



# Port Hueneme Water Agency

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August 1, 2017

Kai Luoma  
Executive Officer  
Ventura Local Agency Formation Commission  
Hall of Administration, 4<sup>th</sup> Floor  
800 S. Victoria Avenue  
Ventura, CA 93009-1850

Re: Copy of Joint Powers Agreement

The Port Hueneme Water Agency is submitting a copy of the Joint Powers Agreement, and any amendment(s) to the agreement, as specified by Senate Bill No. 1266's new filing requirements.

Sincerely,

Steven Hickox  
Water Operations Manager



**AGREEMENT FOR FORMATION OF**

**A JOINT POWERS AGENCY**

**(PORT HUENEME WATER AGENCY)**

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AGREEMENT FOR FORMATION OF  
A JOINT POWERS AGENCY

(PORT HUENEME WATER AGENCY)

This Agreement For Formation of a Joint Powers Agency ("Agreement"), is made and entered into by and between the City of Port Hueneme, a municipal corporation ("City") and the Channel Islands Beach Community Services District, a community services district ("District"), (collectively "Members"), pursuant to Section 6500 et seq., of the Government Code, and other applicable law and with reference to the following recitals:

The parties hereby agree as follows:

Section 1. Recitals. This Agreement is made and entered into with respect to the following facts and in recognition of the following purposes:

a. There is an urgent need for area-wide planning, coordination, development, financing, construction, and operation of a joint water desalination and softening plant and necessary transport facilities ("water facilities") to service the Members and the U.S. Navy ("Navy") installations at the Construction Battalion Center-Port Hueneme ("Navy CBC") and the Naval Air Warfare Center-Pt. Mugu ("NAWC Pt. Mugu").

b. Seawater intrusion in the geographic areas of the Members and prospective Navy customers has threatened the lower system aquifers traditionally used for groundwater extractions, and it is environmentally beneficial to look for methods of decreasing such extractions and providing for alternative water supply sources.

c. The public interest makes it desirable that development and operation of water facilities within the political boundaries of the Members be coordinated, which can be accomplished by means of a Joint Powers Agency involving the active participation of both Members.

d. Each of the Members, by and through its legislative body, has determined that a joint powers agency to accomplish the planning, development, financing, construction, and operation of water facilities is in furtherance of the public interest, convenience and necessity.

e. The legislative body of each of the Members has independently determined that the public interest, convenience and necessity makes desirable the execution of this Agreement by and on behalf of the Members.

Section 2. Creation of Separate Legal Entity. It is the intention of the Members to create, by means of this Agreement, a separate legal entity, the Port Hueneme Water Agency within the



meaning of Section 6503.5 of the Government Code. Accordingly, there is hereby created a separate legal entity which shall exercise its powers in accordance with the provisions of this Joint Powers Agreement and applicable law.

Section 3. Name. The name of the Agency shall be the Port Hueneme Water Agency ("Agency").

Section 4. Purpose of Agreement. The purpose of this Agreement is to establish a joint powers agency to (i) provide the Members and their prospective Navy customers with an adequate and reliable supply of water to meet future demands; (ii) improve water quality; (iii) in furtherance of any state or federal funds received, conduct water desalination research activities; and (iv) develop a cost-effective means to implement such water quantity and quality through a subregional cooperative venture. The principal purpose of the Agency shall be to acquire real property for, and to construct and operate, an approximate 3.9 mgd water desalination and softening plant and necessary transport facilities ("water facilities") serving the Members, the Navy CBC, and the NAWC-Pt. Mugu. The Members anticipate that the Agency in furtherance thereof and in the best interests of the Members will reach necessary annexation and water purchase and sale agreements with various water districts as necessary and desirable, and will sell water via services contracts to the Navy CBC and the NAWC-Pt. Mugu. A May 1994 Draft Concept Report for the proposed project by Kennedy/Jenks Consultants, entitled "Water Quality Improvement

Program-Port Hueneme Water Agency" is incorporated by reference as if set forth in full herein. This draft report will be replaced by a Final Concept Report upon completion of the planning process as referenced in Section 26 herein. The Members intend and agree that they each respectively shall retain all title and interest in, and responsibility for, their own separate water treatment and distribution facilities, and their respective rights to extract, procure and distribute water (including allocations and credits from the Fox Canyon Groundwater Management Agency and the United Water Conservation District), except as may be otherwise specifically set forth herein or as mutually agreed upon between the Members in future agreements. The term "water facilities" as defined herein is intended to include only those water facilities jointly owned and operated by the Members and does not include their own respective, separate water distribution and treatment facilities.

Section 5. Agency Powers. The Agency shall possess, and may exercise the following general powers:

a. Overall Supervision. The Agency through the Governing Board shall exercise overall supervision and control of all matters pertaining to the Agency pursuant to the terms of this Agreement and applicable law. In the exercise of such authority, the Agency shall act solely on behalf of the Members.

b. Specific Authority and Duties. The Agency shall possess those powers expressly set forth in Chapter 5 of Division 7 of the Title 1 of the Government Code, commencing with Section 6500, and other applicable laws and this Agreement, including the following:

(1) Formation of the Agency and its Governing Board;

(2) Formation of an Operating Committee and appointment of City as the Agency Operator, and the operation of the Agency water facilities pursuant to the Agency Operating Agreement attached hereto as Exhibit "A" and incorporated by reference herein;

(3) Acquire real property and construct the water facilities;

(4) Reach agreement with the City of Oxnard for the construction and operation of the water facilities within that city's boundaries, except that the Agency shall not have the authority to interconnect its water facilities with the City of Oxnard to receive non-emergency water service, or otherwise receive such service (interconnection designed for limited duration receipt of water by the Agency during emergencies, and receipt of such water, is permitted);

(5) Act as applicant for the annexation to the Calleguas Municipal Water District ("CMWD") and the Metropolitan Water District of Southern California ("MWD") of the geographical areas served by the Members and the reaching of water purchase and

sale agreements with said districts (including obtaining LAFCO determination of no voter approval needed);

(6) Reach agreement with the United Water Conservation District ("UWCD") for Agency use of and water delivery to the Agency through the UWCD's Oxnard-Hueneme Pipeline, and transfer of rights to state water entitlements from UWCD to the Agency;

(7) Enter into utility service (water service) contracts with the Navy CBC and NAWC-Pt. Mugu, and other service contracts as authorized by the Governing Board;

(8) Subject to the terms and conditions herein, enter into agreement(s) for the financing and construction of the water facilities;

(9) Authorize commencement of appropriate joint environmental review pursuant to the California Environmental Quality Act ("CEQA"), as required, and the National Environmental Policy Act ("NEPA"), as required, for acquisition of real property and construction of the water facilities by the Agency; and

(10) Authorize the collection of revenues, pursuant to a budget approved by the Governing Board, which revenues shall recoup the capital and operation and maintenance costs of the water facilities;

(11) Subject to the approval of the Fox Canyon Groundwater Management Agency, authorize transfer of pumping allocation and groundwater storage and conservation credits to the United Water Conservation District ("UWCD") and to the CMWD (provided that nothing herein shall be construed as requiring

Members to transfer such credits, rights or entitlements to the Agency);

(12) Authorize Agency's discretionary transfer of rights to all or a portion of its state water entitlements to the MWD or other parties;

(13) Provide for entry into new or assignment of existing professional services consultant contracts to the Agency;

(14) Provide for the issuance of Agency revenue bonds or the incurring of Agency indebtedness pursuant to the provisions of Article 2 of Chapter 5 of Division 7 of Title 1 of the Government Code, commencing with Section 6540;

(15) Provide for the keeping of Agency books and records and accounting of Agency funds in accordance with generally accepted accounting principles applicable to governmental agencies;

(16) Authorize the Agency's application for and receipt of state and federal funds for the construction and operation of the water facilities.

(17) Provide for directors fees in the statutory amount for Governing Board meetings;

The Agency shall in addition have all implied powers necessary to exercise these functions. The Agency through the Governing Board shall exercise its power only in a manner consistent with the provisions of this Agreement, the Bylaws and applicable law.

Section 6. Creation of Agency Governing Board. There is hereby created a Governing Board for the Agency ("Governing

Board") to conduct the affairs of the Agency. The Governing shall consist of five (5) directors, constituted as follows:

a. Designation of Regular Directors and Alternate Directors of Governing Board. The City shall designate three (3) members of its legislative body, and the District shall designate two (2) members of its legislative body, to be Regular Directors of the Governing Board. City and District shall each designate one (1) additional member from their respective legislative bodies to act as their respective Alternate Director of the Governing Board.

b. Eligibility. No person shall be eligible to serve as a Regular Director or an Alternate Director of the Governing Board unless that person is at all times an appointed or elected, and qualified, member of the legislative body of one of the appointing Members. Should any person serving on the Governing Board fail to maintain this required status, that person's directorship on the Governing Board shall be deemed vacated as of the date such person ceases to qualify pursuant to the provisions herein.

c. Attendance Fee. Each Director shall receive a fee of \$50 for attendance at each Governing Board meeting. Maximum monthly compensation to any directors shall be limited in accordance with applicable law.

