



Date: October 15, 2014

To: Honorable Mayor and City Councilmembers

From: Water Utilities Department/ Property Management

Subject: **APPROVAL OF A LEASE AGREEMENT WITH HYDRANAUTICS FOR PREMISES AT SAN LUIS REY RECLAMATION FACILITY**

SYNOPSIS

Staff recommends that the City Council approve a five-year Lease Agreement with Hydranautics for a minimum total revenue of \$9,120 per year for use and occupation of the premises at San Luis Rey Reclamation Facility for the purpose of operating a Pilot Membrane Plant; and authorize the City Manager to execute the agreement.

BACKGROUND

Hydranautics has been operating within the City of Oceanside since 1963, providing innovative membrane separation technological research and product production. Hydranautics entered the reverse osmosis water treatment field in 1970, and is now one of the most respected and experienced firms in the membrane separations industry. Hydranautics has been located within the Oceanside Industrial Park on Jones Road, and has been conducting test operations at the San Luis Rey Reclamation Facility located at 3950 North River Road (the "Facility") since June 2010, and desires to continue operating at Facility.

Hydranautics' products are currently in use on seven continents for such diverse applications as potable water, boiler feedwater, industrial process water, wastewater treatment, surface water treatment, seawater desalination, electronic rinse water, agricultural irrigation and pharmaceuticals.

ANALYSIS

The terms of the lease agreement ("Lease") with Hydranautics are as follows:

- Premises: Hydranautics will have non-exclusive use of 480 square feet, including upon which is an enclosed structure ("Premises"), at the Facility.
- Uses: Hydranautics is leasing the Premises solely and exclusively for the purposes of a Pilot Membrane Plant.

- Term:** Term of the Lease will be for five years, between November 1, 2014 and October 31, 2019. Hydranautics may request two successive three-year extension terms, subject to City Council approval.
- Termination:** Hydranautics must fulfill in any manner the uses and purposes for which the Premises is leased; and must cure any such defaults under this Lease within thirty (30) days of notice from the City. If Hydranautics fails to cure said defaults, the City shall have the right to immediately terminate the Lease.
- Rent:** Hydranautics shall pay \$760 per month for its use and occupation of the Premises at the Facility.
- Utilities:** Hydranautics' rent shall be considered to include payment of utilities.
- Maintenance:** Hydranautics agrees to assume full responsibility and cost for the maintenance and repair of the pilot unit and associated equipment and fixtures utilized for its purpose. City will be responsible for the structural integrity of the enclosed structure on the Premises.

FISCAL IMPACT

Annual rent to be paid by Hydranautics for its use and occupation of the Premises is \$9,120. Rent revenue will be appropriated and deposited to account 1721.4461.0012, Sewer Operating, reimbursement for services, Hydranautics.

COMMISSION OR COMMITTEE REPORT

Does not apply.

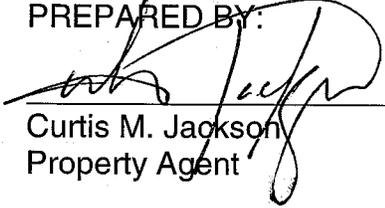
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a five-year Lease Agreement with Hydranautics for a minimum total revenue of \$9,120 per year for use and occupation of the premises at San Luis Rey Reclamation Facility for the purpose of operating a Pilot Membrane Plant; and authorize the City Manager to execute the agreement.

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THIS PROPERTY USE AGREEMENT, dated _____, 2014, hereinafter called ("Lease"), is executed between the **City of Oceanside**, a California charter city, hereinafter called ("City"), and **Hydranautics**, hereinafter called ("Lessee").

RECITALS

WHEREAS, City is the lawful owner of certain real property and improvements thereon, commonly known as the San Luis Rey Water Reclamation Facility, located at 3950 North River Road, Oceanside, California (the "Property"); and

WHEREAS, Lessee desires to lease a portion of the Property consisting of approximately 480 square feet ("Premises"), on which is located an enclosed structure, for the purposes of operating a Pilot Membrane Plant; and

WHEREAS, Lessee desires the right of ingress and egress upon the Property for purposes of access to the Premises; and

WHEREAS, City is willing to lease the Premises to Lessee for the term and upon the covenants, conditions and provisions hereinafter set forth.

