



SPECIAL

BOARD OF DIRECTORS MEETING

May 3, 2018

2:00 p.m.

**City of Ontario – Council Chambers
303 E. “B” Street, Ontario, CA**

**SPECIAL BOARD MEETING OF
THE BOARD OF DIRECTORS
CHINO BASIN DESALTER AUTHORITY**

May 3, 2018
2:00 p.m.

Council Chambers, of the City of Ontario
303 E. "B" Street, Ontario, CA

*All documents available for public review are on file with the Authority's secretary located at
2151 S. Haven Avenue, Suite 202, Ontario, CA 91761.*

AGENDA

Call to Order

Flag Salute

Public Comment: Members of the public may address the Board at this time on any non-agenda matter. *Please complete a Comment Card and give it to the Secretary. Comments are limited to three (3) minutes per individual. State your name and address for the record before making your presentation. This request is optional, but very helpful for the follow-up process.*

Under the provisions of the Brown Act, the CDA Board is prohibited from taking action on oral requests. However, Board Members may respond briefly or refer the communication to staff. The CDA Board may also request the Secretary to calendar an item related to your communication at a future CDA Board meeting.

ACTION ITEMS

Prior to action of the CDA Board, any member of the audience will have the opportunity to address the CDA Board on any item listed on the agenda, including those on any consent calendar. Please submit a comment card to the secretary with the agenda item number noted.

- 1. MINUTES OF APRIL 5, 2018 REGULAR BOARD MEETING**

- 2. PHASE 3 EXPANSION: AGREEMENT WITH SPECIALTY MINERALS, INC. FOR DISPOSAL/SALE OF CALCIUM CARBONATE PELLETS**
Report by: Curtis D. Paxton, General Manager/CEO
Staff Recommendation:
 1. Approve the Agreement with Specialty Minerals Inc. for the disposal/sale of calcium carbonate pellets produced by the Concentrate Reduction Facility.
 2. Authorize the General Manager/CEO to execute the Agreement.

- 3. CONSIDERATION AND POSSIBLE ACTION ON SCHEDULING THE REGULAR JULY 2018 BOARD MEETING**
Report by: Curtis D. Paxton, General Manager/CEO

Staff Comments:

- (i) Deputy CDA General Counsel, Allison Burns
- (ii) CDA CFO/Treasurer, Michael Chung
- (iii) CDA General Manager/CEO, Curtis Paxton

CLOSED SESSION

The Authority may adjourn to a Closed Session to consider litigation matters, personnel matters, or other matters as provided for in the Ralph M. Brown Act (Section 54950 et seq., of the Government Code).

- 4. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO GOVERNMENT CODE
SECTION 54956.9(D)(2)
(TWO POTENTIAL CASES)**

- 5. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 0218-231-13, 15, City of Ontario
CDA Negotiators: Curtis Paxton, Allison Burns
Negotiating parties: SC Ontario Development Company
Under negotiation: Price and terms of payment**

- 6. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
CONSIDERATION OF INITIATION OF LITIGATION PURSUANT TO GOVERNMENT
CODE SECTION 54956.9(D)(4)
(ONE POTENTIAL CASE)**

Directors Comments:

ADJOURNMENT – To the Special Meeting on June 7, 2018

Declaration of Posting

I, Casey Costa, Executive Assistant to the Chino Basin Desalter Authority, hereby certify that a copy of this agenda has been posted by 2:00 p.m. at the Chino Basin Desalter Authority's main office, 2151 S. Haven Ave., Ontario, CA on Monday, April 30, 2018.

Casey Costa, Executive Assistant



Board of Directors Meeting

Agenda Item

No. 1

REGULAR MEETING OF THE
BOARD OF DIRECTORS OF THE
CHINO BASIN DESALTER AUTHORITY

MINUTES

April 5, 2018

The Regular Meeting of the Board of Directors of the Chino Basin Desalter Authority was held at the City of Ontario, 303 E. "B" Street, Ontario, CA, on the above date. The meeting was called to order at 2:00 p.m. by Greg Newton, City of Norco.

Directors Present:

Greg Newton, City of Norco, Chair
Robert Stockton, Western Municipal Water District, Vice Chair
Tom Haughey, City of Chino, Secretary
Peter Rogers, City of Chino Hills
Jim Bowman, City of Ontario
Jasmin Hall, Inland Empire Utilities Agency
Betty Anderson, Jurupa Community Services District
J. Arnold Rodriguez, Santa Ana River Water Company

Directors Absent:

None

Others Present:

Curtis Paxton, CDA General Manager/CEO
Michael Chung, CDA CFO/Treasurer
Todd Minten, CDA Operations Manager
Allison Burns, CDA Deputy General Counsel
Jose Garcia, CDA Principal Accountant
Casey Costa, CDA Executive Assistant
Dave Crosley, City of Chino
Tom O'Neill, City of Ontario
Moustafa Aly, Jurupa Community Services District
Derek Kawaii, Western Municipal Water District
Cindy Miller, Hazen & Sawyer
Sam Gershon, Albert A. Webb Associates

FLAG SALUTE

The Pledge of Allegiance was led by Director Stockton/Western Municipal Water District

PUBLIC COMMENT ON NON-AGENDA ITEMS

None

CONSENT CALENDAR ITEMS

Consent Calendar items are expected to be routine and non-controversial to be acted upon by the Board at one time without discussion. If any Board member, staff member, or interested person requests that an item be removed from the Consent Calendar, it will be moved to the first item on the Action Items.

