

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**  
**by and between**  
**SAN JOSE WATER COMPANY**  
**and**

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This Confidentiality and Non-Disclosure Agreement (“Agreement”) is effective upon execution and is entered into between San Jose Water Company, a subsidiary of SJW Corp., primarily located at 110 W. Taylor Street in San Jose, California, 95110, (“Disclosing Party”) and \_\_\_\_\_, primarily located at \_\_\_\_\_ (“Receiving Party”).

This Agreement allows San Jose Water Company to release specific customer information to the Receiving Party for the sole purpose of the Receiving Party calculating sewer fees. In consideration of their respective covenants and conditions set forth herein, the parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and/or confidential information (“Confidential Information”), as defined in Section 1 below.

**1. Definition of Confidential Information**

For purposes of this Agreement, “Confidential Information” shall mean any proprietary and/or confidential information which one party (“Receiving Party”) receives from the other party (“Disclosing Party”), or others acting on behalf of a party, either directly or indirectly, in writing, verbally, electronically or by inspection, including without limitation, documents, business or marketing plans or strategies, financial statements, books of accounts, other financial analyses and forecasts, customer lists, account numbers, and/or data, strategic plans, products, services, distribution and operations information, inventions and innovations, market research, processes, designs, drawings, analyses, compilations, surveys, studies, tests, results, trade secrets and any other proprietary information of the Disclosing Party.

By way of further example and not as a limitation hereof, Confidential Information shall include: (a) the Disclosing Party’s records on customer name, service address, email address, customer identification information, consumption data; and (b) all information or material that has or could have commercial value or other utility in the business in which the Disclosing Party is engaged.

**2. Use and Disclosure**

The Confidential Information disclosed by the Disclosing Party shall be used solely and exclusively by the Receiving Party for the purposes contemplated per this Agreement. The Receiving Party shall keep all Confidential Information received hereunder in the strictest confidence. The Receiving Party further understands and agrees that it will not disclose the Confidential Information disclosed to it hereunder except to its employees, consultants, and agents on a need-to-know basis. In the event an employee, consultant, or agent of the Receiving Party receives Confidential Information, each employee, consultant, or agent shall be subject to the Receiving Party’s internal restrictions concerning disclosure of such Confidential Information; and the internal restrictions shall include, but not be limited to, a requirement that each employee, consultant, or agent shall hold all Confidential Information in strict confidence, and *provided* that such employees, consultants, or agents are under a confidentiality obligation to the Receiving Party at least as protective of the Disclosing Party as set forth in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for the Receiving Party’s own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information.

These restrictions on disclosure of Confidential Information shall not apply to:

- a. Information which, in the Receiving Party's opinion is required to be disclosed in accordance with applicable law or regulation, *provided* that the Receiving Party shall give the Disclosing Party prompt written notice and sufficient opportunity to object to such use or disclosure, or to request confidential treatment of the Confidential Information; or
- b. Information that was in the public domain at the time of this Agreement; or
- c. Information that has entered the public domain through the Disclosing Party or through any third party not being bound to secrecy by the Disclosing Party; or
- d. Information that the Receiving Party had in its possession prior to such disclosures by the Disclosing Party, as evidenced by written records; or
- e. Information that the Receiving Party has acquired from a third party bona fide source other than the Disclosing Party, which third party is not under an obligation with either the Receiving Party or Disclosing Party to maintain the confidentiality of such disclosed information; or
- f. Information that has been independently developed by the Receiving Party.

### **3 Enforcement**

The parties acknowledge that they may be irreparably harmed if a Receiving Party breaches its obligation of confidentiality under this Agreement and such obligation is not specifically enforced, then the Disclosing Party

may not have an adequate remedy at law in the event of an actual or threatened violation of any such material obligation hereunder. In the event that any Receiving Party breaches any material obligation under this

Agreement, the Disclosing Party shall, in addition to any and all other forms of relief to which it may be entitled,

be entitled to seek an injunction restraining any further disclosure or use of Confidential Information.

### **4. Disclaimer and Indemnification**

The Receiving Party's evaluation of the Confidential Information of the Disclosing Party shall be at its own risk.

The Receiving Party will indemnify and hold harmless the Disclosing Party, from and against any and all losses, claims, damages, or liabilities to which the Disclosing Party may become subject, including reasonable costs and attorneys fees, insofar as such losses, claims, damages or liabilities arise out of or are based on any negligent act or omission of the Receiving Party in connection with any disclosure of Confidential Information hereunder or as a result of a breach by the Receiving Party of any aspect of this Agreement. This indemnification obligation shall survive the termination of this Agreement.

### **5. Return of Documents**

Upon the request of the Disclosing Party, the Receiving Party shall immediately return all records, notes, and other written, printed, or tangible materials in its possession relating to Confidential Information of the Disclosing Party; *provided, however*, that the Receiving Party may retain one copy of those documents which Receiving Party is statutorily obligated to retain.

### **6. Time Periods**

The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and the Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as Confidential Information or until the Disclosing Party sends the Receiving Party written notice releasing the Receiving Party from this Agreement.

**7. Relationships**

Nothing contained in this Agreement shall be deemed to constitute either party as a partner, establishing a joint venture, or employee of the other party for any purpose. In addition, this Agreement does not obligate either party to enter into any further agreements.

**8. Assignment and Successors**

This Agreement may not be assigned by any party hereto, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Disclosing Party may assign this Agreement (i) as incident to the merger, consolidation, reorganization or acquisition of stock affecting actual voting control or of substantially all of the assets of the assigning party or (ii) to a parent, affiliate or subsidiary. Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

**9. Severability**

If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as to best affect the intent of the parties.

**10. Integration**

This Agreement expresses the complete understanding of the parties with respect to the subject and supersedes all prior proposals, agreements, representations and understandings. This Agreement shall not be amended except in a writing signed by both parties.

**11. Waiver**

Any waiver of a particular breach of this Agreement by a party shall not operate as a waiver to any other breach of this Agreement by that party.

**12. Multiple Originals**

This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument.

This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories.

**In Witness Whereof**, the parties have caused this Agreement to be executed by their duly authorized representatives as identified and dated below.

“Disclosing Party”

“Receiving Party”

\_\_\_\_\_  
By:

Title:

Date:

San Jose Water Company

\_\_\_\_\_  
By:

Title:

Date:

\_\_\_\_\_

Form No. 24

(N)

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

PLEASE REFER TO TARIFF BOOK FOR SAMPLE DOCUMENT

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 424

PALLE JENSEN

Date Filed MAR - 4 2011

Vice President,

Effective APR - 3 2011

Dec. No.

Regulatory Affairs

Resolution No. \_\_\_\_\_

TITLE