Section 7. Duties of the Governing Board.

a. The Governing Board shall be deemed, for all purposes, the policy making body of the Agency. All of the powers of the Agency, except as may be expressly delegated to the Operating Committee, the Operator or others, pursuant to the provisions of this Agreement, the Governing Board's Bylaws or by specific action of the Governing Board are reserved to and, shall be exercised by and through the Governing Board.

b. The Governing Board shall decide and take action on all matters pertaining to Agency Operations including, but not limited to those matters set forth in Section 5, including the following:

(1) The method of all Agency operations, including authorization for water facilities construction, professional consultant services and other contracts.

(2) The acquisition of real property interests and the construction of water facilities as defined in Section 4.

(3) The annexation of the geographical areas of the Members, and intended Navy customers, to the CMWD and MWD; water sale and purchase agreements with water districts, including CMWD, MWD and UWCD; and agreements with the City of Oxnard for the construction and operation of the water facilities within that city's boundaries and the disposal of wastewater from the water facilities.

(4) Approval of an annual budget.

(5) Transfer of capacity rights in the water facilities by Members to any third parties.

(6) The financing of Agency water facilities.

(7) Admission of new Members or customers.

(8) Other than as previously approved through the budget process, the making of any single capital or equipment expenditure in excess of Twenty-five Thousand Dollars (\$25,000). Any non-budgeted expenditure in excess of Ten Thousand Dollars (\$10,000) requires an informational expenditure report to be furnished to the Governing Board.

(9) The selling or otherwise disposing of any major item of surplus Agency Equipment, if the current price of new equipment similar thereto is Twenty-Five Thousand Dollars (\$25,000) or more.

(10) The designating of a representative to appear before any court or regulatory agency in matters pertaining to Agency Operations (however, such designation shall not prevent any Member from appearing in person or from designating another representative in its own behalf).

(11) The expansion of Agency Operations, i.e. the admission of new Members, the sale of water to new customers not initially described by this Agreement, and the construction of new pipeline or plant facilities not initially described by this Agreement.



(12) The accounting for, and auditing and investment of Agency funds in accordance with generally accepted accounting principles applicable to governmental agencies.

(13) The recommendation for termination or amendment of this Joint Powers Agreement.

(14) The express authorization to Agency Operator to enter into, on behalf of Members, such agreements with third parties as the Members shall determine are necessary or desirable to provide for the acquisition of an adequate and reliable supply of good quality water and, when possible, the resale of such water to third parties.

Section 8. Governing Board Proceedings.

a. Quorum. A quorum of the Governing Board shall consist of three (3) regular directors, and in the absence of a regular director, an alternate or alternates.

b. Regular Directors. Regular Directors appointed by the respective Members pursuant to Section 6 herein shall be entitled to each cast one (1) vote on all matters pending before the Governing Board, provided that the Regular Director is physically present at the meeting of the Governing Board.

c. Alternate Director. Alternate Directors appointed by their respective Members pursuant to Section 6 herein shall be entitled to attend and each cast one (1) vote on all

matters pending before the Governing Board, in the absence of a Regular Director of that respective Member.

d. Actions; Voting. Except as specified herein or where required by applicable law, actions taken by the Governing Board shall be by not less than a majority vote of the total voting membership of the Governing Board, i.e. three (3) votes.

e. Admittance of New (Non-Member) Customers. The approval of water service or distribution to new customers, i.e. other than the Navy CBC, NAWC-Pt. Mugu and CMWD shall be handled in the following manner: Before a new non-member customer is admitted, the Governing Board shall, at the request of any two (2) directors of the Governing Board, retain an engineering firm to prepare a professional evaluation to assist the Governing Board in its determination whether or not to admit the non-member customer. The Governing Board shall consider such evaluation during its deliberations concerning admission of the non-member customer. The cost of such evaluation shall be borne by the prospective customer. If the Governing Board votes to admit a new non-member customer over the objection of a Member, the withdrawal provisions of Section 8.f. are available to the objecting Member.

f. Withdrawal From Participation In Certain Agency Actions. (1) Certain actions [described in subparagraph (4) below] by the Governing Board are considered to be of such nature that either the District's Board of Directors or the City's Council may

elect to withdraw and not be bound by, or participate in such action. Such election to withdraw must occur within thirty (30) days of the Governing Board's determination to take such action. However, if the Member decides to request a professional evaluation of the action as set forth in subparagraph (3) herein, the Member may elect to withdraw from the action in accordance with the timeline as set forth in subparagraph (3).

(2) The withdrawal of a Member from an Agency action shall not in any way affect its status as a Member or its volumetric capacity rights (expressed in million gallons per day or gallons per minute) in the water facilities as set forth in Exhibit "C" [refer to Section 17.b.] or discharge, impair or modify the obligations of the withdrawing Member in existence prior to and subsequent to its withdrawal except that the withdrawing Member shall not be liable for debts, liabilities or obligations of the Agency, or any costs to Agency resulting from the specified action. The non-withdrawing member will be responsible to develop accounting procedures in accordance with generally accepted accounting principles within sixty (60) days to assure that any and all costs incurred for the contested action will be the sole responsibility of the non-withdrawing Member. The accounting procedures will be presented in writing to the withdrawing Member and become the basis for a compliance section of the annual audit. The Agency's Independent Auditor will be responsible to express an opinion that costs have been allocated in accordance with the written procedures.

(3) Notwithstanding anything to the contrary herein a Member may request a professional evaluation at its expense from a duly qualified expert regarding the activities described below if the Member disagrees with a Governing Board determination. Such an evaluation may be provided to the Governing Board not later than twenty (20) days after its questioned determination. The Governing Board shall review the questioned determination and shall give the evaluation full consideration in such review, but shall not be bound by such evaluation. If upon its review the Governing Board affirms its initial determination to take such action, a Member shall thereafter have ten (10) days from the date of such affirmance to withdraw from the action. The Governing Board's questioned determination will be stayed during the evaluation process unless in the opinion of the Governing Board failure to immediately implement the action would cause the Agency substantial harm or loss of significant economic opportunity.

(4) For purposes of this subsection f., "actions" include the following:

(a) Capital Expenditures. Approval for any capital expenditure or equipment, other than those approved as part of the Agency's annual budget, in excess of Twenty-five Thousand Dollars (\$25,000).

(b) Acquisition of Real Property Rights. Acquisition of interests in real property (including fee ownership and easement rights) other than those interests acquired for the construction of the water desalination plant and necessary transport facilities.

(c) Expansion and/or Modification of Water Facilities. Except as required by law, subsequent expansion and/or modification of any of the water facilities initially constructed pursuant to this Agreement, beyond their initial original design capacity.

(d) Agency Debt Issuance. Issuance of Agency debt through revenue bonds or other debt instruments as set forth in Section 21.b.

g. Actions Benefiting One Member. The provisions of subsection f. shall not apply to actions undertaken by the Agency (e.g. expansion of or modification to the water facilities; capital expenditures; and acquisition of real property rights; as well as specific Budget items) brought by and solely benefiting City as Member, wherein City (and not Agency) takes sole financial responsibility, on a several basis, for the action and all costs associated therewith (including any consequential financial impacts suffered by District as an Agency Member thereby). Further, the City agrees that through the Governing Board it shall agree to any action undertaken by the Agency (e.g. expansion of or modification

to the water facilities; capital expenditures; acquisition of real property rights; as well as specific Budget items) brought by and solely benefiting District as Member, wherein District (and not Agency) takes sole financial responsibility, on a several basis, for the action and all costs associated therewith (including any consequential financial impacts suffered by City as an Agency Member thereby). Any such actions taken as described herein shall not impact or alter the non-participating Member's volumetric capacity rights (expressed in million gallons per day or gallons per minute) in the water facilities as set forth in Exhibit "C" [refer to Section 17.b].

h. Consultation in Event of Dispute. Should there be two (2) directors of the Governing Board who dissent from the Board majority concerning: (a) a method of procurement for the construction of the water facilities (e.g. design-bid-build, design-build, competitive negotiation, etc.); or (b) the agreements and amendments (e.g. change orders) thereto for the initial construction of the water facilities; or (c) whether expansion and/or modification of the water facilities is required by law, the Governing Board at Agency expense shall consult with a nationally-recognized professional engineering firm regarding those matters being considered by the Governing Board and any alternatives thereto. In making decisions pertaining to these issues, the Governing Board shall consider, but shall not be bound by, the recommendations of such engineering firm.

i. Roberts Rules of Order. The substance of Roberts Rules of Order shall apply to proceedings of the Governing Board, except as may otherwise be provided in this Agreement, the Bylaws or applicable law.

j. Meetings of Governing Board. The Governing Board, by means of the adoption of Bylaws, shall establish the dates and times of regular meetings of the Governing Board. Its regular meetings shall be held not less than four (4) times during each calendar year during the term of this Agreement, once per calendar quarter. The location of each such meeting shall be as directed by the Governing Board.

k. Election of Chair and Vice-Chair.