1. **MINUTES OF MARCH 1, 2018 SPECIAL BOARD MEETING**
2. **TREASURER'S FINANCIAL AFFAIRS REPORT FOR QUARTER ENDED DECEMBER 2017**
Report by: Michael Chung, CDA CFO/Treasurer
3. **TREASURER'S REPORT ON GENERAL DISBURSEMENTS FOR THE QUARTER ENDED DECEMBER 2017**
Report by: Michael Chung, CDA CFO/Treasurer
4. **BUDGET VARIANCE REVIEW FOR THE QUARTER ENDED DECEMBER 2017**
Report by: Michael Chung, CDA CFO/Treasurer

Motion: *It was moved by Director Bowman/Ontario and seconded by Director Rogers/Chino Hills to approve Consent Items 1-4.*

Motion carried:

Ayes: T. Haughey/Chino, P. Rogers/Chino Hills, G. Newton/Norco, J. Bowman/Ontario, B. Anderson/JCSD, J.A. Rodriguez/SARWC, R. Stockton/WMWD

Noes: None

Absent: None

Abstained: None

ACTION ITEMS

5. **PHASE 3 EXPANSION: AMENDMENT NO. 1 TO DUDEK'S CONTRACT FOR DESIGN OF DUAL PRODUCT WATER PIPELINES USING HORIZONTAL DIRECTIONAL DRILLING**
Report by: Cindy Miller, Phase 3 Expansion Program Manager

Staff Recommendation:

1. Approve Amendment No. 1 in the amount of \$84,263 to Dudek's contract for Design of Dual Product Water Pipelines Using Horizontal Directional Drilling, for a total contract amount of \$587,226.
2. Authorize the General Manager to execute Amendment No. 1 and approve authorized expenditures up to a not-to-exceed total of \$625,000.

Program Manager Miller reviewed the recommendation to approve an amendment to the contract with Dudek for Design of Dual Product Water Pipelines. She reviewed that field work was initiated in April 2017 and was put on hold due to encroachment permit issues. Dudek prepared additional alignment alternatives and a new preferred alignment was selected, which required a repeat of some design tasks. When the geotechnical investigation resumed in October 2017 some work associated with the geotechnical investigation and pilot bore needed to be repeated. Our consultant for acquisition of regulatory permits from California Department of Fish and Wildlife recommended that a frac-out plan be prepared and included as part of the permit, which is an additional item that was requested from Dudek. Director questions included whether it was anticipated that the project timeline would be as extended as it is, and whether the difference between the recommended total contract amount and recommended approval amount was for a contingency. Program Manager Miller replied that the project timeline had been extended, but not significantly since the bird nesting season from March to October had been incorporated into the timeline, and the lead time for the pipe that is needed has a much longer lead time than expected. She also confirmed that a contingency had been factored into the recommended approval amount. Director Newton/Norco commented that the Norco City Council approved the encroachment and easement. There were no further questions or comments.

Motion: *It was moved by Director Anderson/JCSD and seconded by Director Stockton/MMWD to approve Action Item 5.*

Motion carried:

Ayes: T. Haughey/Chino, P. Rogers/Chino Hills, G. Newton/Norco, J. Bowman/Ontario, B. Anderson/JCSD, J.A. Rodriguez/SARWC, R. Stockton/MMWD

Noes: None

Absent: None

6. RECONCILIATION OF THE ALLOCATION OF COSTS FOR FISCAL YEAR 2016/17 AND RELATED RESERVE BALANCE ANALYSIS

Report by: Michael Chung, CDA CFO/Treasurer

Staff Recommendation:

1. Approve the reconciliation of the allocation of costs for fiscal year 2016/17 per the attached Exhibit A;
2. Approve the refund of the overpayment to each member Agency;
3. Approve the analysis of reserve balance at June 30, 2017 per the attached Exhibit B.

Treasurer Chung reviewed staff recommendation to approve the reconciliation of the allocation of costs, approve a refund of the overpayment and approve the reserve balance analysis. He reviewed that the 2016/17 budget was prepared using the

expected delivery of 29,900 AF of water, and actual deliveries totalled 24,655 AF. This resulted in an overpayment of \$4,259,959. He reported that the reserve analysis revealed a deficit of \$318,028, according to the reserve policy level of \$6,630,000 and CDA members agreed to increase the reserve balance to policy level. It was questioned by what means the reserve balance will be increased. Treasurer Chung replied that CDA member agencies agreed to an assessment to increase reserve funds. There were no further questions or comments.

Motion: *It was moved by Director Rodriguez/SARWC and seconded by Director Bowman/Ontario to approve Action Item 6.*

Motion carried:

Ayes: T. Haughey/Chino, P. Rogers/Chino Hills, G. Newton/Norco, J. Bowman/Ontario, B. Anderson/JCSD, J.A. Rodriguez/SARWC, R. Stockton/WMWD

Noes: None

Absent: None

Abstained: None

INFORMATION ITEMS

Information items are non-action items presented to the Board for their information.

