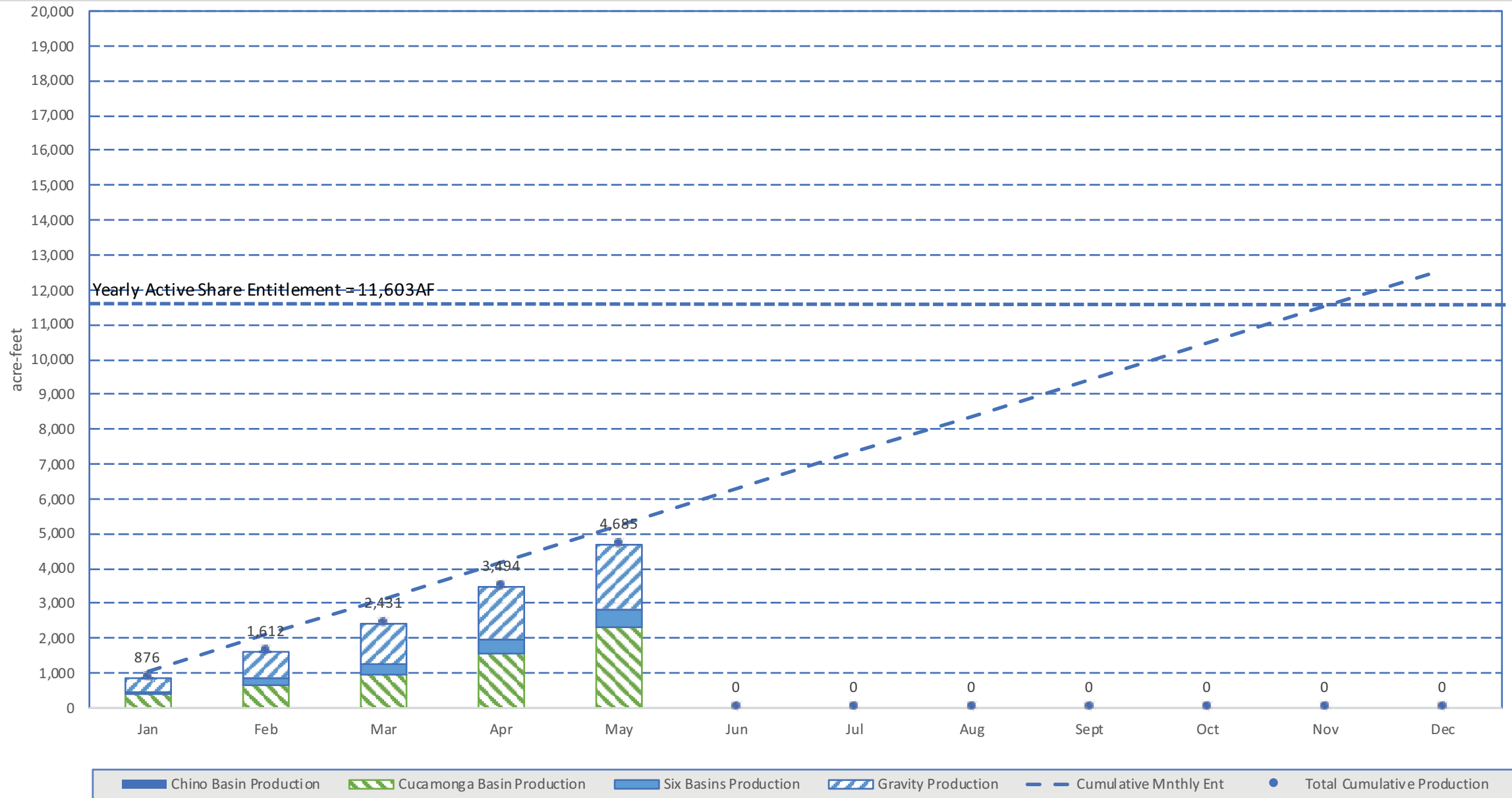
# 2021 Monte Vista Consumption



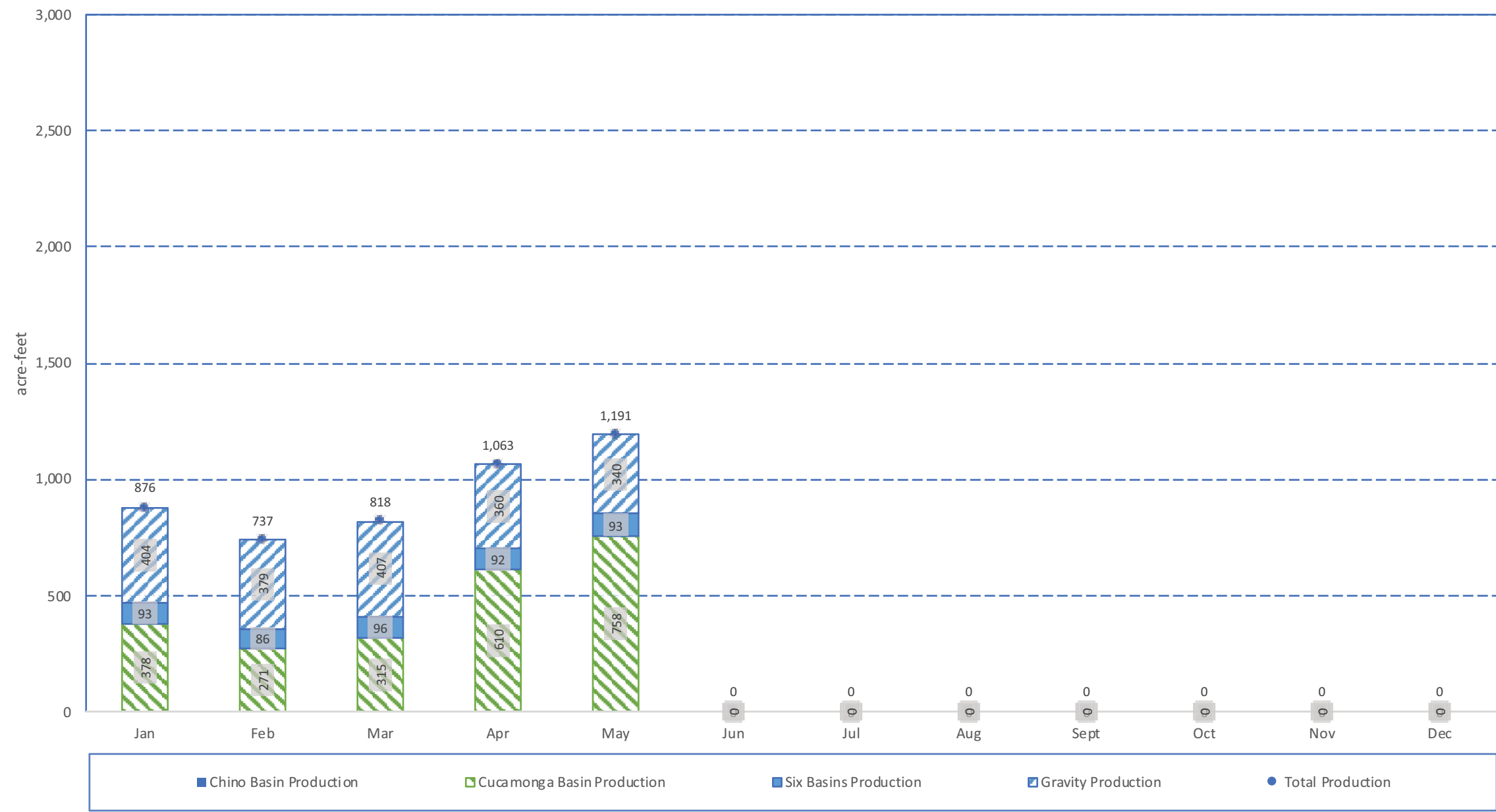
# 2021 Ontario Consumption



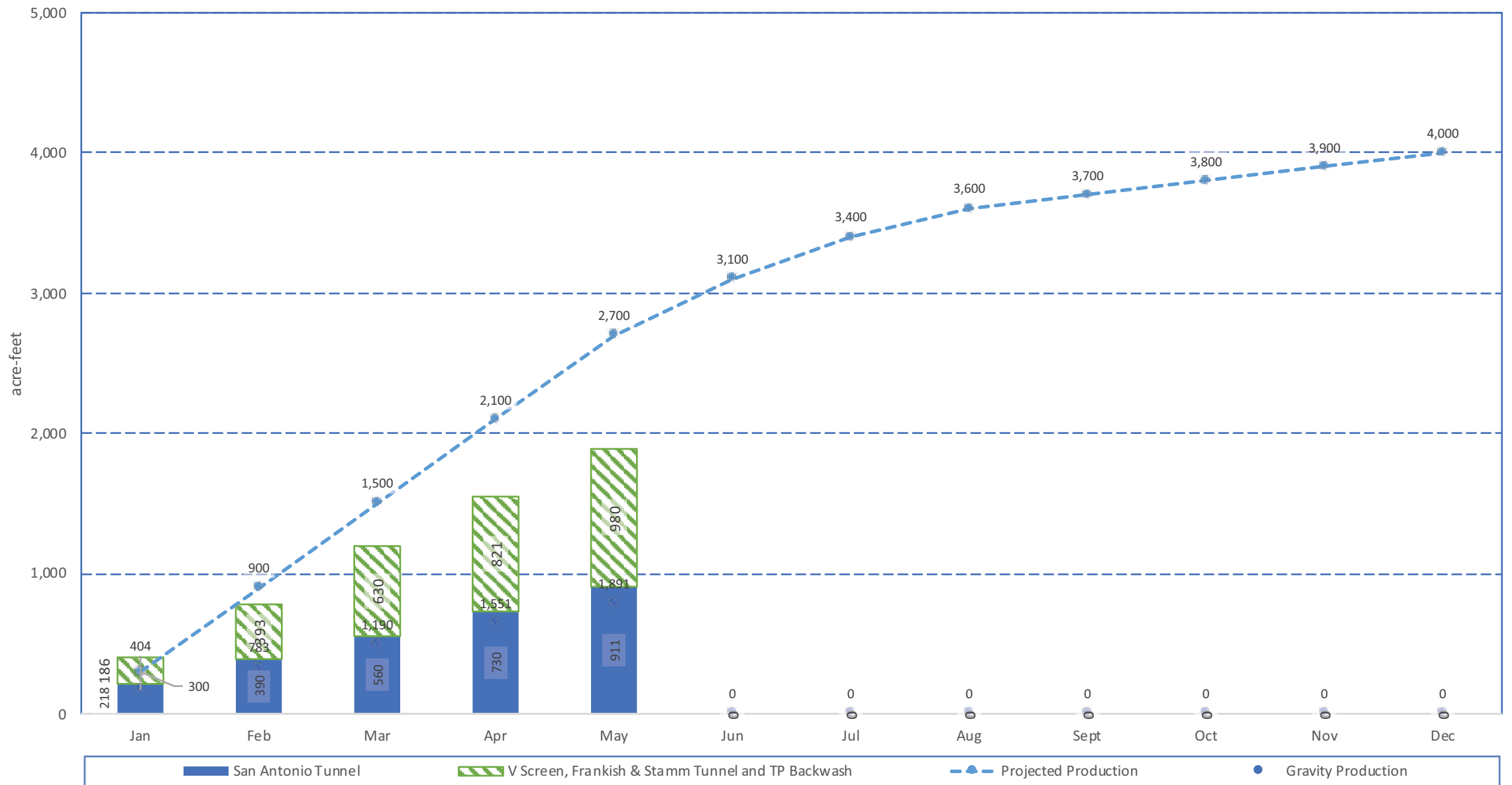
# 2021 Total Yearly Production



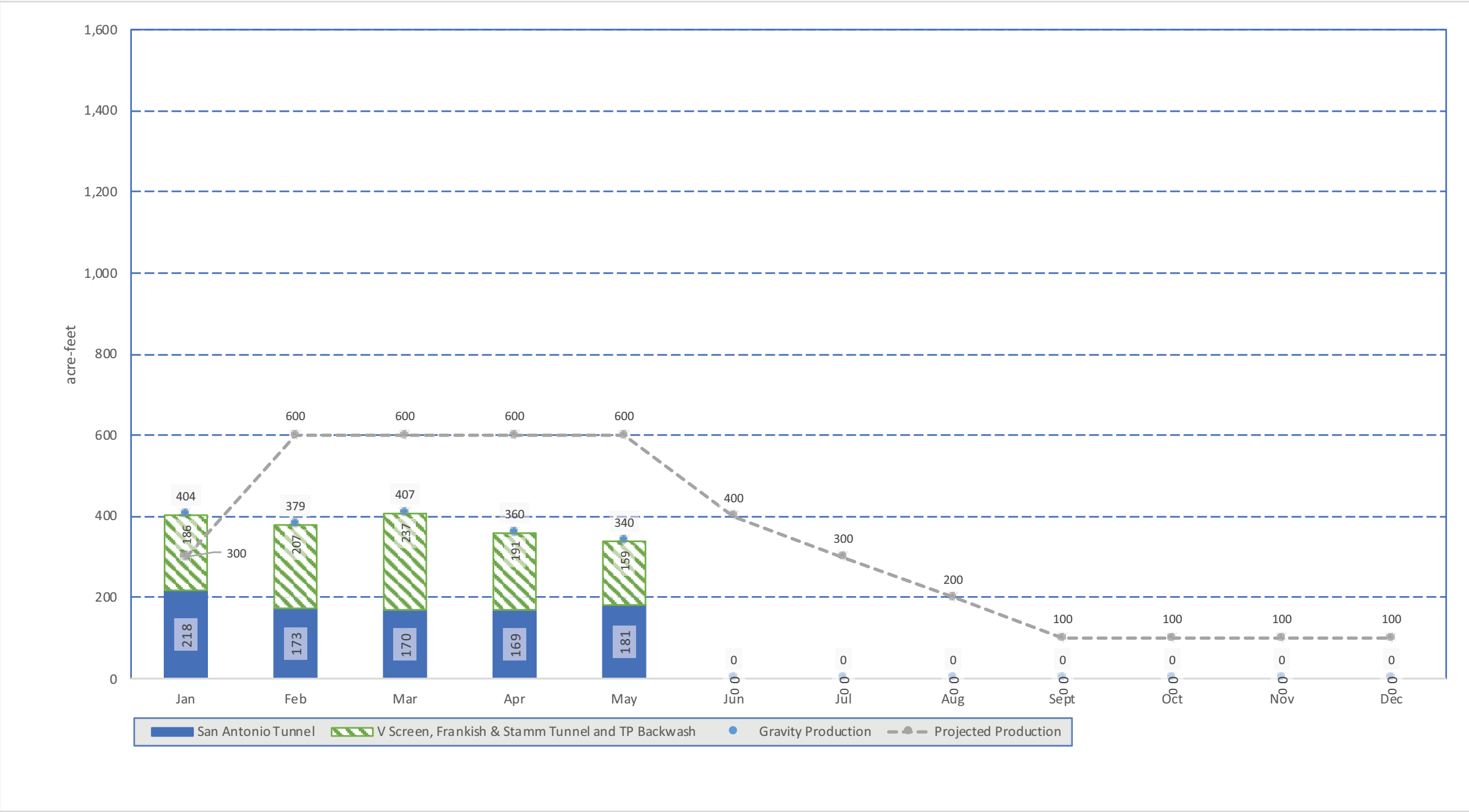
# 2021 Monthly Production



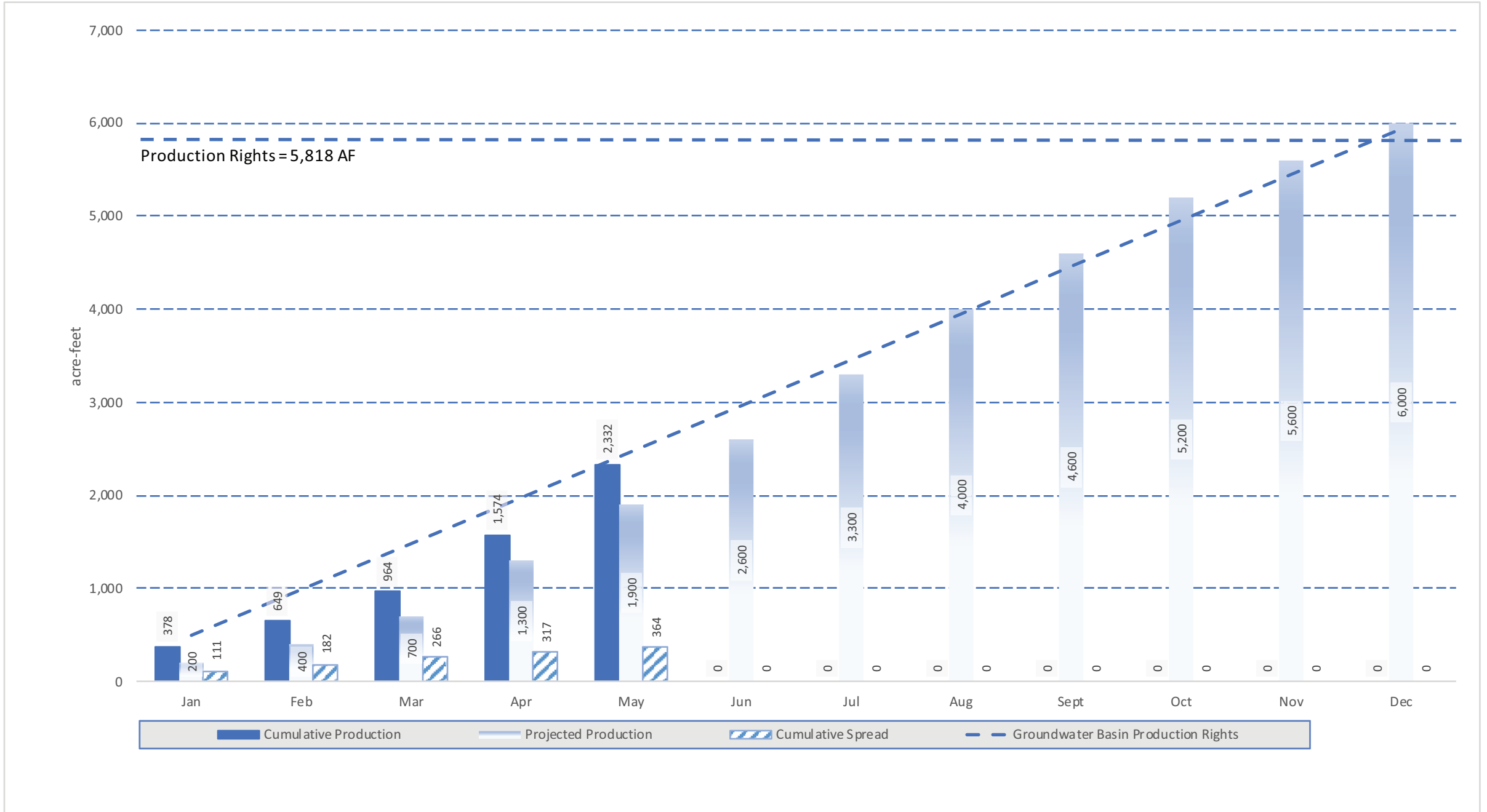
# 2021 Gravity Cumulative



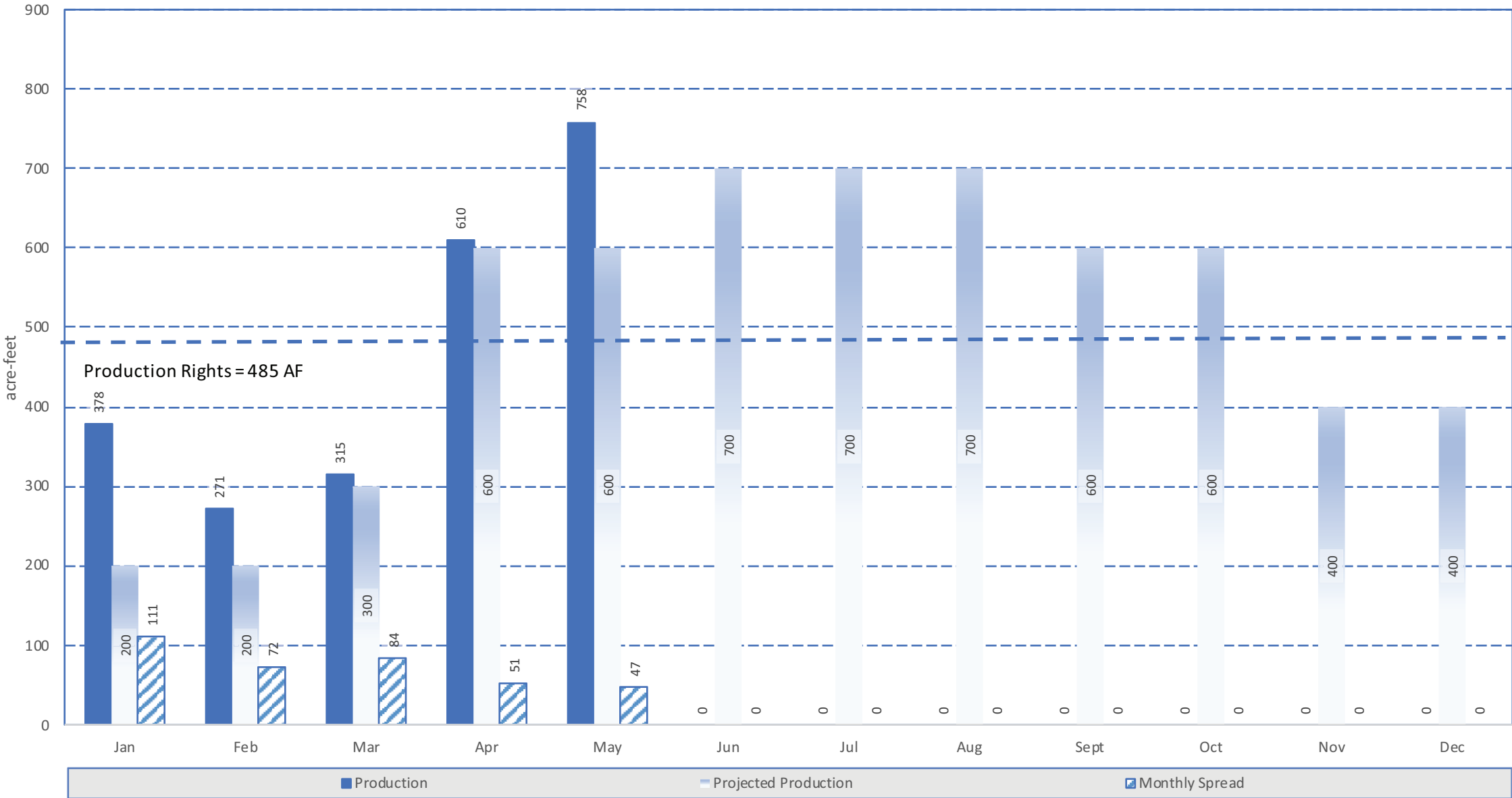
# 2021 Gravity Monthly



# 2021 Cucamonga Basin Cumulative

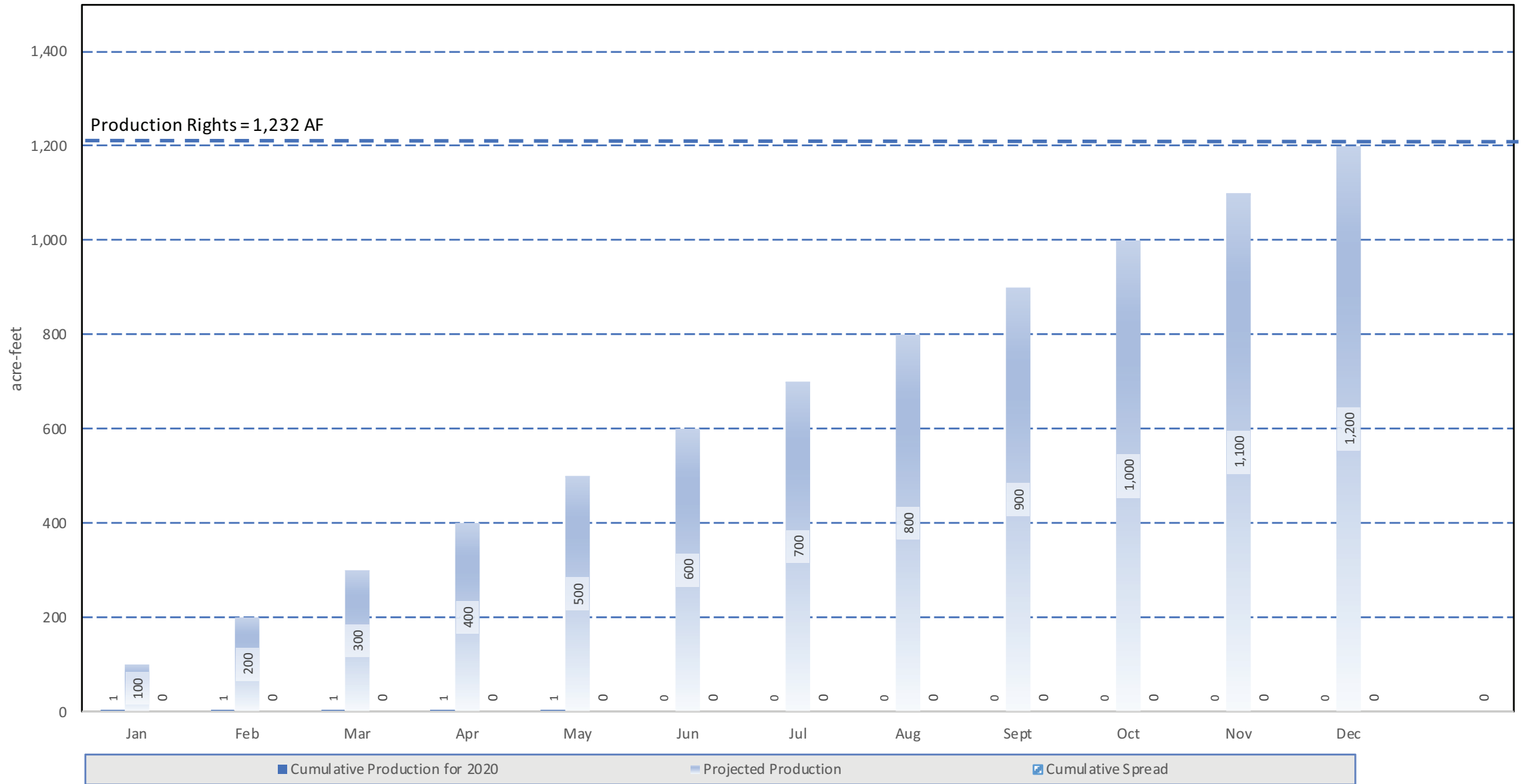


# 2021 Cucamonga Basin Monthly

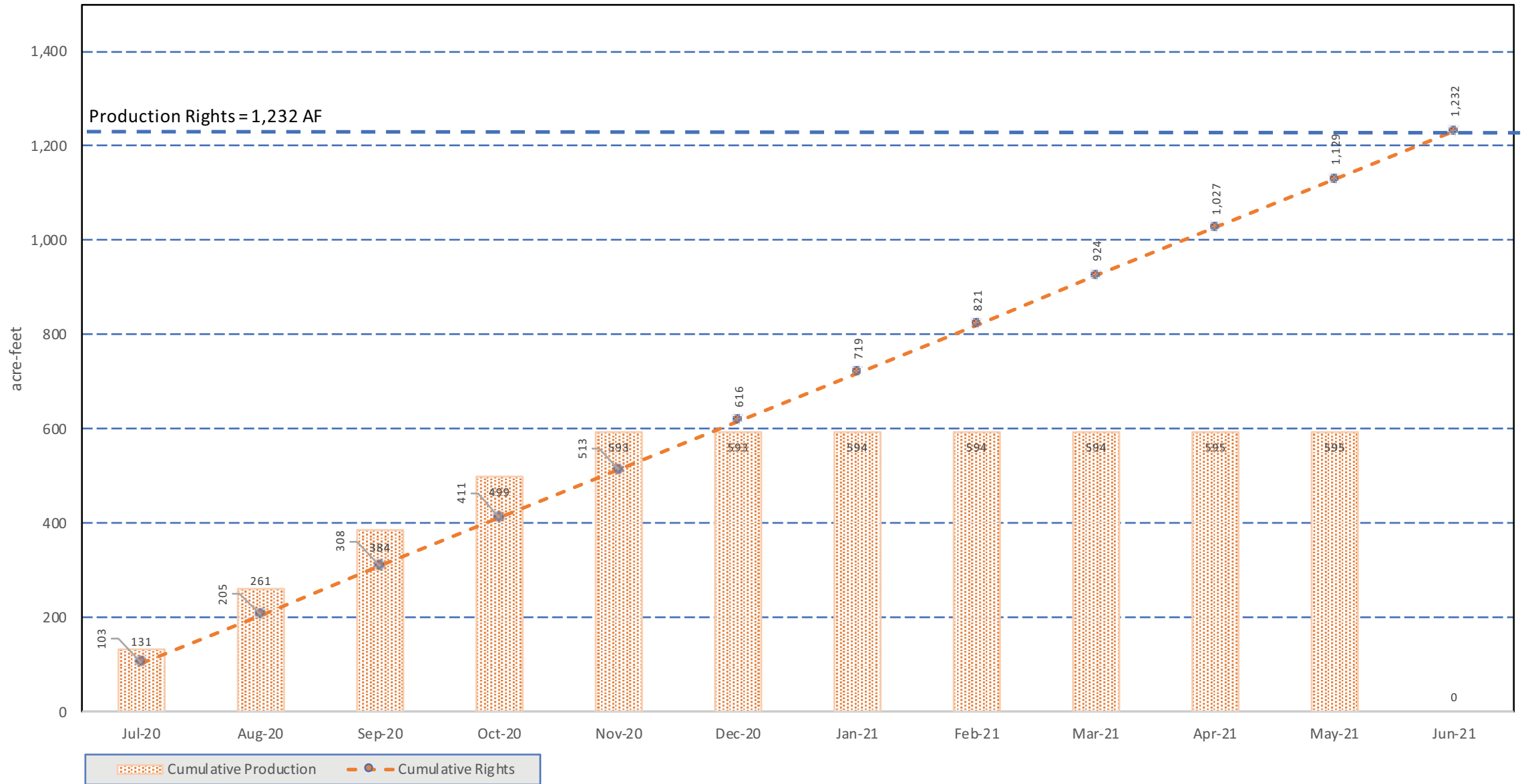




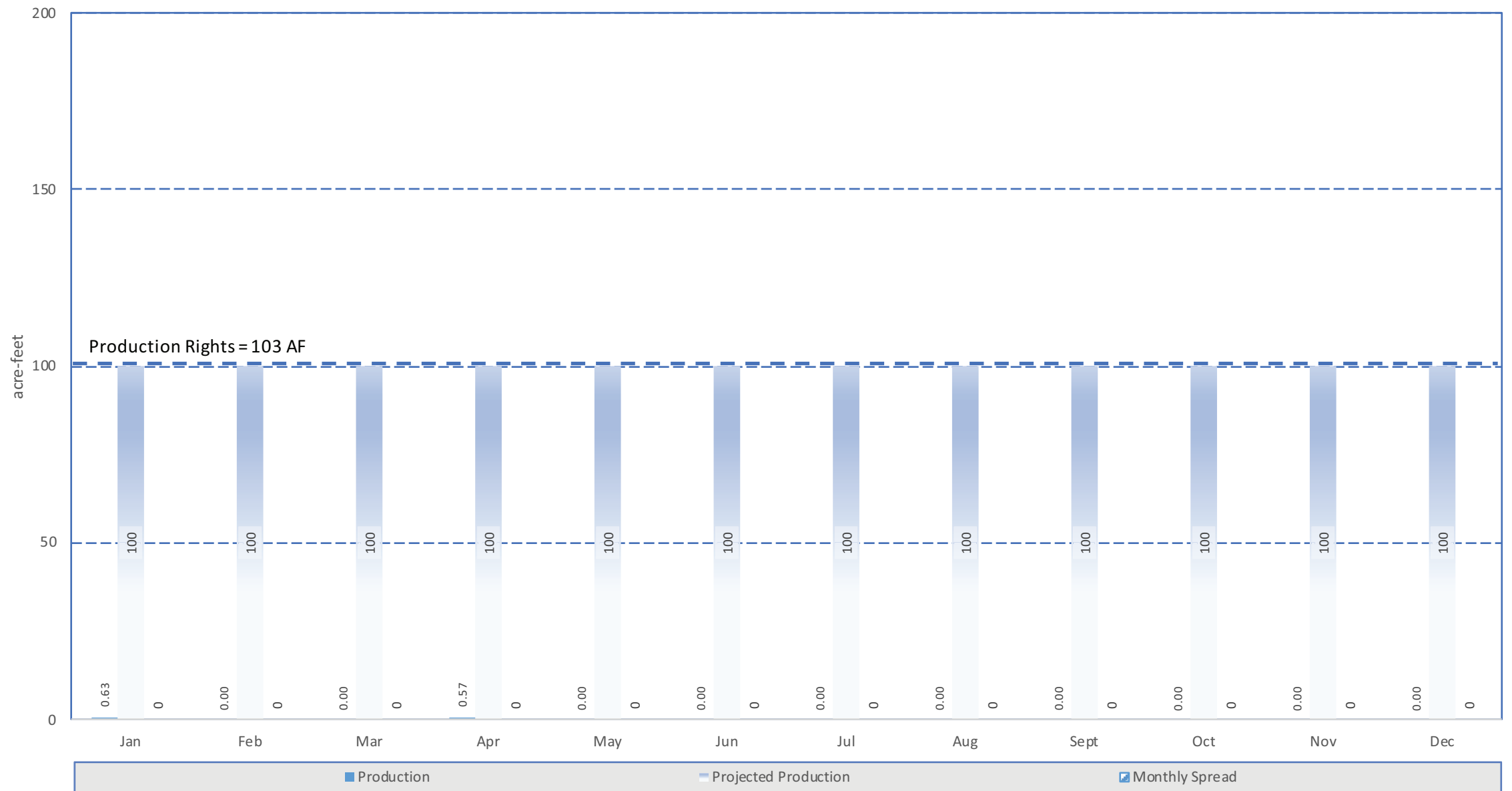
# 2021 Chino Basin Cumulative



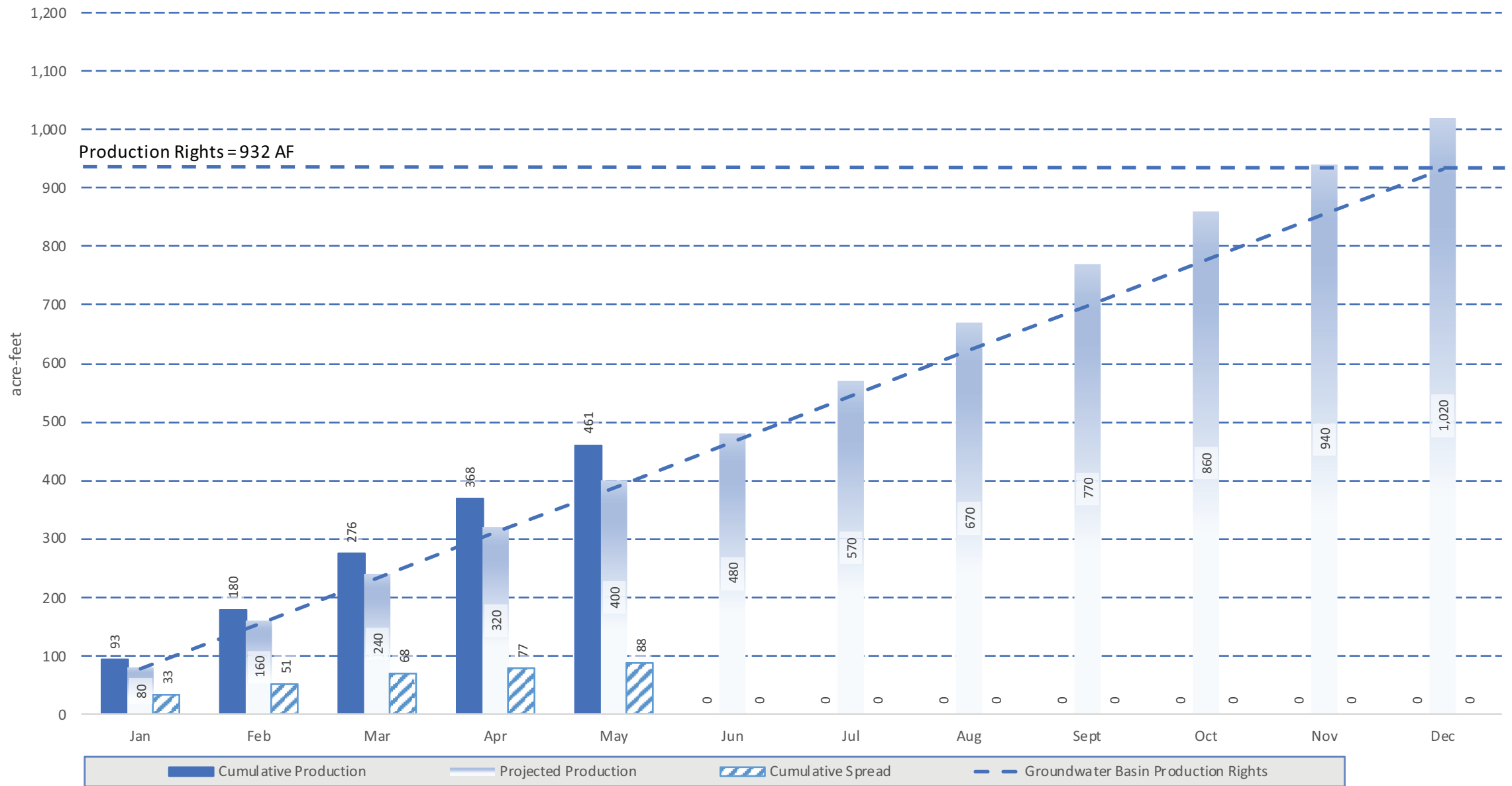
# 20-21 Chino Basin Cumulative



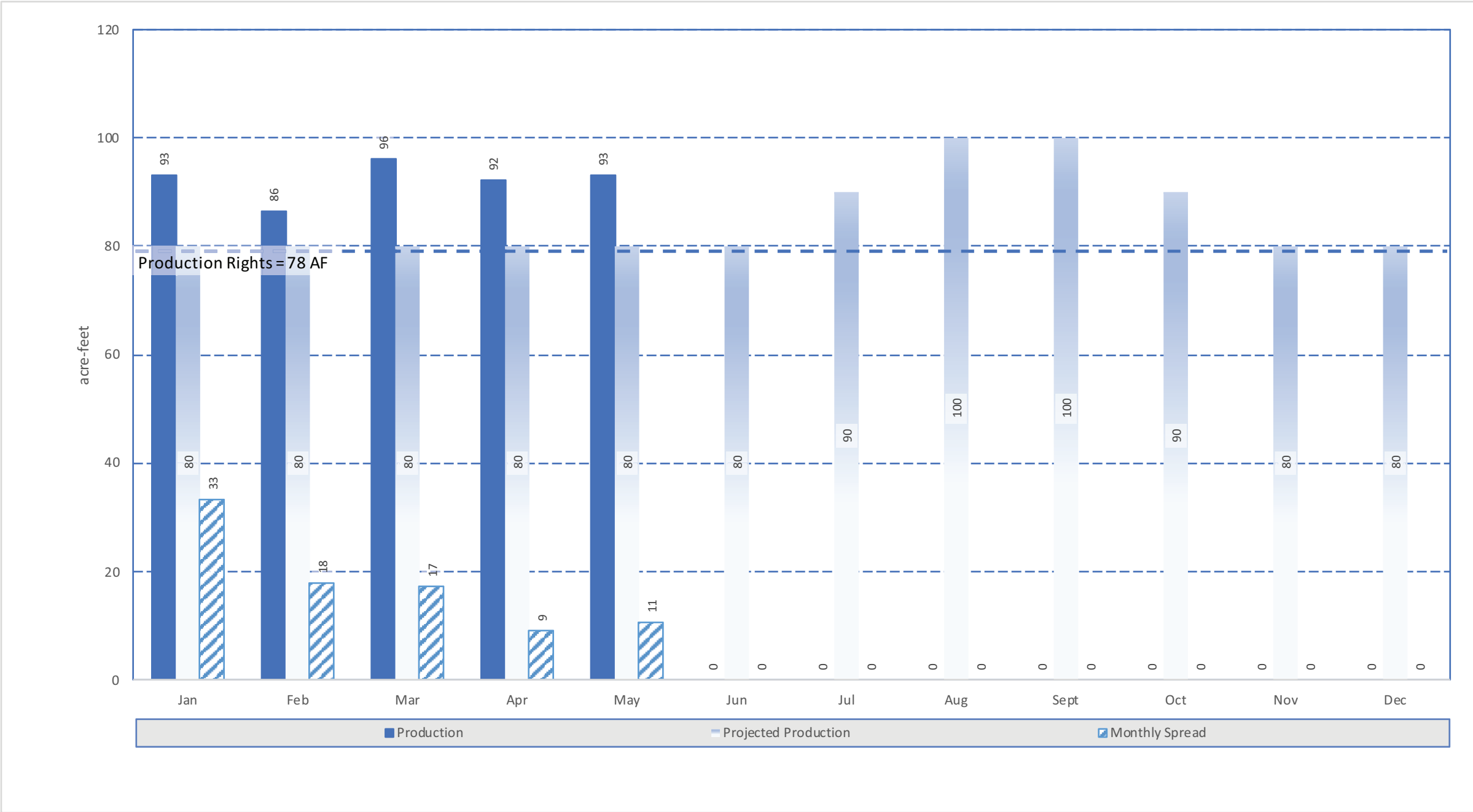
# 2021 Chino Basin Monthly



# 2021 Six Basins Cumulative



# 2021 Six Basins Monthly



## Prominent Issues Report

**Agenda Item No. 4G**

Agenda Date: June 15, 2021

**A. Water Supply through May 2021**

- Annual entitlement for CY2021 is 13,000 AF
  - Cumulative yearly production was 4,685 AF
  - Cumulative yearly consumption was 4,196 AF
  - Cumulative yearly spread was 452 AF
  - Cumulative unaccounted water was 37 AF

**Six Basins Production for 2021**

- Annual production right is 932 AF.
- Cumulative production was 461 AF. Production is sent to the WFA treatment facility to meet City of Ontario and MVWD entitlement.
- The Company spread a total of 88 AF.

**Cucamonga Basin Production for 2021**

- Annual production right is 5,938 AF.
- Cumulative production was 2,332 AF.
- The Company spread a total of 364 AF.

**Chino Basin Production for 2021**

- Annual production right is 1,232 AF.
- Cumulative production was 1 AF.
- The Company spread a total of 0 AF.

**Surface Water (San Antonio Creek) flow for 2021**

Total flow was 978 AF.

**Tunnel flow for 2021**

San Antonio Tunnel flow was 911 AF.  
Frankish and Stamm Tunnel flow was 0 AF.

**B. Company Stock**

5 share of water stock moved from active to dormant while another 1/4 share moved from dormant to active this transfer period.

**C. Communication and Information Activities**

"Facebook" - 179 friends liking our old FB page and 71 customers have liked our new FB page. No new communication posted on the new page and no new communication on the old Facebook page. Facebook is not able to merge the two Facebook pages; therefore, we are in discussion of possibly deleting the old page.

**D. Administration Matters****Meetings of interest:**

- Wed, May 19 – GM hosted luncheon of CBWM minor appropriator representatives
- Thurs, May 20 – GM participated in CBWM AP Confidential Meeting and Advisory Meeting
- Wed, June 2 – GM met with GRB at crosswalls
- Wed, June 2 – GM met with museum at Ops Yard to discuss exhibit pieces

## Prominent Issues Report

**Agenda Item No. 4G**

Agenda Date: June 15, 2021

**E. Groundwater Basin Matters****Chino Basin -**

Spread Water from SAWCo – SAWCo’s application to spread 1,500 AF in 20/21 water year has been approved and fully executed. SAWCo has applied to spread 1,500 AF per year for years 21/22 through 25/26. Application is making its way through the process. We have not yet spread any water in 2021.

Storage Management Plan / Optimum Basin Management Plan – Watermaster issued the final report on the 2020 Storage Management Plan on December 11<sup>th</sup>.

WM staff intend for the OBMP Implementation Plan to be attached to the Peace Agreement and will require a Peace Agreement amendment.

Parties have proposed a solution to the Court and the Court has provided a tentative ruling (attached). Final ruling will be discussed on June 25<sup>th</sup>. In short, available basin storage is increasing from 500,000 AF to 700,000 AF

~~Discussion is currently focused on the CEQA requirements and a reduced focus on a storage only plan. AP has drafted a plan for the ‘skinny storage’ option that is currently being discussed amongst the Pools~~

Ag Pool Contest and Legal Expenses – In May 2017 the Agricultural Pool initiated adversarial proceedings contesting Appropriative Pool storage within the Chino Basin.

The Appropriative Pool has objected to those costs being ‘expenses’ as defined by the Peace Agreement.

The Court issued its final ruling regarding who pays for adversarial proceedings on May 28<sup>th</sup> (attached). In short, the court agreed fully with AP that:

- “No reasonable person would make a contract that would obligate that person to pay another party’s expenses without limit and without knowledge of the nature of the expenses, including the expenses of a lawsuit against the paying person”
- “It is fundamentally unfair to compel a party to pay expenses over which the party has no control and no specific, detailed knowledge.”

The Court provided a pathway forward for the Ag Pool. We are waiting to see what the Ag Pool chooses to do.

~~At the end of June 2020, the Agricultural Pool requested a last-minute considerable upward adjustment to their legal budget for the fiscal year ending June 30, 2020. The Agricultural Pool has also sizably increased its 2021 legal budget. These increases are directly related to the Agricultural Pool’s actions against the Appropriative Pool. The Agricultural Pool expected that the Appropriative Pool would pay those costs per the Agricultural Pool’s interpretation of the Peace Agreement.~~

~~At a November 13<sup>th</sup> court hearing, the judge ordered parties to mediate.~~

~~Mediation was held on March 22. Mediation was unsuccessful.~~

## Prominent Issues Report

**Agenda Item No. 4G**

Agenda Date: June 15, 2021

~~At the April 30 hearing the judge allowed AgP an opportunity to submit a short brief regarding a 1998 Court ruling that may be relevant to the current situation. There is a hearing scheduled for May 28 to review the AgP brief and AP response. Judge Reichert is planning on issuing a ruling at that time.~~

Six Basins –

A meeting was last held on May 26, 2021. The Watermaster Board addressed the following:

- Approved transferring Jericho's Systems Inc.'s contract for preparing the Strategic Plan Programmatic Environmental Impact Report to Tom Dodson and Associates.
- Discussed legal counsel search. For past 21 years, the Board had contracted with Redwine and Sherrill, LLP and its predecessors to perform legal services for the Watermaster. Mr. Gerry Shoaf announce his retirement which started the search for new legal counsel.

Cucamonga Basin –

The working group met virtually on June 1st. Cucamonga Valley Water District (CVWD) stated they still needed to run the Term of Reference document by the General Manager for signature.

The working group discussed the Statement of Qualifications and concluded on the consultants to continue in the request for proposal process.

The next scheduled meeting is July 6th.



**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

MAY 28 2021

BY Amber Bouchard  
AMBER BOUCHARD, DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )  
Plaintiff, )  
vs. )  
CITY OF CHINO, et al., )  
Defendants )

CASE NO. RCVRS 51010

ORDER on MOTION of  
APPROPRIATIVE POOL MEMBER  
AGENCIES RE: AGRICULTURAL  
POOL LEGAL AND OTHER  
EXPENSES

Date: May 28, 2021  
Time: 1:30 PM  
Department: S35/S3 [Hearing Location]

Regarding the motion of the Appropriative Pool Member Agencies re: Agricultural Pool legal and other expenses, filed September 18, 2020, the court finds and orders as follow:

1. The court concludes that the word "all" in paragraph 5.4(a) of the Peace Agreement cannot mean "all" in the dictionary sense of the whole amount without qualification or limitation. The court must look at the context and use of the word "all" to interpret the word from the Peace Agreement (aka Peace I) made 20 years ago in relation to the Judgment entered more than 40 years ago.

A. The court concludes that to interpret the word "all" in the way that the

1 AgPool proposes would defeat the reasonable expectations of the parties to the  
2 Peace Agreement.

3 B. No reasonable person would make a contract that would obligate that person  
4 to pay another party's expenses without limit and without knowledge of the nature of  
5 the expenses, including the expenses of a lawsuit against the paying person, *i.e.*, no  
6 reasonable person would pay to finance a lawsuit against himself or herself. (As  
7 pointed out in the Appropriative Pool member agencies response to the Agricultural  
8 Pool's briefing filed May 24, 2021.)

9 C. It is fundamentally unfair to compel a party to pay expenses over which the  
10 party has no control and no specific, detailed knowledge.