(1) Annually at its first regular meeting of a calendar year, the Governing Board shall select one of its regular directors to hold the position of Chair of the Governing Board, and a second regular director to hold the position of Vice Chair of the Governing Board. The Chair shall conduct all meetings of the Governing Board and perform such other duties and functions as required of such person by this Agreement, the Bylaws or the Governing Board. The Vice Chair shall serve as Chair in the absence of the Chair and shall perform such duties as may be required by this Agreement, by the Chair, the Governing Board or the Bylaws.

(2) At the first organizational meeting of the Governing Board, a regular director designated by the City pursuant

to Section 5.a. shall be elected as Chair of the Governing Board and a regular director designated by the District pursuant to Section 5.a. shall be elected as Vice Chair of the Governing Board, for terms expiring on the date of the first regular meeting of the Governing Board held in 1996.

(3) Thereafter, the Chair and Vice Chair positions on the Governing Board shall be rotated on an annual basis between regular directors from the City and District, respectively. Following the initial period, the parties agree that the position of Chair of the Governing Board shall be filled by a regular director from the City in odd-numbered calendar years beginning in 1997 (1997, 1999, etc.), and by a regular director from the District in even-numbered calendar years beginning in 1996 (1996, 1998, etc.). Conversely, the Vice-Chair position shall be filled by a regular director from the City in even-numbered calendar years beginning in 1996 (1996, 1998, etc.) and by a regular director from the District in odd-numbered calendar years beginning in 1997 (1997, 1999, etc.).

(4) If there is a vacancy, for any reason, in the position of Chair or Vice Chair, the Governing Board shall forthwith conduct an election and fill such vacancy for the unexpired term of such prior incumbent, from either the regular directors of City or District depending on the year of vacancy.

Section 9. Designation of Treasurer and Auditor. The Governing Board shall designate the City's Treasurer or other qualified person to act as the Treasurer and Auditor for the



Agency. The compensation, if any, of a person or persons holding the office of Treasurer and Auditor shall be as set by the Governing Board of the Agency.

Section 10. Annual Financial Audit Requirement. The person holding the position of Treasurer of the Agency shall be in charge of the depositing and custody of all funds held by the Agency. The Treasurer shall perform such other duties as may be imposed by, and in strict accordance with, applicable law, including those duties described in Section 6505.5 of the Government Code, and such duties as may be required by the Governing Board. The Agency's Treasurer and Auditor shall cause an annual financial audit of the Agency's accounts and records, performed in accordance with the standards in Section 6505 of the Government Code, to be made by an independent certified public accountant not otherwise under contract to City or District. The Agency's Auditor shall also perform such other functions as may be required by applicable law, this Agreement, the Bylaws and direction of the Governing Board.

Section 11. Agency Secretary. The Governing Board shall designate the City Clerk or other qualified person to act as Secretary to the Governing Board. The secretary shall act as custodian for all Agency records and exercise other duties as deemed appropriate by the Governing Board.

Section 12. Operating Committee.

a. Creation. There is hereby created an Operating Committee for the Agency ("Operating Committee"). The purpose of the Operating Committee is to provide technical assistance to and monitor the activities of the Agency Operator and to report to the Governing Board.

b. Membership. The Operating Committee membership shall be comprised solely of staff of the Members and Agency customers, as follows:

(1) For the City: (a) the City Manager; and (b) at the City Manager's discretion, one other city employee or designee. The City Manager shall act as the Executive Director of the Operating Committee and shall chair its meetings.

(2) For the District: (a) the District Manager; and (b) at the District Manager's discretion, one other district employee or designee.

(3) For Customers of the Agency (including, if applicable, the CBC-Port Hueneme and the NAWC-Pt. Mugu): one representative for each customer.

The time, costs and expense (including salaries) associated with Operating Committee members' preparation for and participation at Operating Committee meetings shall not be chargeable to the Agency.

c. Consultant Expenses. The costs and expenses associated with professional services consultants hired by the Agency to assist the Operating Committee shall be chargeable to the Agency.

d. Advisory Function. The Operating Committee shall serve only in an advisory function, unless specific authority is otherwise granted by the Governing Board.

e. Meetings. The Members agree that at a minimum, the Operating Committee shall meet on a monthly basis from the date of this Agreement through the period twelve (12) months following the start-up of operations of the water desalination facility contemplated hereby, and thereafter on a as needed basis unless otherwise mutually agreed. The Operating Committee members may meet more frequently as they deem advisable or upon a meeting being called by either City or District.

Section 13. Direction of Operating Committee and Other Officers and Employees. The Governing Board may direct the actions of the Operating Committee and employ such other officers or employees or consultants as it deems appropriate and necessary to conduct the affairs of the Agency. The City Manager of the City shall serve as Executive Director of the Agency. The Executive Director of the Agency shall perform such duties as may be imposed upon that person by this Agreement, the Bylaws, other applicable law express direction of the Governing Board.

Section 14. Agency Operator. The Agency Operator ("Operator") shall be the City, acting as operator and not as Member. The terms of the Operator's authority are contained in the Agency Operating Agreement ("Exhibit A"). In the event the City determines it no longer desires to be the Operator the Governing Board shall appoint a new Operator. If the Members are not in agreement as to the selection of a new Operator, the Members at Agency expense shall consult with an independent third party knowledgeable in water treatment operations agreed upon by both Members regarding the selection of a new Operator.

Section 15. Use of Public Funds and Property. Consistent with applicable law, the Agency shall be empowered to utilize for its purposes, public and private funds, property and other resources received from the Members and from other sources.

Section 16. Operational Audits. In addition to annual financial audits in accordance with Section 10, the Governing Board shall cause an audit of all Agency operations to be performed at Agency expense every five (5) years during the term of this Agreement, with the first such audit to be performed one (1) year after the start up of the water desalination plant. If either City or District desire that such an audit be conducted on a more frequent basis, the audit shall be performed and the Member proposing the audit shall bear its expense.

Section 17. Financial Obligations of Members. The various costs referenced in subsection a. herein refer to costs incurred after the effective date of this Agreement.

a. Definitions.

(1) "Capital Construction Costs" refers to all costs associated with construction of the water facilities, including design engineering, legal, environmental review and construction management services incidental to the construction, maintenance of joint protection insurance, and monies paid to contractors for construction. Cost of acquisition of real property interests in connection with the water facilities shall not be considered a capital construction cost.

(2) "Fixed Operations and Maintenance Costs" refers to costs for insurance; operations and engineering consultant fees; Agency legal fees; laboratory expenses; and water facility operations and maintenance costs incurred regardless of the amount of water purchased or distributed by the water facilities, including accounting, personnel and general management costs and expenses of Operator attributable to Agency operations. Refer to Exhibit "B", attached and incorporated by reference, for examples of fixed and variable operation and maintenance costs.

(3) "Variable Operations and Maintenance Costs" refers to costs (a) for power; (b) for chemicals; and (c) varying with the amount of water purchased or distributed or waste disposed of by the water facilities for (i) water facility operations and

maintenance costs, (ii) water purchase and distribution and waste disposal costs, and (iii) accounting, personnel and general management costs and expenses of Operator attributable to Agency operations. Refer to Exhibit "B" for examples of fixed and variable operation and maintenance costs.

(4) "Replacement Costs" refers to the cost of new facilities or equipment which replaces or augments existing facilities or equipment. "Replacement costs" do not include minor maintenance or repair items included in Operations and Maintenance Costs.

(5) "Real Property Acquisition Costs" refer to all costs associated with Agency acquisition of real property interests, including fee title to real property and easements or other interests. Such costs include compensation and damages paid to the landowner(s), appraisal costs, legal fees and court costs related to condemnation, if any.

(6) "Debt Service Costs" refers to those costs incurred by the Agency to cover financing of the water facilities.

b. Obligations of Members.

(1) Capacity Rights. The following costs shall be prorated between the Members in accordance with their capacity rights in each of the water facilities referenced in Exhibit "C" attached and incorporated by reference:

- (a) Capital construction costs;
- (b) Replacement costs;
- (c) Real property acquisition; and
- (d) Debt service costs.

(2) Fixed Operations and Maintenance Costs.

Fixed operations and maintenance costs shall be annually apportioned to the Members based on their respective aggregate share of all of the water facilities as referenced in Exhibit "C."

(3) Facilities Output. The following costs (i.e. net costs after changes to non-member customers) shall be prorated between the Members in accordance with the respective annual delivery, on a per acre foot basis, of water from the water facilities to each Member:

(a) Variable Operations and Maintenance Costs.

(4) Cost Allocation. Exhibit "C" includes a preliminary estimate of the allocation of capital construction and real property acquisition costs for each of the water facilities. Final allocation of all costs referenced in subsection b.(1)(a) through (d), respectively, shall be apportioned among the Members in accordance with actual costs approved by the Governing Board.

c. Agency Funds. All funds of Agency shall be separately accounted for and not commingled with any funds of the City. Accounting for all Agency funds (revenues and expenditures alike) shall be done by the City separately from the accounting done by City as Agency Operator and in accordance with generally accepted accounting principles applicable to governmental agencies. Costs for such Agency accounting shall be an expense chargeable to the Agency.