7. QUARTERLY DESALTER EXPANSION REPORT
Report By: Cindy Miller, Phase 3 Expansion Program Manager

Program Manager Miller presented the Chino Desalter Phase 3 Expansion Report. She reported that the Concentrate Reduction Facility is complete and operational. Two projects are in startup and closeout phase - Chino I & II Intertie Pipeline and Equipping of Wells II-10 and II-11. The Santa Ana River Crossing HDD is in design.

She reported on activities for the Chino I & II Intertie Pipeline and Equipping of Wells II-10 and II-11, and design activities for the Santa Ana River HDD, with construction anticipated in January 2019. During the next three months it is expected that operation will begin for Chino II Raw Water Pipeline and Wells II-10 and II-11, and final design of the HDD river crossing will be completed. She reported on total project cost estimate of \$152.8 million and grant funding totaling \$80.6 million, for a net Capital Cost of \$72.2 million.

It was questioned how many feet of piping were installed for the Intertie Pipeline. Program Manager Miller estimated 10,000 to 15,000 feet of pipe were installed in east/west and north/south configurations. It was also questioned how many times the pipeline was flushed and tested; Program Manager Miller reported that disinfection has been attempted three times, with positive bacti results received each time. Coordination efforts between Contractor, Construction Manager and Operations staff are taking place to successfully disinfect the pipeline and put it into service. There were no further questions or comments.

8. QUARTERLY SOUTH ARCHIBALD PLUME REPORT
Report By: Cindy Miller, South Archibald Plume Program Manager

Program Manager Miller reported that the expected overall completion date is 1st quarter of 2020. She reviewed that the Raw Water Pipeline was partially installed under Phase 3 Expansion and final design is anticipated in August 2018, with construction completed mid-late 2019. Well II-12 property acquisition is expected to be completed no sooner than May 2018. A Request for Proposal for the design of Chino II Desalter Decarbonators was released in March 2018. A Request for Proposal for Construction Management and Inspection contract will be released in April 2018. Total project cost estimate is \$24.5 Million, with RP-1 Parties portion of \$20.1 Million, and the difference comprised of facilities that were part of the Phase 3 Expansion Project. Grant funding of \$23.68 Million has been secured for the project. There were no questions or comments.

9. QUARTERLY OPERATIONS REPORT
Report By: Todd Minten, CDA Operations Manager

Operations Manager Minten presented the Quarterly Operations Report for the period December 2017 through February 2018. He reported on the status of water deliveries to member agencies through February 2018, at 106.9% of entitlement deliveries. Water quality goals have been met, and he reported on desalter production, brine line discharge and status of wells. There were no questions or comments.

STAFF COMMENTS

- (i) CDA Deputy General Counsel Allison Burns had no comments.
- (ii) CDA CFO/Treasurer, Michael Chung had no comments.
- (iii) CDA General Manager/CEO, Curtis Paxton commented that the July 2018 CDA Regular Board Meeting is currently scheduled for July 5, 2018. In consideration of the July 4th holiday, a recommendation will be agendized for the May 2018 Board Meeting to reschedule the July Board Meeting to June 28th or July 12, 2018.

CLOSED SESSION

The Authority may adjourn to a Closed Session to consider litigation matters, personnel matters, or other matters as provided for in the Ralph M. Brown Act (Section 54950 et seq., of the Government Code).

**10. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO GOVERNMENT CODE
SECTION 54956.9(D)(2)**

(ONE POTENTIAL CASES)

**11. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
CONSIDERATION OF INITIATION OF LITIGATION PURSUANT TO GOVERNMENT
CODE SECTION 54956.9(D)(4)**

(ONE POTENTIAL CASE)

The Board did not enter into Closed Session.

DIRECTOR COMMENTS

There were no comments.

ADJOURNMENT – There being no further business to come before the Board, the meeting was adjourned at 2:28 p.m.

Secretary of the Board of Directors/cc



Board of Directors Meeting

Agenda Item

No. 2



SUBJECT: PHASE 3 EXPANSION: AGREEMENT WITH SPECIALTY MINERALS, INC. (SMI) FOR THE DISPOSAL/SALE OF CALCIUM CARBONATE PELLETS

RECOMMENDATION:

Staff recommends that the Board:

1. Approve the Agreement with Specialty Minerals, Inc. (SMI) for the disposal/sale of calcium carbonate pellets generated from the Concentrate Reduction Facility; and
2. Authorize the General Manager/CEO to execute the Agreement.

BACKGROUND:

In January 2017, the Board approved a Letter of Understanding with Specialty Minerals Inc. (SMI) for the disposal/sale of calcium carbonate pellets generated by the water treatment process at the Concentrate Reduction Facility. The intent of the Letter of Understanding was to provide the framework and deal points for a detailed agreement to be negotiated and finalized.

The arrangement with SMI provides for guaranteed disposal of the pellets at a predetermined freight charge until SMI is able to develop high value applications that can generate shared revenue for SMI and CDA. The cost of the seed material needed for pellet generation is also set in the Agreement. SMI will invest resources in the processing, sales, and market development of the calcium pellets and/or resultant product when the agreement is finalized.