11 I. The court notes that the AgPool has consistently refused to provide the  
12 Appropriative Pool with the actual attorney fee bills for the AgPool's attorney. In  
13 its last briefing, the AgPool again offered for the court to review the bills in  
14 camera. The court refuses this offer because there is no legal basis for the court  
15 to do so. If the parties cannot come to an agreement themselves (as the court  
16 states they may do in paragraph 7 below), then the court defines the procedure  
17 for the court to rule on the legal expenses, and any other expenses, as set forth in  
18 paragraph 8 below.

19 D. The court's ruling has nothing to do with the separation of powers among the  
20 three pools, the Advisory Committee, and the Watermaster. It applies strictly to the  
21 issue of the attorney fee and expense dispute between the AgPool and the  
22 Appropriative Pool pursuant of Section 5.4(a) of the 2000 Peace Agreement.

23 2. The court concludes that its previous tentative ruling also does not provide a  
24 solution to the dispute because the court now concludes that the previous  
25 tentative did not contain the proper legal basis for the ruling, that being, an  
26 analysis of the Judgment and the 2000 Peace agreement, as set forth herein.

27 A. The court appreciates the Appropriative Pool's argument that the resolution of  
28 the dispute in 2009 could be a precedent for the court's resolution of the current

1 attorney fee dispute, but the court has concluded that a specific tailored decision for  
2 the attorney fee dispute based on the Judgment and the 2000 Peace Agreement is the  
3 proper remedy.

4 I. The 2009 dispute over Section 5.4(a) involved the Appropriative Pool's  
5 dispute regarding the payment of costs assessed to the AgPool for a State of  
6 California Regional Water Quality Control Board, Santa Ana Region requirement.  
7 Specifically, the dispute was over an invoice for the Pathogen Total Maximum  
8 Daily Loads Task Force Study (TMDL Study) for the Middle Santa Ana River  
9 watershed. The issue was whether the TMDL study constituted a Special Project  
10 Expense subject to payment by the Appropriative Pool under section 5.4(a) of the  
11 Peace Agreement. That issue is completely different than the instant issue.

12 II. That resolution was for a one-time problem, not a recurring issue which  
13 the court concludes the instant issue is.

14 3. The court also appreciates the briefing by the AgPool concerning Judge Gunn's  
15 1998 order and Special Referee Schneider's report of 1997, but the court finds  
16 that neither res judicata nor collateral estoppel applies here for the reasons set  
17 forth in the Appropriative Pool's response.

18 A. In short, neither res judicata nor collateral estopped applies because:

19 I. Judge Gunn's 1998 order and Special Referee Schneider's report of  
20 1997 predate the 2000 Peace Agreement.

21 II. Judge Gunn's order also addressed a specific problem not related to the  
22 current dispute, even though Judge Gunn's order addresses issues beyond the  
23 dispute.

24 a) The impetus for Judge Gunn's 1998 order was fraudulent checks drawn  
25 on the account of the Chino Basin Municipal Water District (then the  
26 Watermaster). The District's Board of Directors had ordered a special  
27 audit of the District's account. The issue at the time was whether the  
28 cost of the audit could be considered a "Watermaster expense." The

1 instant issue is completely different.

2 III. The “Tragedy of Commons” argument in the AgPool’s briefing the  
3 court found intriguing, but not relevant to the issue in dispute.

4 IV. Again even though Judge Gunn’s ruling addressed a number of areas,  
5 the issue for Judge Gunn’s resolution was for a one-time problem, not a recurring  
6 issue which the court concludes the instant issue is.

7 4. Furthermore, the court notes that the AgPool Storage Contests, which form the  
8 basis of the attorney fees at issue, were the first of their kind, representing the  
9 first time the contest procedure has been used. (Burton declaration filed  
10 September 13, 2020, ¶3.)

11 5. The ruling of the court on the instant motion for attorney fees is intended to  
12 apply only to the specific attorney fee dispute between the AgPool and the  
13 Appropriative Pool. It is not intended to have any general effect on any other  
14 party or pool, or to give the Appropriative Pool any legal basis to object to any  
15 other aspect or any other budget item.

16 A. The court notes this in response to the brief of the Non-Agricultural Pool  
17 (NAP).

18 6. So, in interpreting Peace Agreement §5.4(a), the court turns to the Judgment and  
19 to the 2000 Peace Agreement (Peace I).

20 A. Peace I, Paragraph 5.4(a) states in pertinent part:

21 I. 5.4 Assessments, Credits, and Reimbursements. After the Effective  
22 Date and until the termination of this Agreement, the Parties expressly consent to  
23 Watermaster’s performance of the following actions, programs or procedures  
24 regarding Assessments.

25 a) (a) During the term of this Agreement, all assessments and expenses of  
26 the Agricultural Pool including those of the Agricultural Pool  
27 Committee shall be paid by the Appropriative Pool. This includes but  
28 is not limited to OBMP Assessments, assessments pursuant to

1 Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative  
2 Expenses and Special Project Expenses, 55, and Exhibit F (Overlying  
3 Agricultural Pool Pooling Plan) of the Judgment except however in the  
4 event the total Agricultural Pool Production exceeds 414,000 acre-feet  
5 in any five consecutive year period as defined in the Judgment, the  
6 Agricultural Pool shall be responsible for its Replenishment obligation  
7 pursuant to Paragraph 45 of the Judgment.”

8 B. In the Judgment, the only section that deals with attorney fees is Paragraph  
9 54(b) which states:

10 I. 54. Administrative Expenses. The expenses of administration of this  
11 Physical Solution shall be categorized as either (a) general Watermaster  
12 administrative expense, or (b) special project expense.

13 a) (a) General Watermaster Administrative Expense shall include office  
14 rental, general personnel expense, supplies and office equipment, and  
15 related incidental expense and general overhead.

16 b) (b) Special Project Expense shall consist of special engineering,  
17 economic or other studies, litigation expense, meter testing or other  
18 major operating expenses. Each such project shall be assigned a Task  
19 Order number and shall be separately budgeted and accounted for.

20 c) General Watermaster administrative expense shall be allocated and  
21 assessed against the respective pool based upon allocation made by the  
22 Watermaster, who shall make such allocations based upon generally  
23 accepted cost accounting methods. Special Project Expense shall be  
24 allocated to a specific pool, or any portion thereof, only upon the basis  
25 of prior express assent and find of benefit by the Pool Committee, or  
26 pursuant to written order of the court.

27 C. So, when the court reads Peace I Section 5.4(a) with Judgment Paragraph 54,  
28 the court initially concludes that attorney fees for storage contests would be included

1 in the definition of “Special Project Expense” as a “litigation expense.”

2 I. So, the first step would be for the AgPool to approve the attorney fee  
3 upon an express finding that it benefits the AgPool.

4 II. Then, pursuant to Peace I, the attorney fee as a Special Project Expense  
5 would go to the Appropriative Pool for payment.

6 a) The court interprets the Judgment ¶54 and Peace I §5.4(a) to mean that  
7 the litigation expense at least must not be adverse to the Appropriative  
8 Pool as a matter of fundamental fairness and not to defeat the  
9 reasonable expectations of the parties to Peace I.

10 7. Judgement ¶54 and Peace I §5.4(a) mean that, of course, the Ag Pool and the  
11 Appropriative Pool can agree to a determination to about payment of “litigation  
12 expense.” The court concludes that they have been doing this up until the instant  
13 motion. The court will only add that now the dispute has arisen, the procedure  
14 should include the AgPool providing the Appropriative Pool with the AgPool’s  
15 attorney fee bills. Otherwise, there will be no way for the Appropriative Pool to  
16 determine whether the bills fit within the court’s interpretation.

17 8. The alternative in the Judgment is for the court to order the Special Project  
18 Expense attorney fee or expense for the AgPool upon motion.

19 A. This is consistent with California Civil Code §1717 regarding a contract  
20 provision for attorney fees and costs.

21 I. The 2000 Peace Agreement (Peace I) is a contract, and therefore, CC  
22 §1717 should apply by analogy, even though the Peace I does not have a  
23 requirement of “prevailing party.”

24 II. California Rules of Court, Rule 1702, which requires a motion for  
25 attorney fees, should also should apply by analogy.

26 B. There is no procedure in either the Judgement or Peace I (or Peace II for that  
27 matter) for the court to hear this unique kind of motion concerning for attorney fees  
28 and expenses set forth in the Judgment ¶54. So, the court indicates that for such a

1 motion the court requires:

2 I. Service and filing of a noticed motion with a hearing set for Friday at  
3 1:30 PM, with the date cleared by the court's judicial assistant.

4 II. Notice of the motion pursuant to CCP §§1010 to 1020.

5 III. All supporting documents for the motion to be included, including the  
6 fee bills themselves. It is a denial of due process, as well as fundamentally unfair,  
7 for a party to be forced to pay a bill that the party has not seen. In order for a  
8 party to contest a bill, the party must be able to see and examine it first.

9 a) The court would consider this requirement to be not only a matter of  
10 fundamental fairness, but also for the court and the Appropriative Pool  
11 to determine whether the fees for actions benefitting the AgPool (as  
12 required by ¶54 of the Judgment) and at least not adverse to the  
13 Appropriative Pool.

14 i) The court requires this to be not only a matter of fundamental  
15 fairness but also not to defeat the reasonable expectations of the  
16 parties to Peace I.

17 b) The bills may be redacted, but the court must admonish the parties that  
18 the redactions cannot be so extensive as to make the bills meaningless  
19 for review by opposing counsel and determination by the court.

20 C. If the AgPool so chooses, it may file a motion for attorney's fees using the  
21 procedure the court has set forth above. This will protect the due process rights of  
22 the AgPool as well as serve what the court determines to be the issues of  
23 fundamental fairness surrounding the issue of the AgPool's attorney fees. It will also  
24 give the court a factual basis to rule upon the amount of the fees.<sup>1</sup>

25 I. In order for the court to bring the current issue of the AgPool's  
26

27 <sup>1</sup> The court notes that the Appropriative Pool points out that Watermaster Regulations ¶10.26(a) requires that "each  
28 party to the [Contest] proceeding shall bear its own costs and expenses associated with the proceeding." (Memorandum  
of points and authorities in support of motion of Appropriative Pool member agencies re: Agricultural Pool legal and  
other expenses, filed September 18, 2020, page 16, lines 1-7.) However, the court finds that this issue should be  
governed by the Judgment and the 2000 Peace Agreement only.

1 attorney fees and expenses to a close the court orders that the AgPool serve and  
2 file its motion for attorney fees and expenses by 2:00 PM (when the clerk's office  
3 now closes) on July 25, 2021, with a hearing date to be set by the court.

4 II. If the AgPool does not file its motion on or before July 25, 2021, as  
5 ordered, then the court will consider the AgPool to have waived its current claims  
6 for attorney fees and expenses, and the court will order vacated the assessments  
7 subject to the current dispute, and any party's payment of the assessments subject  
8 to the current dispute reimbursed to the paying party.

- 9 a) The court notes the Exhibit A to the Declaration of John Schatz filed  
10 May 24, 2021, "Appropriative Pool Special Assessment of \$165,694.75"  
11 which appears to the court to itemize the assessments to Appropriative  
12 Pool members, and the court would use that list as the basis of the  
13 reimbursements.

14  
15 Dated: May 28, 2021

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18 \_\_\_\_\_  
Stanford E. Reichert, Judge



# FEE EXEMPT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, ET AL.,

Defendants.

**Case No. RCV RS 51010**

[Assigned for All Purposes to the Honorable Stanford E. Reichert]

**[PROPOSED] ORDER RE MOTION REGARDING IMPLEMENTATION OF THE LOCAL STORAGE LIMITATION SOLUTION**

Date: June 25, 2021  
Time: 1:30 p.m.  
Dept: S35

**[PROPOSED] ORDER**

On June 25, 2021, Chino Basin Watermaster’s (“Watermaster”) Motion Regarding Implementation of the Local Storage Limitation Solution came on regularly for hearing in the above-captioned matter.

Having read and considered the papers and heard the arguments of counsel, the Court finds that:

1. The public interest is benefitted by the beneficial use of the Basin’s storage capacity as described by the LSLS;
2. No amendments to the Peace Agreements and the OBMP Implementation Plan were required to store quantities of water in excess of 500,000 AF as provided in the LSLS;
3. Addendum No. 2 was adopted by the IEUA and found that there were no unmitigable significant adverse impacts attributable to the LSLS;
4. The terms and conditions applicable to Local Storage of water in the Basin as set forth in the Peace Agreement and the OBMP Implementation Plan provide a consistent and logical framework for managing quantities of stored water up to the maximums set forth in the LSLS; and
5. Although amendments to the Watermaster Rules and Regulations are not generally subject to Court approval, the parties’ collective subject matter interest in storage warrants an exception requiring Court approval of proposed changes in this instance.

On these bases, it is **HEREBY ORDERED** that:

1. Watermaster manage all quantities of water held in storage in amounts from 500,001 AF up to a maximum of 700,000 AF until June 30, 2030 and thereafter a maximum of 620,000 until June 30, 2035, consistent with all provisions of the Peace Agreement and the Peace II Agreement applicable to the Local Storage of water within the Basin, without limitation, subject to further order of this Court;
2. Watermaster conform the Watermaster Rules and Regulations consistent with such order, subject to Court approval;
3. Watermaster implement the OBMP in conformance with such Order, the IEUA Addendum dated March 17, 2021 and the Court’s April 28, 2017, March 15, 2019, and July 31, 2020 orders establishing a Safe Yield Reset process;
4. All of the parties’ rights and remedies, whatever they may be, are expressly reserved, preserved and protected and made applicable to the quantities of stored water greater than 500,001 AF; and
5. The Court reserves jurisdiction to consider future proposals of Watermaster or the

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parties with regard to storage management.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Stanford E. Reichert  
Judge of the Superior Court

22677418.3

**Agenda Item No. 4H**

Item Title: Projects and Operations Update

Purpose:

To update the Board and Shareholders on Company capital projects.

Updates:

1507 – Office Relocation

Presentation to City of Upland originally scheduled for late September has been deferred at City Manager’s request.

1602 – Holly Drive Reservoir, Phase 2

A modified and reduced project was awarded to Paso Robles Tanks on September 15. Contract has been fully executed. Preconstruction meeting held. Material submittal process initiated. Construction of the tank has been completed. ~~Coating and final work should be completed this month or early June.~~ Delivery of mixer inlet piping was delayed. Mixer pipe is expected to be delivered and installed this month. Disinfection is expected to occur in July.

The remaining civil portion of the contract was awarded at the March Board Meeting. Civil work was completed in March/April.

Original Budget .....	\$477,000
Original Contracts.....	\$862,130
Civil Contract.....	\$149,985
Authorized Change Orders .....	\$389,096
Current Contract w/ Civil .....	\$1,172,611

1901 – Automated Meter Reading (AMR)

~~At its regular February meeting the Board authorized CP Construction to complete the meter installations. CP Construction has installed about 670 meters. We have about 30 meters remaining to be installed. All meters originally ordered have been installed and staff has ordered the remaining meters from Metron Fairmer. Staff will install the remaining 30 meters once they arrive.~~

~~Office staff has received a first introductory training session on how to use the Water Scope data access software.~~

All domestic meters have been installed. Field staff has verified each meter installation and is working to fix minor leaks at some meter threads. Staff is working with supplier on meter communication issues for about 100 meters. Staff is working on rolling out private digital access to their meter for each shareholder starting in the summer.

Original Budget .....	\$770,000
Original Contracts.....	\$731,220
Authorized Change Orders .....	8,000
Current Contracts.....	\$739,220

1902 – Cucamonga Crosswalls Mitigation

Staff is contacting our environmental contractor to conduct the 2021 Spring Assessment and site clean-up.

County has retained GRB, our contractor for the crosswall work, to process spoils behind the Cucamonga Dam. The state Division of Safety of Dams has requested that the County 'muck out' behind the dam to regain lost storage.

1905 – 2020 Master Plan

Computer Water Model being constructed by consultant. Hydrant flow testing occurred Nov 11<sup>th</sup>. Computer modeling being calibrated. Data gathering is an ongoing process. Company has purchased three data loggers and a pitot tube flow diffuser.

Consultant presented a Water Supply Resiliency presentation to the PRC in February.

Original Budget .....	\$240,000
Original Contracts.....	\$204,085
Authorized Change Orders .....	NA
Current Contracts.....	\$204,085

2001 Reservoir 9 Pipeline

Bid opening occurred on Nov 10. Project was awarded to Downing Construction on November 17. Contract has been fully executed.

Final paving occurred on May 12. Project construction is complete. Final slurry of streets is scheduled for June 24<sup>th</sup>.

Original Budget .....	\$408,000
Original Contracts.....	\$807,090
Authorized Change Orders .....	\$92,204
Current Contracts.....	\$899,295
Proposed Change Order .....	\$100,163
Proposed Contract .....	\$999,458

2002 Frankish Tunnel Improvements

Bid opening occurred on December 4<sup>th</sup>. Project was awarded to CP Construction on December 15, 2020. Project is complete. Consultant is finalizing paperwork.

Original Budget .....	\$50,000
Original Contracts.....	\$126,485
Authorized Change Orders .....	NA
FINAL project cost.....	\$126,485

2003 Small Pipelines Project

Bid opening occurred on December 4<sup>th</sup>. Project was awarded to CP Construction on December 15, 2020. Project is complete. Consultant is finalizing paperwork.

Original Budget .....	\$519,000
Original Contracts.....	\$738,290
Authorized Change Orders .....	NA
Current Contracts.....	\$738,290

2007 Well 19

Staff is working on a Request for Proposals to construct a new Well 19. RFP should be released next year for consideration by the Board.

Agenda Date: June 15, 2021

2101 Booster 17 (V Screen) Generator

Purchase Order has been submitted. Waiting on delivery.

Original Budget .....	\$18,000
Original Contracts.....	\$14,510
Authorized Change Orders .....	NA
Current Contracts.....	\$14,510

2102 Shaft 6 Generator

Purchase Order has been submitted. Waiting on delivery.

Original Budget .....	\$8,000
Original Contracts.....	\$6,436
Authorized Change Orders .....	NA
Current Contracts.....	\$6,436

2103 Booster 19 (Holly Drive) Generator

Purchase Order has been submitted. Waiting on delivery. Contractor is currently working on concrete pad for generator installation.

Original Budget .....	\$75,000
Original Contracts.....	\$61,366
Authorized Change Orders .....	NA
Current Contracts.....	\$61,366

2105 Urban Water Management Plan

Contract was awarded at the March 2021 Board Meeting. Staff and consultant are exchanging and reviewing data.

Original Budget .....	\$60,000
Original Contracts.....	\$48,780
Authorized Change Orders .....	NA
Current Contracts.....	\$48,780

2106 American Water Infrastructure Act Risk and Resiliency Assessment

Contract was awarded at the March 2021 Board Meeting. Staff and consultant are exchanging and reviewing data.

Original Budget .....	\$40,000
Original Contracts.....	\$29,075
Authorized Change Orders .....	NA
Current Contracts.....	\$29,075

2107 Risk and Resiliency Assessment of SCADA system

Company has contracted a detailed study to find and eliminate openings in our SCADA system to reduce risk of outside attacks.

Original Budget .....	\$15,000
Original Contracts.....	\$12,000
Authorized Change Orders .....	NA
Current Contracts.....	\$12,000

2108 Demolition of abandoned booster stations 5 and 15

Contract with CP Construction was awarded at the May Board Meeting. City has tentatively agreed to waive permit fees in exchange for quit claim of park land.

Original Budget .....	\$100,000
Original Contracts.....	\$80,000
Authorized Change Orders .....	NA
Current Contracts.....	\$80,000

Agenda Item No. 6A

Item Title: 401K Reinstatement and Proposed Changes

Purpose:

To review, discuss and recommend proposed changes to the 401k plan

Issue:

Develop changes to the 401k plan based on prior benefit approval and consider any further recommendations before reinstatement of 401k plan.

Manager's Recommendation:

Review, provide feedback and approve AFC's recommendation of 401k changes in the process of reinstatement of the 401k plan.

Background:

A reinstatement of the 401k plan is necessary to keep up with any law changes that have occurred. The Company is due to update their 401k plan this year.

The Board recently reviewed and approved some employee benefit changes. One such change would be beneficial for new personnel. The current 401k plan requires an individual to be with the Company for 1 year before being eligible to participate in the 401k. The current waiting period is a carryover from many years ago when the Plan was first installed. In today's world it is common to see a shorter waiting period that is often tied to qualifying for other employee benefits, like health insurance. To be more in line with other retirement systems like PERS, the Board approved not having to wait for 1 year to participate in the 401k plan.

Management reviewed other changes to the 401k plan that made sense and they are as follows:

- Currently, the plan allows an individual to work at 60 and collect from their 401k and retirement age is 65. The third-party administrator is investigating why have a different age for retirement. He is not aware of any reason to have two different ages. [PERS offers anywhere from age 50 to 62 as retirement age]
- Simplify the wording and calculation of formula [current wording is very confusing]
- Allow employee % deductions only [administratively easier to process]

This matter was discussed at the AFC meeting in May and the Committee agreed with the minor revisions and did not have any further revisions to consider.

Impact on the Budget:

None.

Previous Actions:



**SAN ANTONIO WATER COMPANY  
NONSTANDARDIZED PROFIT SHARING/401(k) PLAN  
ADOPTION AGREEMENT #001**

By executing this Nonstandardized Profit Sharing/401(k) Plan Adoption Agreement (the "Adoption Agreement" or "AA"), the undersigned Employer agrees to establish or continue a Profit Sharing/401(k) Plan. The Profit Sharing/401(k) Plan adopted by the Employer consists of the Defined Contribution Pre-Approved Plan Basic Plan Document #01 (the "BPD") and the elections made under this Adoption Agreement (collectively referred to as the "Plan"). An Employer may jointly co-sponsor the Plan by signing a Participating Employer Adoption Page, which is attached to this Adoption Agreement. **This Plan is effective as of the Effective Date identified under §2-1 of this Adoption Agreement.**

In completing the provisions of this Adoption Agreement, unless designated otherwise, selections under the Deferral column apply to all Salary Deferrals (including Roth Deferrals and Catch-Up Contributions) and After-Tax Employee Contributions. In addition, selections under the Deferral column apply to any Safe Harbor Contributions, unless designated otherwise under AA §6C, and also apply to any QNECs and/or QMACs made under the Plan, unless designated otherwise under AA §6D. The selections under the Match column apply to Matching Contributions under AA §6B and selections under the ER column apply to Employer Contributions under AA §6.

**SECTION 1  
EMPLOYER INFORMATION**

**1-1 EMPLOYER INFORMATION.**

Name: SAN ANTONIO WATER COMPANY

Address: 139 N. EUCLID AVE.  
UPLAND, CA 91786

Telephone: (909) 982-4107

**1-2 EMPLOYER IDENTIFICATION NUMBER (EIN).** 95-1183990

**1-3 FORM OF BUSINESS.**

- |   |  |
|---|--|
| <input type="checkbox"/> C-Corporation                                    | <input type="checkbox"/> S-Corporation             |
| <input type="checkbox"/> Partnership / Limited Liability Partnership      | <input type="checkbox"/> Limited Liability Company |
| <input type="checkbox"/> Sole Proprietor                                  | <input type="checkbox"/> Tax-Exempt Entity         |
| <input checked="" type="checkbox"/> Other: <u>501(c)(12) Organization</u> |  |

*[Note: Any entity entered under "Other" must be a legal entity recognized under federal income tax laws.]*

**1-4 EMPLOYER'S TAX YEAR END.** The Employer's tax year ends December 31

**1-5 RELATED EMPLOYERS.** Is the Employer part of a group of Related Employers (as defined in Section 1.124 of the Plan)?

- Yes  
 No

If yes, Related Employers may be listed below. A Related Employer must execute a Participating Employer Adoption Page for Employees of that Related Employer to participate in this Plan. The failure to cover the Employees of a Related Employer may result in a violation of the minimum coverage rules under Code §410(b). (See Section 2.02(c) of the Plan.)

*[Note: This AA §1-5 is for informational purposes and the Employer need not list Related Employers. The failure to identify all Related Employers under this AA §1-5 will not jeopardize the qualified status of the Plan.]*

**SECTION 2  
PLAN INFORMATION**

**2-1 PLAN NAME.** SAN ANTONIO WATER COMPANY 401(K) PLAN

Original Effective Date: January 1, 2011

Restatement Effective Date: July 1, 2021

**2-2 PLAN NUMBER.** 002

**2-3 TYPE OF PLAN.**  Profit Sharing (PS) Plan only       PS and 401(k) Plan       PS and Safe Harbor 401(k) Plan

2-4 **PLAN YEAR.**

- (a) Calendar year.  
 (b) The 12-consecutive month period ending on \_\_\_\_\_ each year.  
 (c) The Plan has a Short Plan Year running from \_\_\_\_ to \_\_\_\_.

2-5 **FROZEN PLAN.** Check this AA §2-5 if the Plan is a frozen Plan to which no contributions will be made.

- This Plan is a frozen Plan effective \_\_\_\_\_. (See Section 3.02(a)(7) of the Plan.)

*[Note: As a frozen Plan, the Employer will not make any contributions with respect to Plan Compensation earned after such date and no Participant will be permitted to make any contributions to the Plan after such date. In addition, no Employee will become a Participant after the date the Plan is frozen.]*

2-6 **MULTIPLE EMPLOYER PLAN.** Is this Plan a Multiple Employer Plan as defined in Section 1.85 of the Plan? (See Section 16.07 of the Plan for special rules applicable to Multiple Employer Plans.)

- Yes  
 No

2-7 **PLAN ADMINISTRATOR.**

- (a) The Employer identified in AA §1-1.

(b) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

*[Note: This AA §2-7 may be used to designate an individual who is acting as Plan Administrator under ERISA §3(16). To the extent an individual named in this AA §2-7 does not take on all responsibilities of Plan Administrator, the Employer will retain those responsibilities as Plan Administrator. See Section 1.98 of the Plan.]*

2-8 **DEFINITION OF DISABLED.** An individual is considered Disabled for purposes of applying the provisions of this Plan if:

- (a) The individual is covered by the Employer's disability insurance plan and is determined to be disabled under such plan.  
 (b) The individual is determined to be disabled by the Social Security Administration under Section 223(d) of the Social Security Act for purposes of determining eligibility for Social Security benefits.  
 (c) The Plan Administrator determines an individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence. The Plan Administrator may establish reasonable procedures for determining whether a Participant is Disabled. [Selection of this subsection (c) requires the Plan to apply the Department of Labor's disability claims procedures as set forth in DOL Regulation §2650.503-1, as effective on April 1, 2018.]

*[Note: An Employer may elect any or all of the elections above. If more than one is selected, the hierarchy for determining whether an individual is considered Disabled is in the order listed above, unless described otherwise under separate administrative procedures or as described below.]*

- (d) Alternative definition of Disabled: \_\_\_\_\_

*[Note: Any alternative definition described in this subsection will apply uniformly to all Participants under the Plan. In addition, any alternative definition of Disabled may not discriminate in favor of Highly Compensated Employees. The Employer may describe different definitions of Disabled for different purposes under the plan.]*

**SECTION 3  
ELIGIBLE EMPLOYEES**

3-1 **ELIGIBLE EMPLOYEES.** In addition to the Employees identified in Section 2.02 of the Plan, the following Employees are excluded from participation under the Plan with respect to the contribution source(s) identified in this AA §3-1. See Sections 2.02(e) and (f) of the Plan for rules regarding the effect on Plan participation if an Employee changes between an eligible and ineligible class of employment.

- | Deferral                 | Match                    | ER                       |                   |
|--------------------------|--------------------------|--------------------------|-------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (a) No exclusions |

- |                                     |                                     |                          |   |
|-------------------------------------|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (b) Collectively Bargained Employees  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (c) Non-resident aliens who receive no compensation from the Employer which constitutes U.S. source income  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (d) Leased Employees  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (e) Employees paid on an hourly basis   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (f) Employees paid on a salaried basis  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (g) Commissioned Employees  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (h) Highly Compensated Employees  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (i) Key Employees   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (j) Non-Key Employees who are Highly Compensated  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (k) Employees eligible for another qualified plan sponsored by the Employer or a Related Employer<br>Specify name of other qualified plan (optional): _____ |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (l) Other: _____  |

*[Note: A class of Employees excluded under the Plan must be defined in such a way that it precludes Employer discretion, and may not provide for an exclusion designed to cover only Nonhighly Compensated Employees with the lowest amount of compensation and/or the shortest periods of service who may represent the minimum number of Nonhighly Compensated Employees necessary to satisfy the coverage requirements under Code §410(b). See Section 2.02(b)(6) of the Plan for special rules that apply to service-based exclusions (e.g., part-time Employees). Also see Section 2.02(b) of the Plan for rules regarding the automatic exclusion/inclusion of other Employees.]*

**3-2 EMPLOYEES OF AN EMPLOYER ACQUIRED AS PART OF A CODE §410(b)(6)(C) TRANSACTION.** *[Note: For this purpose, a Code §410(b)(6)(C) transaction includes an asset sale, stock sale or other disposition or acquisition that results in the movement of Employees from one Employer to another Employer or causes a change in status as a Related Employer group.]*

- (a) An Employee acquired as part of a Code §410(b)(6)(C) transaction will become an Eligible Employee as of the date of the transaction (unless otherwise excluded under AA §3-1 or this AA §3-2). (See Section 2.02(d) of the Plan.)
- (b) Employees of an Employer acquired as part of a Code §410(b)(6)(C) transaction will not become an Eligible Employee until after the expiration of the transition period described in Code §410(b)(6)(C)(ii) (i.e., the period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction). (See Section 2.02(d) of the Plan.)
- (c) All Employees of any Employer acquired as part of a Code §410(b)(6)(C) transaction are excluded and will NOT become an Eligible Employee upon the expiration of the transition period described in Code §410(b)(6)(C)(ii), unless otherwise provided elsewhere under the Plan.
- (d) The following Employees of acquired employers are excluded/included under the Plan:  
\_\_\_\_\_

*[Note: This subsection may be used to provide for the inclusion or exclusion of Employees with respect to specific Employers at a time other than provided under this AA §3-2.]*

- (e) Describe any special rules that apply for purposes of applying the rules under this AA §3-2: \_\_\_\_\_

*[Note: Employees acquired under a Code §410(b)(6)(C) transaction are eligible or not eligible to participate under the Plan, as provided under this AA §3-2. However, see Section 2.02(c) of the Plan for rules regarding the coverage of Employees of a Related Employer and AA §4-5 for rules regarding the crediting of service with a Predecessor Employer. Any special rules are subject to the minimum coverage requirements under Code §410(b) and the nondiscrimination rules under Code §401(a)(4). For Related Employers, elections under this AA §3-2 are subject to the completion of a Participation Agreement.]*

**SECTION 4**  
**MINIMUM AGE AND SERVICE REQUIREMENTS**

4-1 **ELIGIBILITY REQUIREMENTS – MINIMUM AGE AND SERVICE.** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service conditions under this AA §4-1 will be eligible to participate under the Plan as of his/her Entry Date (as defined in AA §4-2 below).

(a) **Service Requirement.** An Eligible Employee must complete the following minimum service requirements to participate in the Plan. If a different minimum service requirement applies for the same contribution type for different groups of Employees or for different contribution formulas, such differences may be described below.

- | Deferral                            | Match                               | ER                       |   |
|-------------------------------------|-------------------------------------|--------------------------|---|
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (1) There is no minimum service requirement for participation in the Plan.  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (2) One Year of Service (as defined in Section 2.03(a)(1) of the Plan and AA §4-3).   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (3) The completion of at least <u>80</u> [cannot exceed 1,000] Hours of Service during the first <u>1</u> [cannot exceed 12] months of employment (or the first <u>    </u> [cannot exceed 365] days of employment) or the completion of a Year of Service (as defined in AA §4-3), if earlier. <ul style="list-style-type: none"> <li><input type="checkbox"/> (i) An Employee who completes the required Hours of Service satisfies eligibility at the end of the designated period, regardless if the Employee actually works for the entire period.</li> <li><input checked="" type="checkbox"/> (ii) An Employee who completes the required Hours of Service must also be employed continuously during the designated period of employment. See Section 2.03(a)(2) of the Plan for rules regarding the application of this subsection (ii).</li> </ul>   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (4) The completion of <u>    </u> [cannot exceed 1,000] Hours of Service during an Eligibility Computation Period. [ <i>Note: An Employee satisfies the service requirement immediately upon completion of the designated Hours of Service rather than at the end of the Eligibility Computation Period.</i> ]  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | (5) Full-time Employees are eligible to participate as set forth in subsection (i). Employees who are “part-time” Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a full-time Employee is any Employee not defined in subsection (ii). <ul style="list-style-type: none"> <li>(i) Full-time Employees must complete the following minimum service requirements to participate in the Plan:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> (A) There is no minimum service requirement for participation in the Plan.</li> <li><input type="checkbox"/> (B) The completion of at least <u>    </u> [cannot exceed 1,000] Hours of Service during the first <u>    </u> [cannot exceed 12] months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier.</li> <li><input type="checkbox"/> (C) Under the Elapsed Time method as defined in AA §4-3 below.</li> <li><input type="checkbox"/> (D) Describe: _____<br/>                                     [<i>Note: Any conditions provided under (D) must satisfy the requirements of Code §410(a).</i>]</li> </ul> </li> <li>(ii) Part-time Employees must complete a Year of Service (as defined in AA §4-3). [<i>Note: Generally, an Employee earns a Year of Service for eligibility purposes upon completing 1,000 Hours of Service (or fewer Hours of Service designated under AA §4-3) during an Eligibility Computation Period.</i>]                             <ul style="list-style-type: none"> <li><input type="checkbox"/> (A) For this purpose, a part-time Employee is any Employee (including a temporary or seasonal Employee) whose normal work schedule is less than:                                     <ul style="list-style-type: none"> <li><input type="checkbox"/> (I) <u>    </u> hours per week.</li> </ul> </li> </ul> </li> </ul> |

(II) \_\_\_ hours per month.

(III) \_\_\_ hours per year.

(B) Describe part-time Employees for this purpose: \_\_

*[Note: A part-time employee must be described as an individual who works less than a specified number of hours (no greater than 40) during a standard work week.]*

N/A            (6) Two (2) Years of Service. *[Full and immediate vesting must be chosen under AA §8-2.]*

           (7) Under the Elapsed Time method as defined in AA §4-3 below.

           (8) Describe eligibility conditions: \_\_\_\_\_

           Describe eligibility conditions: \_\_\_\_\_

*[Note: Any conditions on eligibility must satisfy the requirements of Code §410(a). An eligibility condition under this AA §4-1 may not cause an Employee to enter the Plan later than the first Entry Date following the completion of a Year of Service (as defined in AA §4-3). Also see Section 2.02(b)(5) and (6) for rules regarding the exclusion of certain "short-service" Employees and disguised service conditions.]*

(b) **Minimum Age Requirement.** An Eligible Employee (as defined in AA §3-1) must have attained the following age with respect to the contribution source(s) identified in this AA §4-1(b).

**Deferral      Match      ER**

           (1) There is no minimum age for Plan eligibility.

           (2) Age 21.

           (3) Age 20½.

           (4) Age \_\_\_ (not later than age 21).

(c) **Special eligibility rules.** The following special eligibility rules apply with respect to the Plan: \_\_\_\_\_

*[Note: This subsection (c) may be used to apply the eligibility conditions selected under this AA §4-1 separately with respect to different Employee groups or different contribution formulas under the Plan. Any special eligibility rules must satisfy the requirements of Code §410(a).]*

4-2 **ENTRY DATE.** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service requirements in AA §4-1 shall be eligible to participate in the Plan as of his/her Entry Date. For this purpose, the Entry Date is the following date with respect to the contribution source(s) identified under this AA §4-2.

**Deferral      Match      ER**

           (a) **Immediate.** The date the minimum age and service requirements are satisfied (or date of hire, if no minimum age and service requirements apply).

           (b) **Semi-annual.** The first day of the 1st and 7th month of the Plan Year.

           (c) **Quarterly.** The first day of the 1st, 4th, 7th and 10th month of the Plan Year.

           (d) **Monthly.** The first day of each calendar month.

           (e) **Payroll period.** The first day of the payroll period.

           (f) **The first day of the Plan Year.** *[See Section 2.03(b)(2) of the Plan for special rules that apply.]*

           (g) **Describe Entry Date.** \_\_\_\_\_

*[Note: Any Entry Date under this subsection (g) must be within the dates described under subsections (a) – (f).]*

An Eligible Employee’s Entry Date (as defined above) is determined based on when the Employee satisfies the minimum age and service requirements in AA §4-1. For this purpose, an Employee’s Entry Date is the Entry Date:

Deferral	Match	ER	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(h) <b>next following</b> satisfaction of the minimum age and service requirements.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) <b>coinciding with or next following</b> satisfaction of the minimum age and service requirements.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(j) <b>nearest</b> the satisfaction of the minimum age and service requirements.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(k) <b>preceding</b> the satisfaction of the minimum age and service requirements.

This section may be used to describe any special rules for determining Entry Dates under the Plan. For example, if different Entry Date provisions apply for the same contribution sources with respect to different groups of Employees, such different Entry Date provisions may be described below.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(l) <b>Describe</b> any special rules that apply with respect to the Entry Dates under this AA §4-2: _____

*[Note: Any special rules under this subsection must satisfy the requirements of Code §410(a) and may not cause an Employee to enter the Plan later than the first Entry Date following the completion of a Year of Service (as defined in AA §4-3).]*

4-3 **DEFAULT ELIGIBILITY RULES.** In applying the minimum age and service requirements under AA §4-1 above, the following default rules apply with respect to all contribution sources under the Plan:

- **Year of Service.** An Employee earns a Year of Service for eligibility purposes upon completing 1,000 Hours of Service during an Eligibility Computation Period. Hours of Service are calculated based on actual hours worked during the Eligibility Computation Period. (See Section 1.72 of the Plan for the definition of Hours of Service.)
- **Eligibility Computation Period.** If one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Plan Years. (See Section 2.03(a)(3)(i) of the Plan.) If more than one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Anniversary Years. However, if the Employee fails to earn a Year of Service in the first or second Eligibility Computation Period, the Plan will determine subsequent Eligibility Computation Periods on the basis of Plan Years beginning in the first or second Eligibility Computation Period, as applicable. (See Section 2.03(a)(3)(iii) of the Plan.)
- **Break in Service Rules.** The Nonvested Participant Break in Service rule and the One-Year Break in Service rule do NOT apply. (See Section 2.07 of the Plan.)

To override the default eligibility rules, complete the applicable sections of this AA §4-3. **If this AA §4-3 is not completed for a particular contribution source, the default eligibility rules apply.**

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) <b>Year of Service.</b> Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ____ [ <i>must be less than 1,000</i> ] Hours of Service during an Eligibility Computation Period.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) <b>Eligibility Computation Period (ECP).</b> The Plan will use Anniversary Years for all Eligibility Computation Periods. (See Section 2.03(a)(3) of the Plan.)

- |                          |                          |                          |  |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <p>(c) <b>Elapsed Time method.</b> Eligibility service will be determined under the Elapsed Time method. An Eligible Employee (as defined in AA §3-1) must complete a period of service, as designated below, to participate in the Plan. (See Section 2.03(a)(6) of the Plan.)</p> <p><input type="checkbox"/> (1) For Deferral, must complete a ____ period of service</p> <p><input type="checkbox"/> (2) For Match, must complete a ____ period of service</p> <p><input type="checkbox"/> (3) For ER, must complete a ____ period of service</p> <p><i>[Note: Under the Elapsed Time method in this subsection, service will be measured from the Employee's employment commencement date (or reemployment commencement date, if applicable) without regard to the Eligibility Computation Period designated in Section 2.03(a)(3) of the Plan. The period of service may not exceed 12 months for eligibility for Salary Deferrals or After-Tax Employee Contributions. If a period greater than 12 months is entered and the Salary Deferral column is checked, the period of service will be deemed to be a 12-month period. If a period greater than 12 months applies to Matching Contributions or Employer Contributions, 100% vesting must be selected under AA §8 for those contributions.]</i></p> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <p>(d) <b>Equivalency Method.</b> For purposes of determining an Employee's Hours of Service for eligibility, the Plan will use the Equivalency Method (as defined in Section 2.03(a)(5) of the Plan). The Equivalency Method will apply to:</p> <p><input type="checkbox"/> (1) All Employees.</p> <p><input type="checkbox"/> (2) Only Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, eligibility will be determined based on actual hours worked.</p> <p>Hours of Service for eligibility will be determined under the following Equivalency Method.</p> <p><input type="checkbox"/> (3) <b>Monthly.</b> 190 Hours of Service for each month worked.</p> <p><input type="checkbox"/> (4) <b>Weekly.</b> 45 Hours of Service for each week worked.</p> <p><input type="checkbox"/> (5) <b>Daily.</b> 10 Hours of Service for each day worked.</p> <p><input type="checkbox"/> (6) <b>Semi-monthly.</b> 95 Hours of Service for each semi-monthly period worked.</p>   |
| N/A                      | <input type="checkbox"/> | <input type="checkbox"/> | <p>(e) <b>Nonvested Participant Break in Service rule applies.</b> Service earned prior to a Nonvested Participant Break in Service will be disregarded in applying the eligibility rules. (See Section 2.07(b) of the Plan.)</p> <p><input type="checkbox"/> The Nonvested Participant Break in Service rule applies to all Employees, including Employees who have not terminated employment.</p>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <p>(f) <b>One-Year Break in Service rule applies.</b> The One-Year Break in Service rule (as defined in Section 2.07(d) of the Plan) applies to temporarily disregard an Employee's service earned prior to a one-year Break in Service. (See Section 2.07(d) of the Plan if the One-Year Break in Service rule applies to Salary Deferrals.)</p> <p><input type="checkbox"/> The One-Year Break in Service rule applies to all Employees, including Employees who have not terminated employment.</p>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <p>(g) <b>Special eligibility provisions.</b> _____</p> <p><i>[Note: Any conditions provided under this AA §4-3 must satisfy the requirements of Code §410(a) and may not cause an Employee to enter the Plan later than the first Entry Date following the completion of a Year of Service (as defined in this AA §4-3).]</i></p>   |

4-4 **EFFECTIVE DATE OF MINIMUM AGE AND SERVICE REQUIREMENTS.** The minimum age and/or service requirements under AA §4-1 apply to all Employees under the Plan. An Employee will participate with respect to all contribution sources under the Plan as of his/her Entry Date, taking into account all service with the Employer, including service earned prior to the Effective Date.

To allow Employees hired on a specified date to enter the Plan without regard to the minimum age and/or service conditions, complete this AA §4-4.

**Deferral**      **Match**      **ER**  
                       

An Eligible Employee who is employed by the Employer on the following designated date will enter the Plan on the designated date without regard to minimum age and/or service requirements (as designated below):

- (a) the Effective Date of this Plan (as designated on the Employer Signature Page).
- (b) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
- (c) \_\_\_\_\_ [insert date no earlier than the Effective Date of this Plan]

An Eligible Employee who is employed on the designated date will enter the Plan on the designated date without regard to the minimum age and service requirements under AA §4-1. If both minimum age and service conditions are not waived, select (d) or (e) to designate which condition is waived under this AA §4-4.

- (d) This AA §4-4 only applies to the minimum service condition.
- (e) This AA §4-4 only applies to the minimum age condition.

The provisions of this AA §4-4 apply to all Eligible Employees employed on the designated date unless designated otherwise under subsection (f) or (g) below.

- (f) The provisions of this AA §4-4 apply to the following group of Employees employed on the designated date: \_\_\_\_\_
- (g) Describe special rules: \_\_\_\_\_

*[Note: An Employee who is employed as of the designated date described in this AA §4-4 will enter the Plan as of such date unless a different Entry Date is designated under subsection (g). The provisions of this AA §4-4 may not violate the minimum age or service rules under Code §410 or violate the nondiscrimination requirements under Code §401(a)(4).]*

4-5 **SERVICE WITH PREDECESSOR EMPLOYER.** If the Employer is maintaining the plan of a Predecessor Employer, service with such Predecessor Employer is automatically counted for eligibility, vesting and for purposes of applying any allocation conditions under AA §6-5 and AA §6B-7.

In addition, this AA §4-5 may be used to identify any Predecessor Employers for whom service will be counted for purposes of determining eligibility, vesting and allocation conditions under this Plan. (See Sections 2.06, 3.09(c) and 7.08 of the Plan.)

If this AA §4-5 is not completed, no service with a Predecessor Employer will be counted except as otherwise required under this AA §4-5.

(a) **Identify Predecessor Employer(s):**

- (1) The Plan will count service with all Employers which have been acquired as part of a transaction under Code §410(b)(6)(C).
- (2) The Plan will count service with the following Predecessor Employers:

	Eligibility	Vesting	Allocation Conditions
<input type="checkbox"/> (i) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(b) **Describe** any special provisions applicable to Predecessor Employer service: \_\_\_\_\_

*[Note: Any special provisions under this subsection may not violate the nondiscrimination requirements under Code §401(a)(4).]*



**SECTION 5  
 COMPENSATION DEFINITIONS**

5-1 **TOTAL COMPENSATION.** Total Compensation is based on the definition set forth under this AA §5-1. See Section 1.142 of the Plan for a specific definition of the various types of Total Compensation.

- (a) W-2 Wages
- (b) Code §415 Compensation
- (c) Wages under Code §3401(a)

*[Note: For purposes of determining Total Compensation, each definition includes Elective Deferrals as defined in Section 1.47 of the Plan, pre-tax contributions to a Code §125 cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4).]*

5-2 **POST-SEVERANCE COMPENSATION.** Total Compensation includes post-severance compensation, to the extent provided in Section 1.142(b) of the Plan, unless otherwise elected below.

- (a) **Exclusion of post-severance compensation from Total Compensation.** The following amounts paid after a Participant's severance of employment are excluded from Total Compensation:
  - (1) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.
  - (2) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee's gross income.

*[Note: Plan Compensation (as defined in Section 1.99 of the Plan) includes any post-severance compensation amounts that are includible in Total Compensation. The Employer may elect to exclude all compensation paid after severance of employment or may elect to exclude specific types of post-severance compensation from Plan Compensation under AA §5-3.]*

- (b) **Continuation payments for disabled Participants.** If this subsection is not elected, Total Compensation does not include continuation payments for disabled Participants. If this subsection is elected, Total Compensation shall include post-severance compensation paid to a Participant who is permanently and totally disabled, as provided in Section 1.142(c) of the Plan. For this purpose, disability continuation payments will be included for:
  - (1) Nonhighly Compensated Employees only.
  - (2) All Participants who are permanently and totally disabled for a fixed or determinable period.

5-3 **PLAN COMPENSATION.** Plan Compensation is **Total Compensation** (as defined in AA §5-1 above) with the following exclusions.

Deferral	Match	ER	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(a) No exclusions.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(b) Elective Deferrals (as defined in Section 1.47 of the Plan), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4) are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) All fringe benefits (cash and noncash), reimbursements or other expense allowances, moving expenses, deferred compensation, and welfare benefits are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) Compensation above \$___ is excluded. (See Section 1.99 of the Plan.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) Amounts received as a bonus are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Amounts received as commissions are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Overtime payments are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Amounts received for services performed for a non-signatory Related Employer are excluded. (See Section 2.02(c) of the Plan.)

*[Note: If this subsection is not elected, amounts received for services performed for a non-signatory Related Employer are INCLUDED in Plan Compensation.]*

- (i) “Deemed §125 compensation” as defined in Section 1.142(d) of the Plan.
- (j) Amounts received after termination of employment are excluded. (See Section 1.142(b) of the Plan.)
- (k) Differential Pay (as defined in Section 1.142(e) of the Plan).
- (l) Describe adjustments to Plan Compensation: \_\_\_\_\_

*[Note: Any exclusions selected under this AA §5-3 that do not meet the safe harbor exclusions under Treas. Reg. §1.414(s)-1, as described in Section 1.99(a) of the Plan, may cause the definition of Plan Compensation to fail to satisfy a safe harbor definition of compensation under Code §414(s). Certain exclusions above are safe harbor exclusions. (See Section 1.138 of the Plan.) Other exclusions may require the Plan to additional nondiscrimination testing, including the compensation ratio test under Treas. Reg. §1.414(s)-1(d)(3). Failure to use a definition of Plan Compensation that satisfies the nondiscrimination requirements under Code §414(s) will cause the Plan to fail to qualify for any contribution safe harbors, such as the permitted disparity allocation or Safe Harbor 401(k) Plan safe harbors. Any adjustments to Plan Compensation under this AA §5-3 must be definitely determinable and preclude Employer discretion. See AA §6C-5 for the definition of Plan Compensation as it applies to Safe Harbor Contributions.]*

**5-4 PERIOD FOR DETERMINING COMPENSATION.**

- (a) **Compensation Period.** Plan Compensation will be determined on the basis of the following period(s) for the contribution sources identified in this AA §5-4. *[Note: If a period other than Plan Year applies for any contribution source, any reference to the Plan Year as it refers to Plan Compensation for that contribution source will be deemed to be a reference to the period designated under this AA §5-4.]*

Deferral	Match	ER	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1) The Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) The calendar year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) The Employer's fiscal tax year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) The 12-month period ending on ____ which ends during the Plan Year.