Section 18. Capacity Rights in Water Facilities.

a. The right to use a portion of each of the water facilities to be constructed and operated by the Agency, and the right to take water produced and available from each of the facilities, shall be apportioned between the Members in accordance with Exhibit "C" to this Agreement.

b. Each Member, individually, shall own an undivided interest, equal to its pro rata contribution, in all property and facilities acquired or otherwise taken over by Agency. City shall bear financial responsibility for and all rights to the portion of the water facilities capacity attributable to its own capacity and the capacity attributable to Agency customers, including the Navy-CBC and NAWC-Pt. Mugu. District shall bear financial responsibility for and all rights to the portion of its water facilities capacity as set forth in Exhibit "C". Capacity rights of the Members shall not be assigned or otherwise transferred by



Agency, although it is recognized that each Member subject to its obligations hereinunder may transfer such rights.

Section 19. Desalination and Softening Facilities. The method of procurement and construction of the water facilities to the Agency shall be as determined in the best interests of the Agency by the Governing Board. The desalination and softening plant shall be designed and Operator shall endeavor to operate the plant, to produce high-quality potable water not exceeding 370 mg/l TDS and 150 mg/l hardness. The Members acknowledge that water ultimately derived from the water desalination and softening plant may be blended with water from CMWD which water may vary slightly from these values.

Section 20. Control and Investment of Agency Funds. The Governing Board shall adopt a policy for the control and investment of its funds and shall require strict compliance with such policy. The policy shall comply, in all respects, with all provisions of applicable law.

Section 21. Obligations of Agency Members.

a. Several Liability. Members' responsibility for the debts, liabilities and obligations of the Agency shall be strictly several, and not joint and several, and nothing herein shall be construed as creating any type of partnership, joint venture, association or trust between the Members. City and

District shall respectively bear such Agency debts, liabilities and obligations in the aggregate proportions set forth in Exhibit "C" and in accordance with the respective financial responsibilities of the Members as referenced in Section 18.b., except to the extent that the indemnification provisions of Section 23 may alter such several responsibility.

b. Agency Debt Financing. The Agency shall be empowered to issue revenue bonds or incur Agency indebtedness ("debt") pursuant to the provisions of Article 2 of Chapter 5 of Division 7 of Title 1 of the Government Code, commencing with Section 6540. It is expressly agreed, however, that any Member may elect not to participate in such Agency issuance of debt and upon its non-participation the Member shall not incur any financial obligation for such debt pursuant to Government Code sections 6547.5 and 6547.6, whether directly in its own name or indirectly through its status as an Agency Member.

Section 22. Indemnity Obligations. City acknowledges that it is Agency Operator pursuant to this Agreement and that it shall undertake direct responsibility for the construction, operation and maintenance of the water facilities intended by this Agreement. City as Operator and not as a Member shall at its own expense indemnify, defend and hold District harmless from all liabilities, claims, demands, costs, penalties, fines, losses, actions and proceedings arising from any act, error or omission caused by the sole negligence of, or the gross negligence or

willful misconduct of, City or its officers, employees or agents. For purposes of this section, City shall not be deemed "solely negligent" for an act, error or omission if it acted in accordance with directions of the Governing Board or the Operating Committee. In no event shall the City's obligation to the District exceed the greater of \$2,000,000 or the then-current replacement cost of the District's capacity rights in the water facilities as referenced in Exhibit "C".

Section 23. Insurance.

a. The Agency in its name shall procure and keep in full force and effect during the term of the Agreement comprehensive general liability insurance protecting the Agency and individual Members, and their directors, officers, employees, and agents, against any liability arising out of the activities contemplated by this Agreement, including the construction, operation and maintenance of the water facilities. Such liability insurance shall have a combined single limit for bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, in addition to coverage for all defense costs. The Agency, its Members and any other individuals or entities as determined by the Governing Board shall be listed as insureds and the coverage shall be primary to the coverage afforded by any individual Members' policies, if such policies apply in the event of any occurrence. Insurance policy(ies) issued hereunder shall not be cancelable or subject to reduction of coverage or

other modification except upon thirty (30) days' prior written notice to Agency and its Members.

b. In addition to such insurance as set forth in (a), City in its capacity as Operator of the water facilities shall add District and Agency as additional insureds to City's general liability policies which cover City's activities as Operator. City's policies shall be deemed primary to any applicable coverage afforded by District's policies.

Section 24. Pre-Agency Formation Costs. The parties acknowledge that each Member has incurred substantial pre-formation costs benefiting the Agency. The Members agree to each identify the amount of pre-Agency formation costs respectively incurred and upon mutual agreement each Member shall submit to the Agency an invoice for such costs.

Section 25. Term. This Agreement and Agency created pursuant to this Agreement shall continue in existence from the effective date hereof for a period coinciding with the term of the Agency's water purchase and sale agreement with UWCD, but not less than twenty-five (25) years, when it shall terminate, unless earlier terminated by: (a) mutual agreement of the Members; or (b) the District, as set forth in Section 26.

Section 26. Termination of Agreement During Planning Process.

a. The Members acknowledge that this Joint Powers Agreement is being entered into as a first step in undertaking a subregional water supply process and that many institutional arrangements must be negotiated and reached regarding annexation of their respective geographical areas to the CMWD and MWD; the purchase from and sale of water to CMWD and the UWCD; the sale of water via utility services contracts to the Navy CBC and NAWC-Pt. Mugu; the construction and operation of water facilities within the City of Oxnard; and the disposal of wastewater from the water facilities. The Members agree to use their best efforts to work cooperatively in mutually negotiating and reaching such arrangements with third parties. The Members acknowledge their intent to execute all such institutional arrangements simultaneously, as one series of agreements.

b. The Members also anticipate that the design engineering and environmental review process for the water facilities, together with negotiating and reaching the institutional arrangements cited in subsection a. herein (collectively "planning process"), needs to commence immediately and will last during the balance of calendar year 1994 and perhaps thereafter.

c. Prior to execution of the Agency annexation and water purchase and sale agreements with CMWD, MWD and UWCD, and

within twenty (20) days of the presentation of each of the agreements by those respective districts to the Agency for consideration, each of the respective legislative bodies of the Members may meet to consider and decide whether to approve the agreements upon majority vote. If any of the agreements are disapproved by either Members' Legislative body, the Member disapproving such agreement(s) shall be deemed to have terminated this Agreement pursuant to subparagraph f. herein.

d. The Members also acknowledge that other conditions encountered during the planning process may increase the cost of the water facilities, or present other obstacles, to the point where either Member may wish to terminate its participation in the Agency. The Members agree that up to the time that bid(s) are accepted and a contract is awarded by the Governing Board for construction of the water facilities, either Member may unilaterally, without penalty, terminate this Agreement, whereupon the Agency shall cease to exist.

e. If either Member elects to terminate this Agreement, it shall do so by written notice directed to the other Member.

f. If a Member elects to unilaterally terminate this Agreement, the withdrawing Member shall be responsible for, and shall pay to the other Member, the withdrawing Member's share of all capital construction costs (including design engineering,

environmental review and professional consultant services) and real property acquisition costs (with the proportionate value of real property being returned to the withdrawing Member upon resale of the Property) incurred by the Agency before the date of termination.

g. Upon such termination, District and City may in their discretion reach a mutually acceptable water sales contract whereupon City will provide water to District. City and District pledge to use their good faith effort to reach such an agreement, but nothing herein shall be construed as binding or obligating the parties to reach such an agreement.

Section 27. Unilateral Withdrawal of Agency Member. A Member may unilaterally withdraw from this Agency by filing its written notice of withdrawal with the Chair of the Governing Board, not less than eighteen (18) months before effective date of withdrawal. The withdrawal of a Member shall not in any way discharge, impair or modify the long term debt obligations of the withdrawing Member in existence as of the effective date of its withdrawal. The withdrawing Member shall not be liable for debts, liabilities or obligations of the Agency resulting from decisions made or actions taken subsequent to the date of withdrawal. The withdrawing Member shall not be liable for fixed operation and maintenance costs of the water facilities after the effective date of its withdrawal. Withdrawal of a Member shall not affect the remaining Member(s) who shall administer the Agency as they deem in

its best interests necessary. A withdrawing Member shall not be entitled to the return of any funds or other assets belonging to the Agency, until the effective date of termination of this Agreement. A withdrawing Member may continue to receive water from the Agency provided that there is agreement between the parties as to the terms thereof.

Section 28. New Members. New Members may be admitted to the Agency upon the majority vote of both of the Members' legislative bodies, provided that such a proposed new Member is a public entity whose jurisdiction lies within, and/or immediately adjacent to, the boundaries of the County of Ventura. Admission to membership shall be subject to such terms and conditions as the Governing Board as may deem appropriate.