The initial term of the Agreement is for five years. If SMI is able to generate an annual revenue of \$150,000 for CDA by the fifth year of the Agreement, the Agreement will automatically renew for an additional five years. If SMI is able to generate an annual revenue of \$300,000 for CDA by the tenth year of the Agreement, the Agreement will automatically renew for an additional five years.

This item was reviewed/approved by the:

- Technical Advisory Committee (TAC) on 04/24/2018
- Finance Committee on 04/19/2018

IMPACT ON BUDGET:

The cost of the seed material to be purchased from SMI and the freight charges for disposal of the pellets as described in the Agreement have been included in the adopted FY 2017/18 Budget.

ATTACHMENT:

- Agreement with Specialty Minerals, Inc.

Prepared by: Curtis Paxton, CDA General Manager/CEO

Board of Directors: Approved Continued Denied

CDA GM/CEO Acknowledgement: _____ **Date:** _____

AGREEMENT

This Agreement, dated as of May 3, 2018 (the “Effective Date”) is made between Specialty Minerals Inc., a Delaware corporation (hereinafter referred to as “SMI”), having its main office located at 622 3rd Avenue, 38th Floor, New York, NY 10017, and Chino Basin Desalter Authority, a joint exercise of powers agency (hereinafter referred to as “CDA”), with its main office located at 2151 S. Haven Avenue, Suite 202, Ontario, CA 91761. (SMI and CDA hereinafter may be referred to together as the “Parties”).

WHEREAS, CDA is constructing an expansion of the Chino II water treatment facility in Jurupa Valley, California (the “Chino II Facility”); and

WHEREAS, CDA will purchase from SMI, and SMI will sell to CDA, limestone for the operation of the Chino II Facility; and

WHEREAS, the Chino II Facility will produce calcium carbonate pellets (the “Pellets”) as a byproduct of its water treatment process; and

WHEREAS, SMI agrees to accept 100% of the Pellets; and

WHEREAS, SMI will endeavor to create a positive revenue stream of sales margin for SMI and CDA as soon as possible during the first (5) five years of the Agreement; and

WHEREAS, the Parties will explore the sale or use of the Pellets into industrial commercial applications and markets.

NOW, THEREFORE, in consideration of good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purchase and Sale of Calcium Carbonate

- (a) Subject to the terms and conditions of this Agreement, during the Term (as defined below), CDA agrees to purchase 100% of its product requirements for limestone, including SMI’s VICAL® 4005 product or VICAL® 2060 product (hereinafter, “SMI Product”), meeting the specifications attached hereto as Appendix A (hereafter, “Product Specifications”) for use at the Chino II Facility. The SMI Product shall be shipped from SMI’s Lucerne Valley, CA facility to the Chino II Facility in 2,000 lb. supersacks or in bulk shipments, in accordance with the instructions provided by CDA in its purchase order. CDA agrees that it shall use the SMI Product only in its own operations and shall not resell any SMI Product.
- (b) The initial contract price for SMI Product hereunder (“SMI Product Price”) is:
 - (i) \$55.00/ton, in 2,000 lb. supersacks, or
 - (ii) \$25.00/ton, in bulk shipments.

The SMI Product Price does not include freight, which shall be paid by CDA. SMI Product Price is FOB Lucerne Valley, CA. At CDA’s option, CDA may elect to pay freight collect, or CDA may have SMI prepay and add actual freight cost to the invoice.

- (c) The SMI Product Price will remain as provided in Section 1(b) through March 31, 2019, and, commencing April 1, 2019, SMI may adjust the SMI Product Price on April 1 of each year, in an amount equal to the Consumer Price Index: Los Angeles-Riverside-Orange County, CA CPI-O all items, 12 month % change, provided however that such increase will be no more than 2.0% annually. SMI shall notify CDA of any SMI Product Price increase by no later than February 1 of each year.
- (d) Payment terms are Net (30) days from CDA's receipt of SMI's invoice. All payments must be in U.S. dollars and made payable as designated by SMI in writing from time to time.
- (e) CDA hereby acknowledges and agrees that the risk of loss and title with respect to any shipments of SMI Product made to CDA shall pass to CDA FOB SMI's Lucerne Valley, CA facility.