- (b) **Compensation while a Participant.** Unless provided otherwise under this subsection (b), in determining Plan Compensation, only compensation earned while an individual is a Participant under the Plan with respect to a particular contribution source will be taken into account.  
 To count compensation for the entire Plan Year for a particular contribution source, including compensation earned while an individual is not a Participant with respect to such contribution source, check below. (See Section 1.99 of the Plan.)

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	All compensation earned during the Plan Year will be taken into account, including compensation earned while an individual is not a Participant.

- (c) **Few weeks rule.** The few weeks rule (as described in Section 5.03(c)(7)(ii) of the Plan) will not apply unless designated otherwise under this subsection (c).  
 Amounts earned but not paid during a Limitation Year solely because of the timing of pay periods and pay dates shall be included in Total Compensation for the Limitation Year, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and no amounts are included in more than one Limitation Year.

**SECTION 6  
 EMPLOYER CONTRIBUTIONS**

**6-1 EMPLOYER CONTRIBUTIONS.** Is the Employer authorized to make Employer Contributions under the Plan (other than Safe Harbor Employer Contributions or QNECs)?

- Yes
- No *[If No, skip to Section 6A.]*

*[Note: See AA §6C below for rules regarding Safe Harbor Employer Contributions and AA §6D-3 for rules regarding Qualified Nonelective Contributions (QNECs).]*

6-2 **EMPLOYER CONTRIBUTION FORMULA.** For the period designated in AA §6-4 below, the Employer will make the following Employer Contributions on behalf of Participants who satisfy the allocation conditions designated in AA §6-5 below. Any Employer Contribution authorized under this AA §6-2 will be allocated in accordance with the allocation formula selected under AA §6-3.

- (a) **Discretionary contribution.** The Employer will determine in its sole discretion how much, if any, it will make as an Employer Contribution.
- (b) **Fixed contribution.**
  - (1) \_\_\_\_\_% of each Participant’s Plan Compensation.
  - (2) \$\_\_\_\_ for each Participant.
- (c) **Contributions under Collective Bargaining Agreement, employment contract or equivalent arrangement.** The Employer will make an Employer Contribution based on a Collective Bargaining Agreement, employment agreement or equivalent arrangement as follows: \_\_\_\_\_

*[Note: Insert the appropriate contribution formula (and allocation formula, if applicable) from the Collective Bargaining Agreement, employment agreement or equivalent arrangement. The formula must be definitely determinable as required under Treas. Reg. §1.401-1.]*

- (d) **Service-based contribution.** The Employer will make the following contribution:
  - (1) **Discretionary.** A discretionary contribution determined as a uniform percentage of Plan Compensation for each period of service designated below.
  - (2) **Fixed percentage.** \_\_\_\_% of Plan Compensation paid for each period of service designated below.
  - (3) **Fixed dollar.** \$\_\_\_\_ for each period of service designated below.

The service-based contribution will be based on the following periods of service:

- (4) Each Hour of Service
- (5) Each week of employment
- (6) Describe period: \_\_\_\_\_

The service-based contribution is subject to the following rules.

- (7) Describe any special provisions that apply to a service-based contribution: \_\_\_\_\_

*[Note: Any period described in subsection (6) must apply uniformly to all Participants and cannot exceed a 12-month period. Any special provisions under subsection (7) may only describe the basis for determining a discretionary service-based contribution, such as a uniform dollar amount, and must satisfy the nondiscrimination requirements under Code §401(a)(4) and the regulations thereunder.]*

- (e) **Year of Service contribution.** The Employer will make an Employer Contribution based on Years of Service with the Employer.

	Years of Service	Contribution %
<input type="checkbox"/> (1)	For Years of Service between ___ and ___	___%
<input type="checkbox"/> (2)	For Years of Service between ___ and ___	___%
<input type="checkbox"/> (3)	For Years of Service between ___ and ___	___%
<input type="checkbox"/> (4)	For Years of Service ___ and above	___%

For this purpose, a Year of Service is each Plan Year during which an Employee completes at least 1,000 Hours of Service. Alternatively, a Year of Service is: \_\_\_\_\_

*[Note: Any alternative definition of a Year of Service must meet the requirements of a Year of Service as defined in Section 2.03 of the Plan.]*

- (f) **Prevailing Wage Formula.** The Employer will make a contribution for each Participant’s Prevailing Wage Service based on the hourly contribution rate for the Participant’s employment classification. (See Section 3.02(a)(5) of the Plan.)
  - (1) **Amount of contribution.** The Employer will make an Employer Contribution based on the hourly contribution rate for the Participant’s employment classification. The Prevailing Wage Contribution will be determined as follows:
    - (i) The Employer Contribution will be determined based on the required contribution rates for the employment classifications under the applicable federal, state or municipal prevailing wage laws.

For any Employee performing Prevailing Wage Service, the Employer may make the required contribution for such service without designating the exact amount of such contribution.

- (ii) The Employer will make the Prevailing Wage Contribution based on the hourly contribution rates as set forth in the Addendum attached to this Adoption Agreement. However, if the required contribution under the applicable federal, state or municipal prevailing wage law provides for a greater contribution than set forth in the Addendum, the Employer may make the greater contribution as a Prevailing Wage Contribution.
- (2) **Offset of other contributions.** The contributions under the Prevailing Wage Formula will offset the following contributions under this Plan. (See Section 3.02(a)(5) of the Plan.)
  - (i) Employer Contributions (other than Safe Harbor Employer Contributions)
  - (ii) Safe Harbor Employer Contributions.
  - (iii) Qualified Nonelective Contributions (QNECs)
  - (iv) Matching Contributions (other than Safe Harbor Matching Contributions)
  - (v) Safe Harbor Matching Contributions.
  - (vi) Qualified Matching Contributions (QMACs)

*[Note: If subsection (ii) or (v) is checked, the Prevailing Wage contribution must satisfy the requirements for a Safe Harbor Contribution.]*

- (3) **Modification of default rules.** Section 3.02(a)(5) of the Plan contains default rules for administering the Prevailing Wage Formula. Complete this subsection (3) to modify the default provisions.
  - (i) **Application to Highly Compensated Employees.** Instead of applying only to Nonhighly Compensated Employees, the Prevailing Wage Formula applies to all eligible Participants, including Highly Compensated Employees.
  - (ii) **Minimum age and service conditions.** Instead of no minimum age or service condition, Prevailing Wage contributions are subject to a one Year of Service (as defined in AA§4-3) and age 21 minimum age and service requirement with semi-annual Entry Dates.
  - (iii) **Allocation conditions.** Instead of no allocation conditions, the Prevailing Wage contributions are subject to a 1,000 Hours of Service and last day employment allocation condition, as set forth under Section 3.09 of the Plan.
  - (iv) **Vesting.** Instead of 100% immediate vesting, Prevailing Wage contributions will vest under the following vesting schedule (as defined in Section 7.02 of the Plan):
    - (A) 6-year graded vesting schedule
    - (B) 3-year cliff vesting schedule
  - (v) **Describe:** \_\_\_\_\_

*[Note: Overriding the default provisions under this subsection (3) may restrict the ability of the Employer to take full credit for Prevailing Wage Contributions for purposes of satisfying its obligations under applicable federal, state or municipal prevailing wage laws. Subsection (v) may only describe modifications to the default provisions relating to minimum age and service conditions, Hour of Service and last day employment allocation conditions and vesting schedules, must satisfy the nondiscrimination requirements under Code §401(a)(4) and should be consistent with the applicable federal, state or municipal prevailing wage laws. See Section 3.02(a)(5) of the Plan.]*

- (g) **Describe special rules for determining contributions under Plan:** \_\_\_\_\_

*[Note: Any special rules must be described in a manner that precludes Employer discretion and must satisfy the nondiscrimination requirements of Code §401(a)(4) and the regulations thereunder.]*

### 6-3 ALLOCATION FORMULA.

- (a) **Pro rata allocation.** The discretionary Employer Contribution under AA §6-2 will be allocated:
  - (1) as a uniform percentage of Plan Compensation.
  - (2) as a uniform dollar amount.
- (b) **Fixed contribution.** The fixed Employer Contribution under AA §6-2 will be allocated in accordance with the selections made with respect to fixed Employer Contributions under AA §6-2.

- (c) **Permitted disparity allocation.** The discretionary Employer Contribution under AA §6-2 will be allocated under the two-step method (as defined in Section 3.02(a)(1)(ii)(A) of the Plan), using the Taxable Wage Base (as defined in Section 1.137 of the Plan) as the Integration Level. However, for any Plan Year in which the Plan is Top Heavy, the four-step method (as defined in Section 3.02(a)(1)(ii)(B) of the Plan) applies, unless provided otherwise under subsection (2) below.

To modify these default rules, complete the appropriate provision(s) below.

- (1) **Integration Level.** Instead of the Taxable Wage Base, the Integration Level is:
- (i) \_\_\_% of the Taxable Wage Base, increased (but not above the Taxable Wage Base) to the next higher:
    - (A) N/A  (B) \$1
    - (C) \$100  (D) \$1,000
  - (ii) \$\_\_\_ (not to exceed the Taxable Wage Base)
  - (iii) 20% of the Taxable Wage Base

[*Note: See Section 3.02(a)(1)(ii) of the Plan for rules regarding the Maximum Disparity Rate that may be used where an Integration Level other than the Taxable Wage Base is selected.*]

The Maximum Disparity Rate is the maximum amount that may be allocated with respect to Excess Compensation. If the two-step allocation method is used, under step one of the two-step formula, the amount allocated as a percentage of Plan Compensation and Excess Compensation may not exceed the following percentage:

<u>Integration Level</u> <u>(as a percentage of the Taxable Wage Base)</u>	<u>Maximum</u> <u>Disparity Rate</u>
100%	5.7%
More than 80% but less than 100%	5.4%
More than 20% and not more than 80%	4.3%
20% or less	5.7%

If the four-step allocation formula is used, under step three of the four-step formula, the amount allocated as a percentage of Plan Compensation and Excess Compensation may not exceed the following percentage:

<u>Integration Level</u> <u>(as a percentage of the Taxable Wage Base)</u>	<u>Maximum</u> <u>Disparity Rate</u>
100%	2.7%
More than 80% but less than 100%	2.4%
More than 20% and not more than 80%	1.3%
20% or less	2.7%

- (2) **Four-step method.**
- (i) Instead of applying only when the Plan is top heavy, the four-step method will always be used.
  - (ii) The four-step method will never be used, even if the Plan is Top Heavy.
  - (iii) In applying step one and step two under the four-step method, instead of using Total Compensation, the Plan will use Plan Compensation. (See Section 3.02(a)(1)(ii)(B) of the Plan.)
- (d) **Uniform points allocation.** The discretionary Employer Contribution designated in AA §6-2 will be allocated to each Participant in the ratio that each Participant's total points bears to the total points of all Participants. A Participant will receive the following points:
- (1) \_\_\_ point(s) for each \_\_\_ year(s) of age (attained as of the end of the Plan Year).
  - (2) \_\_\_ point(s) for each \$ \_\_\_ (not to exceed \$200) of Plan Compensation.
  - (3) \_\_\_ point(s) for each \_\_\_ Year(s) of Service. For this purpose, Years of Service are determined:
    - (i) In the same manner as determined for eligibility.
    - (ii) In the same manner as determined for vesting.
    - (iii) Points will not be provided with respect to Years of Service in excess of \_\_\_.

- (e) **Employee group allocation.** The Employer may make a separate Employer Contribution to the Participants in the following allocation groups. The Employer must notify the Trustee in writing of the amount of the contribution to be allocated to each allocation group.
- (1) A separate discretionary Employer Contribution may be made to each Participant of the Employer (i.e., each Participant is in his/her own allocation group).
- (2) A separate discretionary or fixed Employer Contribution may be made to the following allocation groups. If no fixed amount is designated for a particular allocation group, the contribution made for such allocation group will be allocated as a uniform percentage of Plan Compensation to all Participants within that allocation group, unless otherwise designated as a uniform dollar amount below.
- The contribution made for each allocation group will be allocated as a uniform dollar amount to all Participants within the allocation group.
- Group 1:** \_\_\_\_\_
- [Note: The allocation groups designated above must be clearly defined in a manner that will not violate the definite allocation formula requirement of Treas. Reg. §1.401-1(b)(1)(ii). See Section 3.02(a)(1)(iv)(B)(V) of the Plan for restrictions that apply with respect to “short-service” Employees. In the case of self-employed individuals (i.e., sole proprietorships or partnerships), the requirements of 1.401(k)-1(a)(6) continue to apply, and the allocation method should not be such that a cash or deferred election is created for a self-employed individual as a result of application of the allocation method.]*
- (3) **Special rules.** The following special rules apply to the Employee group allocation formula.
- (i) **Family Members.** In determining the separate groups under (2) above, each Family Member (as defined in Section 1.66 of the Plan) of a Five Percent Owner is always in a separate allocation group. If there is more than one Family Member, each Family Member will be in a separate allocation group.
- (ii) **Benefiting Participants who do not receive Minimum Gateway Contribution.** In determining the separate groups under (2) above, Benefiting Participants who do not receive a Minimum Gateway Contribution are always in a separate allocation group. If there is more than one Benefiting Participant who does not receive a Minimum Gateway Contribution, each will be in a separate allocation group. (See Section 3.02(a)(1)(iv)(B)(III) of the Plan.)
- (iii) **More than one Employee group.** Unless designated otherwise under this subsection (iii), if a Participant is in more than one allocation group described in (2) above during the Plan Year, the Participant will receive an Employer Contribution based on the Participant’s status on the last day of the Plan Year. (See Section 3.02(a)(1)(iv)(A) of the Plan.)
- (A) **Determined separately for each Employee group.** If a Participant is in more than one allocation group during the Plan Year, the Participant’s share of the Employer Contribution will be based on the Participant’s status for the part of the year the Participant is in each allocation group.
- (B) **Describe:** \_\_\_\_\_
- [Note: This subsection (B) may only describe the amount of the Employer Contribution a Participant will receive when such Participant is in more than one allocation group. Any language under this subsection (B) must be definitely determinable and may not violate the nondiscrimination requirements under Code §401(a)(4).]*
- (f) **Age-based allocation.** The discretionary Employer Contribution designated in AA §6-2 will be allocated under the age-based allocation formula so that each Participant receives a pro rata allocation based on adjusted Plan Compensation. For this purpose, a Participant’s adjusted Plan Compensation is determined by multiplying the Participant’s Plan Compensation by an Actuarial Factor (as described in Section 1.04 of the Plan).
- A Participant’s Actuarial Factor is determined based on a specified interest rate and mortality table. Unless designated otherwise under (1) or (2) below, the Plan will use an applicable interest rate of 8.5% and a UP-1984 mortality table.
- (1) **Applicable interest rate.** Instead of 8.5%, the Plan will use an interest rate of \_\_\_% (must be between 7.5% and 8.5%) in determining a Participant’s Actuarial Factor.

(2) **Applicable mortality table.** Instead of the UP-1984 mortality table, the Plan will use the following mortality table in determining a Participant's Actuarial Factor: \_\_\_\_\_

(3) **Describe special rules applicable to age-based allocation:** \_\_\_\_\_

*[Note: See Appendix A of the Plan for sample Actuarial Factors based on an 8.5% applicable interest rate and the UP-1984 mortality table. If an interest rate or mortality table other than 8.5% or UP-1984 is selected, appropriate Actuarial Factors must be calculated. Any alternative interest or mortality factors must meet the requirements for standard interest and mortality assumptions as defined in Treas. Reg. §1.401(a)(4)-12. Any special rules described under subsection (3) may only describe an alternative method for determining adjusted Plan Compensation and may not violate the nondiscrimination requirements under Code §401(a)(4). In addition, subsection (3) may describe a definitely determinable allocation method that was specified in a previously-approved pre-approved plan document.]*

(g) **Service-based allocation formula.** The service-based Employer Contribution selected in AA §6-2 will be allocated in accordance with the selections made under the service-based allocation formula in AA §6-2.

(h) **Year of Service allocation formula.** The Year of Service Employer Contribution selected in AA §6-2 will be allocated in accordance with the selections made under the Year of Service allocation formula in AA §6-2.

(i) **Prevailing Wage allocation formula.** The Prevailing Wage Employer Contribution selected in AA §6-2 will be allocated in accordance with the selections made under the Prevailing Wage allocation formula in AA §6-2. The Employer may attach an Addendum to the Adoption Agreement setting forth the hourly contribution rate for the employment classifications eligible for Prevailing Wage contributions.

(j) **Describe special rules for determining allocation formula:** \_\_\_\_\_

*[Note: This subsection (j) may only be used to describe a definite allocation formula that was included in a previously-approved pre-approved plan. Any special rules under this subsection must be described in a manner that precludes Employer discretion and must satisfy the nondiscrimination requirements of Code §401(a)(4) and the regulations thereunder.]*

6-4 **SPECIAL RULES.** No special rules apply with respect to Employer Contributions under the Plan, except to the extent designated under this AA §6-4. Unless designated otherwise, in determining the amount of the Employer Contributions to be allocated under this AA §6, the Employer Contribution will be based on Plan Compensation earned during the Plan Year. (See Section 3.02(c) of the Plan.)

(a) **Period for determining Employer Contributions.** Instead of the Plan Year, Employer Contributions will be determined based on Plan Compensation earned during the following period: *[Note: Plan Year must be used if the permitted disparity allocation method is selected under AA §6-3 above.]*

(1) Plan Year quarter

(2) calendar month

(3) payroll period

(4) Other: \_\_\_\_\_

*[Note: Although Employer Contributions are determined on the basis of Plan Compensation earned during the period designated under this subsection, this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Employer Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415(c)-1(b)(6)(B), regardless of the period selected under this subsection. Any alternative period designated under subsection (4) may not exceed a 12-month period and will apply uniformly to all Participants.]*

(b) **Limit on Employer Contributions.** The Employer Contribution elected in AA §6-2 may not exceed:

(1) \_\_\_\_% of Plan Compensation

(2) \$\_\_\_\_

(3) A discretionary amount determined by the Employer applied in a uniform manner for all eligible Participants for the Plan Year.

(c) **Offset of Employer Contribution.**

(1) A Participant's allocation of Employer Contributions under AA §6-2 of this Plan is reduced by contributions under \_\_\_\_\_ *[insert name of plan(s)]*. (See Section 3.02(d)(2) of the Plan.)

6-5 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6-5 to receive an allocation of Employer Contributions under the Plan.

*[Note: Any allocation conditions set forth under this AA §6-5 do not apply to Prevailing Wage Contributions under AA §6-2, Safe Harbor Employer Contributions under AA §6C, or QNECs under AA §6D, unless provided otherwise under those specific sections. See AA §4-5 for treatment of service with Predecessor Employers for purposes of applying the allocation conditions under this AA §6-5.]*

- (a) **No allocation conditions** apply with respect to Employer Contributions under the Plan.
- (b) **Safe harbor allocation condition.** An Employee must be employed by the Employer on the last day of the Plan Year OR must complete more than:
  - (1) \_\_\_\_ (not to exceed 500) Hours of Service during the Plan Year.
    - (i) Hours of Service are determined using actual Hours of Service.
    - (ii) Hours of Service are determined using the following Equivalency Method (as defined under AA §4-3):
      - (A) Monthly  (B) Weekly
      - (C) Daily  (D) Semi-monthly
  - (2) \_\_\_\_ (not more than 91) consecutive days of employment with the Employer during the Plan Year.

*[Note: Under this safe harbor allocation condition, an Employee will satisfy the allocation conditions if the Employee completes the designated Hours of Service or period of employment, even if the Employee is not employed on the last day of the Plan Year. See Section 3.09 of the Plan for rules regarding the application of this allocation condition to the minimum coverage test.]*

- (c) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.
- (d) **Minimum service condition.** An Employee must be credited with at least:
  - (1) \_\_\_\_ (not to exceed 1,000) Hours of Service during the Plan Year.
    - (i) Hours of Service are determined using actual Hours of Service.
    - (ii) Hours of Service are determined using the following Equivalency Method (as defined under AA §4-3):
      - (A) Monthly  (B) Weekly
      - (C) Daily  (D) Semi-monthly
  - (2) \_\_\_\_ (not more than 182) consecutive days of employment with the Employer during the Plan Year.
- (e) **Application to a specified period.** The allocation conditions selected under this AA §6-5 apply on the basis of the Plan Year. Alternatively, if an employment or minimum service condition applies under this AA §6-5, the Employer may elect under this subsection to apply the allocation conditions on a periodic basis as set forth below. See Section 3.09(a) of the Plan for a description of the rules for applying the allocation conditions on a periodic basis.
  - (1) **Period for applying allocation conditions.** Instead of the Plan Year, the allocation conditions set forth under subsection (2) below apply with respect to the following periods:
    - (i) Plan Year quarter
    - (ii) calendar month
    - (iii) payroll period
    - (iv) Other: \_\_\_\_\_
  - (2) **Application to allocation conditions.** If this subsection (2) is checked to apply allocation conditions on the basis of specified periods, to the extent an employment or minimum service allocation condition applies under this AA §6-5, such allocation condition will apply based on the period selected under subsection (1) above, unless designated otherwise below:
    - (i) Only the employment condition will be based on the period selected in subsection (1) above.
    - (ii) Only the minimum service condition will be based on the period selected in subsection (1) above.
    - (iii) Describe any special rules: \_\_\_\_\_

*[Note: Any special rules under this subsection (iii) must satisfy the nondiscrimination requirements of Code §401(a)(4).]*



- (f) **Exceptions.**
- (1) The above allocation condition(s) will **not** apply if the Employee, during the Plan Year:
- (i) dies.
  - (ii) terminates employment due to becoming Disabled.
  - (iii) becomes Disabled.
  - (iv) terminates employment after attaining Normal Retirement Age.  
*[Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule below.]*
  - (v) terminates employment after attaining Early Retirement Age.  
*[Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule below.]*
  - (vi) is on an authorized leave of absence from the Employer.
- (2) The exceptions selected under subsection (1) will apply even if an Employee has not terminated employment at the time of the selected event(s).
- (3) The exceptions selected under subsection (1) do not apply to:
- (i) an employment condition designated under this AA §6-5.
  - (ii) a minimum service condition designated under this AA §6-5.
- (g) **Describe** any special rules governing the allocation conditions under the Plan: \_\_\_\_\_  
*[Note: Any special rules must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

**SECTION 6A**  
**SALARY DEFERRALS**

6A-1 **SALARY DEFERRALS.** Are Employees permitted to make Salary Deferrals under the Plan?

- Yes  
 No *[If "No" is checked, skip to Section 6B.]*

6A-2 **MAXIMUM LIMIT ON SALARY DEFERRALS.** Unless designated otherwise under this AA §6A-2, a Participant may defer any amount up to the Elective Deferral Dollar Limit and the Code §415 Limitation (as set forth in Sections 5.02 and 5.03 of the Plan).

(a) **Salary Deferral Limit.** A Participant may not defer an amount in excess of:

- (1) \_\_\_\_\_% of Plan Compensation  
 (2) \$\_\_\_\_\_.

*[Note: If both subsection (1) and subsection (2) are checked, the deferral limit is the lesser of the amounts selected.]*

Any limit described in subsection (1) or subsection (2) above applies with respect to the following period:

- (3) Plan Year.  
 (4) the portion of the Plan Year during which the individual is eligible to participate.  
 (5) each separate payroll period during which the individual is eligible to participate.

- (b) **Different limit for Highly Compensated Employees and Nonhighly Compensated Employees.** The Salary Deferral Limit described above applies only to Employees who are Highly Compensated Employees as of the first day of the Plan Year. For Nonhighly Compensated Employees, the following limit applies:
- (1) **No limit** (other than the Elective Deferral Dollar Limit and the Code §415 Limitation).
- (2) **Nonhighly Compensated Employee limit.**
- (i) \_\_\_\_\_% of Plan Compensation
- (ii) \$ \_\_\_\_\_
- during the following period:
- (iii) Plan Year.
- (iv) the portion of the Plan Year during which the individual is eligible to participate.
- (v) each separate payroll period during which the individual is eligible to participate.
- [Note: Any percentage or dollar limit imposed on Nonhighly Compensated Employees under (i) and/or (ii) above may not be lower than the percentage or dollar limit imposed on Highly Compensated Employees under (a) above. If both (i) and (ii) are checked, the deferral limit is the lesser of the amounts selected.]*
- (c) **Limits on deferrals on bonus payments.** *[Note: This subsection may only be selected if bonus payments are not excluded under AA §5-3.]*
- (1) The same limits specified above apply to bonus and non-bonus Plan Compensation. Employees may defer any amounts out of bonus payments, subject to the Elective Deferral Dollar Limit and the Code §415 Limitation (as defined in Sections 5.02 and 5.03 of the Plan) and any other limit on Salary Deferrals under this AA 6A-2. The Employer may impose special limits on bonus payments under the Salary Deferral Election. (See Section 3.03(a) of the Plan.)
- (2) A Participant may defer up to \_\_\_\_% (*not to exceed 100%*) of any bonus payment (subject to the Elective Deferral Dollar Limit and the Code §415 Limitation) without regard to any other limits described under this AA §6A-2. The Employer may impose special limits on bonus payments under the Salary Deferral Election. (See Section 3.03(a) of the Plan.)
- (3) Describe special rules applicable to deferrals on bonus payments: \_\_\_\_\_
- [Note: If any selection under this subsection is checked, bonus payments may not be excluded from Plan Compensation in the Deferral column under AA §5-3.]*
- (d) **Describe** any other limits that apply with respect to Salary Deferrals under the Plan: \_\_\_\_\_
- [Note: Any other limits provided under this subsection must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

6A-3 **MINIMUM DEFERRAL RATE.** Unless designated otherwise under this AA §6A-3, no minimum deferral requirement applies under the Plan. Alternatively, a Participant must defer at least the following amount in order to make Salary Deferrals under the Plan.

- (a) 1.5% of Plan Compensation for a payroll period.
- (b) \$\_\_\_\_\_ for a payroll period.
- (c) Describe: \_\_\_\_\_

*[Note: If more than one limit applies under this AA §6A-3, the minimum deferral rate is the lesser of the amounts designated under this AA §6A-3. Any minimum deferral rates provided under this AA §6A-3 must comply with the nondiscrimination requirements under Code §401(a)(4).]*

6A-4 **CATCH-UP CONTRIBUTIONS.** Catch-Up Contributions (as defined in Section 3.03(d) of the Plan) are permitted under the Plan, unless designated otherwise under this AA §6A-4.

- Catch-Up Contributions are not permitted under the Plan.

6A-5 **ROTH DEFERRALS.**

- (a) **Availability of Roth Deferrals.**
- (1) Roth Deferrals are permitted under the Plan.
- (2) Roth Deferrals are not permitted under the Plan.

*[Note: If Roth Deferrals are effective as of a date later than the Effective Date of the Plan, designate such special Effective Date in AA §6A-9 below.]*

- (b) **Distribution of Roth Deferrals.** Unless designated otherwise under this subsection, to the extent a Participant takes a distribution or withdrawal from his/her Salary Deferral Account(s), the Participant may designate the extent to which such distribution is taken from the Pre-Tax Deferral Account or from the Roth Deferral Account. (As described under Section 8.11(b)(2) of the Plan, if a Participant fails to designate the appropriate Account for corrective distributions from the Plan, such distribution may be withdrawn equally from both the Pre-Tax Salary Deferral Account and the Roth Deferral Account, or the Employer may withdraw such amounts first from either the Pre-Tax Salary Deferral Account or the Roth Deferral Account.)

Alternatively, the Employer may designate the order of distributions for the distribution types listed below:

(1) **Distributions and withdrawals.**

- (i) Any distribution will be taken on a pro rata basis from the Participant's Pre-Tax Deferral Account and Roth Deferral Account.
- (ii) Any distribution will be taken first from the Participant's Roth Deferral Account and then from the Participant's Pre-Tax Deferral Account.
- (iii) Any distribution will be taken first from the Participant's Pre-Tax Deferral Account and then from the Participant's Roth Deferral Account.

(2) **Distribution of Excess Deferrals.**

- (i) Distribution of Excess Deferrals will be made from Roth and Pre-Tax Deferral Accounts in the same proportion that deferrals were allocated to such Accounts for the calendar year.
- (ii) Distribution of Excess Deferrals will be made first from the Roth Deferral Account and then from the Pre-Tax Deferral Account.
- (iii) Distribution of Excess Deferrals will be made first from the Pre-Tax Deferral Account and then from the Roth Deferral Account.

(3) **Distribution of Salary Deferrals to Highly Compensated Employees to correct ADP or ACP Test failure.**

- (i) Distribution of Excess Contributions (or Excess Aggregate Contributions) will be made from Roth and Pre-Tax Deferral Accounts in the same proportion that deferrals were allocated to such Accounts for the Plan Year.
- (ii) Distribution of Excess Contributions (or Excess Aggregate Contributions) will be made first from the Roth Deferral Account and then from the Pre-Tax Deferral Account.
- (iii) Distribution of Excess Contributions (or Excess Aggregate Contributions) will be made first from the Pre-Tax Deferral Account and then from the Roth Deferral Account.

- (c) **In-Plan Roth Conversions.** Unless elected under this subsection, the Plan does not permit a Participant to make an In-Plan Roth Conversion under the Plan.

- (1) **Effective date.** Effective \_\_\_\_\_ [not earlier than 1/1/2013], a Participant may elect to convert all or any portion of his/her non-Roth vested Account Balance to an In-Plan Roth Conversion Account.

*[Note: The Plan must provide for Roth Deferrals under AA §6A-5 as of the effective date designated in this subsection (1). An election under this subsection does not affect an In-Plan Roth Conversion that was allowed under prior Plan provisions.]*

(2) **In-service distribution.**

- (i) For a Participant to convert his/her eligible contributions to Roth Deferrals through an In-Plan Roth Conversion, the Participant need not be eligible to take a distribution from the Plan. *[Note: If this subsection (i) is checked, a Participant may convert any or all of the eligible contribution sources to Roth Deferrals through an In-Plan Roth Conversion.]*
- (ii) For a Participant to convert his/her eligible contributions to Roth Deferrals through an In-Plan Roth Conversion, a Participant must be eligible for a distribution of any amounts converted to Roth Deferrals through an In-Plan Roth Conversion. Thus, only amounts that are eligible for distribution under AA §9 or AA §10 are eligible for In-Plan Roth Conversion.

- (3) **Contribution sources.** An Employee may elect to make an In-Plan Roth Conversion from all available contribution sources under the Plan.

To override this default provision to limit the contributions sources available for In-Plan Roth Conversion, select the applicable contribution sources from which an In-Plan Roth Conversion is available:

- (i) Pre-tax Salary Deferrals
  - (ii) Employer Contributions
  - (iii) Matching Contributions
  - (iv) Safe Harbor Contributions
  - (v) QNECs and QMACs
  - (vi) After-Tax Contributions
  - (vii) Rollover Contributions
- (4) **Limits applicable to In-Plan Roth Conversions.** No special limits apply with respect to In-Plan Roth Conversions, unless designated otherwise under this subsection.
- (i) Roth conversions may only be made from contribution sources that are fully vested (i.e., 100% vested).  
*[Note: If an In-Plan Roth Conversion is permitted from partially-vested sources, special rules apply for determining the vested percentage of such amounts after conversion. See Section 7.11 of the Plan.]*
  - (ii) A Participant may not make an In-Plan Roth Conversion of less than \$\_\_\_ (may not exceed \$1,000).
  - (iii) A Participant may not make an In-Plan Roth Conversion of any outstanding loan amount.  
*[Note: If this subsection (iii) is not checked, a Participant may convert amounts that are attributable to an outstanding loan, to the extent the loan relates to a contribution source that is eligible for conversion under subsection (3) above.]*
  - (iv) Describe: \_\_\_\_\_  
*[Note: Any selection in subsection (iv) must be definitely determinable and not subject to Employer discretion.]*
- (5) **Amounts available to pay federal and state taxes generated from an In-Plan Roth Conversion.** No special provisions apply to allow Participants to withdraw funds to pay federal or state taxes generated from an In-Plan Roth Conversion, except as provided otherwise under this subsection.
- (i) **In-service distribution.** If the Plan does not otherwise permit an in-service distribution at the time of the In-Plan Roth Conversion and this subsection (i) is checked, a Participant may elect to take an in-service distribution solely to pay taxes generated from the In-Plan Roth Conversion to the extent such in-service distribution would otherwise be permitted under Section 8.10 of the Plan.  
*[Note: If this subsection (i) is checked, a Participant may take an in-service distribution only to the extent such distribution would otherwise be permitted under the provisions of Section 8.10 of the Plan. Thus, for example, a Participant may not take an in-service distribution of amounts attributable to Salary Deferrals (including any QNECs, QMACs or Safe Harbor contributions) prior to age 59½.]*
  - (ii) **Participant loan.** Generally, a Participant may request a loan from the Plan to the extent permitted under Section 13 of the Plan and AA Appendix B. However, to the extent a Participant loan is not otherwise allowed, and this subsection (ii) is selected, a Participant may receive a Participant loan solely to pay taxes generated from an In-Plan Roth Conversion.  
*[Note: If this subsection (ii) is selected, and Participant loans are not otherwise authorized under the Plan, any Participant loan made pursuant to this subsection (ii) will be made in accordance with the default loan policy described in Section 13 of the Plan.]*
- (6) **Distribution from In-Plan Roth Conversion Account.** Distributions from the In-Plan Roth Conversion Account will be permitted at the same time as permitted for Roth Deferrals, as set forth under AA §10-1, unless designated otherwise under this subsection. However, earlier distribution of certain converted amounts may be required to the extent necessary to protect distribution options that were available with respect to such converted amounts prior to the In-Plan Roth Conversion.
- (i) In-service distributions will not be permitted from an In-Plan Roth Conversion Account. However, as set forth in Section 3.03(f)(1)(vi) of the Plan, a distribution must continue to be offered for any converted amounts as of the earliest date a distribution would otherwise be permitted for such converted amounts, had they not been converted.
  - (ii) An in-service distribution may be made from the In-Plan Roth Conversion Account at any time.

(iii) Describe distribution options: \_\_\_\_\_

*[Note: This subsection (6) may not be used to eliminate an in-service distribution option that was otherwise available at the time of the In-Plan Roth Conversion. Thus, for example, if a Participant is permitted to make an In-Plan Roth Conversion of After-Tax Employee Contributions or Rollover Contributions, and such contributions are eligible for immediate distribution at the time of the In-Plan Roth Conversion, those amounts must continue to be available for distribution after the In-Plan Roth Conversion. To the extent a selection in this subsection (6) results in an improper elimination of a distribution right, the provisions of this subsection (6) will not apply.]*

(d) Describe any special rules that apply to Roth Deferrals under the Plan: \_\_\_\_\_

*[Note: Any special rules must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

6A-6 **ADP TESTING.** The ADP Test will be performed using the testing method designated below: (See Section 6.01(a) of the Plan.)

*[Note: If the Plan is a Safe Harbor 401(k) Plan (as designated in AA §6C below), the Plan **must** use the Current Year Testing Method. Thus, for any year the Plan is a Safe Harbor 401(k) Plan, the Current Year Testing Method applies, regardless of any selection under this AA §6A-6.]*

- (a) **Current Year Testing Method.** The Plan will use the Current Year Testing Method in running the ADP test. If the Current Year Testing Method is elected, the ADP of the Nonhighly Compensated Group for the first Plan Year is calculated using current year data, unless otherwise designated below.
- Deemed 3% used for first Plan Year.** Instead of using actual current year data for the first Plan Year, the ADP of the Nonhighly Compensated Group for the first Plan Year the 401(k) Plan is effective is deemed to be 3%.
- (b) **Prior Year Testing Method.** The Plan will use the Prior Year Testing Method in running the ADP Test. If the Prior Year Testing Method is elected, the ADP of the Nonhighly Compensated Group for the first Plan Year is deemed to be 3%, unless otherwise designated below.
- Current year data used for first Plan Year.** Instead of deeming the ADP of the Nonhighly Compensated Group to be 3% for the first Plan Year for which the 401(k) Plan is effective, the Plan will use the actual current year data for the first Plan Year.
- (c) **Application of Current Year Testing Method.** The Current Year Testing Method has applied since the \_\_\_\_ Plan Year. *[Note: If the Plan has switched from the Prior Year Testing Method to the Current Year Testing Method, this subsection may be checked to designate the first Plan Year for which the Current Year Testing Method applies.]*

6A-7 **SALARY DEFERRAL ELECTIONS.**

- (a) **Change or revocation of deferral election.** In addition to the Participant's Entry Date under the Plan, a Participant's election to change or resume a deferral election will be effective as set forth under the Salary Reduction Agreement or other written procedures adopted by the Plan Administrator. A Participant must be permitted to change or revoke a deferral election at least once per year. Unless the Salary Reduction Agreement or other written procedures adopted by the Plan Administrator provide otherwise, a Participant may revoke a deferral election (on a prospective basis) at any time.
- (b) **Salary deferral elections of rehired Participants.** Unless designated otherwise below, a Participant's affirmative election to defer (or to not defer) will cease upon termination of employment and the Participant will need to make a new election upon rehire. *[Note: If this Plan is a QACA Safe Harbor Plan, the Employer must make an election that is consistent with the election in AA §6C-3(c)(5).]*
- Participant's affirmative election does not cease upon termination of employment.** If this subsection (b) is selected, a terminated Participant's affirmative election to defer (or to not defer) **will not cease** upon termination of employment and the Participant's affirmative election to defer (or to not defer) in effect at the time of employment termination will apply upon rehire.

*[Note: The Employer may modify the rules applicable to rehired employees under the Salary Reduction Agreement or other administrative procedures.]*

6A-8 **AUTOMATIC CONTRIBUTION ARRANGEMENT (other than a QACA Safe Harbor 401(k) Plan).** No automatic contribution provisions apply under Section 3.03(c) of the Plan, unless provided otherwise under this AA §6A-8. (If the Employer wishes to adopt a QACA Safe Harbor Plan, the Employer should not complete this AA §6A-8 and instead complete AA §6C-3.)

(a) **Type of Automatic Contribution Arrangement.**

- (1) **Eligible Automatic Contribution Arrangement.** Check this subsection (1) if the Employer intends for the Plan to be an Eligible Automatic Contribution Arrangement (EACA), as described in Section 3.03(c)(2). If this subsection (1) is checked, the selections in this AA §6A-8 must be consistent with the requirements of an EACA. As an EACA, the Employer also must complete AA §6A-8(c) relating to permissible withdrawals.
- (2) **Automatic Contribution Arrangement other than an EACA.** Check this subsection (2) if the Employer intends for the Plan to be an Automatic Contribution Arrangement other than an EACA.

(b) **Automatic deferral election.** Upon becoming eligible to make Salary Deferrals under the Plan (pursuant to AA §3 and AA §4), a Participant will be deemed to have entered into a Salary Deferral Election for each payroll period, unless the Participant completes a Salary Deferral Election (subject to the limitations under AA §6A-2 and AA §6A-3) in accordance with procedures adopted by the Plan Administrator.

(1) **Effective date of Automatic Contribution Arrangement or EACA.** The automatic deferral provisions under this AA §6A-8 are effective as of:

- (i) The Effective Date of this Plan as set forth under the Employer Signature Page.
- (ii) \_\_\_\_\_ [insert date no earlier than the Effective Date of this Plan]
- (iii) As set forth under a prior Plan document. [*Note: If this subsection (iii) is checked, the automatic deferral provisions under this AA §6A-8 will apply as of the original Effective Date of the automatic contribution arrangement. Unless provided otherwise under this AA §6A-8, an Employee who is automatically enrolled under a prior Plan document will continue to be automatically enrolled under the current Plan document.*]
- (iv) If the Employer is amending the provisions applicable to the ACA or EACA, the amended provisions are effective as of \_\_\_\_\_ [insert date]

(2) **Automatic Contribution Arrangement deferral amount and automatic increase.**

(i) **Automatic deferral amount.**

- (A) \_\_\_\_% of Plan Compensation
- (B) \$\_\_\_\_\_

(ii) **Automatic increase.** If elected under this subsection (ii), the automatic deferral amount will increase each Plan Year by the following amount. (See Section 3.03(c) of the Plan.)

- (A) \_\_\_\_% of Plan Compensation
- (B) \$\_\_\_\_\_

(C) If this (C) and subsection (3)(iii) below (relating to the expiration of affirmative deferral elections) are both elected, the automatic increase will apply to all Participants, including those Participants whose affirmative deferral elections have expired and no subsequent affirmative election is made.

Any automatic increase elected under this subsection (ii) will not cause the automatic deferral amount to exceed:

- (D) \_\_\_\_% of Plan Compensation
- (E) \$\_\_\_\_\_

(iii) **Special application of automatic increase provisions.** The Employer may describe under this subsection (iii) special rules applicable to automatic increase provisions: \_\_\_\_\_

[*Note: Any special application of the automatic increase provisions must be definitely determinable and must not discriminate in favor of Highly Compensated Employees.*]

- (3) **Application of automatic deferral provisions.** The automatic deferral election under subsection (2) will apply to new Participants (i.e., Participants who enter the Plan after the automatic deferral provisions are effective) and current Participants (i.e., Participants who were eligible to participate in the Plan at the time the automatic deferral provisions are effective) as set forth under this subsection (3).
- (i) **New Participants.** The automatic deferral provisions apply to all Participants who become eligible on or after the effective date of the automatic deferral provisions.
- (ii) **Current Participants.** The automatic deferral provisions apply to all other eligible Participants as follows:
- (A) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election (including an election not to defer under the Plan).
- (B) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election that is at least equal to the automatic deferral amount under subsection (2)(i). Current Participants who have made a Salary Deferral Election that is less than the automatic deferral amount, or who have not made a Salary Deferral Election, will automatically be increased to the automatic deferral amount unless the Participant enters into a new Salary Deferral election on or after the effective date of the automatic deferral provisions.
- (C) Automatic deferral provisions do not apply to current Participants. Only new Participants described in subsection (3)(i) are subject to the automatic deferral provisions. [**Note:** See Section 3.03(c)(2)(i) of the Plan for the application of this subsection under an EACA.]
- (D) Describe: \_\_\_\_\_
- [**Note:** Any special provisions under subsection (D) must comply with the nondiscrimination requirements under Code §401(a)(4).]
- (iii) **Expiration of affirmative deferral elections.** Unless this subsection (iii) is elected, for purposes of the automatic deferral provisions of the Plan, a Participant's affirmative elective deferral election will not expire. If this subsection (iii) is elected, a Participant's affirmative deferral election will expire:
- (A) at the end of each Plan Year.
- (B) Describe date that the affirmative election will expire: \_\_\_\_\_
- [**Note:** The date must be definite and not discriminate in favor of Highly Compensated Employees.]
- If a Participant fails to complete a new affirmative deferral election subsequent to the prior election expiring, the Participant becomes subject to the automatic deferral percentage as specified in the Plan pursuant to the automatic contribution arrangement provisions. Each year, the Participant can always complete a new affirmative election and designate a new deferral percentage.
- (iv) **Treatment of automatic deferrals.** Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Pre-Tax Salary Deferrals, unless designated otherwise under this subsection (iv).
- Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Roth Deferrals. [**Note:** This subsection (iv) may only be checked if Roth Deferrals are permitted under AA §6A-5.]
- [**Note:** Any Salary Deferral Election (including an election not to defer under the Plan) made after the effective date of the automatic deferral provisions will override such automatic deferral provisions. See Section 6.04(b)(1)(iii) of the Plan for the application of this provision to rehired Employees.]
- (4) **Application of automatic increase.** Unless designated otherwise under this subsection (4), if an automatic increase is selected under subsection (2)(ii) above, the automatic increase will take effect as of the first day of the second Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant. (See Section 3.03(c)(2)(i) of the Plan.)
- (i) **First Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2)(ii) takes effect as of the appropriate date (as designated under subsection (iii) below) within the first Plan Year following the date automatic contributions begin.
- (ii) **Designated Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2)(ii) takes effect as of the appropriate date (as designated under subsection

(iii) below) within the \_\_\_\_ Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant.

- (iii) **Effective date.** The automatic increase described under subsection (2)(ii) is generally effective as of the first day of the Plan Year. If this subsection (iii) is checked, instead of becoming effective on the first day of the Plan Year, the automatic increase will be effective on:

(A) The anniversary of the Participant's date of hire.

(B) The anniversary of the Participant's first automatic deferral contribution.

(C) The first day of each calendar year.

(D) Other date: \_\_\_\_\_

- (iv) **Special rules:** \_\_\_\_\_

*[Note: Any special rules under this subsection (iv) must satisfy the rules applicable to automatic increases under Treas. Reg. §1.401(k)-3, if applicable, and must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

- (5) **Treatment of terminated Employees who are rehired.** Unless designated otherwise below, in applying the automatic deferral provisions under this AA§6A-8, including the automatic increase provisions, a rehired Participant is treated as a new Employee (regardless of the amount of time since the rehired Employee terminated employment).

- (i) **Rehired Employees not treated as new Employee.** In applying the automatic deferral provisions under this AA§6A-8, including the automatic increase provisions, a rehired Participant is not treated as a new Employee. Thus, for example, a rehired Participant's deferral percentage will be calculated based on the date the individual first began making automatic deferrals under the Plan.

- (ii) **Describe special rules applicable to rehired employees:** \_\_\_\_\_

*[Note: Any special rules under this subsection (ii) must satisfy the rules applicable to automatic enrollment under Treas. Reg. §1.401(k)-1, if applicable, and must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

- (c) **Permissible Withdrawals under an Eligible Automatic Contribution Arrangement (EACA).**

- (1) **Permissible withdrawals allowed.** If the Plan satisfies the requirements for an EACA (as set forth in Section 3.03(c)(2) of the Plan), the permissible withdrawal provisions under Section 3.03(c)(2) of the Plan apply. Thus, a Participant who receives an automatic deferral may withdraw such contributions (and earnings attributable thereto) within the time period set forth under Section 3.03(c)(2) of the Plan, without regard to the in-service distribution provisions selected under AA §10-1. Unless elected otherwise below, if an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissible withdrawal, but only with respect to default contributions made after the Employee's return to employment.

- The ability to take permissible withdrawals does not apply to rehired Employees, even if such Employees have not made automatic deferrals to the Plan for an entire Plan Year due to termination of employment.

- (2) **No permissible withdrawals.** Although the Plan contains an automatic deferral election that is designed to satisfy the requirements of an EACA, the permissible withdrawal provisions under this subsection (c) are not available.

- (3) **Time period for electing a permissible withdrawal.** Instead of a 90-day election period, a Participant must request a permissible withdrawal no later than \_\_\_\_ [*may not be less than 30 nor more than 90*] days after the date the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income.

- (d) **Other automatic deferral provisions:** \_\_\_\_\_

*[Note: Any language added under this subsection must comply with the nondiscrimination requirements under Code §401(a)(4) and the regulations thereunder.]*



6A-9 **SPECIAL DEFERRAL EFFECTIVE DATES.** Unless designated otherwise under this AA §6A-9, a Participant is eligible to make Salary Deferrals under the Plan as of the Effective Date of the Plan (as designated on the Employer Signature Page). However, in no case may a Participant begin making Salary Deferrals prior to the later of the date the Employee becomes a Participant, the date the Participant executes a Salary Reduction Agreement or the date the Plan is adopted or effective. (See Section 3.03(a) of the Plan.)

To designate a later Effective Date for Salary Deferrals or Roth Deferrals, complete this AA §6A-9.

- (a) **Salary Deferrals.** A Participant is eligible to make Salary Deferrals under the Plan as of:
- (1) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
  - (2) \_\_\_\_\_ (insert date no earlier than the date the Plan is executed by the Employer).
- (b) **Roth Deferrals.** The Roth Deferral provisions under AA §6A-5 are effective as of \_\_\_\_\_. [If Roth Deferrals are permitted under AA §6A-5 above, Roth Deferrals are effective as of the Effective Date applicable to Salary Deferrals under this AA §6A-9, unless a later date is designated under this subsection.]

6A-10 **SIMPLE 401(k) PLAN PROVISIONS.** The SIMPLE 401(k) provisions under Section 6.05 of the Plan do not apply unless specifically elected under this AA §6A-10.

- (a) By checking this box the Employer elects to have the SIMPLE 401(k) provisions described in Section 6.05 of the Plan apply.
- (1) Employer will make Matching Contributions under Section 6.05(b)(3) of the Plan.
  - (2) Employer will make Employer Contributions under Section 6.05(b)(4) of the Plan.
- (b) Other SIMPLE 401(k) provisions: \_\_\_\_\_

*[Note: This AA §6A-10 may only be checked if the Plan uses a calendar-year Plan Year and the Employer is an Eligible Employer as defined in Section 6.05(a)(1) of the Plan. All contributions under the SIMPLE 401(k) Plan are 100% vested at all times. If this AA §6A-10 is selected, no contributions may be authorized under AA §6 and AA §6B- §6D. Any special rules under subsection (b) must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

<b>SECTION 6B</b>
<b>MATCHING CONTRIBUTIONS</b>

6B-1 **MATCHING CONTRIBUTIONS.** Is the Employer authorized to make Matching Contributions under the Plan?