AGREEMENT

NOW THEREFORE, in consideration of the covenants, conditions and provisions contained herein, the parties hereto do mutually agree as follows:

SECTION 1: Premises

1.01 Premises. City hereby leases the Premises to Lessee and Lessee hereby leases the Premises from City, in accordance with the terms, covenants, conditions and provisions of this Lease, the Premises shall consist of the non-exclusive use of 480 square feet (as illustrated in Exhibit "A") on the Property.

a. Premises Condition. It is expressly understood by the parties that Lessee shall be responsible for connecting fixtures and equipment necessary to place the Premises in a condition suitable for Lessee's uses permitted under this Lease. Lessor will be responsible for permitting and constructing an enclosed structure as well as the necessary infrastructure on the Premises suitable for Lessee's use, including electrical, plumbing and lighting.

1.02 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purposes of a Pilot Membrane Plant ("Permitted Use"), subject to all applicable permits, licenses, laws, regulations, and requirements. The Premises may also be used for other related or incidental purposes as may be first approved in writing by the City and for no other purpose whatsoever.

Lessee covenants and agrees to actively use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or

events beyond the reasonable control of Lessee and acts of God. Said active use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Lessee shall not use the Premises in any manner that disrupts other occupants or users of the surrounding property.

1.03 Related Discretionary Actions. By the granting of this Lease, neither City nor the Oceanside City Council is obligating itself or any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, issuance of building permits, rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.04 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises.

If City for any reason cannot deliver possession of the Premises to Lessee at the commencement of the term of this Lease, or if during the term hereof Lessee is temporarily dispossessed through action or claim of a title superior to the City of Oceanside, then and in either of such events, this Lease shall not be voidable nor shall City be liable to Lessee for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City a proportionate abatement of rent for the period or periods during which Lessee is prevented from having the quiet possession of all or a portion of the Premises. In the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Lease by submitting to the City a **thirty (30) day** written notice together with its justifications for such termination. The City shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

1.05 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however, the City specifically retains the following rights:

- a. Subsurface Rights.** City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- b. Easements.** City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises, for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. Right to Enter.** City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. City will reimburse the Lessee for damages to the Premises or to the Lessee's personal property caused by the City resulting from the City's exercise of its rights herein. If City is required to make a repair

caused by Lessee neglect, Lessee will be liable for costs associated with such repairs. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.01 Commencement: The term of this Lease shall be for a period of five (5) years, commencing on the "Lease Commencement Date," which is hereby defined as the date on which the Lessor has completed the Premises infrastructure construction pursuant to Section 1.01.a herein and has delivered possession to Lessee. City anticipates the Lease Commencement Date to be on or before November 1, 2014. Upon determination of the Lease Commencement Date, Lessee shall execute a Lease Commencement Date Memorandum confirming the actual date the Lease commences and terminates. A copy of the Commencement Date Memorandum is shown in Exhibit "B" ("Lease Commencement Date Memorandum") attached hereto and by this reference made part of this Lease.

2.02 Extension Terms. Lessee may request two (2) successive three (3) year terms under the terms and conditions of this Lease, provided that the Lessee is not in default or breach of any term, condition, covenant or provision of this Lease. The extension request must be in writing and approved by the Oceanside City Council (the "City Council") as set forth below:

Lessee may request an extension of the term of this Lease provided that Lessee provides written notice to the City no later than **one hundred twenty (120) days** prior to the expiration of the initial or extended term of this Lease, as applicable. City designee shall notify the Lessee not later than **sixty (60) days** after receipt of such request whether such request will be recommended to the City Council for approval, at which time the City shall provide Lessee with the terms and conditions the City Staff would recommend for Lessee's use and occupation of the Premises during the extension term.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Lease. In the event the City Council is unable to consider the extension request in sufficient time as to provide Lessee with **thirty (30) days** notice of termination in the case of denial, the Lease shall be extended for a period not to exceed **thirty (30) days**, to allow for such **thirty (30) day** notice of termination.

2.03 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, shall continue in full force and effect.

2.04 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

2.05 Quitclaim of Lessee's Interest. On termination of this Lease for any reason, City may provide Lessee with, and Lessee shall deliver to City, a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within **five (5) days** after receiving written demand

therefor. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this Lease provision and the notice will be conclusive evidence of the termination of this Lease and all of Lessee's rights to the Premises.

2.06 Surrender of Premises. At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good condition as the condition at commencement of this Lease, absent normal wear and tear.