2. Supply and Disposal of Pellets

- (a) Subject to the terms and conditions of this Agreement, during the Term, CDA agrees to exclusively supply to SMI, and SMI agrees to accept from CDA, 100% of the Pellets produced by the Chino II Facility in accordance with the specifications set forth in Exhibit "B" hereto ("Pellet Specifications"), at no charge to SMI. CDA's estimated volume of Pellets for the initial year of this Agreement is 8,000-10,000 tons (annualized). CDA shall advise SMI in a timely manner of anticipated changes in output of Pellets from the Chino II Facility. Notwithstanding the foregoing sentences of this Section 2(a), CDA may: (1) dispose of Pellets as required by law or regulation; and (2) supply Pellets at no charge to third parties not identified or solicited by SMI in accordance with Section 3(b) if CDA's shipping cost to such third parties are lower than the cost to ship the Pellets to SMI's Lucerne Valley location.
- (b) CDA agrees that it shall pay all freight charges (the "Pellet Freight Charges") to ship the Pellets from the Chino II Facility to SMI's Lucerne Valley, CA facility. Such Pellet Freight Charges are currently estimated to be \$20/ton (including fuel). CDA may pay the Pellet Freight Charges to ship Pellets to a closer alternative processing location with lower costs of shipping, upon advanced mutual agreement of the Parties. CDA shall be responsible for paying Pellet Freight Charges directly to carriers. CDA shall keep SMI informed from time to time of the Pellet Freight Charges.
- (c) CDA agrees as follows:
 - (i) Upon request from time to time, CDA shall promptly furnish to SMI Pellet samples, technical data, test results and certifications, process and ingredient information, and related information and data in CDA's possession or otherwise available to it, regarding the Pellets or the component materials of the Pellets.
 - (ii) CDA shall inform SMI of any information which CDA has received or has actual knowledge of concerning any existing or new claims, suits, or administrative actions, related to environmental, health, and/or safety issues concerning the Pellets, including, but not limited to, information, regardless of the source of the information or CDA's involvement in the claim, suit or administrative action.

- (iii) CDA shall not make any material modification to the Pellets or the component materials of the Pellets without prior written notice to SMI including, but not limited to (A) a change in Pellets composition, including the addition, removal, or change of any component of the Pellets; and (B) a deviation from the requirements set forth in the Target Pellet Specification in Appendix B.

3. Exclusive Right to Market and Sell Pellets

- (a) SMI may use the Pellets supplied to SMI as a component in its own products, and shall have the exclusive right to distribute or sell for Positive Sales Margin any of such Pellets, or any product consisting of the Pellets in whole or in part, or any product of which the Pellets are a component. As used in this Agreement, “Positive Sales Margin” means SMI’s total Pellet sales revenue less SMI’s total costs for bringing Pellets to market. Total costs for bringing pellets to market are defined and auditable by Generally Accepted Accounting Principles (GAAP) which are inclusive of costs of materials, labor, manufacturing overhead, and prepaid freight. Except as permitted in Section 2(a), CDA shall not transfer, deliver, sell, or otherwise provide the Pellets, or any products consisting of the Pellets in whole or in part, or any product of which the Pellets are a component, to any other party without SMI’s prior written consent.
- (b) SMI shall in good faith endeavor to market and sell the Pellets, and products consisting of the Pellets in whole or in part or of which the Pellets are a component, for the purpose of creating a Positive Sales Margin stream to be shared with CDA in proportion as set forth hereinafter. In connection with the foregoing, SMI will endeavor to create direct Positive Sales Margin generating sales of Pellets to customers who will pay the freight from CDA to the customer’s manufacturing location (also reducing the Pellet Freight Charges incurred by CDA), and/or to create alternative processing locations with potentially higher processing costs, but lower costs of shipping for processing Pellets suitable for end-user and potentially also reducing the Pellet Freight Charges incurred by CDA. SMI shall be responsible for handling all customer inquiries for Pellet sales, and CDA shall refer any potential customers of Pellets to SMI. During the Term, CDA shall not communicate with any third parties regarding the marketing, sale or processing of Pellets by anyone other than SMI. SMI shall handle all invoicing of Pellet customers and accounts receivable collection. SMI shall endeavor to create an annualized share of Positive Sales Margin for CDA of greater than \$150,000 annually as soon as possible during, but no later than the 5th year of, the Initial Term, as defined hereinafter, of this Agreement. SMI is targeting an annualized share for CDA of greater than \$300,000 annually during the subsequent five (5) years following the Initial Term of the Agreement contingent on sustainability of the Positive Sales Margin stream. The \$150,000 and \$300,000 targets are contingent upon the available output of Pellets from CDA of 10,000 tons annually and would be pro-rated based on actual annual available output of Pellets to SMI during any specific year.
- (c) Where SMI is successful in selling the Pellets with Positive Sales Margin generation, SMI shall pay to CDA a fee (the “Pellet Fee”) for each and every Positive Sales Margin sale of 35% of Positive Sales Margin generated by such sale. Where SMI is using the Pellets delivered to their Lucerne Valley, CA plant as a blend-in for their current ore for existing SMI products as a way to consume delivered Pellets in absence of new Positive Sales Margin Business, SMI will pay CDA a “Pellet Fee” of \$3.00 per ton for pellets used as an offset to using their own ore. Any applicable Pellet Fees shall be paid by SMI to CDA Semi-Annually. A general status review will be conducted semi-annually (within 30 days after January 1st and July 1st of each year) between CDA and SMI summarizing the progress toward these

objectives for CDA. Example of Positive Sales Margin share calculation contained on Appendix C.