Section 29. Disposition of Assets Upon Termination.  
Upon termination of this Agreement pursuant to Section 26:

a. Disposal and Distribution. After payment of or satisfaction of all obligations of the Agency, any assets remaining shall be disposed of or sold by Operator. The proceeds shall be distributed to the Members in the proportion reflecting each Members' capacity rights in each of the water facilities in accordance with Exhibit "C".

b. Valuation. In no event shall the property or equipment be sold in its entirety, without making provision for



repayment of the bonded indebtedness, fixed obligations, or other outstanding obligations of the Agency. Any property to be disposed of, shall have its value fixed by mutual consent between the Members. In the event the Members cannot mutually agree to the value or proportionate division of the value, the value of a party's interest in the property, for purposes of this Agreement, shall be determined by appraisal as follows:

Within five (5) days after the event requiring appraisal, the Members shall jointly appoint an appraiser for that purpose, or failing this joint action, each shall separately designate an appraiser, and within fifteen (15) days after their appointment, the two (2) designated appraisers shall jointly designate a third appraiser. The failure of either Member to appoint its own respective appraiser within the time allowed shall be deemed equivalent to appointing the appraiser appointed by the other Member. No persons shall be appointed or designated an appraiser unless they are an M.A.I., S.R.A. appraiser or registered engineer having expertise in costing the types of water facilities at issue.

If within ninety (90) days after the appointment of all appraisers, a majority of the appraisers concur on the value of the interest being appraised, the appraisal shall be binding and conclusive. If a majority of the appraisers do not concur within that period, the determination of the appraiser whose appraisal is neither the highest nor the lowest, shall be binding and

conclusive. The parties agree to share the appraisal expenses equally.

c. Final Accounting. There shall be a final accounting to Members of the disposition of Agency assets.

d. State Water Entitlements. To the extent permitted by Agency contracts with third parties, Members' rights to use of their respective state water entitlements shall be returned to Members, i.e. 1,600 acre feet per annum to City and 250 acre feet per annum to District.

Section 30. Dispute Resolution. Should a dispute arise between the Members concerning the interpretation or enforcement of this Agreement, and the parties cannot resolve their dispute by negotiation, either party upon written notice may submit the dispute to binding arbitration in accordance with the provisions of Code of Civil Procedure section 1280, et seq. The prevailing party in such arbitration, as determined by the arbitrator, shall be entitled to its fees and costs, including attorney's fees. Arbitrator's costs shall be borne equally by the parties.

Section 31. Application of Laws to Agency Functions. Agency shall comply with all applicable laws in the conduct of its affairs, including, but not limited to: (a) the Ralph M. Brown Act (Section 54950 et seq., of the Government Code); (b) the adoption of a conflict of interest code, pursuant to

Section 87300 of the Government Code; and (c) adoption of Agency guidelines for the implementation of CEQA, pursuant to 14 Cal. Code Regs. Section 15022. Agency shall also establish its own procedures for the selection and award of public works construction contracts, professional services contracts, and purchase of equipment and supplies.

Section 32. Interference With Function of Members. The Governing Board shall not take any action which constitutes an interference with the exercise of lawful powers by a Member of the Agency.

Section 33. Agency Fiscal Year. The Agency's fiscal year shall be from July 1 to June 30.

Section 34. Access to Agency Operations. Each Member shall have access to Agency operations and facilities at all reasonable times to inspect such operations, facilities, and records and data pertaining thereto.

Section 35. Notices. All notices required hereunder shall be in writing and shall be deemed to have been properly served when sent by mail or telegram to the address of the representative of each Member at the following addresses:

For the City: John R. Velthoen  
City Manager  
City of Port Hueneme  
250 North Port Hueneme Road  
Port Hueneme, California 93041

With a copy to: Don G. Kircher, Esq.  
Burke, Williams & Sorensen  
2310 East Ponderosa Drive, Suite 1  
Camarillo, California 93010

For the District: Gerard W. Kapuscik  
General Manager  
Channel Islands Beach  
Community Services District  
353 Santa Monica Drive  
Channel Islands Beach, California 93035-8598

With a copy to: Anthony H. Trembley, Esq.  
Nordman, Cormany, Hair & Compton  
1000 Town Center Drive, 6th Floor  
Post Office Box 9100  
Oxnard, California 93031-9100

or such addresses as either Member may furnish to the other Member from time to time.

Section 36. Amendment. This Agreement may be amended in writing at any time with the consent of all of the then parties thereto.

Section 37. Original, Counterpart, or Other Instrument.  
A Member may become a party to this Agreement by signing the original of this instrument, a counterpart thereof, or other instrument agreeing to become a party hereto. The signing of any such instrument shall have the same effect as if all parties had signed the same instrument. A signatory to this Agreement warrants that such signature is based upon appropriate legal authority to bind such party to this Agreement.

Section 38. Successors and Assigns. This Agreement shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective heirs, devisees, legal representatives, successors, and assigns, and shall constitute a covenant running with the lands, leases, and interest covered hereby.

Section 39. Total Agreement. The Agreement comprises the total understanding and agreement of the parties with respect to the creation and operation of the Agency and no representation, prior or contemporaneous, oral or written, not contained herein shall have any effect with respect to the Agency.

Section 40. Effective Date. The effective date of this Agreement shall be July 20<sup>th</sup>, 1994.

That the Members of this Joint Powers Agreement have caused this Agreement to be executed on their behalf, respectively, as follows:

CITY OF PORT HUENEME

By Orvene J. Carpenter  
Mayor Orvene Carpenter

APPROVED AS TO FORM

Don G. Kircher

City Attorney Don G. Kircher

CHANNEL ISLANDS BEACH COMMUNITY  
SERVICES DISTRICT

By Frank J. Chiella  
Frank J. Chiella  
President, Board of Directors

Attest: Gerard W. Kapuscik  
Gerard W. Kapuscik  
Secretary

APPROVED AS TO FORM

NORDMAN, CORMANY, HAIR & COMPTON

By Anthony H. Trembley  
Anthony H. Trembley  
Legal Counsel for District

**AGENCY OPERATING AGREEMENT**

**PORT HUENEME WATER AGENCY**

**VENTURA COUNTY, CALIFORNIA**

**EXHIBIT "A" TO JOINT POWERS AGREEMENT**

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AGENCY OPERATING AGREEMENT  
PORT HUENEME WATER AGENCY

THIS AGENCY OPERATING AGREEMENT, is made and entered into between the CITY OF PORT HUENEME, a municipal corporation ("City"), and the CHANNEL ISLANDS BEACH COMMUNITY SERVICES DISTRICT, a community services district ("District"), and comprises Exhibit "A" to the Joint Powers Agreement between the parties entered into concurrently herewith.

R E C I T A L S:

1. The parties ("Members") have executed, as of the date hereof, an Agreement for Formation of a Joint Powers Agency ("Joint Powers Agreement") which created the Port Hueneme Water Agency ("Agency") and which, among other things, provides for a separate agreement to be entered into by its Members to provide for Joint Powers Operations as therein defined,

In consideration of the mutual agreements herein set forth, it is agreed as follows:

ARTICLE 1

CONFIRMATION OF JOINT POWERS AGREEMENT

1.1 Confirmation of Joint Powers Agreement. The Joint Powers Agreement is hereby confirmed and by reference made a part of this Agency Operating Agreement. The definitions in the Joint Powers Agreement are adopted for all purposes of this Agency Operating Agreement. If there is any conflict between the Joint Powers Agreement and this Agency Operating Agreement, the Joint Powers Agreement shall govern.

ARTICLE 2

DEFINITIONS

As used in this Agency Operating Agreement:

2.1 Member. Member shall mean a party who agrees to join in and pay its share of the cost of Agency operations conducted under the provisions of this Agency Operating Agreement. Member is a party hereto who is a "Member" as defined in the Joint Powers Authority Agreement. "Member" does not include the Navy CBC, the NAWC-Pt. Mugu, or the Calleguas Municipal Water District.

2.2 Agency Equipment is all personal property, plants, and other facilities and equipment taken over or otherwise acquired for use in Agency Operations.

2.3 Agency Expense is all cost, expense, or indebtedness incurred by Members or Agency Operator pursuant to the Joint Powers Agreement and this Agency Operating Agreement for or on account of Agency Operations.

2.4 Agency Operating Agreement is the agreement entered into by Members, having the same Effective Date as the Joint Powers Agreement entitled "Agreement for Formation of a Joint Powers Agency."

2.5 Agency Operations are all operations conducted pursuant to the Joint Powers Agreement and this Agency Operating Agreement.

2.6 Agency Operator ("Operator") is the City of Port Hueneme, which shall conduct Agency Operations, acting as Operator and not as a Member.

### ARTICLE 3

#### EXHIBITS

3.1 Exhibits. The following exhibit is incorporated herein by reference:

- (a) Exhibit "1" - Operator Accounting Procedures. (If there is any conflict between this Agency Operating Agreement and Exhibit "1," this Agency Operating Agreement shall govern.

## ARTICLE 4

### AUTHORITY AND DUTIES OF OPERATOR

4.1 Right to Operate Agency. Subject to the provisions of this Agency Operating Agreement and the Joint Powers Agreement, Operator shall have the exclusive right and obligation to conduct Agency Operations. Operator shall be strictly accountable to the Agency Governing Board.