- Yes.** [Check this box if Matching Contributions may be made under the Plan, including Matching Contributions that satisfy the ACP safe harbor (i.e., Matching Contributions that are made in addition to the Safe Harbor Contributions required to satisfy the ADP safe harbor under AA §6C-2(a).]
- No.** [Check this box if there are no Matching Contributions or the only Matching Contributions are Safe Harbor Matching Contributions that satisfy the ADP safe harbor under AA §6C-2(a). If “No” is checked, skip to Section 6C.]

6B-2 **MATCHING CONTRIBUTION FORMULA.** For the period designated in AA §6B-5 below, the Employer will make the following Matching Contribution on behalf of Participants who satisfy the allocation conditions under AA §6B-7 below. (See AA §6B-3 for the definition of Eligible Contributions for purposes of the Matching Contributions under the Plan. If the Plan provides for After-Tax Employee Contributions, also see AA §6D-2 to determine the application of the Matching Contribution formulas to After-Tax Employee Contributions.)

*[Note: A contribution will not be considered a Matching Contribution if such contribution is contributed before the underlying Salary Deferral or After-Tax Employee Contribution election is made or before an Employee performs the services with respect to which the underlying Salary Deferrals or After-Tax Employee Contributions are made (or when the cash that is subject to such election would be currently available, if earlier).]*

- (a) **Discretionary match.** The Employer will determine in its sole discretion how much, if any, it will make as a Matching Contribution. Such amount will be allocated as a uniform percentage of Eligible Contributions, unless designated otherwise below. (See AA §6B-5 relating to period for determining Matching Contributions and true-up requirements.)
- (1) Discretionary matching contributions will be allocated as a flat dollar amount.

- (2) Allocation of discretionary Matching Contribution determined by written instructions to Plan Administrator (or Trustee). If a discretionary Matching Contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to allocate a Matching Contribution to Participants) and the Employer makes a discretionary Matching Contribution to the Plan, the Employer must provide the Plan Administrator (or Trustee, if applicable), written instructions describing: (1) how the discretionary Matching Contribution formula will be allocated to Participants (e.g., a uniform percentage of Eligible Contributions or a flat dollar amount), (2) the computation period(s) to which the discretionary Matching Contribution formula applies (unless otherwise designated under AA §6B-5), and (3) if applicable, a description of each business location or business classification subject to separate discretionary Matching Contribution allocation formulas.

Such instructions must be provided no later than the date on which the discretionary Matching Contribution is made to the Plan. A summary of these instructions must be communicated to Participants who receive discretionary Matching Contributions no later than 60 days following the last date on which the discretionary Matching Contribution is made to the Plan for the Plan Year. If this AA §6B-2(a)(2) is elected, the written instruction requirement does not take effect until the first day of the Plan Year following the Plan Year in which this Plan’s Cycle 3 restatement is executed.

- (b) **Fixed match.** The Employer will make a Matching Contribution for each Participant equal to:
- (1) \_\_\_% of Eligible Contributions made for each period designated in AA §6B-5 below.
  - (2) \$\_\_\_ for each period designated in AA §6B-5 below.
  - (3) \_\_\_% of Eligible Contributions made for each period designated in AA §6B-5 below. However, to receive the Matching Contribution for a given period, a Participant must contribute Eligible Contributions equal to at least \_\_\_% of Plan Compensation for such period.
  - (4) \$\_\_\_\_\_ for each period designated in AA §6B-5 below. However, to receive the Matching Contribution for a given period, a Participant must contribute Eligible Contributions equal to at least \_\_\_% of Plan Compensation for such period.

- (c) **Matching Contributions under Collective Bargaining Agreement, employment contract or equivalent arrangement.** The Employer will make a Matching Contribution based on a Collective Bargaining Agreement, employment agreement or equivalent arrangement as follows: \_\_\_\_\_

*[Note: Insert the appropriate Matching Contribution formula from the Collective Bargaining Agreement, employment agreement or equivalent arrangement. The formula must be definitely determinable as required under Treas. Reg. §1.401-1.]*

- (d) **Tiered match.** The Employer will make a Matching Contribution to all Participants based on the following tiers of Eligible Contributions. If discretionary Match is elected, the discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each tier.

- (1) **Tiers as percentage of Plan Compensation.**

Eligible Contributions	Fixed Match	Discretionary Match
<input type="checkbox"/> (i) Up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (ii) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (iii) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (iv) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>

- (2) **Tiers as dollar amounts.**

Eligible Contributions	Fixed Match	Discretionary Match
<input type="checkbox"/> (i) Up to \$___	_____%	<input type="checkbox"/>
<input type="checkbox"/> (ii) From \$___ up to \$___	_____%	<input type="checkbox"/>
<input type="checkbox"/> (iii) From \$___ up to \$___	_____%	<input type="checkbox"/>
<input type="checkbox"/> (iv) Above \$___	_____%	<input type="checkbox"/>

*[Note: If the Employer elects to make tiered Matching Contributions under subsection (1) or (2) above, funding will be made in the following non-discretionary order. First, all Matching Contributions under the first tier will be completely funded, but if the Employer's contribution is not sufficient to fully fund those contributions, then Matching Contributions will be made as a uniform percentage of eligible Participant contributions. Then, all Matching Contributions under the second tier will be fully funded, but if the Employer's contribution is not sufficient to fully fund the second-tier contributions, then Matching Contributions at the second tier will be made as a uniform percentage of eligible Participant contributions. The same approach will be followed for the third and fourth tiers.]*

- (3) **Discretionary tiered match.** The Employer will determine in its sole discretion how much, if any, it will make as a tiered Matching Contribution. (See AA §6B-5 relating to period for determining Matching Contributions and true-up requirements.)

*[Note: If the Plan is designed to satisfy the ACP safe harbor with respect to the Matching Contributions, the rate of Matching Contribution may not increase as the rate of Eligible Contributions increases.]*

- (e) **Year of Service match.** The Employer will make a Matching Contribution as a uniform percentage of Eligible Contributions to all Participants based on Years of Service with the Employer. If discretionary Match is elected, the discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each Year of Service level.

Years of Service	Fixed Match	Discretionary Match
<input checked="" type="checkbox"/> (1) From 0 ___ up to 2 ___ Years of Service	233 ___ %	<input type="checkbox"/>
<input checked="" type="checkbox"/> (2) From 2 ___ up to 5 ___ Years of Service	366 ___ %	<input type="checkbox"/>
<input type="checkbox"/> (3) From ___ up to ___ Years of Service	_____ %	<input type="checkbox"/>
<input type="checkbox"/> (4) From ___ up to ___ Years of Service	_____ %	<input type="checkbox"/>
<input checked="" type="checkbox"/> (5) Years of Service equal to and above 6 ___	500 ___ %	<input type="checkbox"/>

For this purpose, a Year of Service is each Plan Year during which an Employee completes at least 1,000 Hours of Service. Alternatively, a Year of Service is: \_\_\_\_\_

*[Note: Each separate rate of Matching Contribution must satisfy the nondiscrimination requirements under Treas. Reg. §1.401(a)(4)-4 as a separate benefit, right or feature. Any alternative definition of a Year of Service must meet the requirements of a Year of Service as defined in Section 2.03 of the Plan.]*

- (f) **Different Employee groups.** The Employer may make a different Matching Contribution to the Employee groups designated under subsection (1) below. The Matching Contribution will be allocated separately to each designated Employee group in accordance with the formula designated under subsection (2).

- (1) **Designated Employee groups.**

*[Note: Each group designation must describe a group of Employees which is definitely determinable with no Employer discretion.]*

- (2) **Matching Contribution formulas.**

- (i) **Discretionary Matching Contribution.** The Employer may make a different discretionary Matching Contribution for each Employee group designated under subsection (1). The discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each Employee group. (See AA §6B-5 relating to period for determining Matching Contributions and true-up requirements.)
- (ii) **Different Matching Contribution formula.** The following Matching Contribution will apply for each Employee group designated under subsection (1).

*[Note: Each separate rate of Matching Contribution must satisfy the nondiscrimination requirements under Treas. Reg. §1.401(a)(4)-4 as a separate benefit, right or feature.]*

- (g) **Describe special rules for determining allocation formula:** In order to receive a Matching contribution, a participant must make an employee deferral of at least 1.50%. The Employer Matching Contribution defined in "e" above is based on an employee's years of service with the employer, and the defined percentage Match is applied to employee deferral of 1.50% only. The Employer provides an example of the Matching Contribution with the SPD.

*[Note: Any special rules may not provide for a discretionary Matching Contribution allocation formula and must be described in a manner that precludes Employer discretion and must satisfy the nondiscrimination requirements of Code §401(a)(4) and the regulations thereunder.]*

6B-3 **CONTRIBUTIONS ELIGIBLE FOR MATCHING CONTRIBUTIONS (“ELIGIBLE CONTRIBUTIONS”).** Unless designated otherwise under this AA §6B-3, all Salary Deferrals, including any Roth Deferrals and Catch-Up Contributions, are eligible for the Matching Contributions designated under AA §6B-2.

- (a) **Matching Contributions.** Only the following contribution sources are eligible for a Matching Contribution under AA §6B-2:

- (1) Pre-tax Salary Deferrals  
 (2) Roth Deferrals  
 (3) Catch-Up Contributions

*[Note: Any amounts excluded under this subsection do not apply to Safe Harbor Matching Contributions under AA §6C-2. See AA §6D-2 to determine eligibility of After-Tax Employee Contributions for Matching Contributions.]*

- (b) **Application of Matching Contributions to elective deferrals made under another plan maintained by the Employer.** If this subsection is checked, the Matching Contributions described in AA §6B-2 will apply to elective deferrals made under another plan maintained by the Employer.

- (1) The Matching Contribution designated in AA §6B-2 above will apply to elective deferrals under the following plan maintained by the Employer: \_\_\_\_\_  
 (2) The following special rules apply in determining the amount of Matching Contributions under this Plan with respect to elective deferrals under the plan described in subsection (1): \_\_\_\_\_

*[Note: This subsection (2) may be used to describe special provisions applicable to Matching Contributions provided with respect to elective deferrals under another plan maintained by the Employer, including another qualified plan, Code §403(b) plan or Code §457(b) plan.]*

- (c) **Calculation of Matching Contributions if Plan uses dual eligibility and/or different entry dates.** Unless designated otherwise below, if the Plan has dual eligibility and/or different entry dates (or the Employer chooses to use the Plan’s optional true-up provisions), the Matching Contribution formula(s) will be based on Eligible Contributions and Plan Compensation for the period designated under AA §6B-5.

- The Plan will make Matching Contributions only on Salary Deferrals and After-Tax Employee Contributions (if applicable) made after the Participant becomes eligible for Matching Contributions, regardless of the period designated under AA §6B-5. *[Note: The election of this option may require additional or more complex nondiscrimination testing.]*

- (d) **Special rules.** The following special rules apply for purposes of determining the Matching Contribution under this AA §6B-3: \_\_\_\_\_

*[Note: Any special rules must satisfy the nondiscrimination requirements under Code §401(a)(4) and the regulations thereunder. If contribution sources are limited for only certain Matching Contributions, those limitations may be described under this subsection.]*

6B-4 **LIMITS ON MATCHING CONTRIBUTIONS.** In applying the Matching Contribution formula(s) selected under AA §6B-2 above, all Eligible Contributions are eligible for Matching Contributions, unless elected otherwise under this AA §6B-4. (See AA §6D-2 for any limits that apply with respect to After-Tax Employee Contributions.)

- (a) **ACP safe harbor match.** The Matching Contribution formula(s) selected in AA §6B-2 are designed to satisfy the ACP Safe Harbor as described in Section 6.04(i) of the Plan. Therefore, any fixed Matching Contribution selected in AA §6B-2 will only apply with respect to Eligible Contributions that do not exceed 6% of Plan Compensation. To the extent any Matching Contribution formula is discretionary under AA §6B-2, the discretionary Matching Contributions will not exceed 4% of Plan Compensation for the Plan Year.

*[Note: If this subsection is checked, no allocation conditions should be selected under AA §6B-7. If allocation conditions are selected under AA §6B-7, the Matching Contributions under AA §6B-2 may not qualify for the ACP safe harbor. See Section 6.04(i) of the Plan.]*

- (b) **Limit on the amount of Eligible Contributions.** The Matching Contribution formula(s) selected in AA §6B-2 above apply only to Eligible Contributions that do not exceed:
- (1) 1.50 % of Plan Compensation.
  - (2) \$ \_\_\_\_\_.
  - (3) A discretionary amount determined by the Employer that will be applied in a uniform manner for all eligible Participants for the Plan Year.

[*Note: If both subsection (1) and subsection (2) are selected, the limit under this subsection is the lesser of the percentage selected in subsection (1) or the dollar amount selected in subsection (2).*]

- (c) **Limit on Matching Contributions.** The total Matching Contribution provided under the formula(s) selected in AA §6B-2 above will not exceed:
- (1) \_\_\_% of Plan Compensation.
  - (2) \$ \_\_\_\_\_.

- (d) **Application of limits.** The limits identified under this AA §6B-4 do **not** apply to the following Matching Contribution formula(s):

- |  |  |
|--|--|
| <input type="checkbox"/> (1) Any limit on the amount of Eligible Contributions does not apply to: <ul style="list-style-type: none"><li><input type="checkbox"/> (i) Discretionary match</li><li><input type="checkbox"/> (ii) Fixed match</li><li><input type="checkbox"/> (iii) Tiered match</li><li><input type="checkbox"/> (iv) Year of Service match</li><li><input type="checkbox"/> (v) Employee group match</li></ul> | <input type="checkbox"/> (2) Any limit on Matching Contributions does not apply to: <ul style="list-style-type: none"><li><input type="checkbox"/> (i) Discretionary match</li><li><input type="checkbox"/> (ii) Fixed match</li><li><input type="checkbox"/> (iii) Tiered match</li><li><input type="checkbox"/> (iv) Year of Service match</li><li><input type="checkbox"/> (v) Employee group match</li></ul> |
|--|--|

- (e) **Special limits applicable to Matching Contributions:** \_\_\_\_\_

[*Note: Any special provisions under this subsection must comply with the nondiscrimination requirements under Code §401(a)(4).*]

6B-5 **PERIOD FOR DETERMINING MATCHING CONTRIBUTIONS.** The Matching Contribution formula(s) selected in AA §6B-2 above (including any limitations on such amounts under AA §6B-4) are based on Eligible Contributions and Plan Compensation for the Plan Year. To apply a different period for determining the Matching Contributions and limits under AA §6B-2 through AA §6B-4, complete this AA §6B-5.

- (a) payroll period
- (b) Plan Year quarter
- (c) calendar month
- (d) Other: \_\_\_\_\_

[*Note: Although Matching Contributions (and any limits on those Matching Contributions) will be determined on the basis of the period designated under this AA §6B-5, this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Matching Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415-6, regardless of the period selected under this AA §6B-5. Any alternative period designated under this AA §6B-5 may not exceed a 12-month period and will apply uniformly to all Participants.*]

[*Note: In determining the amount of Matching Contributions for a particular period, if the Employer actually makes Matching Contributions to the Plan on a more frequent basis than the period selected in this AA §6B-5, a Participant will be entitled to a true-up contribution to the extent he/she does not receive a Matching Contribution based on the Eligible Contributions and/or Plan Compensation for the entire period selected in this AA §6B-5. If a period other than the Plan Year is selected under this AA §6B-5, the Employer may make an additional discretionary Matching Contribution equal to the true-up contribution that would otherwise be required if Plan Year was selected under this AA §6B-5. See Section 3.04(c) of the Plan. Discretionary "true-up" contributions are not available for Safe Harbor Plans.*]

6B-6 **ACP TESTING.** The ACP Test will be performed using the testing method designated below: (See Section 6.02(a) of the Plan.)

[*Note: If the Plan is a Safe Harbor 401(k) Plan (as designated in AA §6C below), the Plan **must** use the Current Year Testing Method. Thus, for any year the Plan is a Safe Harbor 401(k) Plan, the Current Year Testing Method applies, regardless of any selection under this §6B-6.*]

- (a) **Current Year Testing Method.** The Plan will use the Current Year Testing Method in running the ACP test. If the Current Year Testing Method is elected, the ACP of the Nonhighly Compensated Group for the first Plan Year is calculated using current year data, unless otherwise designated below.
  - Deemed 3% used for first Plan Year.** Instead of using actual current year data for the first Plan Year, the ACP of the Nonhighly Compensated Group for the first Plan Year the 401(k) Plan is effective is deemed to be 3%.
- (b) **Prior Year Testing Method.** The Plan will use the Prior Year Testing Method in running the ACP Test. If the Prior Year Testing Method is elected, the ACP of the Nonhighly Compensated Group for the first Plan Year is deemed to be 3%, unless otherwise designated below.
  - Current year data used for first Plan Year.** Instead of deeming the ACP of the Nonhighly Compensated Group to be 3% for the first Plan Year for which the 401(k) Plan is effective, the Plan will use the actual current year data for the first Plan Year.
- (c) **Application of Current Year Testing Method.** The Current Year Testing Method has applied since the \_\_\_\_ Plan Year. [*Note: If the Plan has switched from the Prior Year Testing Method to the Current Year Testing Method, this subsection may be checked to designate the first Plan Year for which the Current Year Testing Method applies.*]

6B-7 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6B-7 to receive an allocation of Matching Contributions under the Plan.

*[Note: Any allocation conditions set forth under this AA §6B-7 do not apply to Safe Harbor Matching Contributions under AA §6C or QMACs under AA §6D, unless provided otherwise under those specific sections. See AA §4-5 for treatment of service with Predecessor Employers for purposes of applying the allocation conditions under this AA §6B-7.]*

- (a) **Application of allocation conditions**
  - (1) **No allocation conditions** apply with respect to Matching Contributions under the Plan.
  - (2) Allocation conditions only apply to discretionary Matching Contributions under the Plan.
  - (3) Allocation conditions only apply to fixed Matching Contributions under the Plan.

*[Note: (2) or (3) above should be selected only if the Plan provides for both Fixed and Discretionary Matching Contributions.]*
- (b) **Safe harbor allocation condition.** An Employee must be employed by the Employer on the last day of the Plan Year OR must complete more than:
  - (1) \_\_\_\_ (not to exceed 500) Hours of Service during the Plan Year.
    - (i) Hours of Service are determined using actual Hours of Service.
    - (ii) Hours of Service are determined using the following Equivalency Method (as defined under AA §4-3):
 

<input type="checkbox"/> (A) Monthly	<input type="checkbox"/> (B) Weekly
<input type="checkbox"/> (C) Daily	<input type="checkbox"/> (D) Semi-monthly
  - (2) \_\_\_\_ (not more than 91) consecutive days of employment with the Employer during the Plan Year.

*[Note: Under this safe harbor allocation condition, an Employee will satisfy the allocation conditions if the Employee completes the designated Hours of Service or period of employment, even if the Employee is not employed on the last day of the Plan Year. See Section 3.09 of the Plan for rules regarding the application of this allocation condition to the minimum coverage test.]*
- (c) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.
- (d) **Minimum service condition.** An Employee must be credited with at least:
  - (1) \_\_\_\_ Hours of Service (not to exceed 1,000) during the Plan Year.
    - (i) Hours of Service are determined using actual Hours of Service.
    - (ii) Hours of Service are determined using the following Equivalency Method (as defined under AA §4-3):
 

<input type="checkbox"/> (A) Monthly	<input type="checkbox"/> (B) Weekly
<input type="checkbox"/> (C) Daily	<input type="checkbox"/> (D) Semi-monthly
  - (2) \_\_\_\_ (not more than 182) consecutive days of employment with the Employer during the Plan Year.

- (e) **Application to a specified period.** The allocation conditions selected under this AA §6B-7 apply on the basis of the Plan Year. Alternatively, if an employment or minimum service condition applies under this AA §6B-7, the Employer may elect under this subsection to apply the allocation conditions on a periodic basis as set forth below. (See Section 3.09(a) of the Plan for a description of the rules for applying the allocation conditions on a periodic basis.)
- (1) **Period for applying allocation conditions.** Instead of the Plan Year, the allocation conditions set forth under subsection (2) below apply with respect to the following periods:
- (i) Plan Year quarter
  - (ii) calendar month
  - (iii) payroll period
  - (iv) Other: \_\_\_\_\_
- (2) **Application to allocation conditions.** To the extent an employment or minimum service allocation condition applies under this AA §6B-7, such allocation condition will apply based on the period selected under subsection (1) above, unless designated otherwise below:
- (i) Only the employment condition will be based on the period selected in subsection (1) above.
  - (ii) Only the minimum service condition will be based on the period selected in subsection (1) above.
  - (iii) Describe any special rules: \_\_\_\_\_
- [Note: Any special rules under this subsection (iii) must satisfy the nondiscrimination requirements of Code §401(a)(4).]*
- (f) **Exceptions.**
- (1) The above allocation condition(s) will **not** apply if the Employee, during the Plan Year:
- (i) dies.
  - (ii) terminates employment due to becoming Disabled.
  - (iii) becomes Disabled.
  - (iv) terminates employment after attaining Normal Retirement Age.  
*[Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule below.]*
  - (v) terminates employment after attaining Early Retirement Age.  
*[Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule below.]*
  - (vi) is on an authorized leave of absence from the Employer.
- (2) The exceptions selected under subsection (1) above will apply even if an Employee has not terminated employment at the time of the selected event(s).
- (3) The exceptions selected under subsection (1) above do not apply to:
- (i) an employment condition designated under this AA §6B-7.
  - (ii) a minimum service condition designated under this AA §6B-7.
  - (iii) the following Matching Contributions:
    - (A) Discretionary match
    - (B) Fixed match
    - (C) Tiered match
    - (D) Year of Service match
    - (E) Employee group match
- (g) **Describe** any special rules governing the allocation conditions under the Plan: \_\_\_\_\_
- [Note: Any special rules must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

SECTION 6C  
SAFE HARBOR 401(k) CONTRIBUTIONS

6C-1 **SAFE HARBOR 401(k) PLAN.** Is the Plan intended to be a Safe Harbor 401(k) Plan?

- (a) Yes, the Plan is intended to be a Traditional Safe Harbor 401(k) Plan under Code §401(k)(12)  
[Complete AA §6C-2 below.]
- (b) Yes, the Plan is intended to be a QACA Safe Harbor 401(k) Plan under Code §401(k)(13)  
[Complete AA §6C-3 below.]
- (c) No [If “No” is checked, skip to Section 6D.]

6C-2 **TRADITIONAL SAFE HARBOR CONTRIBUTIONS.** To qualify as a Traditional Safe Harbor 401(k) Plan, the Employer must make a traditional Safe Harbor Matching Contribution or Safe Harbor Employer Contribution. The Safe Harbor Contribution elected under this AA §6C-2 will be in addition to any Employer Contribution or Matching Contribution elected in AA §6 or AA §6B above.

(a) **Traditional Safe Harbor Matching Contribution.**

(1) **Safe Harbor Matching Contribution formula.**

- (i) **Basic match:** 100% of Salary Deferrals up to the first 3% of Plan Compensation, plus 50% of Salary Deferrals up to the next 2% of Plan Compensation.
- (ii) **Enhanced match:** \_\_\_% of Salary Deferrals up to \_\_\_% of Plan Compensation.
- (iii) **Tiered match:** \_\_\_% of Salary Deferrals up to the first \_\_\_% of Plan Compensation,  
 (A) plus \_\_\_% of Salary Deferrals up to the next \_\_\_% of Plan Compensation,  
 (B) plus \_\_\_% of Salary Deferrals up to the next \_\_\_% of Plan Compensation.

[**Note:** The enhanced match under subsection (ii) and the tiered match under subsection (iii) must provide a matching contribution that is at least equivalent to the basic match described in subsection (i). If the enhanced match or tiered match applies to Salary Deferrals in excess of 6% of Plan Compensation or if the tiered match provides for a greater level of match at higher levels of Salary Deferrals, the Matching Contribution will be subject to ACP Testing. See Section 6.04(i)(2) of the Plan.]

(2) **Period for determining Safe Harbor Matching Contributions.** Instead of the Plan Year, the Safe Harbor Matching Contribution formula selected in (1) above is based on Salary Deferrals for the following period:

- (i) payroll period
- (ii) Plan Year quarter
- (iii) calendar month
- (iv) Other: \_\_\_\_\_

[**Note:** In determining the amount of Safe Harbor Matching Contributions for a particular period, if the Employer actually makes Safe Harbor Matching Contributions to the Plan on a more frequent basis than the period selected in this subsection (2), a Participant will be entitled to a “true-up” contribution to the extent he/she does not receive a Safe Harbor Matching Contribution based on the Salary Deferrals and/or Plan Compensation for the entire period selected in this subsection (2). Thus, for example, if Plan Year applies under this subsection (2), additional Safe Harbor Matching Contributions may be required if the Safe Harbor Matching Contributions are made on a more frequent basis than annually. If true-up contributions will not be made for any Participant under the Plan, payroll period should be selected under this subsection (2).]

(b) **Traditional Safe Harbor Employer Contribution:** \_\_\_% (not less than 3%) of Plan Compensation.

(1) **Supplemental Safe Harbor notice.** Check this selection if the Employer will make the Safe Harbor Employer Contribution pursuant to a supplemental notice, as described in Section 6.04(a)(4)(iii) of the Plan.

[**Note:** If this subsection (1) is checked, the Safe Harbor Employer Contribution described above will be required for a Plan Year only if the Employer provides a supplemental notice (as described in Section 6.04(a)(4)(iii) of the Plan). If the Employer properly provides the Safe Harbor notice, but does not provide a supplemental notice, the Employer need not provide the Safe Harbor Employer Contribution described above. In such a case, the Plan will not qualify as a Safe Harbor 401(k) Plan for that Plan Year and will be subject to ADP/ACP testing, as applicable. See Section 6.04(a)(4)(iii) of the Plan for rules that apply in subsequent Plan Years.]

(c) **Other plan:** Check this subsection if the Safe Harbor Employer Contribution or Safe Harbor Matching Contribution will be made under another plan maintained by the Employer and identify the plan: \_\_\_\_\_



6C-3 **QACA SAFE HARBOR CONTRIBUTIONS.** To qualify as a QACA Safe Harbor 401(k) Plan, the Employer must make a QACA Safe Harbor Matching Contribution or QACA Safe Harbor Employer Contribution. The Safe Harbor Contribution elected under this AA §6C-3 will be in addition to any Employer Contribution or Matching Contribution elected in AA §6 or AA §6B above. As a QACA Safe Harbor 401(k) Plan, the Employer also must complete the **QACA automatic deferral percentage and automatic increase** subsection below.

(a) **QACA Safe Harbor Matching Contribution.**

(1) **QACA Safe Harbor Matching Contribution formula.**

- (i) **Basic match:** 100% of Salary Deferrals up to the first 1% of Plan Compensation, plus 50% of Salary Deferrals up to the next 5% of Plan Compensation.
- (ii) **Enhanced match:** \_\_\_\_% of Salary Deferrals up to \_\_\_\_% of Plan Compensation.
- (iii) **Tiered match:** \_\_\_\_% of Salary Deferrals up to the first \_\_\_\_% of Plan Compensation,
  - (A) plus \_\_\_\_% of Salary Deferrals up to the next \_\_\_\_% of Plan Compensation,
  - (B) plus \_\_\_\_% of Salary Deferrals up to the next \_\_\_\_% of Plan Compensation.

*[Note: The enhanced match under subsection (ii) and the tiered match under subsection (iii) must provide a matching contribution that is at least equivalent at all deferral levels to the basic match described in subsection (i). If the enhanced match or tiered match applies to Salary Deferrals in excess of 6% of Plan Compensation, or if the tiered match provides for a greater level of match at higher levels of Salary Deferrals, the Matching Contribution will be subject to ACP Testing. See Section 6.04(i)(2) of the Plan.]*

(2) **Period for determining Safe Harbor Matching Contributions.** Instead of the Plan Year, the Safe Harbor/QACA Safe Harbor Matching Contribution formula selected in (1) above is based on Salary Deferrals for the following period:

- (i) payroll period
- (ii) Plan Year quarter
- (iii) calendar month
- (iv) Other: \_\_\_\_\_

*[Note: In determining the amount of QACA Safe Harbor Matching Contributions for a particular period, if the Employer actually makes QACA Safe Harbor Matching Contributions to the Plan on a more frequent basis than the period selected in this subsection (2), a Participant will be entitled to a "true-up" contribution to the extent he/she does not receive a QACA Safe Harbor Matching Contribution based on the Salary Deferrals and/or Plan Compensation for the entire period selected in this subsection (2). Thus, for example, if Plan Year applies under this subsection (2), additional QACA Safe Harbor Matching Contributions may be required if the QACA Safe Harbor Matching Contributions are made on a more frequent basis than annually. If true-up contributions will not be made for any Participant under the Plan, payroll period should be selected under this subsection (2).]*

(3) **Other plan.** Check this subsection (3) if the QACA Safe Harbor Matching Contribution will be made under another plan maintained by the Employer and identify the plan: \_\_\_\_\_

(b) **QACA Safe Harbor Employer Contribution:** \_\_\_\_% (not less than 3%) of Plan Compensation.

(1) **Supplemental Safe Harbor notice.** Check this selection if the Employer will make the QACA Safe Harbor Employer Contribution pursuant to a supplemental notice, as described in Section 6.04(a)(4)(iii) of the Plan.

*[Note: If this subsection (1) is checked, the QACA Safe Harbor Employer Contribution described above will be required for a Plan Year only if the Employer provides a supplemental notice (as described in Section 6.04(a)(4)(iii) of the Plan). If the Employer properly provides the Safe Harbor notice, but does not provide a supplemental notice, the Employer need not provide the QACA Safe Harbor Employer Contribution described above. In such a case, the Plan will not qualify as a Safe Harbor 401(k) Plan for that Plan Year and will be subject to ADP/ACP testing, as applicable. See Section 6.04(a)(4)(iii) of the Plan for rules that apply in subsequent Plan Years.]*

(2) **Other plan.** Check this subsection (2) if the QACA Safe Harbor Employer Contribution will be made under another plan maintained by the Employer and identify the plan: \_\_\_\_\_

(c) **QACA automatic deferral percentage and automatic increase.**

- (1) **Automatic deferral percentage.** \_\_\_\_% [must be at least 3% and no more than 10%] of Plan Compensation.

- (2) **Automatic increase.** If elected under this subsection (2), the automatic deferral amount will increase each Plan Year by the following amount:
- (i) \_\_\_\_\_% of Plan Compensation  
but not in excess of
- (ii) \_\_\_\_\_% [not less than 6% nor more than 10%] of Plan Compensation
- [*Note: If the percentage under subsection (1) is less than 6% of Plan Compensation, an automatic deferral of at least 1% must apply under subsection (2)(i). If no percentage is entered under subsection (2)(ii), any automatic increase selected under subsection (2)(i) will not exceed 10% of Plan Compensation.*]
- (3) **Application of automatic deferral provisions.** The automatic deferral election under subsection (1) will apply to new Participants and existing Participants as set forth under this subsection (3).
- (i) **New Participants.** The automatic deferral provisions apply to all Participants who become eligible on or after the effective date.
- (ii) **Current Participants.** The automatic deferral provisions apply to all other eligible Participants as follows:
- (A) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election (including an election not to defer under the Plan).
- (B) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election that is at least equal to the automatic deferral amount under subsection (2)(i). Current Participants who have made a Salary Deferral Election that is less than the automatic deferral amount or who have not made a Salary Deferral Election will automatically be increased to the automatic deferral amount unless the Participant enters into a new Salary Deferral election on or after the effective date of the automatic deferral provisions.
- (C) Describe: \_\_\_\_\_
- [*Note: Any special provisions under subsection (C) must comply with the nondiscrimination requirements under Code §401(a)(4).*]
- (iii) **Treatment of automatic deferrals.** Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Pre-Tax Salary Deferrals, unless designated otherwise under this subsection (iii).
- Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Roth Deferrals. [*This subsection (iii) may only be checked if Roth Deferrals are permitted under AA §6A-5.*]
- [*Note: Any Salary Deferral Election (including an election not to defer under the Plan) made after the effective date of the automatic deferral provisions will override such automatic deferral provisions. See Section 6.04(b)(1)(iii) of the Plan for the application of this provision to rehired Employees.*]
- (4) **Application of automatic increase.** Unless designated otherwise under this subsection (4), if an automatic increase is selected under subsection (c)(2) above, the automatic increase will take effect as of the first day of the second Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant. (See Section 6.04(b)(1)(i) of the Plan.)
- (i) **First Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2) above takes effect as of the appropriate date (as designated under subsection (iii) below) within the first Plan Year following the date automatic contributions begin.
- (ii) **Designated Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2) above takes effect as of the appropriate date (as designated under subsection (iii) below) within the \_\_\_\_\_ Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant.
- [*Note: The Plan must satisfy the minimum deferral requirements applicable to a QACA Safe Harbor 401(k) Plan. See Section 6.04(b)(1)(i) of the Plan for special rules that apply if this subsection (ii) is checked. Also see Rev. Rul. 2009-30.*]
- (iii) **Effective date.** The automatic increase described under subsection (2) above is generally effective as of the first day of the Plan Year. If this subsection (iii) is checked, instead of becoming effective on the first day of the Plan Year, the automatic increase will be effective on:

- (A) The anniversary of the Participant's date of hire.
- (B) The anniversary of the Participant's first automatic deferral contribution.
- (C) The first day of each calendar year.
- (D) Other date: \_\_\_\_\_

*[Note: The Plan must satisfy the minimum deferral requirements applicable to a QACA Safe Harbor 401(k) Plan. See Section 6.04(b)(1)(i) of the Plan for special rules that apply if this subsection (iii) is checked for a QACA plan. Also see Rev. Rul. 2009-30.]*

- (iv) **Special rules:** \_\_\_\_\_

*[Note: Any special rules under this subsection (iv) must satisfy the rules applicable to automatic increases under Treas. Reg. §1.401(k)-3, if applicable, and must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

- (5) **Treatment of terminated Employees who are rehired.** Unless designated otherwise under subsection (i) below, a Participant's affirmative election to defer (or to not defer) will cease upon termination of employment. In addition, unless designated otherwise under subsection (ii) below, in applying the automatic deferral provisions under the Plan, a rehired Participant is treated as a new Employee if the Participant is precluded from making automatic deferrals to the Plan for an entire Plan Year.

- (i) **Participant's affirmative election does not cease upon termination of employment.** If this subsection (i) is selected, a terminated Participant's affirmative election to defer (or to not defer) will not cease upon termination of employment. Thus, a Participant who entered into an election to defer (or not to defer) prior to termination of employment will not be subject to the automatic deferral provisions upon rehire. (See Section 6.04(b)(1)(iii) of the Plan.)

- (ii) **Rehired Employees not treated as new Employee.** If this provision applies, a Participant who is precluded from making automatic deferrals to the Plan for an entire Plan Year will not be treated as a new Employee for purposes of applying the automatic deferral provisions under the Plan. Thus, a rehired Participant's minimum deferral percentage will continue to be calculated based on the date the individual first began making automatic deferrals under the Plan. (See Section 6.04(b)(1)(iii) of the Plan.)

- (d) **Permissible Withdrawals under a Qualified Automatic Contribution Arrangement.**

- (1) **Permissible withdrawals allowed.** If the QACA Safe Harbor 401(k) Plan satisfies the requirements for an EACA, the permissible withdrawal provisions under Section 3.03(c)(2)(ii) of the Plan apply. Thus, a Participant who receives an automatic deferral may withdraw such contributions (and earnings attributable thereto) within the time period set forth under Section 3.03(c)(2)(ii) of the Plan, without regard to the in-service distribution provisions selected under AA §10-1. Unless elected otherwise below, if an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissible withdrawal, but only with respect to default contributions made after the Employee's return to employment.

- The ability to take permissible withdrawals does not apply to rehired Employees, even if such Employees have not made automatic deferrals to the Plan for an entire Plan Year due to termination of employment.

- (2) **No permissible withdrawals.** Although the QACA Safe Harbor 401(k) Plan contains an automatic deferral election that is designed to satisfy the requirements of an EACA, the permissible withdrawal provisions under this subsection are not available.

- (3) **Time period for electing a permissible withdrawal.** Instead of a 90-day election period, a Participant must request a permissible withdrawal no later than \_\_\_\_\_ [may not be less than 30 nor more than 90] days after the date the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income.

- (e) **Other automatic deferral provisions:** \_\_\_\_\_

*[Note: Any language added under this subsection must comply with the nondiscrimination requirements under Code §401(a)(4) and the regulations thereunder.]*

6C-4 **ELIGIBILITY FOR SAFE HARBOR CONTRIBUTION.** (Complete this 6C-4 only if eligibility rules for Traditional Safe Harbor 401(k) Plans or QACA Safe Harbor 401(k) Plans are different than for Salary Deferrals.) The Safe Harbor Contribution selected in AA §6C-2 or §6C-3 above will be allocated to all Participants who are eligible to make Salary Deferrals under the Plan, unless designated otherwise under this AA §6C-4.

- (a) **Availability of Safe Harbor Contributions.** Instead of being allocated to all eligible Participants, the Safe Harbor Contribution selected in AA §6C-2 or §6C-3 will be allocated only to:
- (1) Nonhighly Compensated Participants
  - (2) Nonhighly Compensated Participants and any Highly Compensated Non-Key Employees
- (b) **Eligible Employees.** Unless designated otherwise under this subsection, any Excluded Employees will be determined under the Deferral column under AA §3-1. If this subsection is checked, the following Employees will be excluded for purposes of receiving the Safe Harbor Contribution. [*Note: The exclusion of Employees under this subsection may require additional nondiscrimination testing. See Section 6.04(c) of Plan.*]
- (1) Same exclusions as designated for Matching Contributions under AA §3-1.
  - (2) Same exclusions as designated for Employer Contributions under AA §3-1.
  - (3) The following Employees are Excluded Employees for purposes of receiving the Safe Harbor Contribution:
    - (i) Collectively Bargained Employees
    - (ii) Non-resident aliens who receive no compensation from the Employer which constitutes U.S. source income
    - (iii) Leased Employees
    - (iv) Describe: \_\_\_\_\_

[*Note: If this subsection (iv) is completed to designate a class of Excluded Employees, such Employee class must be defined in such a way that it precludes Employer discretion and may not be based on time or service (e.g., part-time Employees) and may not provide for an exclusion designed to cover only Nonhighly Compensated Employees with the lowest amount of compensation and/or the shortest periods of service which may represent the minimum number of Nonhighly Compensated Employees necessary to satisfy the coverage requirements under Code §410(b).*]

(c) **Minimum age and service conditions.** Unless designated otherwise under this subsection, the minimum age and service conditions applicable to Salary Deferrals under AA §4 will apply for purposes of any Safe Harbor Contributions selected under AA §6C-2 or §6C-3. If this subsection is checked, the following minimum age and service conditions apply for Safe Harbor Contributions. [*Note: The addition of minimum age or service conditions under this subsection may require additional nondiscrimination testing. See Section 6.04(d) of the Plan.*]

- (1) **Minimum service requirement.**
- (i) No minimum service conditions apply.
  - (ii) The minimum service conditions applicable to Matching Contributions (as selected in AA §4).
  - (iii) The minimum service conditions applicable to Employer Contributions (as selected in AA §4).
  - (iv) One Year of Service using shifting Eligibility Computation Period. (See Section 6.04(d) of the Plan.)
  - (v) The completion of at least \_\_\_\_ [*cannot exceed 1,000*] Hours of Service during the first \_\_\_\_ months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier.
  - (vi) Describe: \_\_\_\_\_

[*Note: For purposes of determining eligibility for Safe Harbor Contributions, an Employee may not be required to complete more than one Year of Service.*]

- (2) **Minimum age requirement.**
- (i) No minimum age requirement
  - (ii) Age 21
  - (iii) Age \_\_\_\_ (not later than age 21)

- (3) **Entry Date.**
- (i) Immediate
  - (ii) Semi-annual
  - (iii) Quarterly
  - (iv) Monthly
  - (v) Describe Entry Date: \_\_\_\_\_

[*Note: Entry Date under subsection (v) must be within the dates described under subsections (i) – (iv).*]

An Eligible Employee's Entry Date (as defined above) is determined based on when the Employee satisfies the minimum age and service requirements in AA §4-1 or subsections (1) and (2) above. For this purpose, an Employee's Entry Date is the Entry Date:

- (vi) **next following** satisfaction of the minimum age and service requirements.
  - (vii) **coinciding with or next following** satisfaction of the minimum age and service requirements.
  - (viii) **nearest** the satisfaction of the minimum age and service requirements.
  - (ix) **preceding** the satisfaction of the minimum age and service requirements.
- (d) **Describe eligibility conditions:** \_\_\_\_\_  
*[Note: Any additional eligibility conditions under this subsection must satisfy the requirements of Code §410(a) and may not violate the nondiscrimination requirements of Code §401(a)(4).]*

6C-5 **DEFINITION OF PLAN COMPENSATION.** Unless designated otherwise under this AA §6C-5, Plan Compensation is the same definition as selected under the Deferral column of AA §5-3 and AA §5-4. (See **Note** below for special rules applicable to definition of Plan Compensation.)

- (a) **Modification of Plan Compensation.** Instead of using the definition of Plan Compensation used for Salary Deferrals under AA §5-3, the following exclusions apply for Safe Harbor Contributions:
- (1) No exclusions.
  - (2) All fringe benefits, expense reimbursements, deferred compensation, moving expenses, and welfare benefits are excluded.
  - (3) Amounts received as a bonus are excluded.
  - (4) Amounts received as commissions are excluded.
  - (5) Overtime payments are excluded.
  - (6) Describe adjustments to Plan Compensation: \_\_\_\_\_  
*[Note: Any exclusions selected under subsections (3) – (6) may cause the definition of Plan Compensation to fail to satisfy a safe harbor definition of compensation under Code §414(s). Any modification under this subsection (6) must be definitely determinable and preclude Employer discretion.]*
- (b) **Exclusions applicable only to Highly Compensated Employees.** If this subsection is checked, any non-safe harbor adjustments selected under AA §5-3 or under this AA §6C-5, to the extent the adjustments apply to Safe Harbor 401(k) Plan Contributions, will apply only to Highly Compensated Employees. *[Note: If this subsection is checked, the definition of Plan Compensation that applies for purposes of determining the amount of Safe Harbor Contributions under the Plan will be deemed to satisfy a safe harbor definition of compensation under Code §414(s). See Section 1.138 of the Plan for a description of non-safe harbor compensation adjustments.]*
- (c) **Compensation while a Participant.** Instead of using the period of compensation designated under AA §5-4 for Salary Deferrals, the following Plan Compensation will be taken into account for Safe Harbor Contributions:
- (1) Only Plan Compensation earned while the Employee is eligible to receive a Safe Harbor Contribution.
  - (2) Plan Compensation for the entire Plan Year, including compensation earned while an individual is not eligible to receive the Safe Harbor Contribution.

*[Note: In order to qualify as a Safe Harbor 401(k) Plan, the Plan must use a definition of Plan Compensation that satisfies a nondiscriminatory definition under Code §414(s). If the definition of Plan Compensation used for determining Safe Harbor Contributions or QACA Safe Harbor Contributions under the Plan does not satisfy a nondiscriminatory definition under Code §414(s) for a given Plan Year, the Employer will be deemed to have elected to use Total Compensation for purposes of determining the Traditional Safe Harbor or QACA Safe Harbor Contribution for such Plan Year. See Section 1.99(a) of the Plan.]*

6C-6 **OFFSET OF ADDITIONAL EMPLOYER CONTRIBUTIONS.** Any additional Employer Contributions under AA §6 will be allocated to all eligible Participants in addition to the Safe Harbor Employer Contribution, unless selected otherwise under this AA §6C-6.

- Check this AA §6C-6 to provide that the Safe Harbor Employer Contribution offsets any additional Employer Contributions designated under AA §6. For this purpose, if the permitted disparity allocation method is selected under AA §6-3, this offset applies only to the second step of the two-step permitted disparity formula or the fourth step of the four-step permitted disparity formula. (See Section 3.02(d)(1) of the Plan.)

- 6C-7 **DELAYED EFFECTIVE DATE.** The Safe Harbor provisions under this AA §6C are effective as of the Effective Date of the Plan (or the Effective Date of any Plan amendment or restatement, if applicable), as designated on the Employer Signature Page. To provide for a delayed effective date for the Safe Harbor provisions, check this AA §6C-7.
- The Safe Harbor provisions under this AA §6C are effective beginning 1/1/2013 . Prior to this delayed effective date, the provisions of this AA §6C do not apply. Thus, prior to the delayed effective date, the Employer is not obligated to make a Safe Harbor Contribution and the Plan is subject to ADP and ACP Testing, to the extent applicable.

**SECTION 6D**  
**SPECIAL CONTRIBUTIONS**

6D-1 **SPECIAL CONTRIBUTIONS.** The following Special Contributions may be made under the Plan:

- (a) No Special Contributions are permitted. [*Skip to Section 7.*]
- (b) After-Tax Employee Contributions  
[*Note: After-Tax Employee Contributions are not considered Roth Deferrals. The Employer may elect Roth Deferrals under AA §6A-5.*]
- (c) Fixed Qualified Nonelective Contributions (QNECs), as elected under AA §6D-3.  
[*Note: Under the Plan, the Employer may always make a discretionary QNEC to the Plan as a uniform percentage of Plan Compensation, a uniform dollar amount, or as a Targeted QNEC. See Section 3.02(a)(6) of the Plan.*]
- (d) Qualified Matching Contributions (QMACs)  
[*Note: Regardless of any elections under this AA §6D-1, the Employer may make additional QNECs or QMACs to the Plan on behalf of the Nonhighly Compensated Employees and use such amounts to correct an ADP or ACP Test violation. See Sections 6.01(b)(3) and 6.02(b)(3) of the Plan for special rules regarding the allocation of QNECs/QMACs under the Plan.*]

6D-2 **AFTER-TAX EMPLOYEE CONTRIBUTIONS.** If After-Tax Employee Contributions are authorized under AA §6D-1, a Participant may contribute any amount as After-Tax Employee Contributions up to the Code §415 Limitation (as defined in Section 5.03 of the Plan), except as limited under this AA §6D-2.

- (a) **Limits on After-Tax Employee Contributions.** If this subsection is checked, the following limits apply to After-Tax Employee Contributions:
- (1) **Maximum limit.** A Participant may make After-Tax Employee Contributions up to
- (i) \_\_\_% of Plan Compensation
  - (ii) \$\_\_\_
- for the following period:
- (iii) the entire Plan Year.
  - (iv) the portion of the Plan Year during which the Employee is eligible to participate.
  - (v) each separate payroll period during which the Employee is eligible to participate.
- (2) **Minimum limit.** The amount of After-Tax Employee Contributions a Participant may make for any payroll period may not be less than:
- (i) \_\_\_% of Plan Compensation.
  - (ii) \$\_\_\_.
- (b) **Eligibility for Matching Contributions.** Unless designated otherwise under this subsection, After-Tax Employee Contributions will **not** be eligible for Matching Contributions under the Plan.
- (1) After-Tax Employee Contributions are eligible for the following Matching Contributions under the Plan:
- (i) All Matching Contributions elected under AA §6B and AA §6C.
  - (ii) All Matching Contributions elected under AA §6B (other than Safe Harbor/QACA Safe Harbor Matching Contributions elected under AA §6C).
  - (iii) Only Safe Harbor/QACA Safe Harbor Matching Contributions under AA §6C.
  - (iv) All Matching Contributions designated under AA §6B-2 and/or AA §6C, except for the following Matching Contributions: \_\_\_\_\_

- (2) The Matching Contribution formula only applies to After-Tax Employee Contributions that do not exceed:
  - (i) \_\_\_\_\_% of Plan Compensation.
  - (ii) \$\_\_\_\_\_.
  - (iii) A discretionary amount determined by the Employer.
- (c) **Change or revocation of After-Tax Employee Contributions.** In addition to the Participant’s Entry Date under the Plan, a Participant’s election to change or resume an after-tax election will be effective as set forth under the After-Tax Employee Contributions election form or other written procedures adopted by the Plan Administrator. A Participant must be permitted to change or revoke an after-tax election at least once per year. Unless the After-Tax Contributions election form or other written procedures adopted by the Plan Administrator provide otherwise, a Participant may revoke an after-tax election (on a prospective basis) at any time. Unless designated otherwise in a Participant’s after-tax election form, a Participant’s affirmative election to make an After-Tax Employee Contribution will cease upon termination of employment and the Participant will need to make a new election upon rehire.
- (d) **ACP Testing Method.** The same ACP Testing Method will apply to After-Tax Employee Contributions as applies to Matching Contributions, as designated under AA §6B-6. If no method is selected under AA §6B-6, designate the testing method below.