2.07 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: RENT

3.01 Rent. The annual rent amount for this Lease shall be Nine Thousand One Hundred Twenty-Five Dollars and no Cents (**\$9,125.00**) which shall be payable monthly in advance to the City of Oceanside at the rate of Seven Hundred Sixty Dollars and Forty-Two Cents (**\$760.42**) on or before the first day of each new month starting on the Lease Commencement Date. If the Lease Commencement Date is not the first day of a month, then that portion of such rent which is attributable to the days in that month from the Lease Commencement Date until the end of that month shall be paid on the Lease Commencement Date.

3.02 Delinquent Rent.

Lessee will have a ten (10) day grace period to pay the rent at the beginning of each calendar month. If Lessee fails to pay the rent when due, Lessee will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days from the grace period, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

SECTION 4: INDEMNITY AND INSURANCE

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees or in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole or active negligence or sole willful misconduct of the City, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Insurance. Lessee shall take out and maintain at all times during the term of this Lease the following insurance at its sole expense:

a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit per occurrence \$1,000,000

General Aggregate \$2,000,000

b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside, its directors, officers, employees, contractors, agents and authorized volunteers, as "additional insured" under the insurance policy(s) required in accordance with this Lease. Insurance coverage provided to City as additional insured shall be primary insurance to City, its directors, officers, employees, contractors, agents and authorized volunteers. The coverage shall contain no special limitations on the scope of protection afforded to City, its directors, officers, employees, contractors, agents and authorized volunteers. Any insurance, self-insurance or other coverage maintained by City, its directors, officers, employees, contractors, agents and authorized volunteers, shall not contribute to the insurance provided pursuant to this Section.

c. All insurance companies affording coverage to the Lessee shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide **thirty (30) days** written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. City shall not be responsible to insure Lessee's leasehold improvements and Lessee's personal property: Lessee shall be responsible for said items and for the insurance thereof.

i. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by Lessee on the **first (1st) day** of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

j. City, at its discretion, may require reasonable and good faith revision of amounts and coverage at any time during the term of this Lease by giving Lessee **sixty (60) days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within **three business days** after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

SECTION 5: MAINTENANCE OF PREMISES

5.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that the Premises is in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises.

5.02 Lessee's Maintenance. Without exception, as part of the consideration for the leasing thereof, Lessee agrees to assume full responsibility and cost for the maintenance and repair of the pilot unit and associated equipment and fixtures utilized for its purpose, throughout the term of this Lease and without expense to City. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee shall not be responsible for the structural integrity of the enclosed structure including exterior walls, foundation, ceiling, and roof.

Lessee further agrees to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the

condition of, and protect its interests in, the Premises. In the event that City finds that the Premises is not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work for which it is responsible per section 5.02 within **ten (10) days** after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than **ten (10) days** after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises except as otherwise provided herein. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.03 Waste, Damage, or Destruction. Lessee shall give notice to City of any fire or other damage that occurs on the Premises within **seventy-two (72) hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, Lessee agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

SECTION 6: UTILITIES AND TAXES

6.01 Utilities Lessee's rent shall be considered to include payment for utilities.

6.02 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or Premises of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee of activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to Premises taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes before they become delinquent.

SECTION 7: IMPROVEMENTS/ALTERATIONS AND PERSONAL PROPERTY

7.01 Improvements/Alterations. The parties anticipate and expect that improvements to the Premises will be completed as described at Section 1.01a. Notwithstanding this expectation, no improvements, structures, or installations shall be constructed on the Premises, and Lessee may not alter the Premises without prior written approval by the Water Utilities Director. Further, Lessee agrees that major

structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the Water Utilities Director and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to, on or about the Premises.

7.02 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by Lessee, excepting the membrane pilot unit and such fixtures which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, City shall so notify Lessee in writing **thirty (30) days** prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by Lessee by the date of the expiration or termination of this Lease. Any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

7.03 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

7.04 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following:

offsite improvements for service of the Premises; onsite improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon, shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

SECTION 8: Intentionally Omitted.

SECTION 9: DAMAGE AND/OR DESTRUCTION

9.01 City's Options. In the event the Premises is damaged and/or destroyed to any extent for any reason whatsoever, the City in its sole discretion shall have the right to either repair said damage and/or destruction or elect not to repair said damage in whole or in part. In the event the City elects not to repair the damage or destroyed portion of the Premises and/or Building, and said damage and/or destruction materially affects Lessee's ability to conduct its operation in the Premises, either party shall have the right to terminate the Lease by giving at least **sixty (60) days** written notice to the other party.