4.2 Workmanlike Conduct. Operator shall conduct Agency operations in a good and workmanlike manner as would a prudent Agency water facilities operator under the same or similar circumstances. Operator shall freely consult with Members and the Operating Committee and keep them informed of all matters affecting Agency operations.

4.3 Liens and Encumbrances. Operator shall endeavor to keep Agency real property interests and Agency plant and equipment free from all liens and encumbrances occasioned by Agency Operations, except the lien and security interest of Operator granted hereunder.

4.4 Employees. The number of employees used by Operator in conducting Agency Operations, their selection, hours of labor, and compensation shall be determined by Operator. Such employees shall be the employees of Operator unless otherwise mutually agreed upon between the Members.

4.5 Records. Operator shall keep correct books, accounts, and records of Agency Operations in accordance with generally accepted accounting principles applicable to governmental agencies. Operator shall render a strict accounting of all funds to the Governing Board and shall report on all receipts and expenditures for review and audit by the Members.

4.6 Reports to Members. Operator shall prepare and furnish Members with periodic reports on all material aspects of Agency Operations. These reports shall be prepared at least quarterly, or more often upon Governing Board request, and presented to the Governing Board prior to its quarterly meetings.

4.7 Reports to Governmental Authorities. Operator shall make all reports to governmental authorities which it has the duty to make as Operator and shall also provide copies of such reports to the Governing Board.

4.8 Expenditures. The Operator is authorized to make expenditures in accordance with the annual budget approved by the Governing Board and non-budgeted single expenditures not in excess of Twenty-five Thousand Dollars (\$25,000) without prior approval of the Governing Board. Notice will be provided to the Governing Board by the Operator for any expenditure in excess of Ten Thousand Dollars (\$10,000). If an emergency occurs, the Operator may immediately make or incur such expenditures as in its opinion are required to deal with the emergency. Operator shall report to the

Governing Board, as promptly as possible, the nature of the emergency and the action taken.

4.9 Work Undertaken by Agency Operator. Operator may employ its own employees, tools and equipment, but the charge to the Agency therefor shall not exceed Operator's actual costs.

## ARTICLE 5

### INSURANCE

5.1 Insurance. Operator, with respect to Agency Operations, shall:

- (a) comply with the Workers' Compensation Laws of the State of California;
- (b) carry Employer's Liability and other insurance required by the laws of the State of California; and
- (c) provide other insurance as set forth in Section 23.b of the Joint Powers Agreement.

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## ARTICLE 6

### AGENCY EXPENSE

6.1 Basis of Charge to Members. Operator shall bill Agency on a monthly basis for expenses incurred by Operator on Agency's behalf. Each Member and Agency customer in turn shall reimburse Agency on a monthly basis for their share of Agency Expense based on Agency's billing. Members shall share in Agency Expenses pursuant to the provisions set forth in the Joint Powers Agreement.

6.2 Budgets. Before or as soon as practical after the Effective Date of the Joint Powers Agreement, Operator shall prepare a Budget and an Annual Development Plan setting forth estimated Agency Expense for the 1994-1995 fiscal year and on or before the first day of each July thereafter, shall prepare a Budget and Annual Development Plan for the ensuing fiscal year. The annual Budget and Annual Development Plan shall set forth the estimated Agency Expense by quarterly periods and shall contain proposed operational and maintenance, capital, and administrative costs and expenditures of the Agency, and anticipated revenues, proposed for the next fiscal year. The Budget and the Annual Development Plan shall be modified as necessary and then adopted by the Governing Board. Copies of each shall be furnished promptly to each Member.

6.3 Prohibition on Commingling. Funds received by and expenses incurred by Operator under this Agency Operating Agreement



shall be segregated and separately accounted for from other funds and expenses of the City.

6.4 Lien and Security Interest of Agency Operator. Each Member grants to Operator a lien and security interest upon its share of water sale proceeds, and its interest in all Agency Equipment, to secure payment of its share of Agency Expense. Upon default by any Member in the payment of its share of Agency Expenses, Operator shall have the right, without prejudice to other rights or remedies, to collect from the Member the proceeds from the sale of such Member's share of water until the amount owed by such Member, plus interest at the legal rate, has been paid. Each Member shall be entitled to rely upon Operator's written statement concerning the amount of any default.

6.5 Unpaid Agency Expense. If any Member fails to pay its share of Agency Expense within sixty (60) days after rendition of a statement therefor by Agency, each Member agrees, upon request by Agency, to pay its proportionate part of the unpaid share of Agency Expense of the defaulting Member. Members who pay the share of Agency Expense of a defaulting Member shall be reimbursed by Agency for the amount so paid, plus any interest collected thereon, upon receipt by Agency of any past due amount collected from the defaulting Member. Any Member so paying a defaulting Member's share of Agency Expense shall, to obtain reimbursement thereof, be subrogated to the lien and other rights provided in Section 12.4,

and shall be entitled to attorney's fees, court costs, and other costs in connection with the collection of unpaid amounts.

6.6 Inventory. The Operator, at Agency expense, shall inventory the rights and property that are acquired by Operator from the Members and furnish a copy of such inventory to each Member.

## ARTICLE 7

### CLAIMS AND SUITS

7.1 Settlements. All claims or lawsuits affecting the Agency shall be promptly reported by Operator to the Governing Board. Operator may settle any single damage claim or suit involving Agency Operations if the expenditure does not exceed Twenty-five Thousand Dollars (\$25,000) and if the payment is in complete settlement of such claim or suit. If the amount required for settlement exceeds the above amount, the Governing Board shall assume and direct further handling of the claim or suit, unless such authority is delegated to Agency Operator. All costs and expense of handling, settling, or otherwise discharging such claim or suit shall be an item of Agency Expense. If a claim is made or lawsuit filed against any Member related to any matter arising from Agency Operations over which such Member has no control because of the rights given Members and Agency Operator by this Agency Operating Agreement and the Joint Powers Agreement, the Member shall immediately notify the Agency Operator, and the claim or suit

shall be treated as any other claim or suit involving Agency Operations.

ARTICLE 8

NOTICE

8.1 Notices. All notices required hereunder shall be in writing and shall be deemed to have been properly served when sent by mail or telegram to the address of the representative of each Member as furnished to Agency Operator at the following addresses:

For the City: John R. Velthoen  
City Manager  
City of Port Hueneme  
250 North Port Hueneme Road  
Port Hueneme, California 93041

With a copy to: Don G. Kircher, Esq.  
Burke, Williams & Sorensen  
2310 East Ponderosa Drive, Suite 1  
Camarillo, California 93010

For the District: Gerard W. Kapuscik  
General Manager  
Channel Islands Beach  
Community Services District  
353 Santa Monica Drive  
Channel Islands Beach, California 93035-8598

With a copy to: Anthony H. Trembley, Esq.  
Nordman, Cormany, Hair & Compton  
1000 Town Center Drive, 6th Floor  
Post Office Box 9100  
Oxnard, California 93031-9100

or such addresses as either Member may furnish to the other Member from time to time.

////

ARTICLE 9

SUCCESSORS AND ASSIGNS

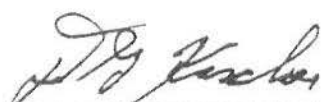
9.1 Term. The term of this Agreement shall run concurrently with the Joint Powers Agreement executed concurrently herewith, and shall terminate upon termination of the Joint Powers Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agency Operating Agreement on the date opposite their respective signatures.

CITY OF PORT HUENEME

By   
Mayor Orvene Carpenter

APPROVED AS TO FORM

  
\_\_\_\_\_  
City Attorney Don G. Kircher

CHANNEL ISLANDS BEACH COMMUNITY  
SERVICES DISTRICT

By Frank J. Chiella  
Frank J. Chiella  
President, Board of Directors

Attest: Gerard W. Kapuscik  
Gerard W. Kapuscik  
Secretary

APPROVED AS TO FORM  
NORDMAN, CORMANY, HAIR & COMPTON

By Anthony H. Trembley  
Anthony H. Trembley  
Legal Counsel for District



## EXHIBIT B

### EXAMPLES OF FIXED AND VARIABLE OPERATION AND MAINTENANCE COSTS

#### Fixed Operation and Maintenance Costs

Labor  
Benefits  
Parts & Materials  
Outside equipment maintenance service  
Vehicle service  
Gasoline  
Tools & Tool Rental  
Refuse Disposal  
Sewer Charges  
Uniforms  
Safety Equipment  
Insurance (all policies)  
Telephone  
Office Supplies  
Computer Programs  
Computer Maintenance  
Outside Laboratory Services  
Laboratory supplies  
Laboratory Equipment Services  
Books & Subscriptions  
Association Dues  
Postage  
Director Fees & Expenses  
Annual Audit  
Legal Expenses  
Consulting Engineering Expenses  
Fees In Lien of Taxes (Oxnard)  
Employee Conference Expenses  
Automobile Expenses  
Underground Service Alert  
Outside Maintenance Services  
United Water Conservation District Oxnard-Hueneme Pipeline Charges (Fixed)  
Calleguas Municipal Water District Charges (Fixed)