4. Term and Termination

- (a) The initial term of this Agreement is five (5) years, commencing on the Effective Date (“Initial Term”). If, at the conclusion of the Initial Term (during the 5th year), SMI has effectively created a positive revenue for CDA greater than \$150,000 (or a lesser pro-rated amount due to Pellet availability from CDA, as provided in Section 3(b)), the Agreement shall renew automatically for an additional five (5) years. If SMI should fail to generate the positive revenue for CDA identified in the preceding sentence, either party may terminate this Agreement, or the parties may agree to continue the Agreement or renegotiate the terms of a new agreement. Should the Agreement automatically renew as set forth hereinabove and SMI creates a positive revenue stream for CDA (during the 5th year of the second 5-year term of this Agreement) of greater than \$300,000 (or a lesser pro-rated amount due to Pellet availability from CDA) the Agreement will automatically renew for an additional five (5) year period contingent on the positive revenue stream situation being sustainable. An example of meeting a pro-rated target during the 5th year of the Agreement would be that if the CDA only had 5000 tons of available annual output of Pellets for SMI, it would thereby reduce the target threshold for automatic renewal by 50% to \$75,000.
- (b) This Agreement may be terminated by the parties prior to the expiration of the Term as follows:
- (i) by either party, upon written notice, in the event the other party fails to perform any of its material obligations under this Agreement or otherwise is in material breach of any of its obligations hereunder; provided that the party receiving such notice shall have sixty (60) days from the date of receipt to take actions in good faith to cure the failure or breach, after which time this Agreement shall terminate only if such actions have not been taken.
 - (ii) by either party, if by reason of a *Force Majeure* Event (as defined below) the obligations imposed on the other party have not been fulfilled for at least a period of sixty (60) days.
 - (iii) By SMI, if (A) SMI determines or is notified that the Pellets do not meet the Pellet Specifications, (B) SMI, in its sole discretion, deems any deviation from the Pellet Specifications to be unacceptable, and (C) within sixty (60) days after notice of such deviation from the Pellet Specifications to CDA, the Pellets do not again meet the Pellet Specifications.
 - (iv) By CDA, if (A) CDA determines or is notified that the SMI Product does not meet the Product Specifications, (B) CDA, in its sole discretion, deems any deviation from the Product Specifications to be unacceptable, and (C) within sixty (60) days after notice of such deviation from the Product Specifications to SMI, the SMI Product do not again meet the Product Specifications.
 - (v) By SMI upon written notice to CDA, if the Pellets are found to contain any hazardous substances as classified by applicable governmental authorities, or if there are other regulatory issues with or scientific data relating to the Pellets that cause SMI to

reasonably determine in its sole discretion that the continued delivery of Pellets to its Lucerne Valley, CA facility is unacceptable.

- (vi) This Agreement will automatically terminate upon the occurrence of any of the following events with respect to either party: (A) its dissolution or liquidation, (B) the entry of a decree or order by a court having jurisdiction adjudging it a bankrupt or insolvent, or approving a petition seeking reorganization, arrangement, adjustment or composition of or in respect of it, under federal bankruptcy law or any other applicable federal or state bankruptcy, insolvency or other similar law, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; (C) the commencement by it of a voluntary case under federal bankruptcy law or any other applicable federal or state bankruptcy, insolvency, or other similar law; (D) the consent by it to the institution of bankruptcy or insolvency proceedings against it; (E) the filing by it of a petition or answer or consent seeking reorganization or relief under federal bankruptcy law or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or similar official of it or of any substantial part of its property; (F) any levy under attachment, execution or similar process which is not vacated or removed by payment or bonding within ten (10) days, or (G) the transfer of any of such party's assets for the benefit of creditors.
- (c) In the event this Agreement expires or is terminated, both parties will be released from all other obligations and duties imposed or assumed hereunder except for continuing obligations and limitations pertaining to confidentiality, warranties, remedies and limitations of damages, indemnities, and dispute resolution.

5. Confidentiality

Subject to applicable laws, rules and regulations, including without limitation the California Public Records Act, Government Code Section 6250, et seq., court orders, or orders of governmental or regulatory agencies with jurisdiction over the applicable party (collectively, "Applicable Disclosure Laws"), CDA and SMI shall treat as confidential and not disclose to others, or use for their own purposes, except as necessary to perform the Agreement (and then only on a confidential basis), any information regarding the other party's plans, plants, processes, products, costs, equipment, operations, or customers without in each instance securing the prior written consent of the other party. Public and non-proprietary information is excluded.

6. Warranties; Remedies; Limitation of damages

- (a) SMI warrants that SMI Product sold hereunder will conform to the Product Specifications. SMI further warrants that the SMI Product sold to CDA under this Agreement has been manufactured, packaged, labeled and sold in compliance with all applicable U.S. federal and state laws, rules and regulations. **SMI MAKES NO WARRANTY OF MERCHANTABILITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE, AND NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO SMI PRODUCT SOLD UNDER THIS AGREEMENT.**
- (b) In the event that CDA determines or is notified that the SMI Product does not meet the Product Specifications, CDA will notify SMI within forty-five (45) days after delivery of SMI Product

to the Chino II Facility, that it rejects the SMI Product. Failure of CDA to reject SMI Product within forty-five (45) days shall be deemed acceptance of such SMI Product. If SMI Product is rejected by CDA, SMI shall evaluate the material at the Chino II Facility and if the material is out of specification CDA may (i) accept replacement material from SMI within specification, (ii) accept a refund by SMI of all amounts paid by CDA for such SMI Product or (iii) declare SMI to have materially breached the terms of this Agreement and exercise its remedies pursuant to Section 4(b)(i) or 4(b)(iv) hereof. SMI shall take back or dispose of out of specification materials. SMI shall have no further obligation to CDA with respect to such material.