*[Note: If the Plan is a Safe Harbor 401(k) Plan (as designated in AA §6C), the Plan must use the Current Year Testing Method.]*

- (1) **Current Year Testing Method.** The Plan will use the Current Year Testing Method in running the ACP test. If the Current Year Testing Method is elected, the ACP of the Nonhighly Compensated Group for the first Plan Year is calculated using current year data, unless otherwise designated below.
  - Deemed 3% used for first Plan Year.** Instead of using actual current year data for the first Plan Year, the ACP of the Nonhighly Compensated Group for the first Plan Year the 401(k) Plan is effective is deemed to be 3%.
- (2) **Prior Year Testing Method.** The Plan will use the Prior Year Testing Method in running the ACP Test. If the Prior Year Testing Method is elected, the ACP of the Nonhighly Compensated Group for the first Plan Year is deemed to be 3%, unless otherwise designated below.
  - Current year data used for first Plan Year.** Instead of deeming the ACP of the Nonhighly Compensated Group to be 3% for the first Plan Year for which the 401(k) Plan is effective, the Plan will use the actual current year data for the first Plan Year.
- (3) **Application of Current Year Testing Method.** The Current Year Testing Method has applied since the \_\_\_\_\_ Plan Year. *[Note: If the Plan has switched from the Prior Year Testing Method to the Current Year Testing Method, this subsection (3) may be checked to designate the first Plan Year for which the Current Year Testing Method applies.]*
- (e) **Other limits:** \_\_\_\_\_

*[Any other limits under this subsection must comply with the nondiscrimination requirements under Code §401(a)(4).]*

**6D-3 QUALIFIED NONELECTIVE CONTRIBUTIONS (QNECs).** Notwithstanding any contrary selections in the Adoption Agreement, for any Plan Year, the Employer may make a discretionary QNEC on behalf of Nonhighly Compensated Participants under the Plan to correct a violation of the ADP and/or ACP tests. (See Sections 6.01(b)(3) and 6.02(b)(3).) Such corrective QNEC may be allocated to all Nonhighly Compensated Participants as a uniform percentage of Plan Compensation or a uniform dollar amount or as a Targeted QNEC, without regard to any allocation conditions selected in AA §6-5. The allocation method chosen by the Employer for a corrective QNEC will be uniformly applied to all Participants receiving the corrective QNEC for the Plan Year. The Employer also may make a discretionary QNEC that is not a corrective QNEC and allocate such discretionary QNEC as a uniform percentage of Plan Compensation to Nonhighly Compensated Employees. If the Employer decides to make a discretionary QNEC, the Employer must designate the contribution as a QNEC prior to making such contribution to the Plan. (See Section 6.01(a)(4) and 6.02(a)(4) of the Plan for a description of the amount of QNEC that may be used in the ADP Test and/or ACP Test.)

The Employer may elect under this AA §6D-3 to make a fixed QNEC to the Plan.

Unless provided otherwise under this AA §6D-3, any QNEC authorized under AA §6D-1 will be allocated to Nonhighly Compensated Employees who are eligible to make Salary Deferrals, without regard to the allocation conditions selected in AA §6-5. Any contribution designated as a QNEC will automatically be subject to the requirements for QNECs (as described in Section 3.02(a)(6) of the Plan). QNECs will be eligible for in-service distribution under the same conditions as elected for Salary Deferrals under AA §10 (other than hardship distributions), unless designated otherwise under AA §10.

To modify these default allocation provisions, complete the applicable provisions under this AA §6D-3.

- (a) **All Participants.** Any QNEC made pursuant to this AA §6D-3 will be allocated to all Participants who are eligible to defer, including Highly Compensated Employees.
- (b) **Fixed QNEC.**
- (1) The Employer will make a QNEC each Plan Year equal to \_\_\_\_% of Plan Compensation.
- (2) The Employer will make a QNEC each Plan Year equal to \$\_\_\_\_.
- [Note: A flat dollar QNEC may only be used in the ADP Test to the extent the QNEC does not violate the Targeted QNEC requirements as set forth in Section 3.02(a)(6)(ii)(B) of the Plan.]*
- (c) **Allocation conditions.** Any QNEC made pursuant to this AA §6D-3 will be allocated only to Participants who have satisfied the following allocation conditions:
- (1) **Safe harbor allocation condition.** An Employee must be employed by the Employer on the last day of the Plan Year OR must complete more than 500 Hours of Service. (See Section 3.09 of the Plan.)
- (2) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.
- (3) **Minimum service condition.** An Employee must be credited with at least 1,000 HOS during the Plan Year.
- (4) **Describe any special rules governing the allocation conditions relating to QNECs:** \_\_\_\_\_
- [Note: Any special rules under this subsection must satisfy the nondiscrimination requirements under Code §401(a)(4).]*
- (d) **Eligibility for QNECs.** In determining eligibility for QNECs, only those Participants who are eligible for the following contributions will share in the allocation of QNECs (subject to the selections in this AA §6D-3):
- (1) **Employer Contributions**
- (2) **Matching Contributions**
- (3) **Describe any special rules governing eligibility relating to QNECs:** \_\_\_\_\_
- [Note: Any special rules under this subsection must satisfy the nondiscrimination requirements under Code §401(a)(4).]*

6D-4 **QUALIFIED MATCHING CONTRIBUTIONS (QMACs).** Notwithstanding any contrary selections in the Adoption Agreement, for any Plan Year, the Employer may make a discretionary QMAC on behalf of Nonhighly Compensated Participants under the Plan to correct a violation of the ADP and/or ACP tests. (See Sections 6.01(b)(3) and 6.02(b)(3).) Such corrective QMAC may be allocated to all Nonhighly Compensated Participants as a uniform percentage of Eligible Contributions or a uniform dollar amount or as a Targeted QMAC, without regard to any allocation conditions selected in AA §6-5. The allocation method chosen by the Employer for a corrective QMAC will be applied uniformly to all Participants receiving the corrective QMAC for the Plan Year.

If QMACs are authorized under AA §6D-1, the Employer may make a non-corrective discretionary QMAC as a uniform percentage of Eligible Contributions. If the Employer decides to make a discretionary QMAC, the Employer must designate the contribution as a QMAC prior to making such contribution to the Plan. Unless provided otherwise under this AA §6D-4, any discretionary QMAC authorized under AA §6D-1 will be allocated only to Nonhighly Compensated Employees, without regard to the allocation conditions selected in AA §6B-7. Any discretionary Matching Contribution designated as a QMAC will automatically be subject to the requirements for QMACs (as described in Section 3.04(d) of the Plan). QMACs will be eligible for in-service distribution under the same conditions as elected for Salary Deferrals under AA §10 (other than hardship distributions). (See Section 6.01(a)(4) and 6.02(a)(1) of the Plan for a description of the amount of QMAC that may be used in the ADP Test and/or ACP Test.)

To modify these default allocation provisions, complete the applicable provision under this AA §6D-4.

- (a) **Eligibility for QMAC.** The discretionary QMAC will be allocated to all Participants (instead of only to Nonhighly Compensated Employees).
- (b) **Designated QMACs.** The Employer may designate under this subsection to treat specific Matching Contributions under AA §6B-2 as QMACs. *[Note: Any Matching Contributions designated as QMACs will automatically be subject to the requirements for QMACs (as described in Section 3.04(d) of the Plan), notwithstanding any contrary selections in this Adoption Agreement.]*
- (1) All Matching Contributions are designated as QMACs.
- (2) The following Matching Contributions described in AA §6B-2 are designated as QMACs: \_\_\_\_\_
- (3) Any discretionary QMAC made pursuant to this AA §6D-4 will be allocated as a Targeted QMAC, as described in Section 3.04(d)(2) of the Plan.



- (c) **Allocation conditions.** Any QMAC made pursuant to this AA §6D-4 will be allocated only to Participants who have satisfied the following allocation conditions:
- (1) **Safe harbor allocation condition.** An Employee must be employed by the Employer on the last day of the Plan Year OR must complete more than 500 Hours of Service. (See Section 3.09 of the Plan.)
  - (2) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.
  - (3) **Minimum service condition.** An Employee must be credited with at least 1,000 HOS during the Plan Year.
  - (4) **Describe:** \_\_\_\_\_
- (d) **Special rules:** \_\_\_\_\_
- [*Note: Any special provisions under this AA §6D-4 must satisfy the nondiscrimination requirements of Code §401(a)(4) and the regulations thereunder.*]

**SECTION 7  
RETIREMENT AGES**

- 7-1 **NORMAL RETIREMENT AGE.** Normal Retirement Age under the Plan is:
- (a) Age 60 \_\_\_\_ (not to exceed 65).
  - (b) The later of age \_\_\_\_ (not to exceed 65) or the \_\_\_\_ (not to exceed 5<sup>th</sup>) anniversary of the Employee's:
    - (1) Participation commencement date (as defined in Section 1.91 of the Plan).
    - (2) Employment date.
  - (c) Describe: \_\_\_\_\_
- [*Note: If this subsection is completed, the Normal Retirement Age may not be later than the later of age 65 or the 5<sup>th</sup> anniversary of the Employee's participation commencement date.*]

[*Note: Effective May 22, 2007 (for Plans initially adopted on or after May 22, 2007), and effective for the first Plan Year beginning on or after July 1, 2008 (for Plans initially adopted prior to May 22, 2007), if the Plan contains any assets transferred from a Money Purchase Plan (or any other pension plan described in Treas. Reg. §1.401-1(a)(2)(i)), the Normal Retirement Age selected in this AA §7-1 must be reasonably representative of the typical retirement age for the industry in which the Plan Participants work. An NRA under age 55 is presumed not to satisfy this requirement while a Normal Retirement Age of at least age 62 is deemed to be reasonable. See Section 1.91 of the Plan.*]

- 7-2 **EARLY RETIREMENT AGE.** Unless designated otherwise under this AA §7-2, there is no Early Retirement Age under the Plan.

- (a) A Participant reaches Early Retirement Age if he/she is still employed after attainment of each of the following:
  - (1) Attainment of age \_\_\_\_
  - (2) The \_\_\_\_ anniversary of the date the Employee commenced participation in the Plan, and/or
  - (3) The completion of \_\_\_\_ Years of Service, determined as follows:
    - (i) Same as for eligibility.
    - (ii) Same as for vesting
- (b) Describe: \_\_\_\_\_

[*Note: Any special rules under this subsection must preclude Employer discretion and must satisfy the nondiscrimination requirements of Code §401(a)(4) and the regulations thereunder.*]

**SECTION 8  
VESTING AND FORFEITURES**

- 8-1 **CONTRIBUTIONS SUBJECT TO VESTING.** Does the Plan provide for Employer Contributions under AA §6, Matching Contributions under AA §6B, or QACA Safe Harbor Contributions under AA §6C that are subject to vesting?

- Yes
- No [If "No" is checked, skip to Section 9.]

[*Note: "Yes" should be checked under this AA §8-1 if the Plan provides for Employer Contributions and/or Matching Contributions that are subject to a vesting schedule, even if such contributions are always 100% vested under AA §8-2. "No" should be checked if the only contributions under the Plan are Salary Deferrals, Safe Harbor Contributions (other than QACA Safe Harbor Contributions), QNECs, QMACs and/or After-Tax Employee Contributions. If the Plan holds Employer*

*Contributions and/or Matching Contributions that are subject to vesting, but the Plan no longer provides for such contributions, see Sections 7.04(e) and 7.13(e) of the Plan for default rules for applying the vesting and forfeiture rules to such contributions.]*

8-2 **VESTING SCHEDULE.** The vesting schedule under the Plan is as follows for both Employer Contributions and Matching Contributions, to the extent authorized under AA §6 and AA §6B. See Section 7.02 of the Plan for a description of the various vesting schedules under this AA §8-2. [**Note:** Any Prevailing Wage Contributions under AA §6-2, any Safe Harbor Contributions under AA §6C and any QNECs or QMACs under AA §6D are always 100% vested, regardless of any contrary selections in this AA §8-2 (unless provided otherwise under AA §6-2 for Prevailing Wage Contributions or under this AA §8-2 for any QACA Safe Harbor Contributions).]

(a) **Vesting schedule for Employer Contributions and Matching Contributions:**

- | ER                       | Match                               |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (1) Full and immediate vesting.        |
| <input type="checkbox"/> | <input type="checkbox"/>            | (2) 3-year cliff vesting schedule      |
| <input type="checkbox"/> | <input type="checkbox"/>            | (3) 6-year graded vesting schedule     |
| <input type="checkbox"/> | <input type="checkbox"/>            | (4) 5-year graded vesting schedule     |
| <input type="checkbox"/> | <input type="checkbox"/>            | (5) Modified vesting schedule          |
|                          |                                     | ___% immediately on Plan participation |
|                          |                                     | ___% after 1 Year of Service           |
|                          |                                     | ___% after 2 Years of Service          |
|                          |                                     | ___% after 3 Years of Service          |
|                          |                                     | ___% after 4 Years of Service          |
|                          |                                     | ___% after 5 Years of Service          |
|                          |                                     | 100% after 6 Years of Service          |

*[Note: If a modified vesting schedule is selected, the vested percentage for every Year of Service must satisfy the vesting requirements under the 6-year graded vesting schedule, unless 100% vesting occurs after no more than 3 Years of Service.]*

(b) **Special vesting schedule for QACA Safe Harbor Contributions.** Unless designated otherwise under this subsection, any QACA Safe Harbor Contributions will be 100% vested. However, if this subsection is checked, the following vesting schedule applies for QACA Safe Harbor Contributions. [**Note:** This subsection may be checked only if a QACA Safe Harbor Contribution is selected under AA §6C-3.]

- Instead of being 100% vested, QACA Safe Harbor Contributions are subject to the following vesting schedule:
- (1) 2-year cliff vesting
  - (2) 1-year cliff vesting
  - (3) Graduated vesting
  - \_\_\_% after 1 Year of Service
  - 100% after 2 Years of Service

(c) **Special provisions applicable to vesting schedule:** \_\_\_\_\_

*[Note: Any special provisions must satisfy the nondiscrimination requirements under Code §401(a)(4) and must satisfy the vesting requirements under Code §411.]*

8-3 **VESTING SERVICE.** In applying the vesting schedules under this AA §8, all service with the Employer counts for vesting purposes, unless designated otherwise under this AA §8-3.

- (a) Service before the original Effective Date of this Plan (or a Predecessor Plan) is excluded.
- (b) Service completed before the Employee's \_\_\_ (not to exceed 18th) birthday is excluded.

*[Note: See Section 7.08 of the Plan and AA §4-5 for rules regarding the crediting of service with Predecessor Employers for purposes of vesting under the Plan.]*

- 8-4 **VESTING UPON DEATH, DISABILITY OR EARLY RETIREMENT AGE.** An Employee's vesting percentage increases to 100% if, while employed with the Employer, the Employee:
- (a) dies
  - (b) terminates employment due to becoming Disabled
  - (c) becomes Disabled
  - (d) reaches Early Retirement Age
  - (e) Not applicable. No increase in vesting applies.

8-5 **DEFAULT VESTING RULES.** In applying the vesting requirements under this AA §8, the following default rules apply. [*Note: No election should be made under this AA §8-5 if all contributions are 100% vested. ER and Match columns also apply to any Safe Harbor QACA Contributions to the extent a vesting schedule applies under AA §8-2 above.*]

- **Year of Service.** An Employee earns a Year of Service for vesting purposes upon completing 1,000 Hours of Service during a Vesting Computation Period. Hours of Service are calculated based on actual hours worked during the Vesting Computation Period. (See Section 1.72 of the Plan for the definition of Hours of Service.)
- **Vesting Computation Period.** The Vesting Computation Period is the Plan Year.
- **Break in Service Rules.** The Nonvested Participant Break in Service rule and One-Year Break in Service rules do NOT apply. (See Section 7.09 of the Plan.)

To override the default vesting rules, complete the applicable sections of this AA §8-5. If this AA §8-5 is not completed, the default vesting rules apply.

**ER            Match**

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | (a) <b>Year of Service.</b> Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ___ Hours of Service during a Vesting Computation Period.   |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) <b>Vesting Computation Period.</b> Instead of the Plan Year, the Vesting Computation Period is:<br><input type="checkbox"/> (1) The 12-month period beginning with the Employee's Employment Commencement Date and, for subsequent Vesting Computation Periods, the 12-month period beginning with the anniversary of the Employee's Employment Commencement Date.<br><input type="checkbox"/> (2) Describe: _____<br><i>[Note: Any Vesting Computation Period described in this subsection (2) must be a 12-consecutive month period and must apply uniformly to all Participants.]</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) <b>Elapsed Time Method.</b> Instead of determining vesting service based on actual Hours of Service, vesting service will be determined under the Elapsed Time method. If this subsection is checked, service will be measured from the Employee's employment commencement date (or reemployment commencement date, if applicable) without regard to the Vesting Computation Period designated in Section 7.06 of the Plan. (See Section 7.05(b) of the Plan.)  |
| <input type="checkbox"/> | <input type="checkbox"/> | (d) <b>Equivalency Method.</b> For purposes of determining an Employee's Hours of Service for vesting, the Plan will use the Equivalency Method (as defined in Section 7.05(a)(2) of the Plan). The Equivalency Method will apply to:<br><input type="checkbox"/> (1) All Employees.<br><input type="checkbox"/> (2) Only to Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, vesting will be determined based on actual hours worked.<br>Hours of Service for vesting will be determined under the following Equivalency Method.<br><input type="checkbox"/> (3) <b>Monthly.</b> 190 Hours of Service for each month worked.<br><input type="checkbox"/> (4) <b>Weekly.</b> 45 Hours of Service for each week worked.<br><input type="checkbox"/> (5) <b>Daily.</b> 10 Hours of Service for each day worked.<br><input type="checkbox"/> (6) <b>Semi-monthly.</b> 95 Hours of Service for each semi-monthly period. |

- (e) **Nonvested Participant Break in Service rule applies.** Service earned prior to a Nonvested Participant Break in Service will be disregarded in applying the vesting rules. (See Section 7.09(c) of the Plan.)
  - The Nonvested Participant Break in Service rule applies to all Employees, including Employees who have not terminated employment.
- (f) **One-Year Break in Service rule applies.** The One-Year Break in Service rule (as defined in Section 7.09(b) of the Plan) applies to temporarily disregard an Employee’s service earned prior to a one-year Break in Service.
  - The One-Year Break in Service rule applies to all Employees, including Employees who have not terminated employment.
- (g) **Special rules:** \_\_\_\_\_  
 [Note: Any special rules under this subsection must satisfy the nondiscrimination requirements of Code §401(a)(4) and the regulations thereunder.]

**8-6 ALLOCATION OF FORFEITURES.**

The Employer may decide in its discretion how to treat forfeitures under the Plan. Alternatively, the Employer may designate under this AA §8-6 how forfeitures occurring during a Plan Year will be treated. (See Section 7.13 of the Plan.) [Note: ER and Match columns also apply to any Safe Harbor QACA Contributions to the extent a vesting schedule applies under AA §8-2 above.]

- | <b>ER</b>                | <b>Match</b>                        |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (a) N/A. All contributions are 100% vested. [Do not complete the rest of this AA §8-6.]       |
| <input type="checkbox"/> | <input type="checkbox"/>            | (b) Reallocated as additional Employer Contributions or as additional Matching Contributions. |
| <input type="checkbox"/> | <input type="checkbox"/>            | (c) Used to reduce Employer and/or Matching Contributions.                                    |

**For purposes of subsection (b) or (c), forfeitures will be applied:**

- (d) for the Plan Year in which the forfeiture occurs.
- (e) for the Plan Year **following** the Plan Year in which the forfeitures occur.  
 [Note: In any event, forfeitures must be used by the end of the Plan Year following the Plan Year in which the forfeitures occur.]

**Prior to applying forfeitures under subsection (b) or (c):**

- (f) Forfeitures may be used to pay Plan expenses. (See Section 7.13(d) of the Plan.)
- (g) Forfeitures may **not** be used to pay Plan expenses.

**In determining the amount of forfeitures to be allocated under subsection (b), the same allocation conditions apply as for the source for which the forfeiture is being allocated under AA §6-5 or AA §6B-7, unless designated otherwise below.**

- (h) Forfeitures are not subject to any allocation conditions.
- (i) Forfeitures are subject to a last day of employment allocation condition.
- (j) Forfeitures are subject to a \_\_\_\_ Hours of Service minimum service requirement.

**In determining the treatment of forfeitures under this AA §8-6, the following special rules apply:**

- (k) Describe: \_\_\_\_\_  
 [Note: Any language added under this subsection (k) may not result in a discriminatory allocation of forfeitures in violation of the requirements of Code §401(a)(4).]

**8-7 SPECIAL RULES REGARDING CASH-OUT DISTRIBUTIONS.**

- (a) **Additional allocations.** If a terminated Participant receives a complete distribution of his/her vested Account Balance while still entitled to an additional allocation, the Cash-Out Distribution forfeiture provisions do not apply until the Participant receives a distribution of the additional amounts to be allocated. (See Section 7.12(a)(1) of the Plan.)

To modify the default Cash-Out Distribution forfeiture rules, complete this AA §8-7(a).

- The Cash-Out Distribution forfeiture provisions will apply if a terminated Participant takes a complete distribution, regardless of any additional allocations during the Plan Year.

- (b) **Timing of forfeitures.** A Participant who receives a Cash-Out Distribution (as defined in Section 7.12(a) of the Plan) is treated as having an immediate forfeiture of his/her nonvested Account Balance.

To modify the forfeiture timing rules to delay the occurrence of a forfeiture upon a Cash-Out Distribution, complete this AA §8-7(b).

- A forfeiture will occur upon the completion of \_\_\_\_ [*cannot exceed 5*] consecutive Breaks in Service (as defined in Section 7.09(a) of the Plan).

- 8-8 **SPECIAL RULE FOR FORFEITURE UPON DEATH OF A PARTICIPANT.** Unless elected below, no vested benefits are forfeited upon the death of a Participant.

To modify this default forfeiture rule, check the box below.

- The Plan will forfeit benefits (including vested benefits) upon the death of a Participant, as permitted under Code §411(a)(3)(A). In no event may the Plan forfeit any benefits required by the Qualified Joint and Survivor Annuity requirements under Section 9 of the Plan and Code §401(a)(11). In addition, in no event may the Plan forfeit any amounts attributable to a Participant's Salary Deferrals or After-Tax Employee Contributions under the Plan or if the Plan has commenced distributions prior to the Participant's death.

**SECTION 9  
DISTRIBUTION PROVISIONS – TERMINATION OF EMPLOYMENT**

- 9-1 **AVAILABLE FORMS OF DISTRIBUTION.**

**Lump sum distribution.** A Participant may take a distribution of his/her entire vested Account Balance in a single lump sum upon termination of employment. In addition, the Plan Administrator may permit a Participant to take partial distributions or installment distributions solely to the extent necessary to satisfy the required minimum distribution rules under Section 8 of the Plan.

**Additional distribution options.** To provide for additional distribution options to the extent available under the Investment Arrangement(s), check the applicable distribution forms under this AA §9-1.

- (a) **Installment distributions.** A Participant may take a distribution over a specified period not to exceed the life or life expectancy of the Participant (and a designated beneficiary).
- (b) **Partial lump sum.** A Participant may take a distribution of less than the entire vested Account Balance upon termination of employment.
- Minimum distribution amount. A Participant may not take a partial lump sum distribution of less than \$\_\_\_\_.
- (c) **Annuity distributions.** A Participant may elect to have the Plan Administrator use the Participant's vested Account Balance to purchase an annuity as described in Section 8.02 of the Plan. [*Note: This annuity distribution option is in addition to any QJSA distribution required under AA §9-2.*]
- (d) **Describe distribution options:** \_\_\_\_\_
- [*Note: Any additional distribution options under this subsection may not be subject to the discretion of the Employer or Plan Administrator.*]

- 9-2 **QUALIFIED JOINT AND SURVIVOR ANNUITY RULES.** This Plan is not subject to the Qualified Joint and Survivor Annuity rules, except to the extent required under Section 9.01 of the Plan (e.g., if the Plan is a Transferee Plan). Upon termination of employment, a Participant may receive a distribution from the Plan, in accordance with the provisions of AA §9-3, in any form allowed under AA §9-1. (If any portion of this Plan is subject to the Qualified Joint and Survivor Annuity rules, the QJSA and QPSA provisions will automatically apply to such portion of the Plan.)

To override this default provision, complete the applicable sections of this AA §9-2.

- (a) **Qualified Joint and Survivor Annuity rules.** Check this subsection to apply the Qualified Joint and Survivor Annuity rules to the entire Plan. If this subsection is checked, all distributions from the Plan must satisfy the QJSA requirements under Section 9 of the Plan, with the following modifications:
- (1) **No modifications.**
- (2) **Modified QJSA benefit.** Instead of a 50% survivor benefit, the Spouse's survivor benefit is:
- (i) 100%                       (ii) 75%                       (iii) 66-2/3%

- (b) **Modified QPSA benefit.** Instead of a 50% QPSA benefit, the QPSA benefit is 100% of the Participant's vested Account Balance.

**9-3 TIMING OF DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT.**

- (a) **Distribution of vested Account Balances exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance exceeding \$5,000 may receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1 within a reasonable period following:

- (1) the date the Participant terminates employment.  
 (2) the last day of the Plan Year during which the Participant terminates employment.  
 (3) the first Valuation Date following the Participant's termination of employment.  
 (4) the completion of \_\_\_ Breaks in Service.  
 (5) the end of the calendar quarter following the date the Participant terminates employment.  
 (6) attainment of Normal Retirement Age, death or becoming Disabled.  
 (7) Describe: \_\_\_\_\_

*[Note: Any distribution event under this subsection (a) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator. See AA §11-7 for special rules that may apply to distributions of Qualifying Employer Securities and/or Qualifying Employer Real Property.]*

- (b) **Distribution of vested Account Balances not exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance that does not exceed \$5,000 may receive a **lump sum** distribution of his/her vested Account Balance within a reasonable period following:

- (1) the date the Participant terminates employment.  
 (2) the last day of the Plan Year during which the Participant terminates employment.  
 (3) the first Valuation Date following the Participant's termination of employment.  
 (4) the end of the calendar quarter following the date the Participant terminates employment.  
 (5) Describe: \_\_\_\_\_

*[Note: Any distribution event under this subsection (b) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator. See AA §11-7 for special rules that may apply to distributions of Qualifying Employer Securities and/or Qualifying Employer Real Property.]*

- 9-4 DISTRIBUTION UPON DISABILITY.** Unless designated otherwise under this AA §9-4, a Participant who terminates employment on account of becoming Disabled may receive a distribution of his/her vested Account Balance in the same manner as a regular distribution upon termination.

- (a) **Immediate distribution upon termination of employment.** Distribution will be made as soon as reasonable following the date the Participant terminates employment on account of becoming Disabled.  
 (b) **Following year distribution upon termination of employment.** Distribution will be made as soon as reasonable following the last day of the Plan Year during which the Participant terminates on account of becoming Disabled.  
 (c) **Describe:** \_\_\_\_\_

*[Note: Any distribution event described in this subsection will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.]*

**9-5 DETERMINATION OF BENEFICIARY.**

- (a) **Default beneficiaries.** Under Section 8.08(c) of the Plan, to the extent a Beneficiary has not been named by the Participant (subject to the spousal consent rules) and is not designated under the terms of the Investment Arrangement(s) to receive all or any portion of the deceased Participant's death benefit, such amount shall be distributed to the Participant's surviving Spouse (if the Participant was married at the time of death) who shall be considered the designated Beneficiary. If the Participant does not have a surviving Spouse at the time of death, distribution will be made to the Participant's surviving children (including legally adopted children, but not including step-children), as designated Beneficiaries, in equal shares. If the Participant has no surviving children, distribution will be made to the Participant's estate.

- If this subsection (a) is checked, the default beneficiaries under Section 8.08(c) of the Plan are modified as follows:

- (1) The Plan adopts the default beneficiary rules under Section 8.08(c) of the Plan, except, if the Participant does not have a surviving Spouse at the time of death, distribution will be made to the

Participant's children (including legally adopted children, but not including step-children), as designated Beneficiaries, **per stirpes**.

- (2) Describe other modifications to the default beneficiaries under Section 8.08(c) of the Plan: \_\_\_\_\_  
[*Note: The description of the modifications to the default beneficiaries must be sufficiently clear for the Plan Administrator to determine the beneficiaries and the method of distribution of the Participant's death benefit.*]

- (b) **One-year marriage rule.** For purposes of determining whether an individual is considered the surviving Spouse of the Participant, the determination is based on the marital status as of the date of the Participant's death, unless designated otherwise under this subsection (b).

- If this subsection (b) is checked, in order to be considered the surviving Spouse, the Participant and surviving Spouse must have been married for the entire one-year period ending on the date of the Participant's death. If the Participant and surviving Spouse are not married for at least one year as of the date of the Participant's death, the Spouse will not be treated as the surviving Spouse for purposes of applying the distribution provisions of the Plan. (See Section 9.04(c)(2) of the Plan.)

- (c) **Divorce of Spouse.** Unless elected otherwise under this subsection (c), if a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded as set forth under Section 8.08(c)(6) of the Plan.

- If this subsection (c) is checked, a Beneficiary designation will not be rescinded upon divorce of the Participant and Spouse.

[*Note: Section 8.08(c)(6) of the Plan and this subsection (c) will be subject to the provisions of a Beneficiary designation entered into by the Participant. Thus, if a Beneficiary designation specifically overrides the election under this subsection (c), the provisions of the Beneficiary designation will control. See Section 8.08(c)(6) of the Plan.*]

#### 9-6 SPECIAL RULES.

- (a) **Availability of Involuntary Cash-Out Distributions.** A Participant who terminates employment with a vested Account Balance of \$5,000 or less will receive an Involuntary Cash-Out Distribution, subject to the Automatic Rollover provisions under Section 8.06 of the Plan.

Alternatively, an Involuntary Cash-Out Distribution will be made to the following terminated Participants:

- (1) **No Involuntary Cash-Out Distributions.** The Plan does not provide for Involuntary Cash-Out Distributions. A terminated Participant must consent to any distribution from the Plan. (See Section 14.03(b) of the Plan for special rules upon Plan termination.)
- (2) **Lower Involuntary Cash-Out Distribution threshold.** A terminated Participant will receive an Involuntary Cash-Out Distribution only if the Participant's vested Account Balance is less than or equal to:
- (i) \$1,000
  - (ii) \$\_\_\_\_\_ (must be less than \$5,000)

- (b) **Application of Automatic Rollover rules.** The Automatic Rollover rules described in Section 8.06 of the Plan do not apply to any Involuntary Cash-Out Distribution below \$1,000 (to the extent available under the Plan).

To override this default provision, check below.

- (1) The Automatic Rollover provisions under Section 8.06 of the Plan apply to all Involuntary Cash-Out Distributions (including those below \$1,000).
- (2) The Automatic Rollover provisions under Section 8.06 of the Plan do not apply to Involuntary Cash-Out Distributions below \$\_\_\_\_\_ (must be between \$0 and \$1,000).

- (c) **Treatment of Rollover Contributions.** Unless elected otherwise under this subsection (c), Rollover Contributions will be included in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold for purposes of applying the distribution rules under this AA §9 and Section 8.04(b) of the Plan. To exclude Rollover Contributions for purposes of applying the Plan's distribution rules, check below.

- In determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, Rollover Contributions will be excluded.

[*Note: This subsection (c) should not be checked if a lower Involuntary Cash-Out Distribution is selected in subsection (a) above in order to avoid the Automatic Rollover provisions described in Section 8.06 of the Plan.*]

- (d) **Distribution upon attainment of stated age.** The Participant consent requirements under Section 8.04 of the Plan apply for distributions occurring prior to attainment of the Participant’s Required Beginning Date.  
 To allow for involuntary distribution upon attainment of Normal Retirement Age (or age 62, if later), check below.
- Subject to the spousal consent requirements under Section 9.04 of the Plan, a distribution from the Plan will be made to a terminated Participant without the Participant’s consent, regardless of the value of such Participant’s vested Account Balance, upon attainment of Normal Retirement Age (or age 62, if later).
- (e) **In-kind distributions.** Section 8.02(b) of the Plan allows the Plan Administrator to authorize an in-kind distribution of property, including Qualifying Employer Securities and Qualifying Employer Real Property, to the extent the Plan holds such property.  
 To modify this default rule, check below.
- A Participant may not receive an in-kind distribution in the form of property or securities, even if the Plan holds such property on behalf of any Participant.

**SECTION 10**  
**IN-SERVICE DISTRIBUTIONS AND REQUIRED MINIMUM DISTRIBUTIONS**

10-1 **AVAILABILITY OF IN-SERVICE DISTRIBUTIONS.** A Participant may withdraw all or any portion of his/her vested Account Balance, to the extent designated, upon the occurrence of any of the event(s) selected under this AA §10-1. If more than one option is selected for a particular contribution source under this AA §10-1, a Participant may take an in-service distribution upon the occurrence of any of the selected events, unless designated otherwise under this AA §10-1. [*Note: If special in-service distribution rules apply to Accounts that hold inactive sources of contributions, the Employer may designate such rules under AA §10-3.*]

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No in-service distributions are permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Attainment of age 59½.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(c) Attainment of age <u>60</u> . [ <i>Note: No in-service distribution of Salary Deferral is permitted prior to age 59½.</i> ]
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) A Hardship that satisfies the safe harbor rules under Section 8.10(e)(1) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) A non-safe harbor Hardship described in Section 8.10(e)(2) of the Plan.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(f) Attainment of Normal Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Attainment of Early Retirement Age.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(h) The Participant has participated in the Plan for at least ____ (cannot be less than 60) months.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(i) The amounts being withdrawn have been held in the Trust for at least two years.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(j) Upon a Participant becoming Disabled.
<input type="checkbox"/>	N/A	N/A	(k) As a Qualified Reservist Distribution as defined under Section 8.10(d) of the Plan.
<input checked="" type="checkbox"/>	N/A	N/A	(l) Upon a deemed separation of employment when an individual is on active duty for a period of at least 30 days while performing service in the Uniformed Services, as described under Section 15.06(c) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(m) Describe: _____

[*Note: Any distribution event described in this AA §10-1 may not discriminate in favor of Highly Compensated Employees. No in-service distribution of Salary Deferrals is permitted prior to age 59½, except for Hardship, Disability, as a Qualified Reservist Distribution or on a deemed separation of employment. If Normal Retirement Age or Early Retirement Age is earlier than age 59½, such age is deemed to be age 59½ for purposes of determining eligibility to distribute Salary Deferrals. If this Plan has accepted a transfer of assets from a pension plan (e.g., a Money Purchase Plan), no in-service distribution from amounts attributable to such transferred assets is permitted prior to age 62, except for Disability. See AA §11-7 for special rules that may apply to distributions of Qualifying Employer Securities and/or Qualifying Employer Real Property.*]



10-2 **APPLICATION TO OTHER CONTRIBUTION SOURCES.** If the Plan allows for Rollover Contributions under AA §C-2 or After-Tax Employee Contributions under AA §6D, unless elected otherwise under this AA §10-2, a Participant may take an in-service distribution from his/her Rollover Account and After-Tax Employee Contribution Account at any time. If the Plan provides for Traditional/QACA Safe Harbor Contributions under AA §6C, unless elected otherwise under this AA §10-2, a Participant may take an in-service distribution from his/her Traditional/QACA Safe Harbor Contribution Account at the same time as elected for Salary Deferrals under AA §10-1.

Alternatively, if this AA §10-2 is completed, the following in-service distribution provisions apply for Rollover Contributions, After-Tax Employee Contributions, and/or Safe Harbor Contributions:

Rollover	After-Tax	SH	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No in-service distributions are permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Attainment of age 59½.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) Attainment of age ____.
<input type="checkbox"/>	<input type="checkbox"/>	N/A	(d) A Hardship that satisfies the safe harbor rules under Section 8.10(e)(1) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	N/A	(e) A non-safe harbor Hardship described in Section 8.10(e)(2) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Attainment of Normal Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Attainment of Early Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Upon a Participant becoming Disabled.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) Describe: _____

*[Note: Any distribution event described in this AA §10-2 may not discriminate in favor of Highly Compensated Employees. No in-service distribution of Safe Harbor/QACA Safe Harbor Contributions is permitted prior to age 59½, except upon Participant becoming Disabled.]*

10-3 **SPECIAL DISTRIBUTION RULES.** No special distribution rules apply, unless specifically provided under this AA §10-3.

- (a) In-service distributions will only be permitted if the Participant is 100% vested in the source from which the withdrawal is taken.
  - (b) A Participant may take no more than \_\_\_\_ in-service distribution(s) in a Plan Year.
  - (c) A Participant may not take an in-service distribution of less than \$ \_\_\_\_.
  - (d) A Participant may not take an in-service distribution of more than \$ \_\_\_\_.
  - (e) Unless elected otherwise under this subsection, the hardship distribution provisions of the Plan are not expanded to cover primary beneficiaries as set forth in Section 8.10(e)(5) of the Plan. If this subsection is checked, the hardship provisions of the Plan will apply with respect to individuals named as primary beneficiaries under the Plan.
  - (f) In determining whether a Participant has an immediate and heavy financial need for purposes of applying the non-safe harbor Hardship provisions under Section 8.10(e)(2) of the Plan, the following modifications are made to the permissible events listed under Section 8.10(e)(1)(i) of the Plan: \_\_\_\_\_
- [Note: This subsection may only be used to the extent a non-safe harbor Hardship distribution is authorized under AA §10-1 or AA §10-2.]*
- (g) If a plan does not otherwise provide for Employer Contributions, but must make Top-Heavy contributions to the Plan, the Employer may designate under this AA §10-3(g) the in-service distribution options available under the Account holding the Top Heavy contributions: \_\_\_\_\_
  - (h) If the Plan includes Accounts that hold inactive sources of contributions, the Employer may designate under this AA §10-3(h) the in-service distribution options available to such Accounts: \_\_\_\_\_
  - (i) Other distribution rules: \_\_\_\_\_

*[Note: Any other distribution rules described in this subsection may not discriminate in favor of Highly Compensated Employees. This subsection may be used to apply the limitations under this AA §10-3 only to specific in-service distribution options (e.g., hardship distributions).]*

**10-4 REQUIRED MINIMUM DISTRIBUTIONS.**

- (a) **Required Beginning Date – non-5% owners.** In applying the required minimum distribution rules under Section 8.12 of the Plan, the Required Beginning Date for non-5% owners is the later of attainment of age 70½ or termination of employment. To override this default provision, check this subsection (a).
- The Required Beginning Date for a non-5% owner is the date the Employee attains age 70½, even if the Employee is still employed with the Employer.
- (b) **Required distributions after death.** If a Participant dies before distributions begin, and there is a Designated Beneficiary, the Participant or Beneficiary may elect on an individual basis whether the 5-year rule (as described in Section 8.12(f)(1) of the Plan) or the life expectancy method described under Sections 8.12(b) and (d) of the Plan apply. See Section 8.12(f)(2) of the Plan for rules regarding the timing of an election authorized under this AA §10-4.
- Alternatively, if selected under this subsection (b), any death distributions to a Designated Beneficiary will be made only under either the 5-year rule or the life expectancy method, as elected below:
- (1) The 5-year rule under Section 8.12(f)(1) of the Plan applies (instead of the life expectancy method). Thus, the entire death benefit must be distributed by the end of the fifth year following the year of the Participant’s death. Death distributions to a Designated Beneficiary may not be made under the life expectancy method.
- (2) The life expectancy method under Sections 8.12(b) and (d) of the Plan (and not the 5-year rule).

**SECTION 11  
 MISCELLANEOUS PROVISIONS**

**11-1 PLAN VALUATION.** The Plan is valued **annually**, as of the last day of the Plan Year.

- (a) **Additional valuation dates.** In addition, the Plan will be valued on the following dates:

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(1) <b>Daily.</b> The Plan is valued at the end of each business day during which the New York Stock Exchange is open.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) <b>Monthly.</b> The Plan is valued at the end of each month of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) <b>Quarterly.</b> The Plan is valued at the end of each Plan Year quarter.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) <b>Describe:</b> _____

*[Note: The Employer may elect operationally to perform interim valuations, provided such valuations do not result in discrimination in favor of Highly Compensated Employees.]*

- (b) **Special rules.** The following special rules apply in determining the amount of income or loss allocated to Participants’ Accounts: \_\_\_\_\_

*[Note: This subsection may be used to describe special rules for different investment options, such as Qualifying Employer Securities and Qualifying Employer Real Property or other specific investment options. Any special rules may not violate the nondiscrimination rules under Code §401(a)(4).]*

**11-2 DEFINITION OF HIGHLY COMPENSATED EMPLOYEE.** In determining which Employees are Highly Compensated (as defined in Section 1.70 of the Plan), the Top-Paid Group Test does not apply, unless designated otherwise under this AA §11-2.

- (a) The **Top-Paid Group Test** applies.
- (b) The **Calendar Year Election** applies. *[Note: This subsection may be chosen only if the Plan Year is not the calendar year. If this subsection is not selected, the determination of Highly Compensated Employees is based on the Plan Year. See Section 1.70(c) of the Plan.]*

**11-3 SPECIAL RULES FOR APPLYING THE CODE §415 LIMITATION.** The provisions under Section 5.03 of the Plan apply for purposes of determining the Code §415 Limitation.

Complete this AA §11-3 to override the default provisions that apply in determining the Code §415 Limitation under Section 5.03 of the Plan.

- (a) **Limitation Year.** Instead of the Plan Year, the Limitation Year is the 12-month period ending \_\_\_\_\_.
- [Note: If the Plan has a short Plan Year for the first year of establishment, the Limitation Year is deemed to be the 12-month period ending on the last day of the short Plan Year.]*

- (b) **Imputed compensation.** For purposes of applying the Code §415 Limitation, Total Compensation includes imputed compensation for a Nonhighly Compensated Participant who terminates employment on account of becoming Disabled, as described under Section 5.03(c)(7)(iii) of the Plan.
- (c) **Special rules:** \_\_\_\_\_  
*[Note: Any special rules under this subsection must be consistent with the requirements of Code §415 and the regulations thereunder and must comply with the nondiscrimination requirements under Code §401(a)(4).]*

11-4 **SPECIAL RULES FOR TOP-HEAVY PLANS.** No special rules apply with respect to Top-Heavy Plans, unless designated otherwise under this AA §11-4.

- (a) **Top Heavy contribution.** If this subsection is checked, any Top Heavy minimum contribution required under Section 4 of the Plan will be allocated to all Participants, including Key Employees. *[If this subsection is not checked, any Top Heavy minimum contribution will be allocated only to Non-Key Employees.]*
- (b) **Vesting rules applicable to Top Heavy Plans.** Generally, if a Top Heavy minimum contribution is made for a Plan Year, such contribution will be subject to the vesting schedule selected in AA §8-2 applicable to Employer Contributions. If no Employer Contributions are made to the Plan, any Top Heavy minimum contribution will be subject to a 6-year graded vesting schedule.
  - Alternatively, if elected under this subsection, the following vesting schedule will apply to any Top Heavy minimum contributions under the Plan. (See Section 4.04(h) of the Plan.)
    - (1) Full and immediate vesting.
    - (2) 3-year cliff vesting schedule
    - (3) Describe: \_\_\_\_\_*[Note: Any vesting schedule under this subsection (3) must be a permissible vesting schedule, as described in Section 7.02 of the Plan.]*

11-5 **SPECIAL RULES FOR MORE THAN ONE PLAN.**

- (a) **Top Heavy minimum contribution – Defined Contribution Plan.** If the Employer maintains this Plan and one or more Defined Contribution Plans, any Top Heavy minimum contribution will be provided under this Plan, provided the Top Heavy minimum contribution is not otherwise provided under the other Defined Contribution Plans. (See Section 4.04(f)(1) of the Plan.)

To provide the Top Heavy minimum contribution under another Defined Contribution Plan, complete this subsection (a).

  - (1) The Top Heavy minimum contribution will be provided in the following Defined Contribution Plan maintained by the Employer: \_\_\_\_\_
  - (2) Describe the Top Heavy minimum contribution that will be provided under the other Defined Contribution Plan:  
\_\_\_\_\_
  - (3) Describe Employees who will receive the Top Heavy minimum contribution under the other Defined Contribution Plan: \_\_\_\_\_
- (b) **Top Heavy minimum contribution – Defined Benefit Plan.** If the Employer maintains this Plan and one or more Defined Benefit Plans, any Top Heavy minimum contribution will be provided under this Plan, provided the Top Heavy minimum benefit is not otherwise provided under the other Defined Benefit Plans. If the Top Heavy minimum contribution is provided under this Plan, the minimum required contribution is increased from 3% to 5% of Total Compensation for the Plan Year. (See Section 4.04(f)(2) of the Plan.)

To provide the Top Heavy minimum benefit under a Defined Benefit Plan, complete this subsection (b).

  - (1) The Top Heavy minimum benefit will be provided in the following Defined Benefit Plan maintained by the Employer: \_\_\_\_\_
  - (2) Describe the Top Heavy minimum benefit that will be provided under the Defined Benefit Plan:  
\_\_\_\_\_
  - (3) Describe Employees who will receive Top Heavy minimum benefit under the Defined Benefit Plan:  
\_\_\_\_\_

11-6 **FAIL-SAFE COVERAGE PROVISION.** If the Plan fails the minimum coverage test under Code §410(b)(1)(A) or (B) due to the application of an allocation condition under AA §6-5 or AA §6B-7, the Employer must amend the Plan in accordance with the provisions of Section 14.02(a) of the Plan to correct the coverage violation.

Alternatively, the Employer may elect under this AA §11-6 to apply a Fail-Safe Coverage Provision that will allow the Plan to automatically correct the minimum coverage violation.

The Fail-Safe Coverage Provision (as described under Section 14.02(b)(1) of the Plan) applies.

*[Note: If the Fail-Safe Coverage Provision applies, the Plan may not perform the average benefit test to demonstrate compliance with the coverage requirements under Code §410(b), except as provided in Section 14.02 of the Plan.]*

11-7 **QUALIFYING EMPLOYER SECURITIES AND QUALIFYING REAL PROPERTY.** See Section 10.06(c) of the Plan for the limits that apply with respect to investments in Qualifying Employer Securities and Qualifying Real Property.

The following special rules apply regarding the purchase of Qualifying Employer Securities and Qualifying Real Property:

(a) Investment in Qualifying Employer Securities and/or Qualifying Employer Real Property may only be made from the following Accounts: \_\_\_\_\_

(b) The following distribution restrictions apply to Qualifying Employer Securities and/or Qualifying Employer Real Property held by a Participant under the Plan: \_\_\_\_\_

(c) The following special rules apply with respect to the investment in Qualifying Employer Securities and/or Qualifying Employer Real Property: \_\_\_\_\_

*[Note: Any provisions entered under this AA §11-7 must satisfy the nondiscrimination requirements under Code §401(a)(4) and the regulations thereunder.]*

11-8 **ELECTION NOT TO PARTICIPATE.** (See Section 2.08 of the Plan). All Participants share in any allocation under this Plan and no Employee may waive out of Plan participation.

To allow Employees to make a one-time irrevocable waiver, check below.

An Employee may make a one-time irrevocable election not to participate under the Plan at any time prior to the time the Employee first becomes eligible to participate under the Plan. *[Note: Use of this provision could result in a violation of the minimum coverage rules under Code §410(b).]*

11-9 **ERISA SPENDING ACCOUNTS.** Section 11.05(d) of the Plan authorizes the Employer to establish an ERISA Spending Account to hold certain miscellaneous amounts that are remitted to or received by the Plan.

If the Employer maintains an ERISA Spending Account, the following special rules apply: \_\_\_\_\_

11-10 **MILITARY SERVICE PROVISIONS.**

(a) **Benefit accruals.** The benefit accrual provisions under Section 15.06 of the Plan do not apply. To apply the benefit accrual provisions under Section 15.06, check the box below.

**Eligibility for Plan benefits.** Check this box if the Plan will provide the benefits described in Section 15.06 of the Plan. If this box is checked, an individual who dies or becomes disabled in qualified military service will be treated as reemployed for purposes of determining entitlement to benefits under the Plan.

(b) **Deemed separation from service.** Unless elected otherwise under AA §10-1 above, an individual shall not be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code §401(k)(2)(B)(i)(I).

11-11 **PROTECTED BENEFITS.** There are no protected benefits (as defined in Code §411(d)(6)) other than those described in the Plan.

To designate protected benefits other than those described in the Plan, complete this AA §11-11.

(a) **Additional protected benefits.** In addition to the protected benefits described in this Plan, certain other protected benefits are protected from a prior plan document. See the Addendum attached to this Adoption Agreement for a description of such protected benefits.

(b) **Money Purchase Plan assets.** This Plan contains assets that were held under a Money Purchase Plan (e.g., Money Purchase Plan assets were transferred to this Plan by merger, trust-to-trust transfer or conversion). See the Addendum attached to this Adoption Agreement for a description of any special provisions that apply with respect to the transferred assets. See Section 14.05(c) of the Plan for rules regarding the treatment of transferred assets.

*[Note: If a 411(d)(6) protected benefit in the Plan or a plan being merged into the Plan is not either (i) available as a provision through the Pre-Approved Plan or (ii) the subject of a prior determination, advisory, or opinion letter, the*

*Employer cannot rely on the Pre-Approved Plan Provider’s opinion letter for qualification with respect to such benefit. If a 411(d)(6) protected benefit in the Plan or a plan being merged into the Plan is not permitted in a pre-approved plan, as described in Section 6.03 of Revenue Procedure 2017-41, such provision must be discontinued no later than the date the Employer adopts this Pre-Approved Plan or, in the case of a merger, the merger date and shall apply only to the extent required under Code Section 411(d)(6).]*

(c) **Elimination of distribution options.** Effective \_\_\_\_\_, the distribution options described in subsection (1) below are eliminated.