#### Variable Operation & Maintenance Costs

Electricity  
Chemicals  
United Water Conservation District Oxnard-Hueneme Pipeline Charges (Variable)  
Calleguas Municipal Water District Charges (Variable)

EXHIBIT C



Recycled Paper



EXHIBIT C

PRELIMINARY COST ALLOCATION OF WATER FACILITIES

| Purveyor                  | Desalination & Softening Plant |                        |            | CMWD Pipeline * |                        |            | Irrigation Pipeline ** |                        |            | Point Mugu Pipeline |                        |            | Aggregate              |            |
|---------------------------|--------------------------------|------------------------|------------|-----------------|------------------------|------------|------------------------|------------------------|------------|---------------------|------------------------|------------|------------------------|------------|
|                           | Capacity (mgd)                 | Capital Cost (1994 \$) | % of Total | Capacity (gpm)  | Capital Cost (1994 \$) | % of Total | Capacity (gpm)         | Capital Cost (1994 \$) | % of Total | Capacity (gpm)      | Capital Cost (1994 \$) | % of Total | Capital Cost (1994 \$) | % of Total |
| City of Port Hueneme      | 1.98                           | 2,918,000              | 51         | 6,387           | 1,131,000              | 42         | 54                     | 250,000                | 52         | -                   | -                      | -          | 4,299,000              | 47         |
| Channel Islands Beach CSD | 0.58                           | 855,000                | 15         | 1,890           | 335,000                | 12         | -                      | 77,000                 | 16         | -                   | -                      | -          | 1,267,000              | 14         |
| Navy CBC                  | 0.71                           | 1,046,000              | 18         | 3,951           | 699,000                | 26         | 396                    | 154,000                | 32         | -                   | -                      | -          | 1,899,000              | 21         |
| NAWC Point Mugu           | 0.63                           | 928,000                | 16         | 2,970           | 526,000                | 20         | -                      | -                      | -          | 2,970               | 237,000                | 100        | 1,691,000              | 18         |
| Total                     | 3.90                           | \$5,747,000            | 100        | 15,198          | \$2,691,000            | 100        | 450                    | \$481,000              | 100        | 2,970               | \$237,000              | 100        | \$9,156,000            | 100        |

\* Based on total future water demand for each water purveyor.

\*\* Although this pipeline will be used by the City and Navy CBC and not the other purveyors, it is being constructed to avoid the higher cost of a treated water pipeline. Accordingly, the cost allocation is based on the proportional capacity of each purveyor in the avoided treated water pipeline.

**JPA Agreement**  
**Amendment No. 1 to Operating Agreement**  
**Exhibit C**

**PORT HUENEME WATER AGENCY  
ANNUAL RECONCILIATION**

**Actual Usage in Acre Feet:**

|                      | July        | Aug         | Sept        | Oct         | Nov         | Dec         | Jan           | Feb           | Mar           | Apr           | May           | June          | Total           |
|----------------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------|---------------|---------------|---------------|---------------|---------------|-----------------|
| City of Port Hueneme |             |             |             |             |             |             | 249.50        | 187.03        | 210.19        | 208.21        | 308.85        | 298.10        | 1,461.88        |
| USNCBC               |             |             |             |             |             |             | 72.25         | 65.17         | 71.75         | 75.52         | 111.13        | 113.08        | 508.90          |
| USNAWS               |             |             |             |             |             |             | 76.88         | 52.04         | 61.74         | 56.24         | 97.85         | 110.23        | 454.98          |
| CIBCSD               |             |             |             |             |             |             | 0.00          | 0.00          | 38.72         | 49.50         | 68.04         | 63.58         | 219.84          |
| VCGP                 |             |             |             |             |             |             | 0.00          | 0.00          | 0.10          | 0.08          | 0.22          | 0.17          | 0.57            |
| ARCHIE ROAD          |             |             |             |             |             |             | 0.00          | 0.00          | 0.00          | 0.00          | 0.01          | 0.39          | 0.40            |
| <b>TOTAL</b>         | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> | <b>398.63</b> | <b>304.24</b> | <b>382.50</b> | <b>389.55</b> | <b>586.10</b> | <b>585.55</b> | <b>2,646.57</b> |

**Allocation of Net Income/Loss:**

|                      |                 |                |                  |
|----------------------|-----------------|----------------|------------------|
| City of Port Hueneme | 1,461.88        | 55.24%         | 24,453.87        |
| USNCBC               | 508.90          | 19.23%         | 8,512.72         |
| USNAWS               | 454.98          | 17.19%         | 7,610.76         |
| CIBCSD               | 219.84          | 8.31%          | 3,677.42         |
| VCGP                 | 0.57            | 0.02%          | 9.63             |
| ARCHIE ROAD          | 0.40            | 0.02%          | 6.69             |
| <b>TOTAL</b>         | <b>2,646.57</b> | <b>100.00%</b> | <b>44,271.00</b> |

**EXHIBIT C**

JPA Agreement  
Amendment 1

COPY

AMENDMENT NO. 1 TO  
AGREEMENT FOR FORMATION OF A

JOINT POWERS AGENCY (PORT HUENEME WATER AGENCY)

THIS AMENDMENT NO. 1 TO AGREEMENT FOR FORMATION OF A JOINT POWERS AGREEMENT (PORT HUENEME WATER AGENCY) is made and entered into by and between the City of Port Hueneme, a municipal corporation ("City"), and the Channel Islands Beach Community Services District, a community services district ("District") (collectively "Members"), effective as of June 5, 1996.

**RECITALS**

A. City and District previously entered into an Agreement For Formation of a Joint Powers Agency ("JPA Agreement") effective July 20, 1994. The JPA Agreement is incorporated by reference herein as if fully set forth. The Port Hueneme Water Agency shall hereinafter be referred to as the "Agency."

B. Planning for the subregional water project ("Water Quality Improvement Program") has progressed since the execution of the JPA Agreement and the parties wish to amend and update the JPA Agreement in certain respects, as set forth herein.

NOW, THEREFORE, it is agreed as follows:

1. Intent of This Amendment. The parties acknowledge that the May 1996 Water Sales Contracts between the District and the Agency, and the City and the Agency (collectively referred to as "Water Sales Contract"), anticipated to be approved concurrently with this Amendment to the JPA Agreement, is intended as a vehicle to implement the JPA Agreement by setting forth the terms and conditions by which the District and City will purchase water from the Agency. In the Water Sales Contract, the District and City set forth, among other things,

their intention that the Water Sales Contract executed by the Agency with both the District and the City contain the same terms and conditions. The parties further acknowledge that the Water Sales Contract, although representing an update to the relationship between the City, the District and the Agency for purposes of the Water Quality Improvement Program, is intended to be complementary to the JPA Agreement.

The parties further acknowledge that District's service area includes the Channel Islands Harbor ("Harbor area") owned by the County of Ventura, and agree that if the County seeks termination of receipt of water service from the District for the Harbor area, or such discontinuance actually occurs for whatever reason, that such discontinuance would economically and otherwise adversely impact the parties' subregional Water Quality Improvement Program. The parties further acknowledge and agree that in such event, the Agency and District shall jointly seek to place any financial costs or charges incurred by Agency or District arising from such event on the County, its lessees, and any water purveyor successor to Purchaser. However, District shall hold Agency and City harmless for any financial costs or charges incurred by Agency in such event.

2. Section 5.b.(4) of the JPA Agreement is amended to read as follows:

"(4) Reach agreement with the City of Oxnard for the construction and operation of the water facilities within that city's boundaries, except that the Agency shall not have the authority to physically interconnect its water facilities with the City of Oxnard to receive non-emergency water service, or otherwise receive such service. Interconnection designed for limited duration receipt of water by the Agency prior to operation of the Agency's water facilities, and thereafter only during emergencies, and receipt of such water, is permitted;"

3. Section 25 of the JPA Agreement is amended to read as follows:

"Section 25. Term. This Agreement and Agency created pursuant to this Agreement shall continue in existence from the effective date hereof for a period coinciding with the term of the Agency's water purchase and sale agreement ("Water Supply Agreement") with UWCD, but not less than twenty-five years if required as a condition of debt issuance by either Member, when it shall terminate, unless earlier terminated by mutual agreement of the Members.

4. Section 26 of the JPA Agreement is amended to read as follows:

"Section 26. Unilateral Withdrawal of Agency Member. A Member may unilaterally withdraw from this Agency by filing its written notice of withdrawal with the Chair of the Governing Board, not less than eighteen (18) months before the effective date of withdrawal. The withdrawal of a Member shall not in any way discharge, impair or modify the debt obligations of the withdrawing Member in existence as of the effective date of its withdrawal. The withdrawal liabilities of the Member shall be as set forth in Section 27. The withdrawing Member shall not be liable for debts, liabilities or obligations of the Agency resulting from decisions made or actions taken subsequent to the date of withdrawal. Withdrawal of a Member shall not affect the remaining Member(s) who shall administer the Agency as they deem in its best interests necessary.