- (c) SMI shall indemnify CDA for property damage to CDA directly caused by a breach of any express warranty made by SMI herein, but only if CDA notifies SMI in writing within sixty (60) days of the date of occurrence. In no event shall SMI's indemnity obligation under this subparagraph 6(c) exceed one million dollars (\$1MM) in the aggregate during the Initial Term, or during any Renewal Term, of this Agreement.
- (d) CDA warrants that it will take all commercially reasonable actions to ensure that the Pellets conform to the Pellet Specifications. CDA further warrants that the Pellets have been produced in compliance with all applicable U.S. federal and state laws, rules and regulations. **CDA MAKES NO WARRANTY OF MERCHANTABILITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE, AND NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE PELLETS.**
- (e) In the event that either party determines or is notified that the Pellets do not meet the Pellet Specifications, such party will notify the other party promptly. If SMI, in its sole discretion, deems any such deviation from the Pellet Specifications to be unacceptable, CDA shall stop all shipments of Pellets to the Pellet destinations and shall exercise commercially reasonable efforts to ensure that Pellets again meet the Pellet Specifications. CDA shall use alternate means of disposal of Pellets until either (i) the Pellets again meet the Pellet Specifications or (ii) SMI, in its sole discretion, deems any continuing deviations from the Pellet Specifications are acceptable. If the Pellets do not again meet the specifications within 60 days after notice to CDA of nonconformance with the Pellet Specifications, SMI shall have the right to terminate this Agreement in accordance with Section 4(b)(iii).
- (f) CDA shall indemnify SMI for property damage to SMI directly caused by a breach of any express warranty made by CDA herein, but only if SMI notifies CDA in writing within thirty (30) days of the date of occurrence. In no event shall CDA's indemnity obligation under this subparagraph 6(f) exceed one million dollars (\$1MM) in the aggregate during the Initial Term, or during any Renewal Term, of this Agreement.
- (g) SMI and CDA acknowledge and agree that pricing has been negotiated in consideration of their agreement to limit certain liabilities. In no event will SMI or CDA be liable to the other for incidental or consequential damages, however caused. This exclusion applies regardless of whether such damages are sought for breach of warranty, breach of contract, for tort or under any other legal theory.

7. **Force Majeure**

- (a) “*Force Majeure* Event” means any event, whether foreseen or unforeseen, that meets all three of the following tests:
- (i) The event prevents a party (the “Nonperforming Party”), in whole or in part, from performing its obligations under this Agreement.
 - (ii) The event is beyond the reasonable control of and not the fault of the Nonperforming Party.
 - (iii) The Non-Performing Party has been unable to avoid or overcome the event by the exercise of due diligence.

Despite the preceding definition of a *Force Majeure* Event, a *Force Majeure* Event excludes economic hardship, changes in market conditions or insufficiency of funds.

- (b) Acts and Events Deemed to Be *Force Majeure* Events. In furtherance of the definition of *Force Majeure* Event and not in limitation of that definition, each of the following acts or events is deemed to be a *Force Majeure* Event: war, flood, lightning, drought, earthquake, fire, landslide, hurricane, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action, epidemic, famine or plague, shipwreck, action of a court or public authority, or strike, work-to-rule action, go-slow or similar labor difficulty.
- (c) Suspension of Performance. If a *Force Majeure* Event occurs, the Nonperforming Party is excused from whatever performance is prevented by the *Force Majeure* Event to the extent prevented.
- (d) Exclusive Remedy. The relief offered by this *Force Majeure* provision, together with the right of a party to terminate this Agreement in accordance with Section 4(b)(ii), is the exclusive remedy available to the Nonperforming Party with respect to a *Force Majeure* Event.

8. **Dispute Resolution**

- (a) Any claims or dispute (“Disputes”) arising out of or relating to this Agreement shall be resolved in accordance with the procedures specified in this Section 8, which shall be the sole and exclusive procedure for the resolution of any such Disputes.
- (b) The parties shall attempt in good faith to resolve any Disputes promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any Dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include (i) a statement of that party’s position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this clause are

confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

- (c) Any Dispute not finally resolved through negotiation may be finally resolved through resort to judicial process.

9. Miscellaneous

- (a) Each party giving or making any notice, request, demand or other communication (each, a “Notice”) pursuant to this Agreement shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid). Any party giving a Notice shall address the Notice to the person set forth on the signature page hereto and at the address set forth in the first paragraph hereto, or to another person or another address as designated by a party in a Notice given pursuant to this Section. A Notice is effective only if the party giving the Notice has complied with this Section and if the addressee has received the Notice.
- (b) The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.
- (c) The parties may waive this Agreement or any provision hereof only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.
- (d) If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
- (e) This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties’ agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. If the terms and conditions of any purchase order, invoice, or order confirmation issued in connection with sales made pursuant to this Agreement are inconsistent with any provision of this Agreement, then the terms of this Agreement will control. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than those expressly stated in this Agreement.
- (f) Neither party may assign any of its rights nor delegate any performance under this Agreement, whether such assignment or delegation is voluntary or involuntary, by merger, consolidation,

dissolution, operation of law or any other manner, except with the prior written consent of the other party. Any purported assignment of rights or delegation of performance in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto, and their permitted assigns.