(1) **Describe eliminated distribution options:** \_\_\_\_\_

(2) **Application to existing Account Balances.** The elimination of the distribution options described in subsection (1) applies to:

(i) All benefits under the Plan, including existing Account Balances.

(ii) Only benefits accrued after the effective date of the elimination (as described above).

*[Note: The elimination of distribution options must not violate the “anti-cutback” requirements of Code §411(d)(6) and the regulations thereunder. See Section 14.01(d) of the Plan.]*

11-12 **SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS.** If the Plan is a Multiple Employer Plan (as designated under AA §2-6), the rules applicable to Multiple Employer Plans under Section 16.07 of the Plan apply.

The following special rules apply with respect to Multiple Employer Plans: \_\_\_\_\_

*[Note: Any special rules under this AA §11-12 must satisfy the nondiscrimination requirements under Code §401(a)(4) and must satisfy the rules applicable to Multiple Employer Plans under Code §413(c).]*

11-13 **CLAIMS PROCEDURES.** The Plan Administrator shall establish and maintain reasonable claims procedures as described in Section 11.07 of the Plan. Special rules may be described below.

The following special rules apply with respect to claims procedures under Section 11.07 of the Plan: \_\_\_\_\_

*[Note: Any special rules under this AA §11-13 must satisfy the requirements under ERISA Reg. §2560.503-1 and any other applicable guidance. If the Employer adds an arbitration clause to resolve benefit claim disputes, the Employer may not rely on the Plan’s opinion letter as to the acceptability of such arbitration clause. The addition of an arbitration clause does not otherwise affect the Employer’s reliance on the Plan’s opinion letter.]*

APPENDIX A  
SPECIAL EFFECTIVE DATES

[*Note: This Appendix A may be used to memorialize prior Plan provisions that pertain to sources that no longer accept new contributions under the Plan.*]

- A-1 **Eligible Employees.** The definition of Eligible Employee under AA §3 is effective as follows:  
\_\_\_\_\_
- A-2 **Minimum age and service conditions.** The minimum age and service conditions and Entry Date provisions specified in AA §4 are effective as follows:  
\_\_\_\_\_
- A-3 **Compensation definitions.** The compensation definitions under AA §5 are effective as follows:  
\_\_\_\_\_
- A-4 **Employer Contributions.** The Employer Contribution provisions under AA §6 are effective as follows:  
\_\_\_\_\_
- A-5 **Salary Deferrals.** The provisions regarding Salary Deferrals under AA §6A are effective as follows:  
\_\_\_\_\_
- A-6 **Matching Contributions.** The Matching Contribution provisions under AA §6B are effective as follows:  
\_\_\_\_\_
- A-7 **Safe Harbor 401(k) Plan provisions.** The Safe Harbor 401(k) Plan provisions under AA §6C are effective as follows:  
\_\_\_\_\_
- A-8 **Special Contributions.** The Special Contribution provisions under AA §6D are effective as follows:  
\_\_\_\_\_
- A-9 **Retirement ages.** The retirement age provisions under AA §7 are effective as follows:  
\_\_\_\_\_
- A-10 **Vesting and forfeiture rules.** The rules regarding vesting and forfeitures under AA §8 are effective as follows:  
\_\_\_\_\_
- A-11 **Distribution provisions.** The distribution provisions under AA §9 are effective as follows:  
\_\_\_\_\_
- A-12 **In-service distributions and Required Minimum Distributions.** The provisions regarding in-service distributions and Required Minimum Distributions under AA §10 are effective as follows:  
\_\_\_\_\_
- A-13 **Miscellaneous provisions.** The miscellaneous provisions under AA §11 are effective as follows:  
\_\_\_\_\_
- A-14 **Special effective date provisions for merged plans.** If any qualified retirement plans have been merged into this Plan, the provisions of Section 14.04 of the Plan apply, as follows:  
\_\_\_\_\_
- A-15 **Other special effective dates:**  
\_\_\_\_\_

- A-16 **Special effective dates for restated pre-approved plans.** Use this A-16 to memorialize plan operational changes that have occurred after the general effective date of the plan and the actual plan restatement adoption date. Adopting employers may use the above Special Effective Date options (A-1 through A-15) to memorialize these changes or they may use this A-16. If the adopting employer uses A-16, the changes will be part of the Plan, but will not be reflected in the SPD or plan summary:
-

**APPENDIX B  
LOAN POLICY**

Use this Appendix B to identify elections dealing with the administration of Participant loans. These elections may be changed without amending this Adoption Agreement by substituting an updated Appendix B with new elections. Any modifications to this Appendix B or any modifications to a separate loan policy describing the loan provisions selected under the Plan will not affect an Employer's reliance on the IRS Favorable Letter.

B-1 Are **PARTICIPANT LOANS** permitted? (See Section 13 of the Plan.)

- (a) Yes  
 (b) No

B-2 **LOAN PROCEDURES.**

- (a) Loans will be provided under the default loan procedures set forth in Section 13 of the Plan, unless modified under this Appendix B.  
 (b) Loans will be provided under a separate written loan policy. *[If this subsection is checked, do not complete the rest of this Appendix B.]*

B-3 **AVAILABILITY OF LOANS.** Participant loans are available to all Participants and Beneficiaries who are parties in interest. Participant loans are not available to a former Employee or Beneficiary (including an Alternate Payee under a QDRO) except in those limited situations where the former Employee or Beneficiary is also considered to be a “party in interest” as defined in ERISA §3(14). To override this default provision, complete this AA §B-3.

- (a) A former Employee or Beneficiary (including an Alternate Payee) who has a vested Account Balance may request a loan from the Plan.  
 (b) A “limited participant” as defined in Section 3.07 of the Plan may not request a loan from the Plan.  
 (c) An officer or director of the Employer, as defined for purposes of the Sarbanes-Oxley Act, may **not** request a loan from the Plan.  
 (d) Describe limitations on receiving loans under the Plan: \_\_\_\_\_  
*[Note: Any limitation under subsection (d) must meet the nondiscrimination requirements under Code §401(a)(4).]*

B-4 **LOAN LIMITS.** The default loan policy under Section 13.03 of the Plan allows Participants to take a loan provided all outstanding loans do not exceed 50% of the Participant’s vested Account Balance. To override the default loan policy to allow loans up to \$10,000, even if greater than 50% of the Participant’s vested Account Balance, check this AA §B-4.

- A Participant may take a loan equal to the greater of \$10,000 or 50% of the Participant's vested Account Balance.  
*[Note: If this AA §B-4 is checked, the Participant may be required to provide adequate security as required under Section 13.06 of the Plan.]*

B-5 **NUMBER OF LOANS.** The default loan policy under Section 13.04 of the Plan restricts Participants to one loan outstanding at any time. To override the default loan policy and permit Participants to have more than one loan outstanding at any time, complete (a) or (b) below.

- (a) A Participant may have \_\_\_ loans outstanding at any time, subject to any internal administrative limitations imposed by the Investment Arrangement, the service provider or platform.  
 (b) There are no restrictions on the number of loans a Participant may have outstanding at any time.

B-6 **LOAN AMOUNT.** Subject to any internal administrative limitations imposed by the Investment Arrangement, or the service provider or platform, the default loan policy under Section 13.04 of the Plan provides that a Participant may not receive a loan of less than \$1,000. To modify the minimum loan amount or to add a maximum loan amount, complete this AA §B-6.

- (a) There is no minimum loan amount.  
 (b) The minimum loan amount is \$\_\_\_\_\_  
 (c) The maximum loan amount is \$\_\_\_\_\_.

B-7 **INTEREST RATE.** The default loan policy under Section 13.05 of the Plan provides for an interest rate commensurate with the interest rates charged by local commercial banks for similar loans. To override the default loan policy and provide a specific interest rate to be charged on Participant loans, complete this AA §B-7.

- (a) The prime interest rate plus 1\_\_\_\_ percentage point(s).



(b) The interest rate is determined in accordance with the terms of the Investment Arrangement, service provider procedures, or other loan policy document adopted by the Plan Administrator.

(c) Describe: \_\_\_\_\_

[*Note: Any interest rate described in this AA §B-7 must be reasonable and must apply uniformly to all Participants.*]

B-8 **PURPOSE OF LOAN.** The default loan policy under Section 13.02 of the Plan provides that a Participant may receive a Participant loan for any purpose. To modify the default loan policy to restrict the availability of Participant loans to hardship events, check this AA §B-8.

(a) A Participant may only receive a Participant loan upon the demonstration of a hardship event, as described in Section 8.10(e)(1)(i) of the Plan.

(b) A Participant may only receive a Participant loan under the following circumstances: \_\_\_\_\_

B-9 **APPLICATION OF LOAN LIMITS.** If Participant loans are not available from all contribution sources, the limitations under Code §72(p) and the adequate security requirements of the Department of Labor regulations will be applied by taking into account the Participant's entire Account Balance. To override this provision, complete this AA §B-9.

The loan limits and adequate security requirements will be applied by taking into account only those contribution Accounts which are available for Participant loans.

B-10 **CURE PERIOD.** The Plan provides that a Participant incurs a loan default if a Participant does not repay a missed payment by the end of the calendar quarter following the calendar quarter in which the missed payment was due. To override this default provision to apply a shorter cure period, complete this AA §B-10.

(a) The cure period for determining when a Participant loan is treated as in default will be \_\_\_\_\_ days (cannot exceed 90) following the end of the month in which the loan payment is missed.

(b) The cure period for determining when a Participant loan is treated as in default will be the greater of \_\_\_\_\_ days (cannot exceed 90) following the end of the month in which the loan payment is missed or the last day of the second calendar quarter following the calendar quarter in which the missed payment was due.

(c) The cure period for determining when a loan is treated as in default will be \_\_\_\_\_ days (cannot exceed 90) following the first missed loan payment.

B-11 **PERIODIC REPAYMENT – PRINCIPAL RESIDENCE.** If a Participant loan is for the purchase of a Participant's primary residence, the loan repayment period for the purchase of a principal residence may not exceed ten (10) years. To override this default provision, complete this AA §B-11.

(a) The Plan does not permit loan payments to exceed five (5) years, even for the purchase of a principal residence.

(b) The loan repayment period for the purchase of a principal residence may not exceed \_\_\_\_\_ years (may not exceed 30), subject to any internal limitations imposed by the Investment Arrangement(s) or the service provider or platform.

(c) Loans for the purchase of a Participant's primary residence may be payable over any reasonable period commensurate with the period permitted by commercial lenders for similar loans, subject to any internal limitations imposed by the Investment Arrangement or the service provider or platform.

B-12 **TERMINATION OF EMPLOYMENT.** Section 13.11 of the Plan provides that a Participant loan becomes due and payable in full upon the Participant's termination of employment. To override this default provision, complete this AA §B-12.

A Participant loan will not become due and payable in full upon the Participant's termination of employment.

B-13 **DIRECT ROLLOVER OF A LOAN NOTE.** Section 13.11(b) of the Plan provides that upon termination of employment a Participant may request the Direct Rollover of a loan note. To override this default provision, complete this AA §B-13.

A Participant may **not** request the Direct Rollover of the loan note upon termination of employment.

B-14 **LOAN RENEGOTIATION.** The default loan policy provides that a Participant may renegotiate a loan, provided the renegotiated loan separately satisfies the reasonable interest rate requirement, the adequate security requirement, the periodic repayment requirement and the loan limitations under the Plan. The Employer may restrict the availability of renegotiations to prescribed purposes provided the ability to renegotiate a Participant loan is available on a non-discriminatory basis. To override the default loan policy and restrict the ability of a Participant to renegotiate a loan, complete this AA §B-14.

(a) A Participant may **not** renegotiate the terms of a loan.

(b) The following special provisions apply with respect to renegotiated loans: \_\_\_\_\_

B-15 **SOURCE OF LOAN.** Participant loans may be made from all available contribution sources, to the extent vested, unless designated otherwise under this AA §B-15. If selected, complete either (a) or (b).

- (a) Participant loans will not be available from the following contribution sources: \_\_\_\_\_
- (b) Participant loans will only be available from the following contribution sources: \_\_\_\_\_

B-16 **SPOUSAL CONSENT.** If this Plan is subject to the Joint and Survivor Annuity requirements under Section 9 of the Plan, a Participant may not use his/her Account Balance as security for a Participant loan unless the Participant's Spouse, if any, consents to the use of such Account Balance as security for the loan. If the Plan is not subject to the Joint and Survivor Annuity requirements under Section 9 of the Plan, a Spouse's consent is not required to use a Participant's Account Balance as security for a Participant loan. However, the Employer may elect under this AA §B-16 to require spousal consent for loans, even though the Plan is not subject to the Joint and Survivor Annuity requirements of Section 9 of the Plan.

- Even though the Plan is not subject to the Joint and Survivor Annuity requirements under Section 9 of the Plan, spousal consent is required for a loan, if the Participant's Account Balance exceeds \$\_\_\_\_\_.

*[Note: An election under this AA §B-16 does not subject the Plan to the Qualified Joint and Survivor Annuity rules and the Plan Administrator may determine the manner and timing of receiving spousal consent.]*

B-17 **MODIFICATIONS TO DEFAULT LOAN PROVISIONS.**

- The following special rules will apply with respect to Participant loans under the Plan: \_\_\_\_\_

*[Note: Any provision under this AA §B-17 must satisfy the requirements under Code §72(p) and the regulations thereunder and will control over any inconsistent provisions of the Plan dealing with the administration of Participant loans.]*

APPENDIX C  
ADMINISTRATIVE ELECTIONS

Use this Appendix C to identify certain elections dealing with the administration of the Plan. These elections may be changed without amending this Adoption Agreement by substituting an updated Appendix C with new elections. The provisions selected under this Appendix C do not create qualification issues and any changes to the provisions under this Appendix C will not affect the Employer's reliance on the IRS Favorable Letter.

C-1 **DIRECTION OF INVESTMENTS.** Are Participants permitted to **direct investments**? (See Section 10.07 of the Plan.)

- (a) No
- (b) Yes, but subject to the following restrictions:
- (1) No restrictions apply
- (2) Only for Accounts that are 100% vested
- (3) Specify Accounts: All Accounts
- (4) Check this selection if the Plan is intended to comply with **ERISA §404(c)**. (See Section 10.07(d) of the Plan.)
- (5) Describe any special rules that apply for purposes of direction of investments: \_\_\_\_\_

*[Note: This subsection (5) may be used to describe special investment provisions for specific types of investments, such as Qualifying Employer Securities or Qualifying Real Property, or for specific Accounts, such as the Rollover Contribution Account. Any provisions added under this subsection (5) will be subject to the nondiscrimination requirements under Code §401(a)(4).]*

C-2 **ROLLOVER CONTRIBUTIONS.** Does the Plan accept **Rollover Contributions**? (See Section 3.07 of the Plan.)

- (a) No
- (b) Yes
- (1) If this subsection (1) is checked, an Employee may make a Rollover Contribution to the Plan prior to becoming a Participant in the Plan. (See Section 3.07 of the Plan.)
- (2) Check this subsection (2) if the Plan will accept Rollover Contributions from former Employees with an Account Balance under the Plan.
- (3) Describe any special rules for accepting Rollover Contributions: \_\_\_\_\_

*[Note: The Employer may designate in this subsection (3) or in separate written procedures the extent to which it will accept rollovers from designated plan types. For example, the Employer may decide not to accept rollovers from certain designated plans (e.g., 403(b) plans, §457 plans or IRAs). Any special rollover procedures will apply uniformly to all Participants under the Plan.]*

C-3 **LIFE INSURANCE.** Are **life insurance** investments permitted? (See Section 10.08 of the Plan.)

- (a) No
- (b) Yes

C-4 **QDRO PROCEDURES.** Do the **default QDRO procedures** under Section 11.06 of the Plan apply?

- (a) No
- (b) Yes
- (1) The provisions of Section 11.06 of the Plan are modified as follows: \_\_\_\_\_
- (2) Alternate Payee shall not be entitled to payment prior to the Participant's earliest retirement date, which is the earlier of the date the Participant has a present entitlement to a distribution or the earliest date on which the Participant would be entitled to a distribution after separation from service.

**EMPLOYER SIGNATURE PAGE**

**PURPOSE OF EXECUTION.** This Signature Page is being executed for SAN ANTONIO WATER COMPANY 401(K) PLAN to effect:

- (a) The adoption of a **new plan**, effective . [*Note: Date can be no earlier than the first day of the Plan Year in which the Plan is adopted.*]
- (b) The **restatement** of an existing plan in order to comply with the requirements for Cycle 3 Pre-Approved Plans, pursuant to Rev. Proc. 2017-41.
  - (1) Effective date of restatement: 7-1-2021 . [*Note: Date can be no earlier than the first day of the Plan Year in which the restatement is adopted.*]
  - (2) Name of plan(s) being restated: SAN ANTONIO WATER COMPANY 401(K) PLAN
  - (3) The original effective date of the plan(s) being restated: 1-1-2011
- (c) An **amendment or restatement** of the Plan (other than to comply with the requirements for Cycle 3 Pre-Approved Plans under Rev. Proc. 2017-41). If this Plan is being amended, a snap-on amendment may be used to designate the modifications to the Plan or the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.
  - (1) Effective Date(s) of amendment/restatement: \_\_\_\_\_
  - (2) Name of plan being amended/restated: \_\_\_\_\_
  - (3) The original effective date of the plan being amended/restated: \_\_\_\_\_
  - (4) If Plan is being amended, identify the Adoption Agreement section(s) being amended: \_\_\_\_\_

**PRE-APPROVED PLAN PROVIDER INFORMATION.** The Pre-Approved Plan Provider (or authorized representative) will inform the Employer of any amendments made to the Plan and will notify the Employer if it discontinues or abandons the Plan. To be eligible to receive such notification, the Employer agrees to notify the Pre-Approved Plan Provider (or authorized representative) of any change in address. The Employer may direct inquiries regarding the Plan or the effect of the IRS Opinion Letter to the Pre-Approved Plan Provider (or authorized representative) at the following location:

**Name of Pre-Approved Plan Provider (or authorized representative):** Raymond, Reeves

**Address:** 1423 South Higley Rd. Ste. 116 Mesa, AZ 85206

**Telephone number:** (480) 834-6524

**IMPORTANT INFORMATION ABOUT THIS PRE-APPROVED PLAN.** A failure to properly complete the elections in this Adoption Agreement or to operate the Plan in accordance with applicable law may result in disqualification of the Plan. The Employer may rely on the Favorable IRS Letter issued by the Internal Revenue Service to the Pre-Approved Plan Provider as evidence that the Plan is qualified under Code §401(a), to the extent provided in Rev. Proc. 2017-41. The Employer may not rely on the Favorable IRS Letter in certain circumstances or with respect to certain qualification requirements, which are specified in the Favorable IRS Letter issued with respect to the Plan and in Rev. Proc. 2017-41. In order to obtain reliance in such circumstances or with respect to such qualification requirements, the Employer may need to apply to the Internal Revenue Service for a determination letter.

By executing this Adoption Agreement, the Employer intends to adopt the provisions as set forth in this Adoption Agreement and the related Plan document. By signing this Adoption Agreement, the individual below represents that he/she has the authority to execute this Plan document on behalf of the Employer. This Adoption Agreement may only be used in conjunction with Basic Plan Document #01. The Employer understands that the Pre-Approved Plan Provider has no responsibility or liability regarding the suitability of the Plan for the Employer’s needs or the options elected under this Adoption Agreement. It is recommended that the Employer consult with legal counsel before executing this Adoption Agreement.

SAN ANTONIO WATER COMPANY  
(Name of Employer)

Teri Layton Officer  
(Name of authorized representative) (Title)

\_\_\_\_\_  
(Signature) (Date)

**TRUST DECLARATION**

**This Trust Declaration may be used to identify and adopt the Trust associated with the Plan.**

*[Note: The Internal Revenue Service does not review the Trust Declaration, or the trust provisions associated with Pre-Approved Plans. Therefore, the provisions of the Trust Declaration, ASC Trust Agreement or any separate Trust agreement have not been approved by the IRS and the IRS opinion letter does not cover such Trust Agreement. The Provider, the Trustee and the adopting Employer should review the applicable Trust provisions, and any modifications thereto, with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]*

**Name of Plan.** SAN ANTONIO WATER COMPANY 401(K) PLAN

**Name of Employer.** SAN ANTONIO WATER COMPANY

**Effective date of Trust Agreement:** 7-1-2021

(a) **The Trust terms are:**

(1) **Determined under the Trust provisions contained in the ASC Trust Agreement - Standard.**

*[Note: Trustee must complete the Trustee Signature section under Section (b) below.]*

(i) **Directed Trustee.** The Trustee may only invest Plan assets as directed by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.

(ii) **Discretionary Trustee.** The Trustee has discretion to invest Plan assets, unless specifically directed otherwise by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.

*[Modification of ASC Trust Agreement Provisions. The Employer may amend the Trust provisions as provided under Section 1.19 of the ASC Trust Agreement. Plan provisions will override any conflicting provisions in the Trust Agreement, including any modification thereto. The Provider and the adopting Employer should review any modifications of the ASC Trust Agreement with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]*

(2) **Determined under a separate Trust agreement(s).** The Trust provisions are contained in a separate Trust Agreement that has been furnished to the Employer. Notwithstanding the terms of the Plan, the terms of the Trust Agreement shall control the rights and responsibilities of the Trustee with respect to the Trust and the assets held in such Trust.

**Name of Trustee.** \_\_\_\_\_

**Title of Trust Agreement.** \_\_\_\_\_

**Address of Trustee.** \_\_\_\_\_

*[Note: In using a separate Trust Agreement, the Trustee may adopt such Trust Agreement by either completing the Trustee Signature section under Section (b) below or may execute the separate Trust Agreement. In either case, the information above – Name of Trustee, Title of Trust Agreement and Address of Trustee – must be completed.]*

(3) **Plan is funded with custodial accounts, annuity contracts and/or insurance contracts.** There is no Trust associated with the Plan because the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts.

*[Note: No signature is required under this Trust Declaration if the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts. The Employer or Plan Administrator may enter into a separate agreement with the custodian or insurance company. Such separate agreement must be consistent with the terms of the Plan.]*

(b) **Trustee/Employer Signatures.**

(1) **Trustee Signature.** By signing below, the designated Trustee(s) accept the responsibilities and obligations set forth under the Trust Agreement specified in this Trust Declaration. By signing this Trust Declaration Page, the individual(s) below represent that they have the authority to sign on behalf of the Trustee.

Teri Layton

(Print name of Trustee)

\_\_\_\_\_  
(Signature of Trustee or authorized representative)

\_\_\_\_\_  
(Date)

- (2) **Employer Signature.** By signing below, the Employer accepts the terms of the Trust Agreement, as specified in this Trust Declaration. By signing this Trust Declaration, the individual below represents that he/she has the authority to adopt the Trust Agreement and sign on behalf of the Employer as sponsor of the Plan.

\_\_\_\_\_  
*(Signature of Employer's authorized representative)*

\_\_\_\_\_  
*(Date)*

Teri Layton

\_\_\_\_\_  
*(Print name of Employer's authorized representative)*

Officer

\_\_\_\_\_  
*(Title of Employer's authorized representative)*

**INTERIM AMENDMENT - HARDSHIP DISTRIBUTION  
ELECTIVE PROVISIONS**

These Elective Provisions provide for elections as allowed by the Final Regulations and the Hardship Distribution Interim Amendment, attached to the Basic Plan Document. In some cases, the Pre-Approved Plan Provider has Defaults as indicated by the items marked as Default under these Elective Provisions. If the adopting Employer approves of the Defaults of the Pre-Approved Plan Provider, the adopting Employer does not need to execute this Hardship Distribution Interim Amendment. If the adopting Employer wishes to override any of the Defaults of the Pre-Approved Plan Provider, the adopting Employer should make the appropriate election(s) in the Elective Provisions below and sign this Hardship Distribution Interim Amendment. If the Plan does not permit Hardship distributions, no elections should be made below.

**HD-1 SOURCES FOR HARDSHIP DISTRIBUTIONS.**

**(a) Source accounts (not including earnings).** For Plan Years beginning after December 31, 2018 (or such later date specified under HD-1(a)(8) or HD-1(a)(9) below or the effective date of a new Plan), a Participant may take an in-service distribution upon the occurrence of a Hardship that satisfies the Hardship distribution rules under Section 8.10(e) of the Plan, as amended by this interim amendment, with respect to the following sources:

- (1) No change to current Plan sources available for Hardship distributions under AA §§10-1 and 10-2.
- (2) Qualified Nonelective Contribution (QNEC) Account (Not applicable to 401(a) Governmental Plans)
- (3) Qualified Matching Contribution (QMAC) Account (Not applicable to 401(a) Governmental Plans)
- (4) Safe Harbor Employer Contribution Account (Not applicable to 401(a) Governmental Plans)
- (5) Safe Harbor Matching Contribution Account (Not applicable to 401(a) Governmental Plans)
- (6) QACA Safe Harbor Employer Contribution Account (Not applicable to 401(a) Governmental Plans)
- (7) QACA Safe Harbor Matching Contribution Account (Not applicable to 401(a) Governmental Plans)
- (8) Effective date is January 1, 2020, whether Plan has a calendar or fiscal Plan Year.
- (9) Describe effective date (if later than the beginning of the Plan Year beginning after December 31, 2018) for which the election(s) above apply: \_\_\_\_\_

**(b) Earnings on source accounts.** For Plan Years beginning after December 31, 2018 (or such later date specified under HD-1(b)(11) or HD-1(b)(12) below or the effective date of a new Plan), amounts available for Hardship distributions include earnings on the following available sources:

- (1) Amounts available for Hardship include earnings on all available sources.
- (2) No change to current Plan rule (i.e., earnings are not available on Salary Deferrals, except for those on grandfathered (pre-1989) earnings, if applicable).
- (3) Pre-Tax Salary Deferral Account
- (4) Roth Deferral Account
- (5) Qualified Nonelective Contribution (QNEC) Account (Not applicable to 401(a) Governmental Plans)
- (6) Qualified Matching Contribution (QMAC) Account (Not applicable to 401(a) Governmental Plans)
- (7) Safe Harbor Employer Contribution Account (Not applicable to 401(a) Governmental Plans)
- (8) Safe Harbor Matching Contribution Account (Not applicable to 401(a) Governmental Plans)
- (9) QACA Safe Harbor Employer Contribution Account (Not applicable to 401(a) Governmental Plans)
- (10) QACA Safe Harbor Matching Contribution Account (Not applicable to 401(a) Governmental Plans)
- (11) Effective date is January 1, 2020, whether Plan has a calendar or fiscal Plan Year.
- (12) Describe effective date (if later than the beginning of the Plan Year beginning after December 31, 2018) for which the election(s) above apply: \_\_\_\_\_

**HD-2 NEED TO OBTAIN ALL AVAILABLE LOANS.** (Complete only if Employer maintains any qualified plan(s) that permits Participant loans.)

- (a) For Plan Years beginning after December 31, 2018 (or such later date specified in HD-2(d) or HD-2(e) below or the effective date of a new Plan), if a Participant requests a Hardship distribution from any of the Accounts specified in HD-1 above and AA §§10-1 and 10-2, the Participant is **NO LONGER** required to obtain all nontaxable loans available under the Plan and all other plans maintained by the Employer.
- (b) No change to current Plan provisions. Participants are required to obtain all nontaxable loans available under the Plan and all plans maintained by the Employer.
- (c) Describe any special requirements with respect to the need to first obtain all available loans: \_\_\_\_\_
- (d) Effective date is January 1, 2020, whether Plan has a calendar or fiscal Plan Year.
- (e) Describe other effective date (if later than the beginning of the Plan Year beginning after December 31, 2018) for which the election(s) above apply: \_\_\_\_\_

**HD-3 SUSPENSION OF ABILITY TO MAKE SALARY DEFERRALS AND AFTER-TAX EMPLOYEE CONTRIBUTIONS DURING 2019.** (Applicable only to Plans that were using the safe harbor Hardship distribution suspension rule.)

*[Note: Under the Final Regulations, adopting Employers may continue to apply the suspension of Salary Deferrals and After-Tax Employee Contributions rules for the 2019 Plan Year. However, in no event, may the Plan provide for a suspension of an Employee's Salary Deferrals or After-Tax Employee Contributions as a condition of obtaining a Hardship distribution for Hardship distributions made on or after January 1, 2020.]*

- (a) For Plan Years beginning after December 31, 2018 (or such later date specified in HD-3(d) below) and applicable to Hardship distributions made before January 1, 2020, if a Participant takes a Hardship distribution as permitted under the Plan, the Participant was NOT suspended from making Salary Deferrals (and After-Tax Employee Contributions, if applicable) for any period of time after the receipt of the Hardship distribution.
- (b) No change to current Plan provisions. For Hardship distributions made before January 1, 2020, the Participant continued to be suspended from making Salary Deferrals (and After-Tax Employee Contributions, if applicable) for a period of 6 months after the receipt of the Hardship distribution.
  - Suspensions on Hardship distributions made after July 1, 2019 will cease effective January 1, 2020.
- (c) Describe any special requirements with respect to the suspension from making Salary Deferrals (and After-Tax Employee Contributions, if applicable): \_\_\_\_\_
- (d) Describe the effective date (if later than the beginning of the Plan Year beginning after December 31, 2018) for which the election(s) above apply: \_\_\_\_\_

**HD-4 APPLICATION OF SUSPENSION REQUIREMENT FOR PRE-2019 PLAN YEAR HARDSHIP DISTRIBUTIONS.** (Applicable only to Plans that were using the Hardship distribution suspension rule as of the last day of the 2018 Plan Year.)

- (a) No change to current Plan provisions. A Participant who received a Hardship distribution prior to the beginning of the 2019 Plan Year continued to be suspended from making Salary Deferrals (and After-Tax Employee Contributions, if applicable) for a period of 6 months after the receipt of the Hardship distribution.
- (b) Effective on the first day of the Plan Year beginning after December 31, 2018 (or such later date specified in HD-4(d) below), a Participant who received a Hardship distribution prior to the beginning of the 2019 Plan Year was no longer suspended from making Salary Deferrals (and After-Tax Employee Contributions, if applicable).
- (c) Describe any special rules with respect to the suspension from making Salary Deferrals (and After-Tax Employee Contributions, if applicable) for Participants who have received pre-2019 Hardship distributions: \_\_\_\_\_
- (d) Describe the effective date (if later than the beginning of the Plan Year beginning after December 31, 2018) for which the election(s) above apply: \_\_\_\_\_

**HD-5 OTHER APPLICABLE RULES.** Describe any other rules, such as conditions for receiving a Hardship distribution, not otherwise reflected in the Plan or Hardship Distribution Interim Amendment: \_\_\_\_\_

**HD-6 MEMORIALIZATION OF PRIOR OPERATION.** The elections in this Hardship Distribution Interim Amendment should reflect current Plan operations. The Employer may memorialize prior plan operations relevant to the implementation of the Final Regulations by describing such operations below: \_\_\_\_\_

**APPLICATION OF AMENDMENT**

Pursuant to Revenue Procedure 2015-36 and Revenue Procedure 2017-41 (as applicable), these Hardship Distribution Interim Amendment Elective Provisions have been adopted by the Pre-Approved Plan Provider on behalf of all adopting Employers. This amendment supersedes any contrary provisions under the Plan. If the Employer wishes to override the Default elections of the Pre-Approved Plan Provider, the Employer (or the authorized representative of the Employer) must execute this Hardship Distribution Interim Amendment by signing below. This amendment applies to the signatory Employer and all Participating Employers under the Plan.

SAN ANTONIO WATER COMPANY

(Name of Employer)

\_\_\_\_\_  
(Name of Authorized Representative, if applicable)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



## ASC TRUST AGREEMENT

**1.01** **Establishment of Trust.** In conjunction with the establishment and/or maintenance of the SAN ANTONIO WATER COMPANY 401(K) PLAN, effective as of 7-1-2021, as provided for under ERISA §403, the Employer and the Trustee (as identified in the executed Trust Declaration associated with the Plan's Adoption Agreement) agree to establish and maintain a domestic Trust in the United States consisting of such sums as shall from time to time be paid to the Trustee under the Plan and such earnings, income and appreciation as may accrue thereon. The Trustee shall carry out the duties and responsibilities herein specified but shall be under no duty to determine whether the amount of any contribution by the Employer or any Participant is in accordance with the terms of the Plan.

The Trust shall be held, invested, reinvested and administered by the Trustee in accordance with the terms of the Plan and this ASC Trust Agreement solely in the interest of Participants and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. Except as provided in Section 15.02 of the Plan, no assets of the Plan shall inure to the benefit of the Employer.

Capitalized terms under this ASC Trust Agreement have the same meaning as defined under the Plan.

**1.02** **Types of Trustees.** The Trustee may act either as a Directed Trustee or as a Discretionary Trustee, as designated in the Trust Declaration.

(a) **Directed Trustee.** A Directed Trustee is subject to the direction of the Plan Administrator, the Employer, a properly appointed investment manager, a Named Fiduciary, or a Plan Participant. A Directed Trustee does not have any discretionary authority with respect to the investment of Plan assets. In addition, a Directed Trustee is not responsible for the propriety of any directed investment made pursuant to this ASC Trust Agreement and shall not be required to consult with or advise the Employer regarding the investment quality of any directed investment held under the Plan.

(1) **Delegation of powers.** The Directed Trustee shall be advised in writing regarding the retention of investment powers by the Employer or the appointment of an investment manager or other Named Fiduciary with power to direct the investment of Plan assets. Any such delegation of investment powers will remain in force until such delegation is revoked or amended in writing. The Employer is deemed to have retained investment powers under this subsection to the extent the Employer directs the investment of Participant Accounts for which affirmative investment direction has not been received.

(2) **Direction of Trustee.** The Employer is a Named Fiduciary for investment purposes if the Employer directs investments pursuant to this subsection. Any investment direction shall be made in writing by the Employer, investment manager, or Named Fiduciary, as applicable. A Directed Trustee must act solely in accordance with the direction of the Plan Administrator, the Employer, any employees or agents of the Employer, a properly appointed investment manager or other fiduciary of the Plan, a Named Fiduciary, or a Plan Participant. (See Section 10.07 of the Plan and Section 1.04 of this ASC Trust Agreement relating to Participant-directed investments.)

(3) **Restriction on Trustee.** The Employer may direct the Directed Trustee to invest in any media in which the Trust may invest. However, the Employer may not borrow from the Trust or pledge any of the assets of the Trust as security for a loan to itself; buy property or assets from or sell property or assets to the Trust; charge any fee for services rendered to the Trust; or receive any services from the Trust on a preferential basis.

(b) **Discretionary Trustee.** A Discretionary Trustee has exclusive authority and discretion with respect to the investment, management or control of Plan assets. Notwithstanding a Trustee's designation as a Discretionary Trustee, a Trustee's discretion is limited, and the Trustee shall be considered a Directed Trustee, to the extent the Trustee is subject to the direction of the Plan Administrator, the Employer, a properly appointed investment manager, or a Named Fiduciary under an agreement between the Plan Administrator and the Trustee. A Trustee also is considered a Directed Trustee to the extent the Trustee is subject to investment direction of a Plan Participant. (See Section 10.07 of the Plan and Section 1.04 of this ASC Trust Agreement relating to Participant-directed investments.)

**1.03** **Responsibilities of the Trustee.** In addition to the powers, rights and responsibilities enumerated under this ASC Trust Agreement, the Trustee has all powers necessary to carry out its duties in a prudent manner. The Trustee's powers, rights and responsibilities may be modified, supplemented or limited by a separate trust agreement or addendum, investment policy, funding agreement, or other binding document entered into between the Trustee and the Plan Administrator or Employer. Such binding document must designate the Trustee's responsibilities with respect to the Plan. A separate trust agreement or addendum, investment policy, funding agreement, or other binding document must be consistent with the terms of the Plan and must comply with all qualification requirements under the Code and regulations. To the extent the exercise of any power, right or responsibility is subject to discretion, such exercise by a Directed Trustee must be made at the direction of the Plan Administrator, the Employer, an investment manager, a Named Fiduciary, or a Plan Participant.

**(a) Responsibilities regarding administration of the Trust.**

- (1) The Trustee, the Employer and the Plan Administrator shall each discharge their assigned duties and responsibilities under this ASC Trust Agreement and the Plan solely in the interest of Participants and their Beneficiaries in the following manner:
  - (i) for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;
  - (ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
  - (iii) by diversifying the available investments under the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
  - (iv) in accordance with the provisions of the Plan insofar as they are consistent with the provisions of ERISA.
- (2) The Trustee will receive all contributions, earnings and other amounts made to and under the terms of the Plan. The Trustee is not obligated in any manner to ensure that such amounts are correct in amount or that such amounts comply with the terms of the Plan, the Code or ERISA. The Trustee is not liable for the manner in which such amounts are deposited or the allocation between Participant's Accounts, to the extent the Trustee follows the written direction of the Plan Administrator or Employer.
- (3) The Trustee will make distributions (and Participant loans, if authorized under the Plan) from the Trust in accordance with the written directions of the Plan Administrator or other authorized representative. To the extent the Trustee follows such written direction, the Trustee is not obligated in any manner to ensure a distribution (or Participant loan) complies with the terms of the Plan, that a Participant or Beneficiary is entitled to such a distribution (or Participant loan), or that the amount distributed (or loaned) is proper under the terms of the Plan. If there is a dispute as to a payment from the Trust, the Trustee may decline to make payment of such amounts until the proper payment of such amounts is determined by a court of competent jurisdiction, or the Trustee has been indemnified to its satisfaction.
- (4) The Trustee may employ agents, attorneys, accountants and other third parties to provide counsel on behalf of the Plan, where the Trustee deems advisable. The Trustee may reimburse such persons from the Trust for reasonable expenses and compensation incurred as a result of such employment. The Trustee shall not be liable for the actions of such persons, provided the Trustee acted prudently in the employment and retention of such persons. In addition, the Trustee will not be liable for any actions taken as a result of good faith reliance on the advice of such persons.
- (5) The Trustee shall keep full and accurate accounts of all receipts, investments, disbursements and other transactions hereunder, including such specific records as may be agreed upon in writing between the Employer and the Trustee. All such accounts, books and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Employer or the Plan Administrator. A Participant may examine only those individual account records pertaining directly to such Participant.
- (6) Except as provided in Section 15.02 of the Plan, at no time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under the Plan shall any part of the corpus or income of the Fund be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, or for defraying reasonable expenses of administering the Plan.

**(b) Responsibilities regarding investment of Plan assets.**

- (1) The Trustee shall be responsible for holding the assets of the Trust in accordance with the provisions of the Plan.
- (2) The Trustee may invest and reinvest, manage and control the Plan assets in a manner that is consistent with the Plan's funding policy and investment objectives of the Plan. The Trustee may invest in any investment, as authorized under this subsection (b), which the Trustee deems advisable and prudent, subject to the proper written direction of the Plan Administrator, the Employer, a properly appointed investment manager, a Named Fiduciary or a Plan Participant. The Trustee is not liable for the investment of Plan assets to the extent the Trustee is following the proper direction of the Plan Administrator, the Employer, a Participant, an investment manager, or other person or persons duly appointed by the Employer to provide investment direction. In addition, the Trustee does not guarantee the Trust in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Trust to meet and discharge any or all liabilities of the Plan.

- (3) The Trustee may hold any securities or other property in the name of the Trustee or in the name of the Trustee's nominee, and may hold any investments in bearer form, provided the books and records of the Trustee at all times show such investment to be part of the Trust, as provided under DOL Regulation §2550.403(a)-1(b). If securities are held on behalf of the Plan in the name of the Trustee's nominee, such securities must be held by:
  - (i) A bank or trust company that is subject to supervision by the United States or a State, or a nominee of such bank or trust company;
  - (ii) A broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer; or
  - (iii) A clearing agency as defined in section 3(a)(23) of the Securities Exchange Act of 1934, or its nominee.
- (4) The Trustee may retain such portion of the Plan assets in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon.
- (5) The Trustee may collect and receive any and all moneys and other property due the Plan and to settle, compromise, or submit to arbitration any claims, debts, or damages with respect to the Plan, and to commence or defend on behalf of the Plan any lawsuit, or other legal or administrative proceedings. Any such arbitration cannot be used to resolve any claim, debt or damage with respect to the Plan arising from a dispute with a Plan Participant.
- (6) The Trustee may pay expenses out of Plan assets as necessary to administer the Trust and as authorized under the Plan.
- (7) The Trustee may borrow or raise money on behalf of the Plan in such amount, and upon such terms and conditions, as the Trustee deems advisable. The Trustee may issue a promissory note as Trustee to secure the repayment of such amounts and may pledge all, or any part, of the Trust as security.
- (8) The Trustee is authorized to execute, acknowledge and deliver all documents of transfer and conveyance, receipts, releases, and any other instruments that the Trustee deems necessary or appropriate to carry out its powers, rights and duties hereunder.
- (9) The Trustee, upon the written direction of the Employer or Plan Administrator, is authorized to enter into a transfer agreement with the Trustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any Employee of the Employer. The Trustee is also authorized, upon the written direction of the Employer or Plan Administrator, to transfer some or all of a Participant's vested Account Balance to another qualified retirement plan on behalf of such Participant.
- (10) If the Employer maintains more than one Plan, the assets of such Plans may be commingled for investment purposes. The Trustee must separately account for the assets of each Plan.
- (11) If the Trustee is a bank or similar financial institution, the Trustee is authorized to invest in any type of deposit of the Trustee (including its own money market fund) at a reasonable rate of interest.
- (12) The Trustee is authorized to invest Plan assets in a common/collective trust fund, or in a group trust fund that satisfies the requirements of IRS Revenue Ruling 81-100, as modified by Revenue Ruling 2004-67, Revenue Ruling 2014-24 and subsequent IRS guidance. All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for the Plan. The assets in a group trust may be pooled with the assets of a custodial account under Code §403(b)(7), a retirement income account under Code §403(b)(9), and a Code §401(a)(24) governmental plan without affecting the tax status of the group trust, subject to the requirements under Rev. Rul. 2011-1 (as modified by Notice 2012-6).
- (13) The Trustee must be bonded as required by applicable law. The bonding requirements shall not apply to a bank, insurance company, or similar financial institution that satisfies the requirements of §412(a)(2) of ERISA.
- (14) Except as authorized under regulations issued by the Department of Labor, the Trustee shall not maintain any indicia of ownership in any assets of the Trust outside of the jurisdiction of the district courts of the United States.

**1.04 Trustee to Follow Participant Investment Direction.** To the extent the Plan allows Participants to direct investment of their Accounts, the Trustee is authorized to follow the Participant's written direction (or other form of direction deemed acceptable by the Trustee).

(a) **Exceptions to following Participant investment direction.** The Trustee may decline to follow a Participant's investment direction to the extent such direction would:

- (1) Result in a prohibited transaction;
- (2) Cause the assets of the Plan to be maintained outside the jurisdiction of the U.S. courts;
- (3) Jeopardize the Plan's tax qualification;
- (4) Be contrary to the Plan's governing documents;
- (5) Cause the assets to be invested in collectibles within the meaning of Code §408(m);
- (6) Generate unrelated business taxable income; or
- (7) Result (or could result) in a loss exceeding the value of the Participant's Account.

(b) **Other conditions relating to Participant investment direction.** The Trustee will not be responsible for any loss or expense resulting from a failure to follow a Participant's direction in accordance with the requirements of this paragraph. Participants' directions will be processed as soon as administratively practicable following receipt of such directions by the Trustee. The Trustee, Plan Administrator, or Employer will not be liable for a delay in the processing of a Participant direction that is caused by a legitimate business reason (including, but not limited to, a failure of computer systems or programs, failure in the means of data transmission, the failure to timely receive values or prices, or other unforeseen problems outside of the control of the Trustee, Plan Administrator, or Employer).

**1.05 Voting and Other Rights Related to Employer Stock.** Unless designated otherwise in a separate investment directive agreed to by the Employer and Trustee, each Participant or Beneficiary of a deceased Participant (referred to herein collectively as Participant) shall have the right to direct the Trustee as to the manner of voting and the exercise of all other rights which a shareholder of record has with respect to shares (and fractional shares) of Employer stock which have been allocated to the Participant's separate account including, but not limited to, the right to sell or retain shares in a public or private tender offer. All shares (and fractional shares) of Employer stock for which the Trustee has not received timely Participant directions shall be voted or exercised by the Trustee in the same proportion as the shares (and fractional shares) of Employer stock for which the Trustee received timely Participant directions, except when to do so would be inconsistent with the provisions of Title I of ERISA. All reasonable efforts shall be made to inform each Participant that shares of Employer stock for which the Trustee does not receive Participant direction shall be voted pro rata in proportion to the shares for which the Trustee has received Participant direction.

Notwithstanding anything to the contrary, in the event of a tender offer for Employer stock, the Trustee shall interpret a Participant's silence as a direction not to tender the shares of Employer stock allocated to the Participant's separate account and, therefore, the Trustee shall not tender any shares (or fractional shares) of Employer stock for which it does not receive timely directions to tender such shares (or fractional shares) from Participants, except when to do so would be inconsistent with the provisions of Title I of ERISA. Furthermore, tender offer materials provided to Participants shall specifically inform Participants that the Trustee shall interpret a Participant's silence as a direction not to tender the Participant's shares of Employer stock.

Information relating to the purchase, holding and sale of securities and the exercise of voting, tender and other similar rights with respect to Employer stock by Participants and Beneficiaries shall be maintained in accordance with procedures that are designed to safeguard the confidentiality of such information, except to the extent necessary to comply with Federal laws or State laws not preempted by ERISA. The Trustee shall be the fiduciary who is responsible for ensuring that such procedures are sufficient to safeguard the confidentiality of the information described above, and that such procedures are followed.

**1.06 Responsibilities of the Employer.** The Employer will provide to the Trustee written notification of the appointment of any person or persons as Plan Administrator, investment manager, or other Plan fiduciary, and the names, titles and authorities of any individuals who are authorized to act on behalf of such persons. The Trustee shall be entitled to rely upon such information until it receives written notice of a change in such appointments or authorizations.

The Employer may authorize the Trustee to enter into a merger or consolidation agreement with the Trustee of another plan to effect such merger or consolidation.

**1.07 Effect of Plan Amendment.** Any amendment that affects the rights, duties or responsibilities of the Trustee or Plan Administrator may only be made with the Trustee's or Plan Administrator's written consent. Any amendment to the Plan must be in writing and a copy of the resolution (or similar instrument) setting forth such amendment (with the applicable effective date of such amendment) must be delivered to the Trustee.

- 1.08 More than One Trustee.** If the Plan has more than one person acting as Trustee, the Trustees may allocate the Trustee responsibilities by mutual agreement. The Trustees may agree to make decisions by a majority vote or may permit any one of the Trustees to make any decision, undertake any action or execute any documents affecting this Trust without the approval of the remaining Trustees. The Trustees may agree to the allocation of responsibilities in a separate trust agreement or other binding document.
- 1.09 Annual Valuation.** The Plan assets will be valued at least on an annual basis. The Employer may designate more frequent Valuation Dates under §11-1 of the Plan's Adoption Agreement. Notwithstanding any election under §11-1 of the Plan's Adoption Agreement, the Trustee and Plan Administrator may agree to value the Trust on a more frequent basis, and/or to perform an interim valuation of the Trust.
- 1.10 Reporting to Plan Administrator and Employer.** Within 120 days after the end of each Plan Year or within 120 days after its removal or resignation, the Trustee shall file with the Plan Administrator a written account of the administration of the Trust showing all transactions effected by the Trustee from the last preceding accounting to the end of such Plan Year or date of removal or resignation. The accounting will include a statement of cash receipts, disbursements and other transactions effected by the Trustee since the date of its last accounting, and such further information as the Trustee and/or Employer deems appropriate. Upon approval of such accounting by the Plan Administrator, neither the Employer nor the Plan Administrator shall be entitled to any further accounting by the Trustee. The Plan Administrator may approve such accounting by written notice of approval delivered to the Trustee or by failure to express objection to such accounting in writing delivered to the Trustee within 90 days from the date on which the accounting is delivered to the Plan Administrator. The Trustee shall have sixty (60) days following its receipt of a written disapproval from the Employer to provide the Employer with a written explanation of the terms in question. If the Employer again disapproves of the accounting, the Trustee may file its accounting with a court of competent jurisdiction for audit and adjudication.
- 1.11 Reasonable Compensation.** The Trustee shall be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Trustee. The Trustee also will be reimbursed for any reasonable expenses or fees incurred in its function as Trustee. An individual Trustee who is already receiving full-time pay as an Employee of the Employer may not receive any additional compensation for services as Trustee. The Plan will pay the reasonable compensation and expenses incurred by the Trustee, unless the Employer pays such compensation and expenses. Any compensation or expense paid directly by the Employer to the Trustee is not an Employer Contribution to the Plan.
- 1.12 Resignation and Removal of Trustee.** The Trustee may resign at any time by delivering to the Employer a written notice of resignation at least thirty (30) days prior to the effective date of such resignation, unless the Employer consents in writing to a shorter notice period. The Employer and Trustee may agree to a longer notification period prior to the resignation of the Trustee. The Employer may remove the Trustee at any time, with or without cause, by delivering written notice to the Trustee at least 30 days prior to the effective date of such removal. The Employer may remove the Trustee upon a shorter written notice period if the Employer reasonably determines such shorter period is necessary to protect Plan assets or to ensure the Plan is being operated for the exclusive benefit of Participants and their Beneficiaries. Upon the resignation, removal, death or incapacity of a Trustee, the Employer may appoint a successor Trustee which, upon accepting such appointment, will have all the powers, rights and duties conferred upon the preceding Trustee. In the event there is a period of time following the effective date of a Trustee's removal or resignation before a successor Trustee is appointed, the Employer is deemed to be the Trustee. During such period, the Trust continues to be in existence and legally enforceable, and the assets of the Plan shall continue to be protected by the provisions of the Trust.
- 1.13 Indemnification of Trustee.** Except to the extent that it is judicially determined that the Trustee has acted with gross negligence or willful misconduct, the Employer shall indemnify the Trustee (whether or not the Trustee has resigned or been removed) against any liabilities, losses, damages, and expenses, including attorney, accountant, and other advisory fees, incurred as a result of:
- (a) any action of the Trustee taken in good faith in accordance with any information, instruction, direction, or opinion given to the Trustee by the Employer, the Plan Administrator, investment manager, Named Fiduciary or legal counsel of the Employer, or any person or entity appointed by any of them and authorized to give any information, instruction, direction, or opinion to the Trustee;
  - (b) the failure of the Employer, the Plan Administrator, investment manager, Named Fiduciary or any person or entity appointed by any of them to make timely disclosure to the Trustee of information which any of them or any appointee knows or should know if it acted in a reasonably prudent manner; or
  - (c) any breach of fiduciary duty by the Employer, the Plan Administrator, investment manager, Named Fiduciary or any person or entity appointed by any of them, other than such a breach which is caused by any failure of the Trustee to perform its duties under this Trust.