9.02 Reconstruction. In the event the City elects to repair the damage and/or destruction and Lessee's ability to conduct its operation in the Premises is not materially affected as set forth above, Lessee shall continue to occupy its Premises in full compliance with the terms, conditions and provisions of the Lease. In the event Lessee's ability to conduct its operation in the Premises is materially affected, Lessee shall not be required to make any payments under the Lease until such time as the damage and/or destruction has been repaired. City's obligation to repair any damage and/or destruction to the Premises shall not include any Interior Improvements made to the Premises by Lessee or personal property of the Lessee, which repair and/or replacement shall be the sole responsibility of Lessee.

SECTION 10: CONDEMNATION

10.01 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

- a. **Total Taking.** In the event the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. **Partial Taking.** In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken.

c. Award. All monies awarded in any such taking of the Premises shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. Transfer. City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.

e. No Inverse Condemnation. The exercise of any City right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

SECTION 11: DEFAULT BY LESSEE

11.01 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within **five (5) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **ten (10) days** after written notice thereof if default is in the failure to perform under the use provisions pursuant to Section 1.02 of this Lease; or **thirty (30) days** after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with the terms of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to

Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within **five (5) days**, if the default is for the failure to submit rent as required, or within **fifteen (15) days** following the expiration of the period within which Lessee may cure such default; provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of this Lease.

11.02 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this Section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remain monies to be paid by Lessee to such beneficiary under the terms of such deed of trust, provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

SECTION 12: GENERAL PROVISIONS

12.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management
300 North Coast Highway
Oceanside, CA 92054

with a copy to:

CITY of OCEANSIDE
Water Utilities
300 North Coast Highway
Oceanside, CA 92054

To Lessee:

Hydranautics
Karin H. Spink
401 Jones Road
Oceanside, CA 92058

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) **three (3) working days** following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

12.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Lease, which does not result in a change to this Lease, the City Manager delegates authority to the City's Real Estate Manager.

12.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age in Lessee's use of the Premises.

12.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. Lessee shall certify in writing to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

12.05 Entire Agreement. This Lease comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

12.06 Interpretation of the Lease. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The

venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

12.07 Lease Modification. This Lease may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

12.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the property constituting the Premises is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

12.09 Dispute Resolution, Attorney's Fees. In the event any suit is commenced by either party to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to an award of all costs expended, together with a reasonable attorney's fee to be fixed by the Court. Venue for enforcement of this Lease shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for the declaratory relief, suit, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or, if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

12.10 Assignment and Subletting - No Encumbrance. This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no

force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

12.11 Section Headings. The table of Contents and the section headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision thereof.

12.12 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 13: SPECIAL PROVISIONS

13.01 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner and comparable to other similar facilities within the San Diego County and Southern California areas which provide like products and services.

13.02 Signs. Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and any such device(s) shall conform to all City of Oceanside and City ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within **twenty-four (24) hours** of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

13.03 Manner of Providing Service. Lessee shall provide an experienced and well-qualified employee to oversee all operations conducted by Lessee on the Premises. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

13.04 Continued Occupancy. Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, uninterruptedly during the term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

13.05 Hazardous Substances. No goods, merchandise or material other than those mentioned herein shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other Premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other Premises, or improvements thereon, or to persons; provided, however, that nothing contained in this Section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Lessor acknowledges Lessee's use of certain small quantity hazardous materials necessary for the operation of the Pilot Membrane Plant including: sodium hypochloride, sodium hydroxide, hydrochloric acid, ferric chloride, and alumun based coagulants.

Lessee is responsible for proper storage and permitting of such hazardous materials in compliance with all applicable laws.

Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

SECTION 14: SIGNATURES

14.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Lease to be executed on the day and year respectively written hereinbelow.

"City"

City of Oceanside, a municipal corporation

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
Steven R. Jepsen, City Manager

By: *Michael Hamilton, 4887*
City Attorney

"Lessee"

Hydranautics

By: *Karin Spink*
Print Name: KARIN SPINK

Title: HYDRANAUTICS CORP VICE PRESIDENT

Dated: Oct 1, 2014

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

ACKNOWLEDGMENT

State of California
County of San Diego)

On October 1, 2014 before me, Angela Copeland, Notary Public
(insert name and title of the officer)

personally appeared Karin Spink, Corporate Vice President,
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



(Seal)