- (g) This Agreement does not and is not intended to confer any rights or remedies upon any person other than the signatories.
- (h) The relationship of the parties shall, at all times, be that of independent contractors. Nothing contained in this Agreement shall authorize, empower, or constitute either party the agent of the other party in any manner; authorize or empower any of either party's officers or employees to represent themselves to be an employee or agent of the other party; authorize or empower either party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the other party; or authorize or empower either party to bind the other party in any manner or make any representation, warranty, covenant, agreement, or commitment on behalf of the other party.
- (i) The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of both parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or by e-mail attachment of a scanned document is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement.
- (j) The descriptive headings of the sections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
- (k) The laws of the State of California (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.
- (l) **WAIVER OF RIGHT TO 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 other legal proceeding arising out of or relating to this Agreement and the transactions it contemplates. This waiver applies to any action or legal proceeding, whether sounding in contract, tort, or otherwise.**
- (m) SMI represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.
- (a) SMI maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for SMI, to solicit or secure this Agreement. Further, SMI warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for SMI, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this

Agreement. For breach or violation of this warranty, CDA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CDA, during the term of his or her service with CDA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

IN WITNESS WHEREOF, the parties hereto execute this Agreement effective as of the Effective Date.

[Chino Basin Desalter Authority]

Specialty Minerals Inc.

By: _____
Name: _____
Title: _____
Email: _____

By: _____
Name: _____
Title: _____
Email: _____

APPENDIX A

SMI Product Specifications



Specialty Minerals, Inc.
Lucerne Valley, California

Document ID: LV-FPS-043 Rev 3

Product name: Vical® 4005

Chemical Formula: CaCO₃

Mineral Class: Calcite

Particle Shape: Rhombohedron

Product Specifications (These properties determine "acceptance" or "rejection")

PROPERTY	MIN	MAX	TYPICAL	PROCEDURE
Dry Brightness	77.0	~	80.0	LV-TEST-14
Dry Color (b)	4.0	7.0	5.3	LV-TEST-14
+20 Mesh (Cumulative %)	~	0.0	0.0	LV-TEST-05
+40 Mesh (Cumulative %)	~	5.0	2.7	LV-TEST-05
+100 Mesh (Cumulative %)	80.0	100.0	96.6	LV-TEST-05
-200 Mesh (%)	~	5.0	1.1	LV-TEST-05

Typical Properties (specification limits have not been set)

CHEMICAL ANALYSIS	PHYSICAL PROPERTIES	Particle Size (Cumulative mesh)
CaCO ₃ 98%	Specific Gravity (g/cc) 2.71	+20 0.0
MgO 0.5%	pH 9.5	+30 0.1
Fe ₂ O ₃ 0.05%	% Moisture 0.1	+40 2.7
Al ₂ O ₃ 0.2%		+50 61.1
SiO ₂ 0.5%		+70 88.9
Acid Insoluble 0.7%		+100 96.6
		+140 98.3
		+200 98.9
		-200 1.1

APPENDIX B

Target Pellet Specifications

Physical Properties

100% <u>Passing through</u> a 20 mesh screen	0.7-0.8 mm (Target)
Hunter Whiteness L*	NLT 92.0
Hunter b*	NMT 2.0

Chemical Properties

% CaCO ₃ (XRF)	NLT 93.0%
% Fe as Fe ₂ O ₃ (XRF)	NMT 0.05%
% Mg as <u>MgO</u> (XRF)	NMT 2.0%
% Si as SiO ₂ (amorphous by XRF)	NMT 1.0%
% Crystalline Silica (by XRD)	NMT 0.1%
% Al as Al ₂ O ₃ (XRD)	NMT 0.1 %

NMT = Not More Than

NLT = Not Less Than

APPENDIX C

Example

BASIC CALCULATION EXAMPLE FOR POSITIVE SALES MARGIN TO CDA:

Positive Sales Margin = SMI's Total Sales Revenue Less SMI's Costs For Bringing Pellets To Market Based On GAAP.

Annual Positive Sales Margin To CDA Will Be 35% OF The Total Of Positive Sales Margin Generated On SMI Revenue Sales Plus \$3.00/ton For Any Pellets Used As An Ore Offset To SMI.

CDA Share OF Positive Sales Margin	35%						
Pellet Fee As Ore Offset/per ton	\$3.00						
Example based on 10000 tons of pellets available to SMI	Tons	SMI Selling Price/ton	Costs to bring to market (GAAP)/ton	Positive Sales margin/ton	CDA Positive Sales margin share/ton	Ore Offset pellet fee to CDA/ton	Annual Positive Sales Margin for CDA
SMI Annual sales of product based on a selling price of \$85.00 ton	5000	\$85.00	\$40.00	\$45.00	\$15.75		\$78,750.00
Pellets sent to Lucerne and consumed as Ore Offset - no new positive sales margin business.	5000					\$3.00	\$15,000.00
Total:							\$93,750.00