Pursuant to DOL Field Assistance Bulletin 2008-01 (FAB 2008-01), the Trustee may be held responsible for the collection of Employer Contributions, Matching Contributions, Salary Deferrals or other contributions that are required under the terms of

the Plan and are not contributed to the Plan on a timely basis. Such responsibility will not apply to the extent the Trustee is a Directed Trustee with respect to such contributions pursuant to ERISA §403(a)(1) or to the extent the authority to collect contributions is delegated to an investment manager pursuant to ERISA §403(a)(2). If no Trustee or investment manager has the responsibility to collect delinquent contributions, the Named Fiduciary with authority to hire the Trustee may be liable for plan losses due to a failure to collect contributions. A Trustee (including a Directed Trustee) may have an obligation under ERISA §§404 and 405(a) to take appropriate steps to remedy a situation where the Trustee knows that no party has assumed responsibility for the collection and monitoring of contributions and that delinquent contributions are going uncollected. In determining how to discharge this duty to collect contributions, the Trustee may weigh the value of Plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred. Among other factors, the trustee may take into account the Employer's solvency in deciding whether to expend Plan assets to pursue a claim. See FAB 2008-01 for a description of the actions that may be required to remedy a breach of fiduciary duty resulting from the failure to collect delinquent contributions.

- 1.14 Liability of Trustee.** The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by the Plan and Trust or as subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee shall rest solely with the Plan Administrator and the Employer.

The Employer agrees that the Trustee shall have no liability with regard to the investment or management of illiquid Plan assets transferred from a prior Trustee, and shall have no responsibility for investments made before the transfer of Plan assets to it, or for the viability or prudence of any investment made by a prior Trustee, including those represented by assets now transferred to the custody of the Trustee, or for any dealings whatsoever with respect to Plan assets before the transfer of such assets to the Trustee. The Employer shall indemnify and hold the Trustee harmless for any and all claims, actions or causes of action for loss or damage, or any liability whatsoever relating to the assets of the Plan transferred to the Trustee by any prior Trustee of the Plan, including any liability arising out of or related to any act or event, including prohibited transactions, occurring prior to the date the Trustee accepts such assets, including all claims, actions, causes of action, loss, damage, or any liability whatsoever arising out of or related to that act or event, although that claim, action, cause of action, loss, damage, or liability may not be asserted, may not have accrued, or may not have been made known until after the date the Trustee accepts the Plan assets. Such indemnification shall extend to all applicable periods, including periods for which the Plan is retroactively restated to comply with any tax law or regulation.

- 1.15 Conflicting Trust Provisions.** In the event of any conflict between the terms of the Plan and any conflicting provision contained in any associated Trust, including this ASC Trust Agreement, or custodial account document, the terms of the Plan will govern.

- 1.16 Governing Law.** The provisions of this Plan and this ASC Trust Agreement shall be construed, administered, and enforced in accordance with the provisions of applicable Federal Law and, to the extent applicable, the laws of the state in which the Trustee has its principal place of business. The foregoing provisions of this section shall not preclude the Employer and the Trustee from agreeing to a different state law with respect to the construction, administration and enforcement of the Plan, which may be reflected herein as a modification to this ASC Trust Agreement.

- 1.17 Severability of Provisions.** In the event that any provision of this ASC Trust Agreement shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions herein shall be construed as if the illegal, invalid or unenforceable provisions had never been included in this ASC Trust Agreement.

- 1.18 Appointment of Custodian.** The Employer, Plan Administrator or Trustee may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the powers, rights and responsibilities similar to those of a Directed Trustee. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an investment manager, a Named Fiduciary or other third party with authority to provide direction to the Custodian. The Employer, Plan Administrator or Trustee also may enter into a separate agreement with the Custodian. Such separate agreement must be consistent with the terms of the Plan.

- 1.19 Modification of ASC Trust Agreement Provisions.** The Employer and the Trustee may amend this ASC Trust Agreement , provided the amended provisions are not in conflict with any provision of the Plan and do not cause the Plan to fail to qualify under Code §401(a). The Employer and Trustee may document any modification to the ASC Trust Agreement below or under a separate Trust addendum.

**ACTION BY THE BOARD OF DIRECTORS  
RESTATEMENT OF QUALIFIED RETIREMENT PLAN**

The undersigned, being all of the members of the Board of Directors of SAN ANTONIO WATER COMPANY (“Employer”), hereby consent to the following resolutions:

WHEREAS, the Employer has maintained the SAN ANTONIO WATER COMPANY 401(K) PLAN (“Plan”) since 1-1-2011 for the benefit of eligible employees;

WHEREAS, the Employer is restating the above-referenced Plan to comply with the requirements of the 2017 IRS Cumulative List (IRS Notice 2017-37), the American Taxpayer Relief Act of 2012, the Tax Cuts and Jobs Act of 2017 and other applicable guidance (collectively referred to herein as the Cycle 3 restatement); and

WHEREAS, the Employer wishes to affirm the appointment of Teri Layton as Trustee(s) of the Plan.

NOW, THEREFORE, BE IT RESOLVED that the Employer hereby adopts the SAN ANTONIO WATER COMPANY 401(K) PLAN as the complete Cycle 3 restatement of the prior Plan, to be effective on 7-1-2021;

RESOLVED FURTHER that the undersigned members of the Board of Directors authorize the execution of the restated Plan document and authorize the performance of any other actions necessary to implement the adoption of the Cycle 3 Plan restatement. The members of the Board of Directors may designate any members of the Board of Directors (or other authorized person) to execute the restated Plan document and perform the necessary actions to adopt the restated Plan. The Employer will maintain a copy of the restated Plan, as approved by the members of the Board of Directors, along with a copy of the prior Plan, in its files;

RESOLVED FURTHER that the Employer will act as administrator of the Plan and will be responsible for performing all actions necessary to carry out the administration of the Plan. The Employer may designate any other person or persons to perform the actions necessary to administer the Plan; and

RESOLVED FURTHER that Plan participants shall be provided with a summary of the Plan provisions within a reasonable period of time following the adoption of the restated Plan.

**Members of the Board of Directors:**

_____	_____	_____
[Name]	[Signature]	[Date]
_____	_____	_____
[Name]	[Signature]	[Date]
_____	_____	_____
[Name]	[Signature]	[Date]
_____	_____	_____
[Name]	[Signature]	[Date]
_____	_____	_____
[Name]	[Signature]	[Date]
_____	_____	_____
[Name]	[Signature]	[Date]

RESOLUTION No. 2021-06-01  
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
SAN ANTONIO WATER COMPANY ADOPTING THE RESTATEMENT  
OF QUALIFIED RETIREMENT PLAN

WHEREAS, the Employer has maintained the SAN ANTONIO WATER COMPANY 401(K) PLAN (“Plan”) since 1-1-2011 for the benefit of eligible employees;

WHEREAS, the Employer is restating the above-referenced Plan to comply with the requirements of the 2017 IRS Cumulative List (IRS Notice 2017-37), the American Taxpayer Relief Act of 2012, the Tax Cuts and Jobs Act of 2017 and other applicable guidance (collectively referred to herein as the Cycle 3 restatement); and

WHEREAS, the Employer wishes to affirm the appointment of Teri Layton as Trustee(s) of the Plan.

NOW, THEREFORE, BE IT RESOLVED that the Employer hereby adopts the SAN ANTONIO WATER COMPANY 401(K) PLAN as the complete Cycle 3 restatement of the prior Plan, to be effective on 7-1-2021;

RESOLVED FURTHER that the Board of Directors of the San Antonio Water Company that the execution of the restated Plan document and authorize the performance of any other actions necessary to implement the adoption of the Cycle 3 Plan restatement. The General Manager (or other authorized person) is hereby authorized and directed to execute the restated Plan document and perform the necessary actions to adopt the restated Plan. The Employer will maintain a copy of the restated Plan, as approved by the members of the Board of Directors, along with a copy of the prior Plan, in its files;

This Resolution was passed and adopted on the 15<sup>th</sup> day of June 2021.

YAYS:

NAYS:

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Tom Thomas, President  
San Antonio Water Company

Attest:

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Martha Goss, Secretary  
San Antonio Water Company



Agenda Item No. 6B

Item Title: Update to Purchasing Policy

Purpose: To review and provide feedback to purchasing policy update

Issue:

Review management's update to purchasing policy and provide any feedback or direction.

Manager's Recommendation:

Review, provide feedback and/or approve update to company's purchasing policy.

Background:

Sometime in 1996 when the company was under the partnership of San Antonio-West End Operating Company, an internal purchasing policy/procedure was established. It was further refined in 2002. The purchasing policy and flow chart are attached for reference.

The updated policy attempts to remove procedural items, includes ethical guidance, reasonable purchasing and increases the need for purchase orders from \$50 or more to \$100 or more. It also increases the need for three quotes from \$500 or more to \$5,000 or more.

The AFC discussed at their May meeting and approved the update without any further feedback.

Impact on the Budget:

None.

Previous Actions:

## SAN ANTONIO WATER COMPANY PURCHASING POLICY

### Purchase Orders

To insure proper fiscal control in the commitment of company monies, all individual transactions with outside vendors with a value of \$50 or more require the use of a properly executed and pre-approved purchase order. Purchase orders of \$500 or more also require the submittal of a minimum of three quotes from independent vendors.

Purchase orders originating in the office must be approved by the requestor's supervisor. Purchase orders originating from the field must be approved by the Assistant Manager. Emergency field purchase orders for transactions up to \$1,000 can be approved by the Water Utility Foreman.

Each purchase order must be recorded on the sequential log form showing the following:

- Purchase order number
- Purchase order date
- Vendor name
- Description of item(s)/services(s) requested
- Requestor's name

After the purchase order is approved, the requestor must file the yellow copy in the purchase order binder and give the original to the Accounting Clerk. If the original needs to be mailed to the vendor, a copy must be given to the Accounting Clerk.

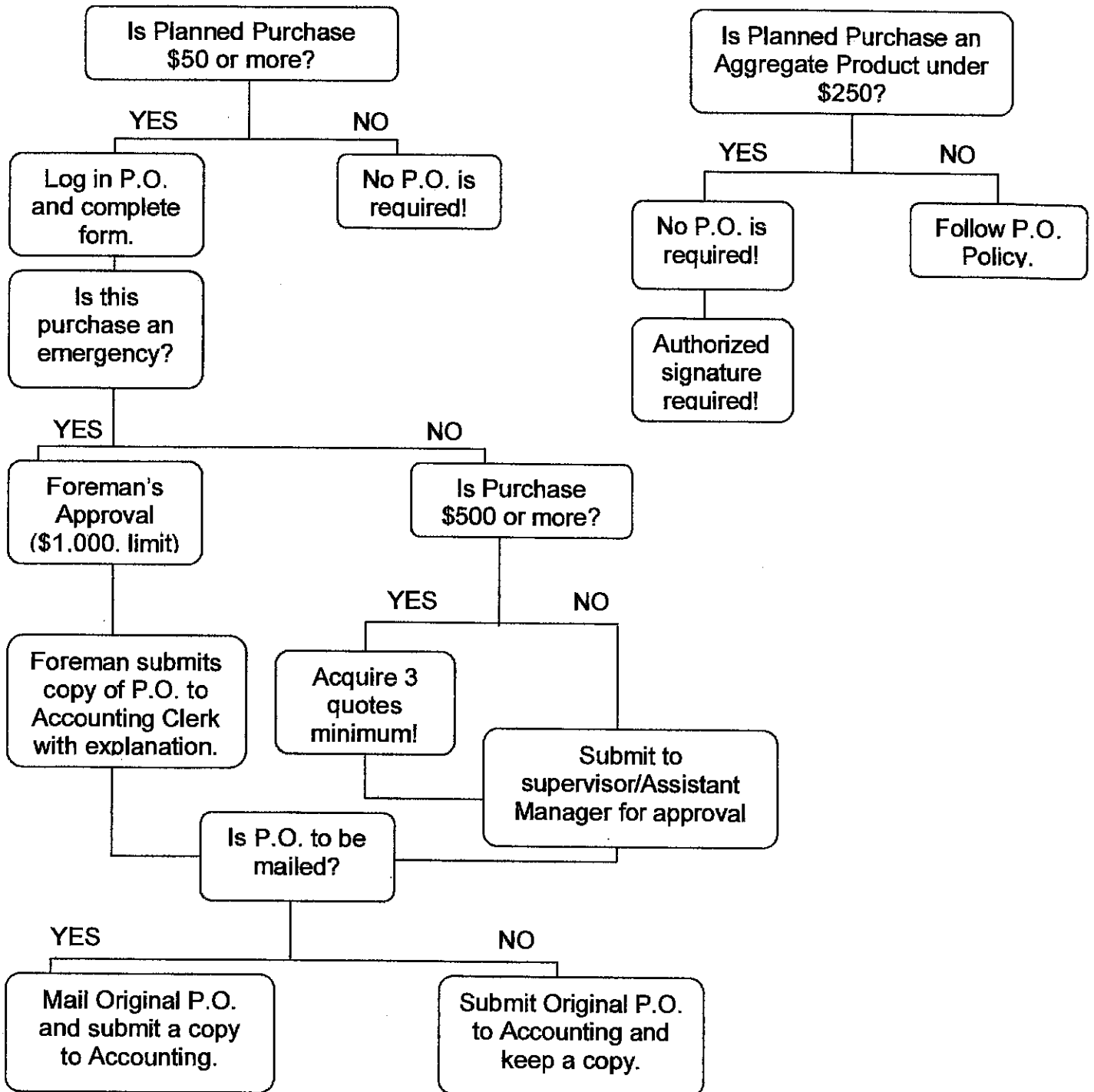
When a packing slip or sales receipt is received with the purchased goods, the contents must be verified and the slip must be signed by the individual taking delivery of the items being received. The signed packing slip and/or sales receipt is then coded with the proper expense account and given to the Accounting Clerk to be matched with the purchase order. All packing slips and sales receipts must be legible.

Local rock companies are exempt from purchase order documentation for purchases under \$250. The Assistant Manager will provide the rock companies with the names of personnel authorized to make purchases under \$250.

### Petty Cash

Management pre-approval is required for any purchases using petty cash. Petty cash may only be used for purchases under \$50. A petty cash form must be filled out and signed by the requestor at the time of reimbursement. An original receipt documenting the purchase must be attached to the completed petty cash form.

# PURCHASE ORDER SEQUENCE OF EVENTS





## Purpose

This policy establishes standards and guidelines for the procurement of supplies, equipment, construction, and services to ensure that they are obtained as economically as possible through an open and competitive process, and contracts are managed with good administrative practices and sound business judgement.

## Code of Conduct

A Code of Conduct shall govern the performance, behavior and actions of the Company, including Board members, employees, or agents who are engaged in any aspect of procurement, including—but not limited to—purchasing goods and services; awarding contracts, or the administration and supervision of contracts. Conflict of interests may arise when any employee, Board member, or agent of SAWCo has a financial, family or any other beneficial interest in the vendor firm selected or considered for an award. No employee, Board member, or agent of San Antonio Water Company (SAWCo) shall participate in the following:

- The selection, award, or administration of a bid or contract if a conflict of interest is real or apparent to a reasonable person.
- Do business with, award contracts to, or show favoritism toward a member of his or her immediate family, spouse's family or to any company, vendor or concern who either employs or has any relationship to a family member, or award a contract or bid, which violates the spirit or intent of procurement laws and policies established to maximize free and open competition among qualified vendors.
- Solicit nor accept gratuities, gifts, or consulting fees, trips, favors or anything having a monetary value from a vendor or potential vendor on an individual basis. During the Christmas season gift baskets and such are received from various contractors and vendors. Any such gifts are shared among the employees as a group or names are drawn for distribution.

## Purchase Orders

Any purchases must be business related and the buyer is to be responsible when utilizing company money. To insure proper fiscal control in the commitment of Company monies, all transactions with outside vendors with a value of \$100 or more require the use of a properly executed and pre-approved purchase order. Purchase orders of \$5,000 or more also require the submittal of a minimum of three quotes from independent vendors. Purchase orders must be approved by management.

No purchase order will be necessary for vendors or consultants that have a contract or agreement with SAWCo. This includes utility vendors. Management should be notified of any change in the contract or agreement. Local rock companies are exempt from purchase order documentation for purchases under \$250.

## Petty Cash

Petty cash may be used for purchases under \$50. A petty cash form must be filled out and signed by the requestor at the time of reimbursement. An original receipt documenting the purchase shall be attached to the completed petty cash form. Management approval is required for any purchases using petty cash.

## Purchasing Management

Price fluctuations are bound to occur for anything you buy. Instead of buying large quantities of items you notice the price increasing for, it's better to buy smaller quantities more often. This allows you to sell off the items quickly, rather than tying up your working capital in overpriced inventory. Buying in smaller quantities allows you to save money on your purchases, and reduce demand for the item, which encourages the price to drop. When prices return to their normal level, you can start buying in your larger quantity again.

Always comparison shop. Before buying anything, contact multiple suppliers and send a request for quotation (RFQ) so you can get quotes on things you want to purchase before making any final decisions. This helps to ensure you're getting the best value possible and assists with cost estimates.

While it is tempting to automatically go with the lowest price, don't always assume that's the best deal. If you're buying a subpar product, or it takes forever to be delivered, this can cause issues that ripple throughout our business. Sometimes, it's better to pay a bit of a premium to make sure you're getting quality materials that you'll receive on time.

Even if you notice a single vendor can meet all of your purchasing needs at affordable prices, you should never completely rely on the vendor. It's always best to maintain contact with other suppliers and keep an eye out for new ones. This way, our business won't suffer if our primary vendor is unable to ship the goods on time or suspends operations for any reason. It's a great way to get better discounts on your materials, too.

Agenda Item No. 6CItem Title: Reserve Funds Policy

Purpose: To update current reserve funds policy allowing ability to transfer between Operating Reserves and Depreciation & Obsolescence Reserves

Issue: Current reserve fund policy approved last year does not provide clear transfer instructions and earlier Board Resolution No. 2012-07-01 establishes restricted transfer instructions.

Manager's Recommendation:

Review, provide feedback and recommend any changes to the attached reserve funds policy.

Background:

On June 19, 2012, the Board approved Board Resolution No. 2012-07-01 which identified the following changes:

- The D&O Reserve opening balance of \$5,076,582
- Combined all reserves at the time into 1 reserve
- Money to be added to reserve was to be from proceeds from sale of stored water and any positive balances on any operating account at year end
- The Board of Directors reserved the right to transfer money out of reserve

On February 18, 2020, the Board approved the following reserve policies setting a target range:

- Operating reserve – 90-180 days budgeted operating expense
- Capital Investment and Depreciation Reserve Funds [D&O Reserve] – 5%-20% of Company's total property & equipment from auditor's statement
- Debt Service Reserves – Minimum as set forth in borrowing documents

The Company currently does not have any debt and does not require any reserves in the Debt Service Reserves Fund.

In addition to the above action, the Board on February 16<sup>th</sup> of this year, approved the AFC's recommendation to set up a Facility Modernization Fund for the purpose of funding rehabilitation of abandoned property and a new office and yard facility in the future.

Management is seeking a way to administer the target funds as established by Board action and the restraint to transfer funds into the D&O Reserves. The attached policy is vague on transfer instructions and staff is recommending incorporating Committee feedback into the policy.

The Committee agreed with management's approach to report on a monthly basis the reserve target funds and keep the Board informed of the necessary fund transfers. The policy has been changed slightly to reflect this understanding.

Impact on the Budget:

None.

Previous Actions:



San Antonio Water Company  
Reserve Funds Policy

Approval Date: 2/18/20

### Purpose

Fiscal responsibility requires anticipating the likelihood of, and preparing for, unforeseen events. It is the purpose of this Reserve Policy to ensure that sufficient funds are available for current operating, capital, and debt service needs. Reserve Funds (Funds) will be accumulated and maintained to allow the Company to fund expenditures in a manner consistent with the Company's Capital Improvement Plan and avoid rate fluctuations due to changes in cash flow requirements.

The Board of Directors will designate specific fund accounts and establish minimum fund balances that it has determined to be in the best interest of the Company. The Board will annually review the level of Funds.

### General Provisions

#### Guidelines

The Company has established and will maintain the following primary reserve funds:

- Operating Reserve Funds
- Capital Investment and Depreciation Reserve Funds
- Debt Service Reserve Funds

Each fund will be maintained in a manner that ensures financial soundness and provides transparency to Company Shareholders. Minimum fund balances stated in this policy are considered the minimum necessary to adequately provide for: compliance with applicable statutory requirements, financing repair and replacement of capital facilities, economic uncertainties and financial hardship due to disasters or economic downturn.

The minimum established for each Fund represents the baseline financial condition that is acceptable to the Company.

Fund balances will be reviewed by the Board on an monthly basis. Operating Reserve Fund balance that exceeds the established maximum will be transferred as necessary into the Capital Reserve Fund.

- Deleted: annual
- Deleted: at or near the end of the fiscal year
- Deleted: annually

On an as-needed basis, monies from the Capital Reserve Fund can be used to pay for operating emergencies as a supplement to the Operating Reserve Fund.

If the Capital Reserve Fund balance exceeds the established maximum, the Board will make a determination regarding reallocation of excess monies.

#### Delegation of Authority

The Board has sole authority to amend or revise the Reserve Funds Policy.

### Operating Reserves

#### Purpose

The Operating Reserve Fund is used for unanticipated operating expenses and to meet routine cash flow needs.

#### Target Level

The minimum target level for the Operating Reserve is 90 days of Company's budgeted total operating expenses.

The maximum target level for the Operating Reserve is 180 days of Company's budgeted total operating expenses.

#### Events or Conditions Prompting the Use of the Fund

Staff may routinely utilize this fund to cover temporary cash flow deficiencies caused by timing differences between revenue and expenses.

The Board may determine to use this fund for extraordinary decreases in revenues or unexpected increases in expenses.

#### Periodic Review Dates for Balances

Operating Reserve fund balance will be approved by the Board during preparation of annual budget.

### Capital Investment and Depreciation Reserves

#### Purpose

The Capital Investment and Depreciation Reserve Fund is intended for:

- The planned replacement of capitalized assets when they reach the end of their useful lives.
- The emergency replacement of capitalized assets when they have catastrophically failed.

#### Target Levels

The Company will strive to maintain a minimum balance totaling 5% of Company's Total Property, Plant and Equipment value as reported in the most recent Independent Auditors' Report.

The Company will strive to maintain a maximum balance below 20% of Company's Total Property, Plant and Equipment value as reported in the most recent Independent Auditors' Report.



#### Events or Conditions Prompting the Use of the Fund

The Board will determine when a condition exists matching the purpose of this fund.

#### Periodic Review Dates for Balances

Capital Reserve fund balance will be approved by the Board during preparation of annual budget.

### Debt Service Reserves

#### Purpose

The Debt Service Reserve Fund is intended to comply with restrictions set forth in legal documents pertaining to the Company's borrowing of money. These funds may be held in trust in favor of the loan holder.

#### Target Level

The Company will maintain a minimum balance as determined by conditions set forth in the borrowing documents.

The Company will strive to maintain a maximum balance that is no more than required to ensure continued compliance with conditions of the borrowing documents.

#### Events or Conditions Prompting the Use of the Fund

As stipulated in the borrowing documents authorized by the Board.

#### Periodic Review Dates for Balances

Debt Service Reserves will be reviewed by staff on a regular basis consistent with the payment schedule conditions of the borrowing documents.

Agenda Item No. 6DItem Title: Cell Tower Lease on Well 19 Property

Purpose: To consider a land lease agreement for a proposed cell tower on Well 19 property

Issue: Does the Board wish to enter into a land lease agreement with New Cingular Wireless?

Manager's Recommendation: Authorize the General Manger to sign a land lease agreement with New Cingular Wireless.

Background:

In late 2019 the Company was approached by representatives of New Cingular Wireless about availability of potential cell tower lease sites. Company staff has worked with the representatives regarding the suitability of Well Site 19.

The triangular Well Site 19 is currently being held as a possible site for a new well. There are currently no Company facilities on the property. The Company does have plans to construct a new well in the general vicinity to replace the old Well 19 (abandoned directly on the other side of the Channel). As proposed the cell site will not interfere with any Company plans to develop a new well on the property. There is ample room for Company facilities and cell tower facilities.

Legal has been afforded an opportunity to review the attached proposed lease and has not provided any comments. We have reached a point in negotiations where it is appropriate for the Board to review and provide staff direction.

The general terms of the proposed lease are \$2,500 per month rent for a minimum five-year period with an option for three additional five-year periods.

Impact on the Budget:

\$30,000 per year non-water sale revenue for the initial five-year term.

Previous Actions:

None

Market: [Los Angeles](#)  
 Cell Site Number: [CSL01787](#)  
 Cell Site Name: [San Antonio Water Co.](#)  
 Fixed Asset Number: [12844535](#)

**LAND LEASE AGREEMENT**

THIS LAND LEASE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by [San Antonio Water Company, a mutual water company](#), having a mailing address of [139 N. Euclid Avenue, Upland, CA 91786](#) (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of [1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319](#) (“**Tenant**”).

**Deleted:** San Antonio Land Company, a California corporation

**BACKGROUND**

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, together with all rights and privileges arising in connection therewith, located at [assessor’s parcel number 1043-431-07-0000](#), in the County of [San Bernardino](#), State of [California](#) (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

**1. LEASE OF PREMISES.**

Landlord hereby leases to Tenant a certain portion of the Property containing approximately [960](#) square feet including the air space above such ground space, as described on attached **Exhibit 1**, (the “**Premises**”), for the placement of a Communication Facility in accordance with the terms of this Agreement.

**2. PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure (“**Structure**”), associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the “**Communication Facility**”), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant’s Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord’s execution of this Agreement will signify Landlord’s approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Surrounding Property as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant’s Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant’s safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant’s expense. Tenant has the right to modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the **Premises** in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the

**Commented [BL1]:** Unsure what this means.

**Commented [EH2R1]:** AT&T pulls a title report on all new sites to make sure there are no issues that would impact the lease. The attached title report and title review confirm there are no issues. AT&T also performs soils tests to make sure there is no existing contamination. I don’t anticipate any issues given the parcel’s location and use.

**Commented [BL3]:** Need to identify the main entry point.

**Commented [EH4R3]:** We are waiting the design for the electrical connection. Whatever that route is, we will use that as the access route as well. I’ll keep you informed as this progresses.

**Deleted:** Property

**Deleted:** Land Lease Agreement 05.18.2018

event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "Additional Premises") for such modification or upgrade, Landlord agrees to enter into negotiations to lease to Tenant the Additional Premises, ~~Leasing of any Additional Premises shall be the Landlord's unilateral decision.~~

**3. TERM.**

(a) The initial lease term will be five (5) years (the "Initial Term"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for Three (3) additional five (5) year term(s) (each additional five (5) year term shall be defined as an "Extension Term"), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least six (6) month's prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("Annual Term") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "Holdover Term"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "Term."

**4. RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "Rent Commencement Date"), Tenant will pay Landlord on or before the fifth (5<sup>th</sup>) day of each calendar month in advance, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Rent"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) Upon the commencement of each Extension Term, the monthly Rent will increase by Fifteen percent (15%) over the Rent paid during the previous five (5) year term.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

**5. APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant's ability to obtain and maintain all Government Approvals and access to the Property. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

**Deleted:** , upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant

**Commented [EH5]:** This should be acceptable to AT&T.

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**Deleted:** Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months

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**Commented [EH7]:** Agreed

**Deleted:**

**Deleted:** [[Spell Out Percent]

**Commented [EH8]:** This should be agreeable to AT&T. Conversely, we can also increase the rent 3% per year.

**Deleted:**

**Deleted:** Land Lease Agreement 05.18.2018

**6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty.

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**7. INSURANCE.** During the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Notwithstanding the foregoing, Tenant shall have the right to self-insure such general liability coverage.

**8. INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

**9. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable

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to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees, invitees, agents or independent contractors, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

**10. WARRANTIES.**

(a) Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

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(c) Landlord represents, warrants and agrees that: (i) Landlord controls the Property by that certain lease between Landlord and the owner of the Property ("Owner"), a true and accurate copy of which is attached hereto as **Exhibit 10(c)(i)** along with all amendments thereto (collectively, the "**Ground Lease**"); (ii) to the best of Landlord's knowledge, neither Owner nor Landlord is, or with the giving of notice, or passage of time (or both), will be in default under any of the terms or conditions of the Ground Lease; (iii) during the Term, Landlord will not terminate, materially modify, amend or assign the Ground Lease in a manner which adversely affects the rights or obligations of Tenant without the prior written consent of Tenant; (iv) during the Term, Tenant shall not be responsible for any cost or expense under the Ground Lease unless expressly set forth in this Agreement with specific reference to the applicable section of the Ground Lease; and (v) Landlord shall timely perform and comply with all the terms and conditions of the Ground Lease, and not do anything or permit anything that would result in a default under or cause the Ground Lease to be terminated. Within thirty (30) days after the Effective Date, Landlord agrees to provide Tenant a consent, non-disturbance agreement substantially in the form attached hereto as **Exhibit 10(c)(iii)** executed by Landlord and Owner.

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**11. ENVIRONMENTAL.**

(a) Landlord represents and warrants, except as may be identified in **Exhibit 11** attached to this Agreement, (i) the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and

indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section ~~Q~~ will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at a Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

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**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property installed by Landlord. Tenant will be responsible for maintenance of any landscaping installed by Tenant as a condition of this Agreement or any required permit.

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(b) Tenant will be responsible for paying on a monthly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

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(c) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(d) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company, providing said easement does not reasonably interfere with Landlord's fair use of property outside Tenant's Premises.

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**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any

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term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

**17. NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: [CSL01787](#); Cell Site Name: [San Antonio Water Co. \(CA\)](#)  
Fixed Asset #: [12844535](#)  
[1025 Lenox Park Blvd NE, 3rd Floor](#)  
Atlanta, Georgia [30319](#)

With a copy to: New Cingular Wireless PCS, LLC  
Attn.: Legal Dept – Network Operations  
Re: Cell Site #: [CSL01787](#); Cell Site Name: [San Antonio Water Co. \(CA\)](#)  
Fixed Asset #: [12844535](#)  
208 S. Akard Street  
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: [Attn. General Manager](#)  
[San Antonio Water Company](#)  
[139 North Euclid Avenue](#)  
[Upland, CA 91786](#)

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

**18. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

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**19. CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

**20. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

**21. TAXES.**

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord

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has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

## **22. SALE OF PROPERTY.**

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or the Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

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(c) Landlord agrees not to sell, lease or use any areas of the Property or the Surrounding Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

**23. RIGHT OF FIRST REFUSAL.** Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

**24. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum of Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

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(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Tenant” shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

Deleted: Land Lease Agreement 05.18.2018

(o) **Incidental Fees.** Unless specified in this Agreement, no unilateral fees or additional costs or expenses are to be applied by either party to the other party, including review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

Deleted: Land Lease Agreement 05.18.2018

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

**“LANDLORD”**

San Antonio Water Company, a mutual water company

**Deleted:** San Antonio Land Company, a California corporation...

By: \_\_\_\_\_

Print Name: Brian C. Lee

Its: General Manager / CEO

Date: \_\_\_\_\_ [Insert Date]

**“TENANT”**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

Print Name: [\_\_\_\_\_]

Its: \_\_\_\_\_ [Insert Title]

Date: \_\_\_\_\_ [Insert Date]

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

**Deleted:** Land Lease Agreement 05.18.2018





EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page of

to the Land Lease Agreement dated [Insert Date] , 20 , by and between San Antonio Water Company, a mutual water company, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

Deleted: San Antonio Land Company, a California corporation

The Property is legally described as follows:

Deleted:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF RANCHO CUCAMONGA, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 3, BLOCK 23, ACCORDING TO MAP OF LANDS OF THE CUCAMONGA HOMESTEAD ASSOCIATION, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP SHOWN AS EXHIBIT "A" IN DECREE OF PARTITION RECORDED IN BOOK 211, PAGES 430 AND 431 OF DEEDS, RECORDS OF SAID COUNTY.

EXCEPT THE WEST 40 FEET THEREOF.

THERE IS HEREBY EXCEPTED AND RESERVED FROM SAID LOT 3, BLOCK 23, AND NOT CONVEYED HEREBY, A PARCEL OF LAND (HEREIN CALLED "WELL-SITE NO. 19") WHICH IS SQUARE IN SHAPE, EACH SIDE OF WHICH IS 100 FEET LONG AND RUNS EITHER EAST AND WEST OR NORTH AND SOUTH, AND THE CENTER OF WHICH WELL-SITE NO. 19 IS THE CENTER OF THE TOP OF THE CASING OF AN EXISTING WELL, KNOWN AS "SAN ANTONIO WELL NO. 19", WHICH IS SITUATED APPROXIMATELY 200 FEET WEST OF THE EASTERLY LINE OF SAID LOT 3, AND APPROXIMATELY 100 FEET NORTH OF THE SOUTHERLY LINE OF SAID LOT 3.

EXCEPT THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE SAN BERNARDINO FLOOD CONTROL DISTRICT AS SET FORTH AND DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED OCTOBER 29, 1981 AS INSTRUMENT NO. 81-239547 OF OFFICIAL RECORDS.

EXCEPT THEREFROM THAT PORTION OF SAID LAND CONVEYED TO HOLLIDAY TRUCKING, INC., AS SET FORTH AND DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED MARCH 04, 1991 AS INSTRUMENT NO. 91-073401 OF OFFICIAL RECORDS.  
APN: 1043-431-07-0-000

The Premises are described and/or depicted as follows: [See attached drawings.](#)

**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

CA CSL01787 2018.Land.Lease.Agreement.CA (Revised Vesting 5-6-21).docx

Deleted: Land Lease Agreement 05.18.2018

**EXHIBIT 11**

**ENVIRONMENTAL DISCLOSURE**

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

*[INSERT AS APPLICABLE]*

**Deleted: EXHIBIT 10(b)**

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**Deleted:**

[FOLLOWS ON NEXT PAGE]

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement")**, dated as of the date below, between [Insert Mortgagee's Name] having its principal office at [Insert Mortgagee's Address], (hereinafter called "**Mortgagee**") and [Insert Landlord's Name], a [Insert Jurisdictional State, and Entity Type] having its principal office/residing at [Insert Landlord's Address] (hereinafter called "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of , Atlanta, GA ("**Tenant**").

**RECITALS:**

Tenant has entered into a certain Option and Lease Agreement dated [Insert Date], 20 (the "**Lease**") with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the "**Premises**"); and

Landlord has given to Mortgagee a mortgage (the "**Mortgage**") upon property having a street address of [Insert Address], being identified as Lot in Block in the of [Insert City], [Insert County] County, State of [Insert State] ("**Property**"), a part of which Property contains the Premises; and

The Mortgage on the Property is in the original principal sum of [Spell Out Dollar Amount](\$ ) Dollars, which Mortgage has been recorded in the appropriate public office in and for [Insert County] County, [Insert State] ("**Mortgage**"); and

Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

... [1]

**Deleted:**

[FOLLOWS ON NEXT PAGE]

(Attach Ground Lease Agreement and all Exhibits and Amendments)

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**EXHIBIT 10(c)(iii)**

**CONSENT, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

[FOLLOWS ON NEXT PAGE]

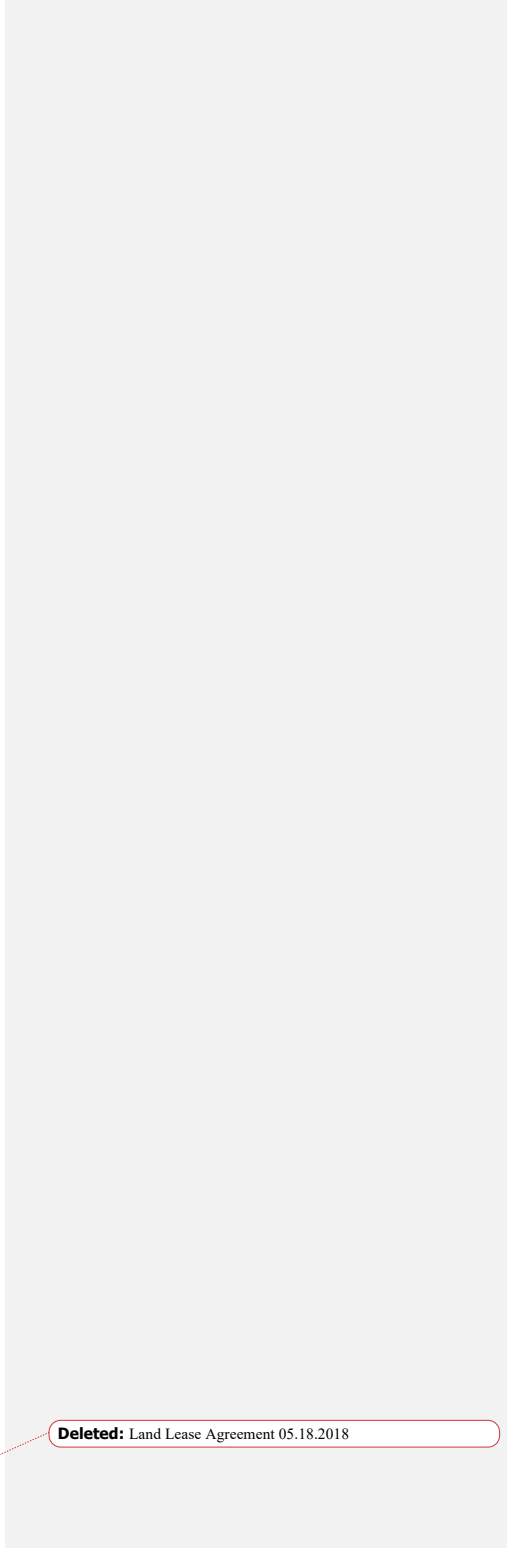
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**CONSENT, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

... [2]

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**EXHIBIT 12**  
**STANDARD ACCESS LETTER**  
[FOLLOWS ON NEXT PAGE]



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**Deleted:** Land Lease Agreement 05.18.2018

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff  
[Landlord, Lessee, Licensee]  
[Street Address]  
[City, State, Zip]

Re: Authorized Access granted to [ ]

Dear Building and Security Staff,

Please be advised that we have signed a lease with [ ] permitting [ ] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [ ] and its representatives, employees, agents and subcontractors (“representatives”) 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [ ] representatives may be seeking access to the property outside of normal business hours. [ ] representatives have been instructed to keep noise levels at a minimum during their visit.

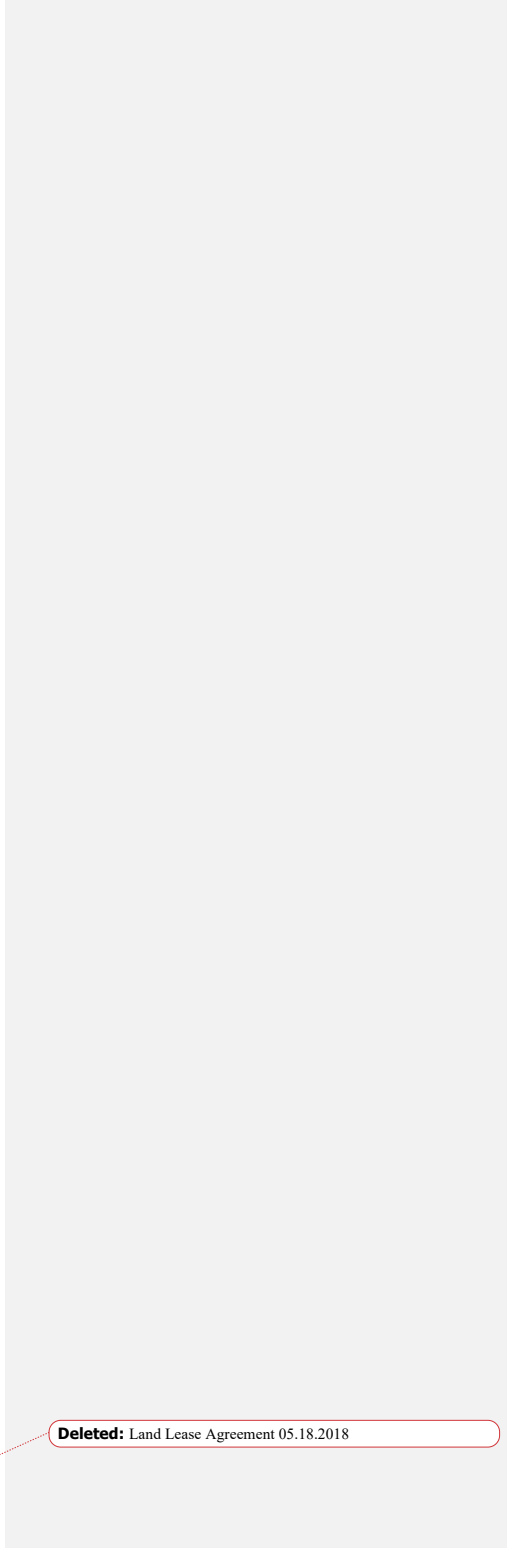
Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

\_\_\_\_\_  
Landlord Signature

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**EXHIBIT 24(b)**  
**MEMORANDUM OF LEASE**  
[FOLLOWS ON NEXT PAGE]



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MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on this day of , 20 , by and between San Antonio Water Company, a mutual water company, having its principal office/residing at 139 N. Euclid Avenue, Upland, CA 91786 (hereinafter called "Landlord"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("Tenant").

Deleted: San Antonio Land Company, a California corporation

Deleted: 30324

- 1. Landlord and Tenant entered into a certain Land Lease Agreement ("Agreement") on the day of , 20 , for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date, with four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in Exhibit 1 annexed hereto.
4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.
5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

San Antonio Water Company, a mutual water company,

By:
Print Name: [ ]
Its: [Insert Title]
Date: [Insert Date]

TENANT:

New Cingular Wireless PCS, LLC, a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager
By:
Print Name: [ ]
Its: [Insert Title]
Date: [Insert Date]

Deleted: San Antonio Land Company, a California corporation

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

Deleted: Land Lease Agreement 05.18.2018

**LANDLORD ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA           )  
  )  
COUNTY OF \_\_\_\_\_        )

On \_\_\_\_\_ before me, \_\_\_\_\_,

(insert name and title of the officer)

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Notary Public

(Seal)

**TENANT ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA           )  
  )  
COUNTY OF \_\_\_\_\_        )

On \_\_\_\_\_ before me, \_\_\_\_\_,

(insert name and title of the officer)

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Notary Public

(Seal)

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EXHIBIT 1 TO MEMORANDUM OF LEASE  
DESCRIPTION OF PROPERTY AND PREMISES

Page of

to the Memorandum of Lease dated , 20 , by and between San Antonio Water Company, a mutual water company, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

Deleted: San Antonio Land Company, a California corporation

The Property is legally described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF RANCHO CUCAMONGA, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Deleted: ¶

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 3, BLOCK 23, ACCORDING TO MAP OF LANDS OF THE CUCAMONGA HOMESTEAD ASSOCIATION, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP SHOWN AS EXHIBIT "A" IN DECREE OF PARTITION RECORDED IN BOOK 211, PAGES 430 AND 431 OF DEEDS, RECORDS OF SAID COUNTY.

EXCEPT THE WEST 40 FEET THEREOF.

THERE IS HEREBY EXCEPTED AND RESERVED FROM SAID LOT 3, BLOCK 23, AND NOT CONVEYED HEREBY, A PARCEL OF LAND (HEREIN CALLED "WELL-SITE NO. 19") WHICH IS SQUARE IN SHAPE, EACH SIDE OF WHICH IS 100 FEET LONG AND RUNS EITHER EAST AND WEST OR NORTH AND SOUTH, AND THE CENTER OF WHICH WELL-SITE NO. 19 IS THE CENTER OF THE TOP OF THE CASING OF AN EXISTING WELL, KNOWN AS "SAN ANTONIO WELL NO. 19", WHICH IS SITUATED APPROXIMATELY 200 FEET WEST OF THE EASTERLY LINE OF SAID LOT 3, AND APPROXIMATELY 100 FEET NORTH OF THE SOUTHERLY LINE OF SAID LOT 3.

EXCEPT THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE SAN BERNARDINO FLOOD CONTROL DISTRICT AS SET FORTH AND DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED OCTOBER 29, 1981 AS INSTRUMENT NO. 81-239547 OF OFFICIAL RECORDS.

EXCEPT THEREFROM THAT PORTION OF SAID LAND CONVEYED TO HOLLIDAY TRUCKING, INC., AS SET FORTH AND DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED MARCH 04, 1991 AS INSTRUMENT NO. 91-073401 OF OFFICIAL RECORDS. APN: 1043-431-07-0-000

The Premises are described and/or depicted as follows: [See attached drawings](#)

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¶  
¶  
¶  
¶

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**W-9 FORM**

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[CA CSL01787.2018.Land.Lease.Agreement.CA \(Revised Vesting 5-6-21\).docx](#)

**W-9**  
Form (Rev. November 2017)  
Department of the Treasury  
Internal Revenue Service

**Request for Taxpayer Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3).

5 Address (number, street, and apt. or suite no.) See instructions.

6 City, state, and ZIP code

7 List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest and dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1099 (home mortgage interest), 1099-E (student loan interest), 1099-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Print or type. See Specific Instructions on page 3.