Exhibit "A" Property

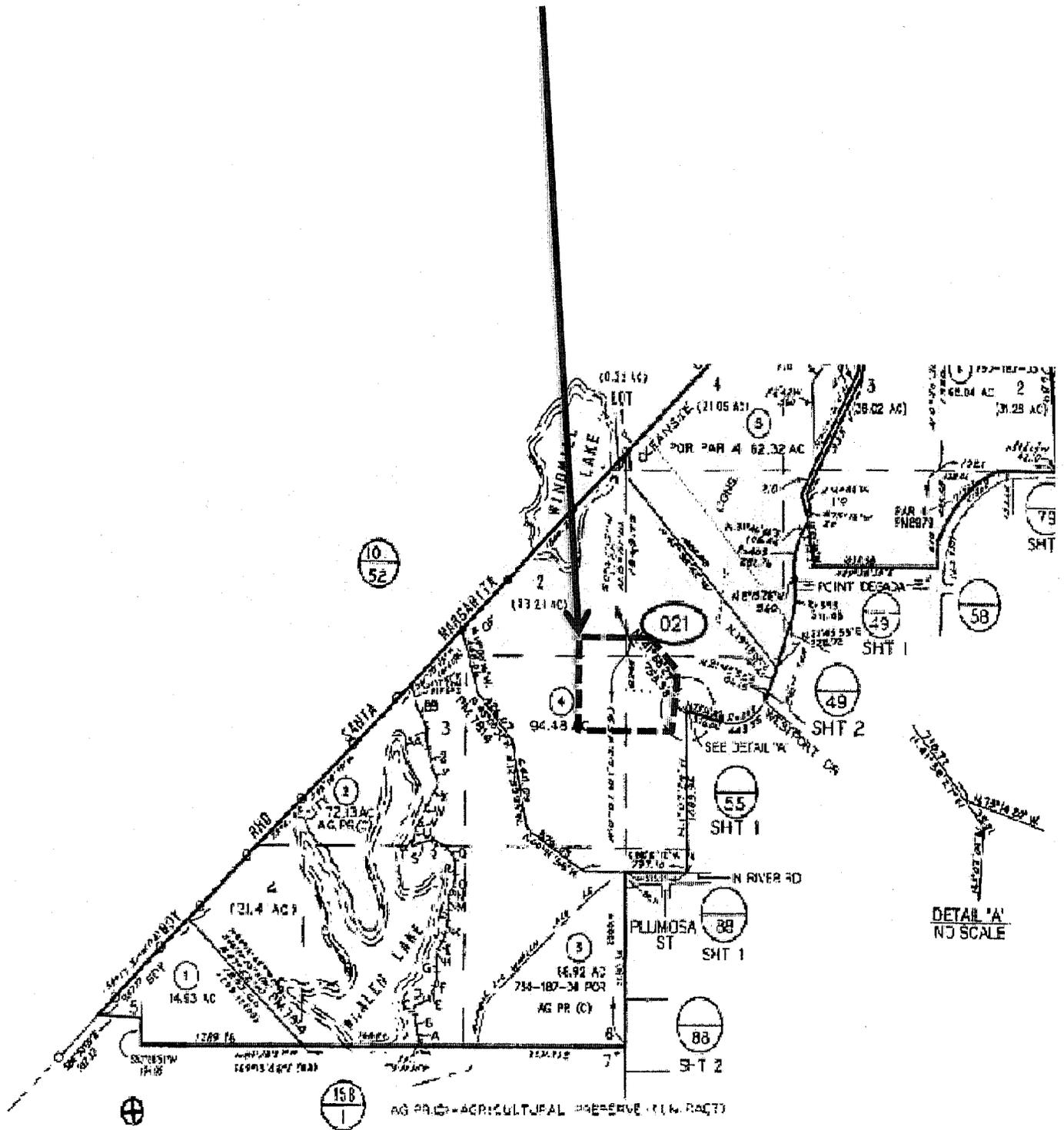


EXHIBIT "B"

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____ is executed between the City of Oceanside, a municipal corporation ("City") and Hydranautics ("Lessee").

RECITALS

WHEREAS, City and Lessee have entered into that certain Property Lease Agreement ("Lease") dated _____ for that portion of City-owned real property located at the San Luis Rey Water Reclamation Facility in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Lease the parties are to execute a memorandum to confirm the commencement date of the Lease.

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

1. The City and Lessee agree that the commencement date of the Lease is _____ and the termination date is _____.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"City"

City of Oceanside
a municipal corporation

By: _____
Name: _____
Title: _____

"Lessee"

Hydranautics

By: _____
Name: _____
Title: _____