Signature of U.S. person

Date

Cat. No. 10231X Form W-9 (Rev. 11-2017)

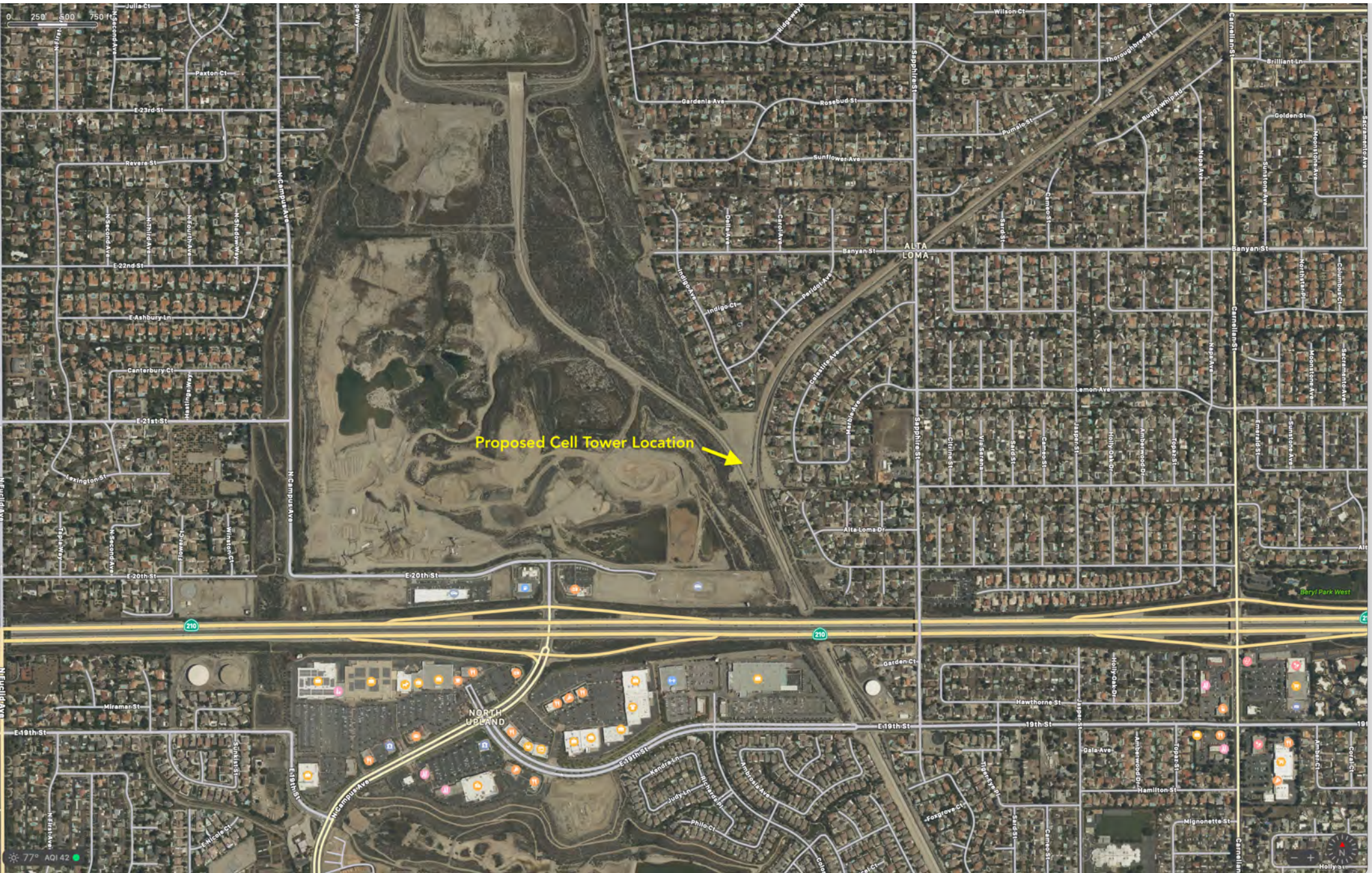
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**Page 2: [1] Deleted Erik Hargrave-- 10/12/20 4:04:00 PM**

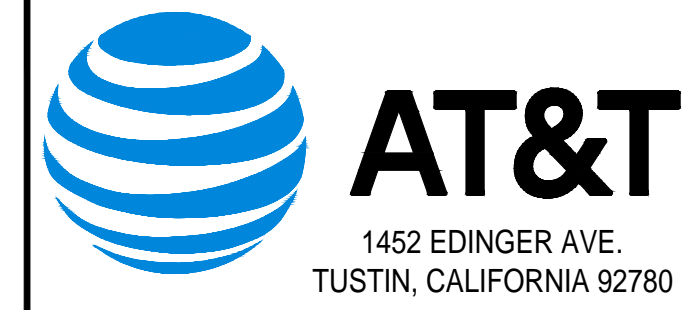
**Page 2: [2] Deleted Erik Hargrave-- 10/12/20 4:04:00 PM**











THE INFORMATION CONTAINED IN THIS SET OF DRAWINGS IS PROPRIETARY & CONFIDENTIAL TO AT&T WIRELESS. ANY USE OR DISCLOSURE OTHER THAN AS IT RELATES TO AT&T WIRELESS IS STRICTLY PROHIBITED.



3300 IRVINE AVENUE, SUITE 300  
NEWPORT BEACH, CA 92660  
TEL: (949) 387-1265  
FAX: (949) 387-1275



4430 E. MIRALOMA AVE. SUITE D  
ANAHEIM, CALIFORNIA 92807

REV	DATE	DESCRIPTION
0	01/23/20	100% ZONING DRAWINGS
A	01/15/20	90% ZONING DRAWINGS

**NOT TO BE USED FOR CONSTRUCTION**

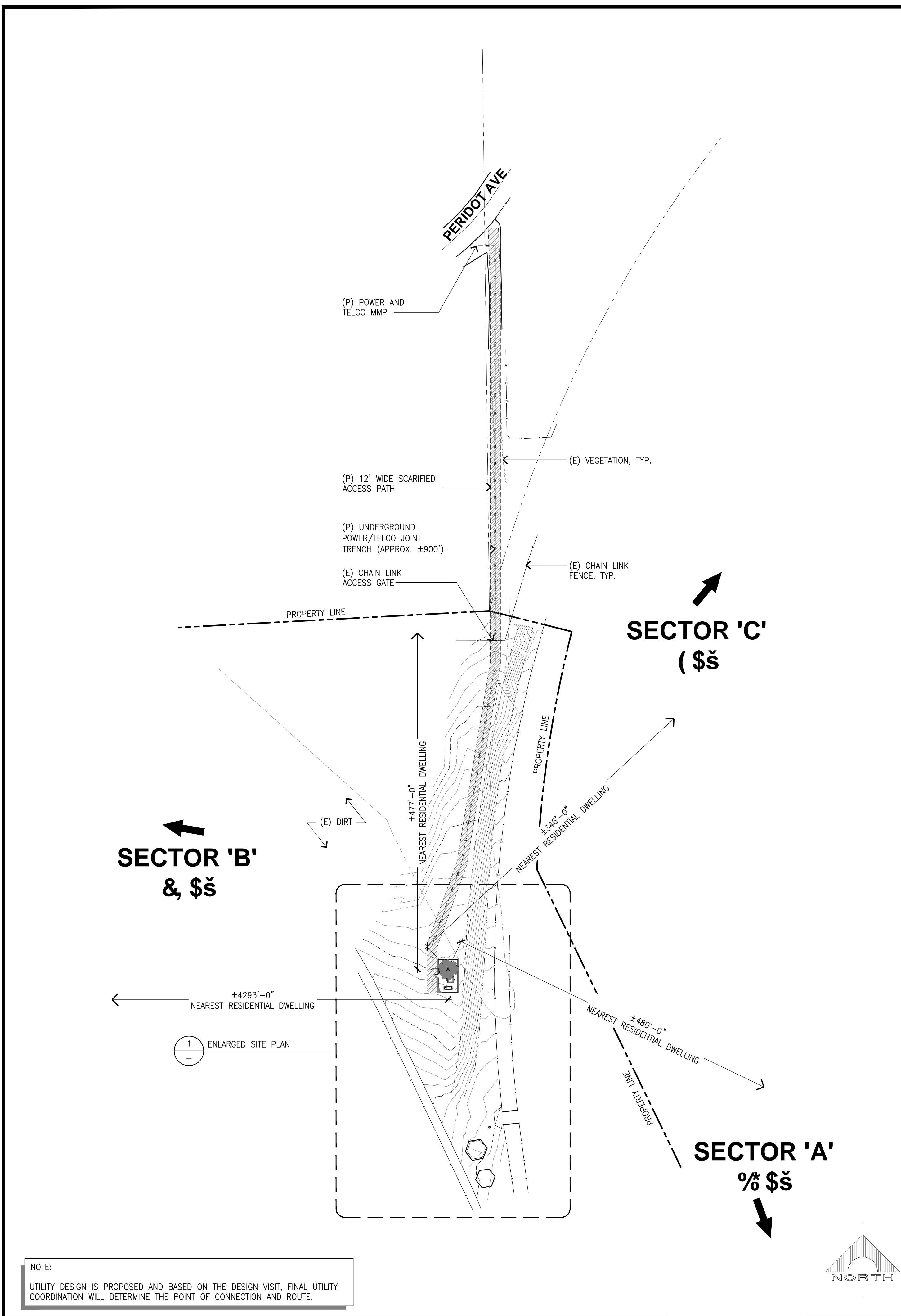
IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

CSL01787  
SAN ANTONIO WATER CO.  
APN# 1043-431-07-0000  
RANCHO CUCAMONGA, CA 91701  
MONOPINE (INDOOR)

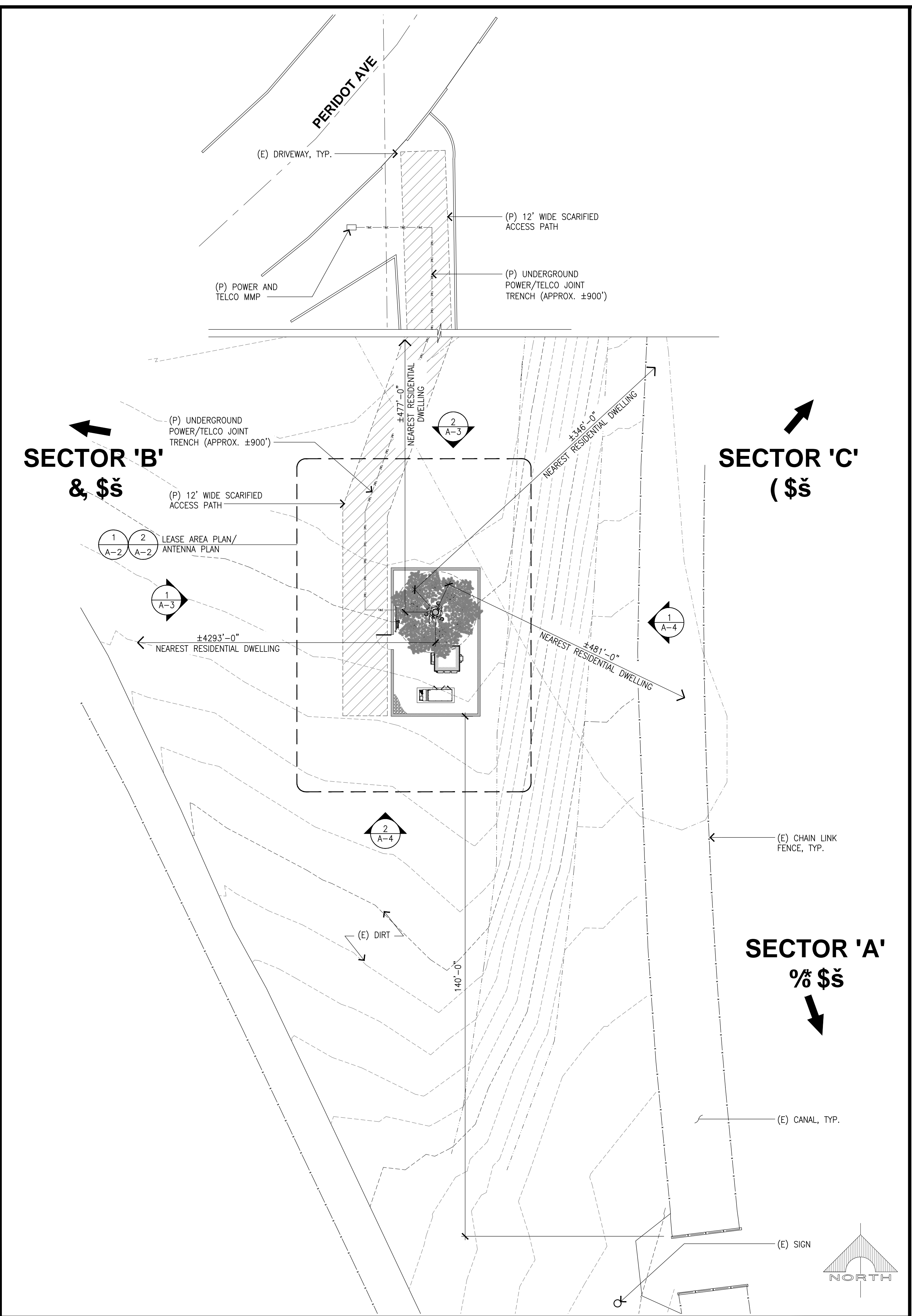
DRAWN BY: RJS	CHECKED BY: JS
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SHEET TITLE:  
**SITE PLAN**

SHEET NUMBER:  
**A-1**

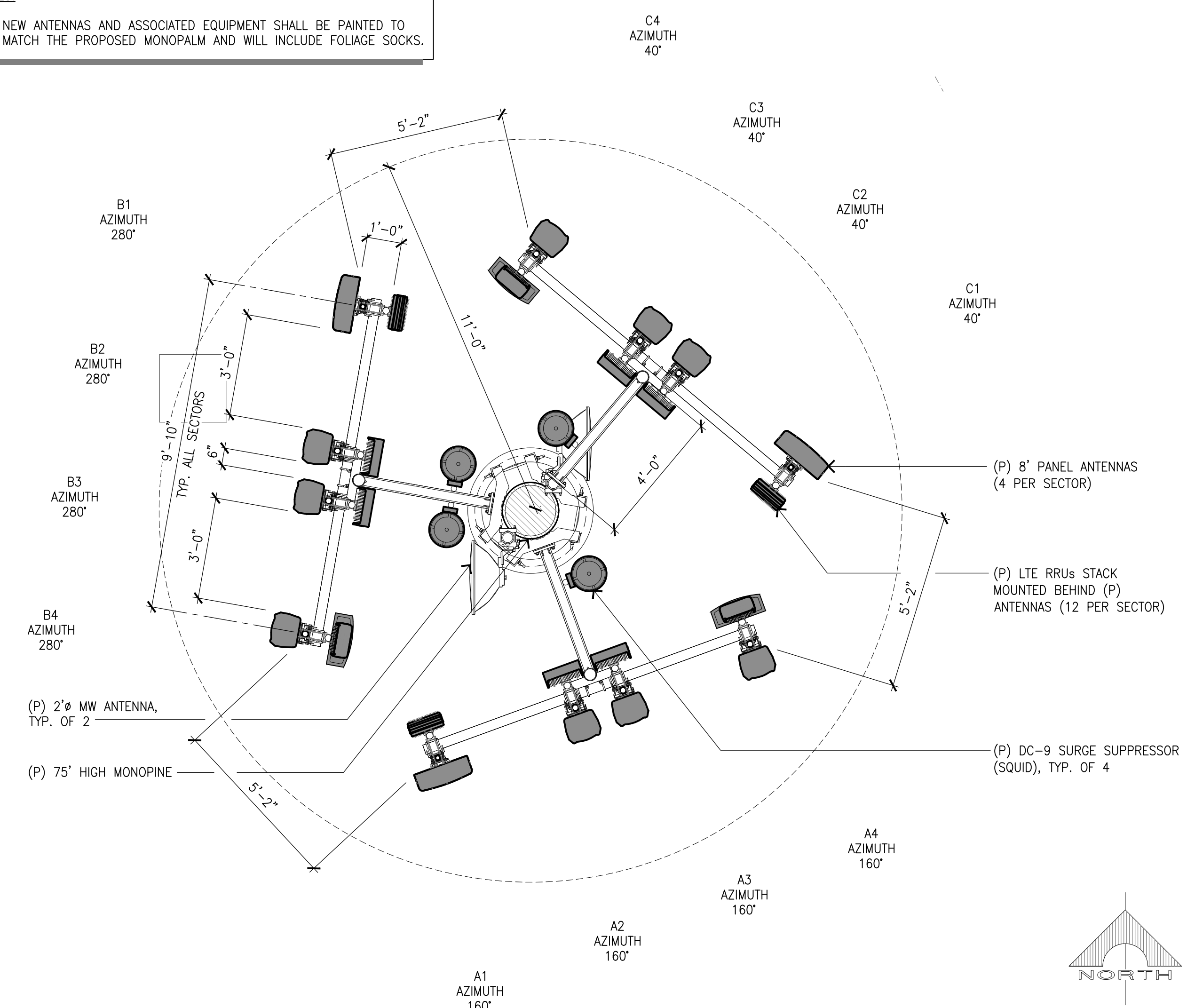


**SITE PLAN** SCALE: 1"=70'-0" 2



**ENLARGED SITE PLAN** 1

NOTES:  
 • NEW ANTENNAS AND ASSOCIATED EQUIPMENT SHALL BE PAINTED TO MATCH THE PROPOSED MONOPALM AND WILL INCLUDE FOLIAGE SOCKS.



ANTENNA PLAN

SCALE: **2**  
 3/8"=1'-0"

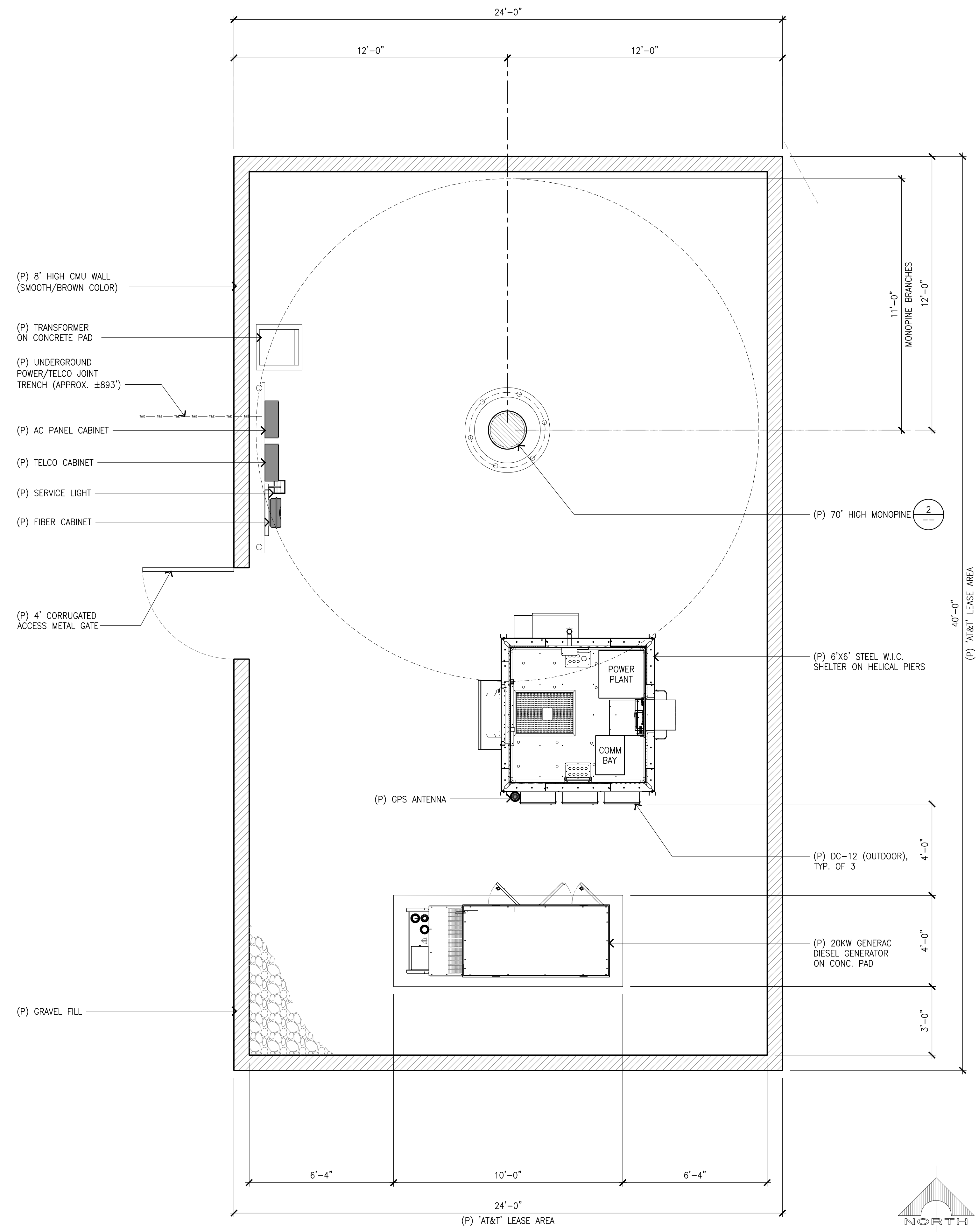
PROPOSED ANTENNA AND TRANSMISSION CABLE REQUIREMENTS							
SECTOR	PROPOSED TECHNOLOGY	ANTENNA		ANTENNA AZIMUTH	RAD CENTER	TRANSMISSION LINES (LENGTH FT +/-)	
		AIR/HEX/8-PORT	SIZE (4', 6', 8')			JUMPER	DC CABLE (AWG #8)
ALPHA SECTOR	A1	LTE	65' BW PANEL ANTENNA	8'	160°	65'-0"	<12' +/- 90'
	A2	LTE	65' BW PANEL ANTENNA	8'	160°	65'-0"	<12' +/- 90'
	A3	LTE	65' BW PANEL ANTENNA	8'	160°	65'-0"	<12' +/- 90'
	A4	LTE	65' BW PANEL ANTENNA	8'	160°	65'-0"	<12' +/- 90'
BETA SECTOR	B1	LTE	65' BW PANEL ANTENNA	8'	280°	65'-0"	<12' +/- 90'
	B2	LTE	65' BW PANEL ANTENNA	8'	280°	65'-0"	<12' +/- 90'
	B3	LTE	65' BW PANEL ANTENNA	8'	280°	65'-0"	<12' +/- 90'
	B4	LTE	65' BW PANEL ANTENNA	8'	280°	65'-0"	<12' +/- 90'
GAMMA SECTOR	C1	LTE	65' BW PANEL ANTENNA	8'	40°	65'-0"	<12' +/- 90'
	C2	LTE	65' BW PANEL ANTENNA	8'	40°	65'-0"	<12' +/- 90'
	C3	LTE	65' BW PANEL ANTENNA	8'	40°	65'-0"	<12' +/- 90'
	C4	LTE	65' BW PANEL ANTENNA	8'	40°	65'-0"	<12' +/- 90'

REMOTE RADIO UNITS (RRU'S)							
SECTOR	RRU UP OR DOWN	RRU COUNT	RRU LOCATION (DISTANCE FROM ANTENNA)	MINIMUM CLEARANCES			
				ABOVE	BELOW	SIDES	
ALPHA SECTOR	A1	UP	3	<12'	18"	8"	8"
	A2	UP	3	<12'	18"	8"	8"
	A3	UP	3	<12'	18"	8"	8"
	A4	UP	3	<12'	18"	8"	8"
BETA SECTOR	B1	UP	3	<12'	18"	8"	8"
	B2	UP	3	<12'	18"	8"	8"
	B3	UP	3	<12'	18"	8"	8"
	B4	UP	3	<12'	18"	8"	8"
GAMMA SECTOR	C1	UP	3	<12'	18"	8"	8"
	C2	UP	3	<12'	18"	8"	8"
	C3	UP	3	<12'	18"	8"	8"
	C4	UP	3	<12'	18"	8"	8"

ANTENNA AND RRU SCHEDULE

SCALE: **3**  
 3/8"=1'-0"

LEASE AREA PLAN



SCALE: **1**  
 3/8"=1'-0"



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 NEWPORT BEACH, CA 92660  
 TEL: (949) 387-1265  
 FAX: (949) 387-1275



4430 E. MIRALOMA AVE. SUITE D  
 ANAHEIM, CALIFORNIA 92807

REV	DATE	DESCRIPTION
0	01/23/20	100% ZONING DRAWINGS
A	01/15/20	90% ZONING DRAWINGS

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CSL01787  
 SAN ANTONIO WATER CO.  
 APN# 1043-431-07-0000  
 RANCHO CUCAMONGA, CA 91701  
 MONOPINE (INDOOR)

DRAWN BY: RJS  
 CHECKED BY: JS

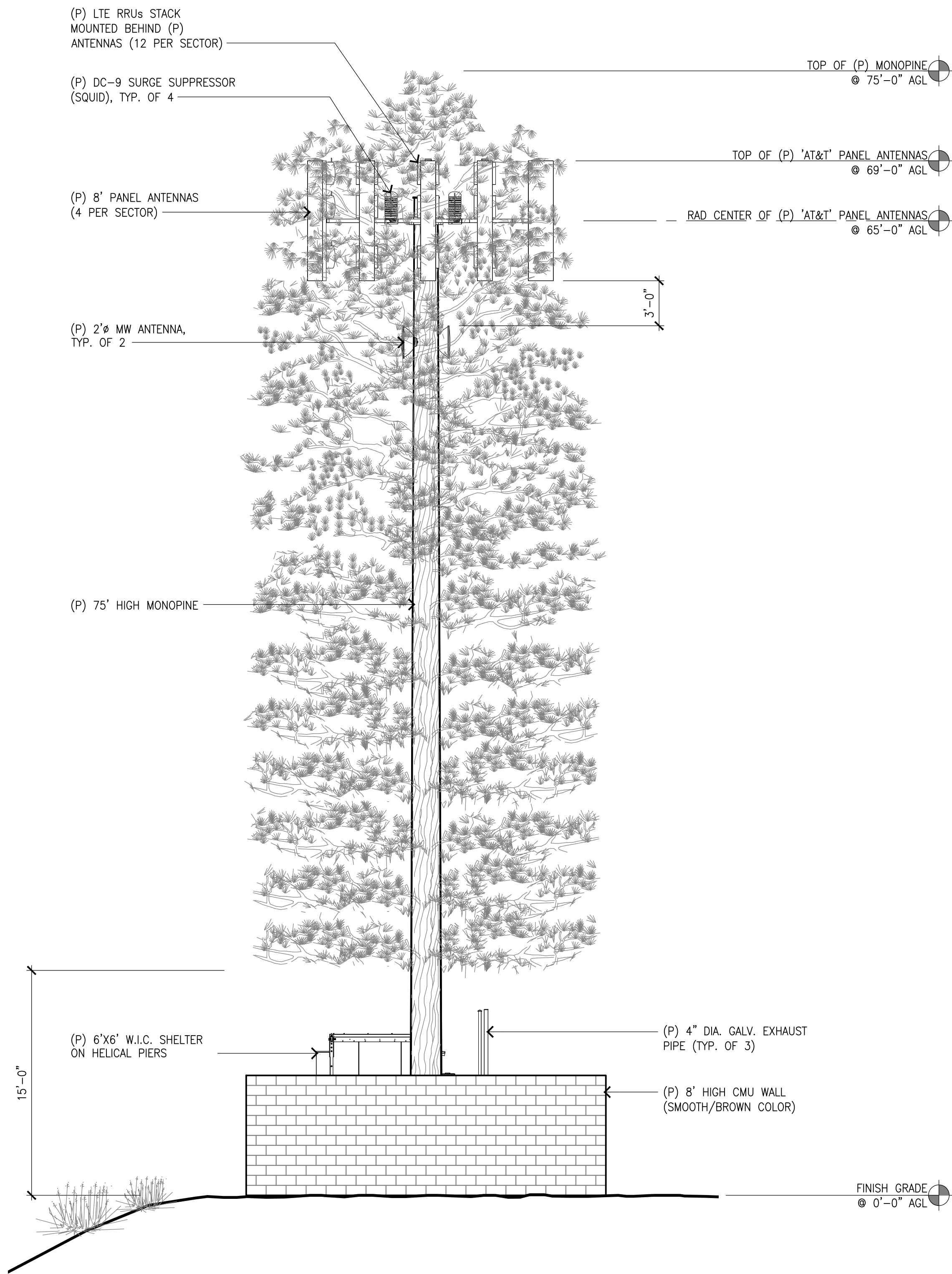
SHEET TITLE:  
 LEASE AREA/ANTENNA PLAN AND ANTENNA/RRU SCHEDULE

SHEET NUMBER:  
**A-2**



NOTES:

- NEW ANTENNAS AND ASSOCIATED EQUIPMENT SHALL BE PAINTED TO MATCH THE PROPOSED MONOPALM AND WILL INCLUDE FOLIAGE SOCKS.



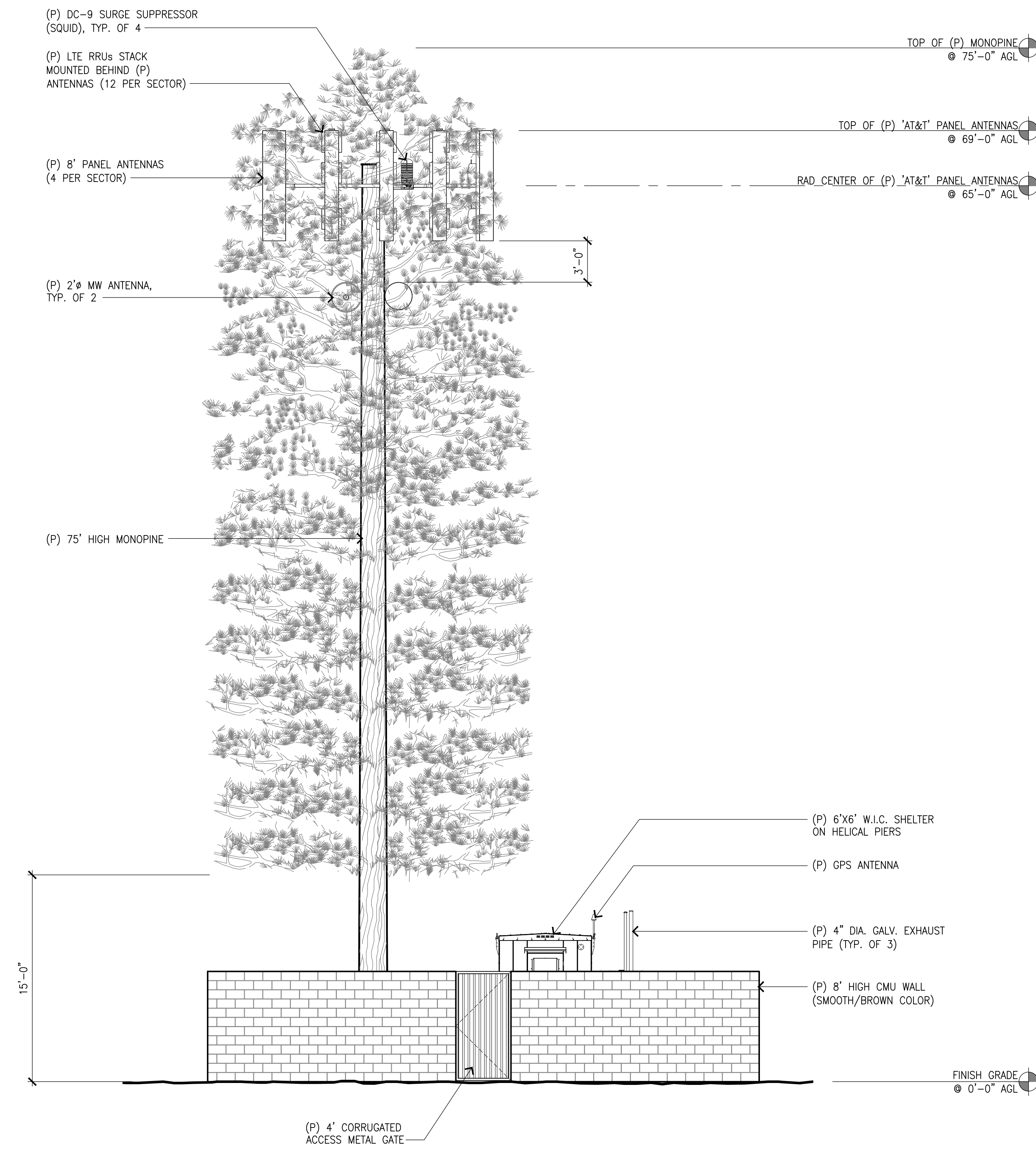
NORTH ELEVATION

SCALE: 3/16"=1'-0"

2

NOTES:

- NEW ANTENNAS AND ASSOCIATED EQUIPMENT SHALL BE PAINTED TO MATCH THE PROPOSED MONOPALM AND WILL INCLUDE FOLIAGE SOCKS.



WEST ELEVATION

SCALE: 3/16"=1'-0"

1



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REV	DATE	DESCRIPTION
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A	01/15/20	90% ZONING DRAWINGS

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APN# 1043-431-07-0000  
RANCHO CUCAMONGA, CA 91701  
MONOPINE (INDOOR)

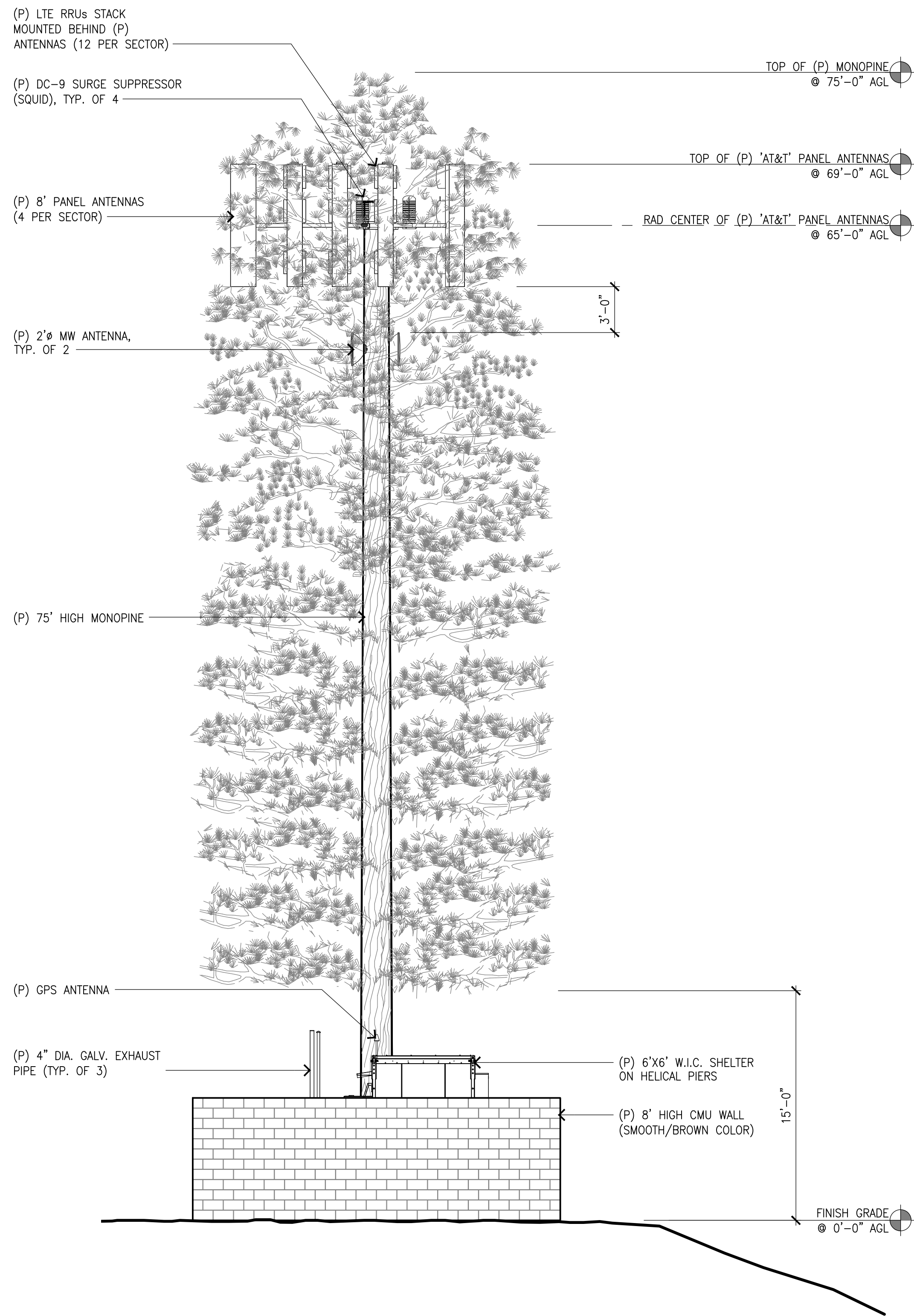
DRAWN BY: RJS  
CHECKED BY: JS

SHEET TITLE:  
ELEVATIONS

SHEET NUMBER:  
**A-3**

NOTES:

- NEW ANTENNAS AND ASSOCIATED EQUIPMENT SHALL BE PAINTED TO MATCH THE PROPOSED MONOPALM AND WILL INCLUDE FOLIAGE SOCKS.



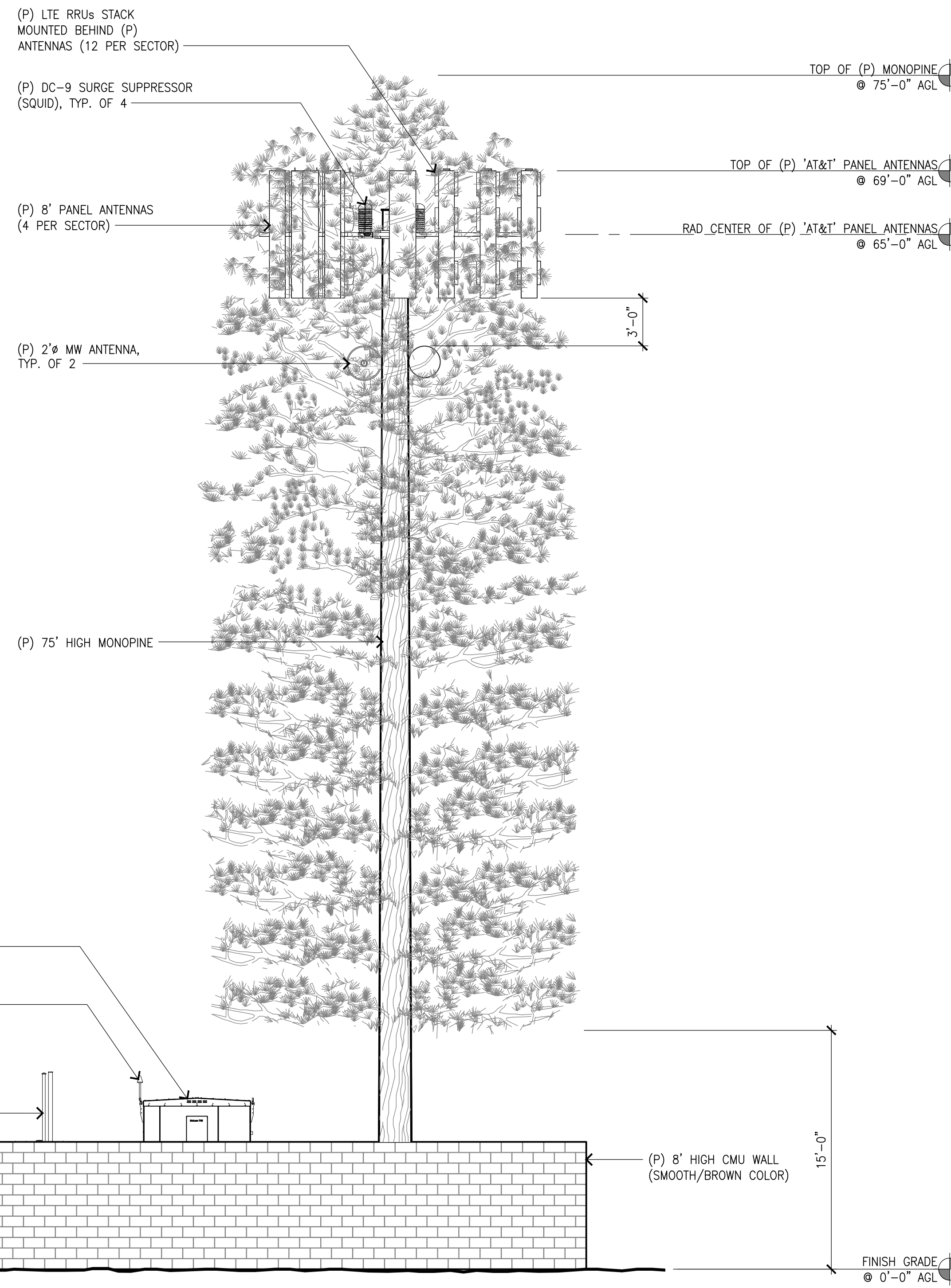
SOUTH ELEVATION

SCALE: 1/4"=1'-0"

2

NOTES:

- NEW ANTENNAS AND ASSOCIATED EQUIPMENT SHALL BE PAINTED TO MATCH THE PROPOSED MONOPALM AND WILL INCLUDE FOLIAGE SOCKS.



EAST ELEVATION

SCALE: 1/4"=1'-0"

1



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REV	DATE	DESCRIPTION
0	01/23/20	100% ZONING DRAWINGS
A	01/15/20	90% ZONING DRAWINGS

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APN# 1043-431-07-0000  
RANCHO CUCAMONGA, CA 91701  
MONOPINE (INDOOR)

DRAWN BY: RJS  
CHECKED BY: JS

SHEET TITLE:  
ELEVATIONS

SHEET NUMBER:  
**A-4**



## NOTICE OF APPLICATION

JUN - 4 2021

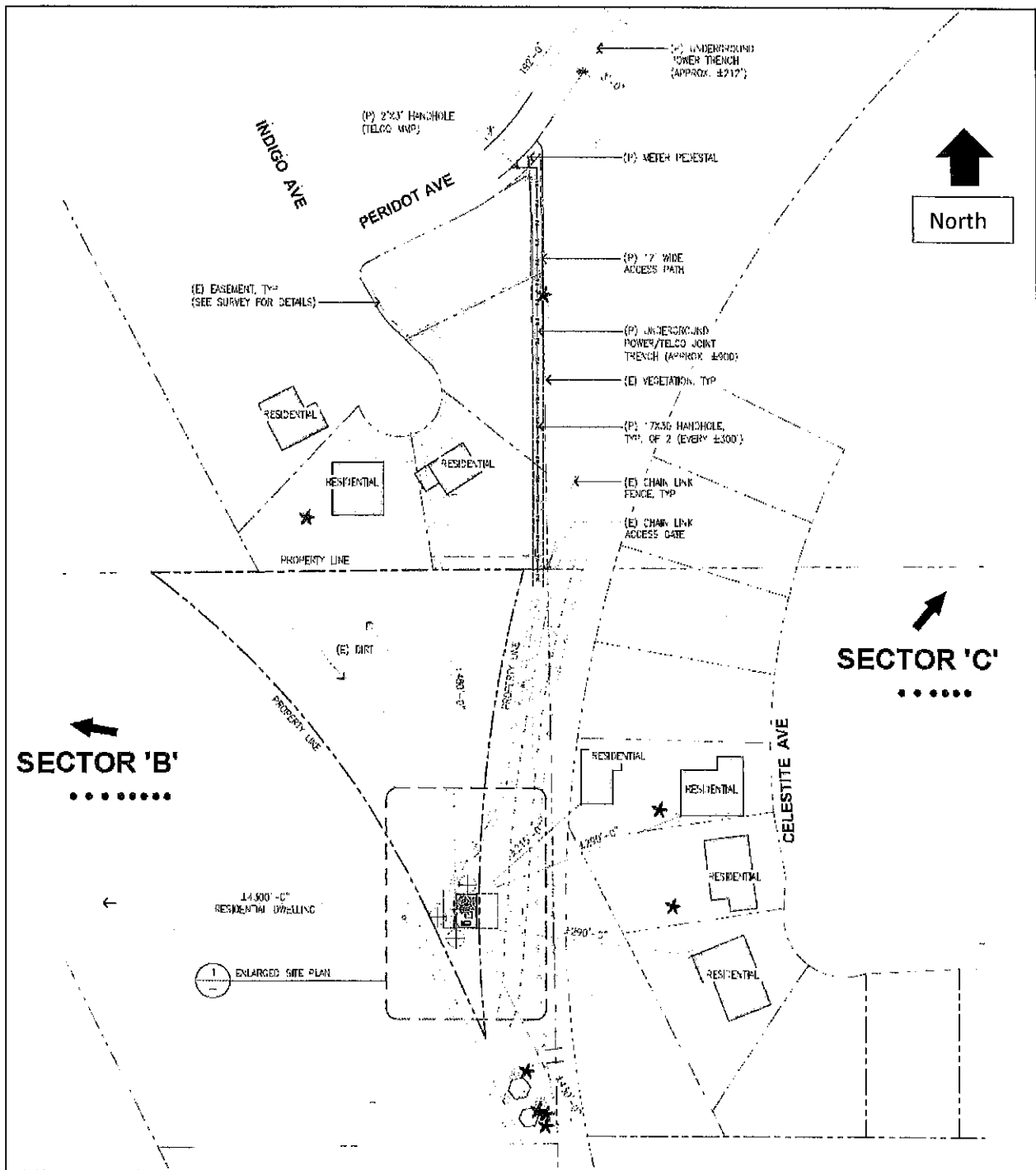
San Antonio Water Company

The Planning Department has received an application for a Conditional Use Permit located at APN: 1043-431-07 which is a triangular shaped parcel bound by the Cucamonga Channel to the West, the Demens Creek Channel to the East and approximately 480 feet to the North are Single Family homes in the Indigo Avenue Cul-de-sac. A site plan showing the location of the project site is attached to this notice.

Pursuant to Article II, Section 17.16.025 of the Rancho Cucamonga Development Code, all property owners adjacent to the proposed project shall receive notice.

<b>PROJECT CASE NO.</b>	DRC2020-00089
<b>WHAT IS PROPOSED?</b>	The proposed involves the construction of a new 75-foot-tall wireless communication facility pole which is disguised as a pine tree. The project also features a 960 square foot enclosure for ground mounted equipment and 3 new canary island pine trees.
<b>WHO TO CONTACT:</b>	Anyone having concerns or questions or wishing to review or comment on the project is welcome to contact the City Planning Department at (909) 774-4330 or visit the offices located at 10500 Civic Center Drive, Monday through Thursday between 10:00 a.m. and 4:00 p.m. The project planner most familiar with this proposal is Griffin Sproul, Planning Technician.
<b>HOW CAN I COMMENT ON THE PROJECT?</b>	All interested parties are invited to comment on the proposal. All comments must be received by June 14, 2021. Written comments should be addressed to the Planning Department, City of Rancho Cucamonga, P. O. Box 807, Rancho Cucamonga, CA 91729 or submitted via email to the project planner at <a href="mailto:griffin.sproul@cityofrc.us">griffin.sproul@cityofrc.us</a>
<b>CAN THE DECISION BE APPEALED?</b>	<p>The decision of the Planning Director is final unless the project is appealed within 10 days of the date of decision. Appeals must be filed in writing to the Planning Commission Secretary, state the reason for the appeal, and be accompanied by the appropriate filing fee. The Planning Commission will hear appeals of any City Planner decision.</p> <p>If you challenge the foregoing action in court, you may be limited to raising only those issues you or someone else raised at the public hearing for the appeal described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the appeal hearing.</p>
<b>DATE NOTICE MAILED:</b>	June 2, 2021
<b>ATTACHMENTS:</b>	Proposed Site Plan Wireless Communication FAQ

# SITE PLAN



## WIRELESS COMMUNICATION FACILITY FAQS

- WHAT IS A WIRELESS COMMUNICATION FACILITY?** Wireless Communication Facilities (WCFs) are the antennas, support structures and other equipment or apparatus necessary for providing personal wireless services like internet and information services like phone calls. Communication equipment is often hidden from public view behind screen walls or within specially designed buildings. Some support structures mimic pine or palm trees.
- WHAT DOES THE CITY REVIEW?** The Rancho Cucamonga Community Development Departments and the Cucamonga Fire District review project plans for consistency with local municipal codes, California building codes and fire safety codes. City and Fire District staff use the information in these codes to oversee what equipment looks like from the public view, where it is placed and how it is built.
- HOW IS THE FEDERAL COMMUNICATIONS COMMISSION (FCC) INVOLVED?** The Federal Communications Commission (FCC) regulates how providers can offer communications by radio, television, wire, satellite and cable in the United States. The FCC regulates health concerns related to cell phones and antenna facilities. Wireless carriers have to submit reports to the FCC to demonstrate compliance with regulations.

Agenda Item No. 6E

Item Title: Tour of Company Facilities

Purpose: To discuss potential dates for a tour of Company facilities

Issue: Do individual Directors wish to participate in a tour of Company facilities?

Manager's Recommendation: Find a day that accommodates the most people

Background: It is a custom of the Company to afford new Directors a personal tour of Company facilities.

Impact on the Budget:

None

Previous Actions:

None

Agenda Item No. 6F

Item Title: Company Response to COVID-19

Purpose:

To discuss the Company's response to the COVID-19 Pandemic.

Issue:

How are State and Local Government Recommendations and Orders impacting the Company during the COVID-19 Pandemic?

Manager's Recommendation:

No recommendation. For discussion only.

Background:

While the nation continues to grapple with appropriate responses to the pandemic there has been limited disruption to the Company's operations.

As the State starts to release mandated restrictions on its residents the Company will begin transitioning back into a 'normal' schedule. All of the actions discussed below anticipate that the State will not readjust their fluctuating directives.

Starting in June:

- The Company is resuming in-person Board Meetings at Upland City Hall. We are anticipating our Board meetings will again be held at the City of Upland's Council Chambers.
- For convenience the Company will continue to use GoToMeeting for committee meetings.
- As of June 1<sup>st</sup>, the Company began conducting business face-to-face at the office again.
- As of June 1<sup>st</sup>, we are a fully staffed office each day, with no less than four staff members scheduled. Office staff will continue to work remotely one day a week on staggered days.

Impact on the Budget:

Company has purchased four laptops to increase efficiency of office staff working remotely, including software that allows remote Voice Over Internet Protocol (VoIP) Company phone access. - ~\$7,500

Previous Actions:

None.