5. Section 27 of the JPA Agreement is hereby amended to read as follows:

"Section 27. Withdrawal/Termination Liability. If a Member unilaterally withdraws from the Agency or terminates the Water Sales Contract after the initiation of design but prior to Agency's initiation of construction of its water facilities, the Member shall pay termination charges to the Agency calculated as the sum of the (1) Member's proportionate share of the Fixed Operations and Maintenance Costs (unamortized) attributable to the Oxnard-

Hueneme ("O/H") Pipeline ("Fixed O&M costs of the O/H Pipeline") as defined in the Water Supply Agreement between the Agency and UWCD; (2) Facilities Development Costs to the date of termination; and (3) Facilities Redesign Costs required to redesign the facilities.

If a Member unilaterally withdraws from the Agency or terminates the Water Sales Contract at any time after the Agency's award of the contract for construction of its water facilities, through the remaining term of this Agreement, the Member shall pay termination charges to the Agency calculated as the then-present value sum of (1) the Member's proportionate share of the Fixed O&M costs of the O/H Pipeline, (2) Facilities Development Costs to the date of termination, (3) fixed costs of water service from the CMWD including but not limited to the Readiness-to-Serve and Base Facilities Charges, (4) Facilities Capital costs (unamortized), and (5) Fixed Operation and Maintenance Costs of the Agency.

In the event of, and after unilateral withdrawal from this Agreement or termination of the Water Sales Contract by a Member, the Agency shall submit a final termination settlement proposal to the Member in the form and with the certification prescribed by the District. The Agency shall submit the proposal promptly, but no later than one (1) year from the effective date of termination unless extended in writing by the Member upon written request of Agency. If the Agency fails to submit the proposal within the time allowed, the Member may determine on the basis of information available, the amount, if any, due the Agency because of the termination and shall pay the amount determined.

In the event of any one of the above withdrawal or termination situations, the Member has the right to mitigate the termination liabilities by transferring, either in whole or in part, to an authorized assignee its rights under this Agreement and the Water Sales Contract.

In the event of its termination or withdrawal, the Member shall be credited with



its ownership share of the Agency's capital facilities (including real property) for which it has paid or will pay subsequent to its termination or withdrawal. However, the Member shall not be entitled to the return of any funds or other assets belonging to Agency, until the effective date of termination of this Agreement. The Member may thereafter continue to receive water from Agency provided that there is agreement between Agency and Member as to the terms thereof.

It is intended and agreed that the same termination liabilities, as discussed herein are applicable to other Members and Agency customers participating in water sales contracts with the Agency as part of the Agency's subregional water project.

Any terms within this Section 27 which are not defined in this Agreement shall be defined in a manner consistent with the provisions of the Water Sales Contract.

Termination of the Water Sales Contract by a Member shall be deemed withdrawal by that Member from the Agency, subject to the provisions of this Section 27.

6. All provisions of the JPA Agreement which are not modified by the terms of the amendments herein shall remain in full force and effect. Although intended to be complementary, in the event of any conflicting terms between the Water Sales Contract and the JPA Agreement, the provisions of the JPA Agreement shall prevail.

This Amendment shall have the effective date first set forth above.

CITY OF PORT HUENEME

By: Robert Turner  
Mayor

APPROVED AS TO FORM

D. G. Kircher  
City Attorney Don G. Kircher

CHANNEL ISLANDS BEACH COMMUNITY  
SERVICES DISTRICT

By: Marcia Marcus  
Marcia Marcus, President

Attest: Gerard W. Kapuscik  
Gerard W. Kapuscik  
Secretary

APPROVED AS TO FORM

NORDMAN, CORMANY, HAIR & COMPTON

By: Anthony H. Trembley  
Anthony H. Trembley  
Legal Counsel for District



Bill Jones  
Secretary of State

Business Programs Division  
Business Filings Section  
P.O. Box 944225  
Sacramento, CA 94244-2250

Special Filings Unit (916) 653-398

1  
October 8 1997

Port Hueneme Water Agency  
City of Port Hueneme  
250 North Ventura Road  
Port Hueneme, CA 93041

*The purpose of this letter is to acknowledge the filing in this office of an Amendment to a Joint Powers Agreement for:*

PORT Hueneme Water Agency

*pursuant to California Government Code Section 6503.5 or 6503.7. This was filed as of:*

October 6 1997 and assigned file number: 981

*In the future, if additional information concerning this Joint Powers is to be reported to the Secretary of State's Office, please use the enclosed Amendment to a Joint Powers Agreement form.*

*Sincerely,*

*Special Filings Unit*

*Enclosures*

RECEIVED  
OCT 4 1997



# State of California

Bill Jones

Secretary of State

FILE NO. \_\_\_\_\_

## AMENDMENT TO A JOINT POWERS AGREEMENT (Government Code Section 6503.5 or 6503.7)

Instructions:

1. Complete and mail to: Secretary of State, P.O. Box 944225, Sacramento, CA 94244-2250 (916) 653-3984
2. Include filing fee of \$5.00.
3. Do not include attachments.

(Office Use Only)

Date of filing initial notice with the Secretary of State: \_\_\_\_\_

File number of initial notice: \_\_\_\_\_

Name of Joint Powers agreement: \_\_\_\_\_

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

Complete one or more boxes below. The agreement has been amended to:

Change the parties to the agreement as follows: \_\_\_\_\_

\_\_\_\_\_

Change the name of the administering agency or entity as follows: \_\_\_\_\_

\_\_\_\_\_

Change the purpose of the agreement or the powers to be exercised as follows: \_\_\_\_\_

\_\_\_\_\_

Change the short title of the agreement as follows: \_\_\_\_\_

\_\_\_\_\_

Make other changes to the agreement as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ Signature

\_\_\_\_\_ Typed Name and Title

CALIFORNIA CODES  
GOVERNMENT CODE  
SECTION 53050-53051

53050. The term "public agency," as used in this article, means a district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the state or a county, city and county, or city.

53051. (a) Within seventy (70) days after the date of commencement of its legal existence, the governing body of each public agency shall file with the Secretary of State on a form prescribed by the Secretary of State and also with the county clerk of each county in which the public agency maintains an office, a statement of the following facts:

1. The full, legal name of the public agency.
2. The official mailing address of the governing body of the public agency.
3. The name and residence or business address of each member of the governing body of the public agency.
4. The name, title, and residence or business address of the chairman, president, or other presiding officer, and clerk or secretary of the governing body of such public agency.

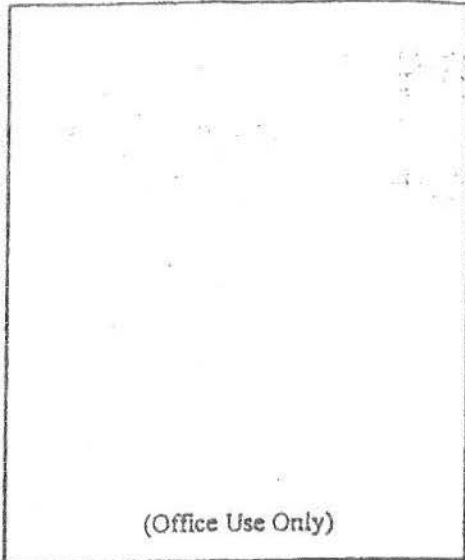
(b) Within 10 days after any change in the facts required to be stated pursuant to subdivision (a), an amended statement containing the information required by subdivision (a) shall be filed as provided therein. The information submitted to the Secretary of State shall be on a form prescribed by the Secretary of State.

(c) It shall be the duty of the Secretary of State and of the county clerk of each county to establish and maintain an indexed "Roster of Public Agencies," to be so designated, which shall contain all information filed as required in subdivisions (a) and (b), which roster is hereby declared to be a public record.



State of California  
 Bill Jones  
 Secretary of State

STATEMENT OF FACTS  
 ROSTER OF PUBLIC AGENCIES FILING  
 (Government Code Section 53051)



(Office Use Only)

Instructions:

1. Complete and mail to: Secretary of State,  
 P.O. Box 944225, Sacramento, CA 94244-2250 (916) 653-3984
2. A street address must be given as the official mailing address or as  
 the address of the presiding officer.
3. Complete addresses as required.
4. If you need additional space, please include information on an 8½ X 11 page.

New Filing [ ] Update [ ]

Legal name of Public Agency: \_\_\_\_\_

Nature of Update: \_\_\_\_\_

County: \_\_\_\_\_

Official Mailing Address: \_\_\_\_\_

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): \_\_\_\_\_

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

Secretary of Clerk (Indicate Title): \_\_\_\_\_

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

Members:

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

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

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

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

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

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

Signature

Typed Name and Title



Bill Jones  
Secretary of State

Business Programs Division  
Business Filings Section  
P.O. Box 944225  
Sacramento, CA 94244-2250

Limited Liability Company (916) 653-3795  
Limited Partnership (916) 653-3365  
Special Filings (916) 653-3984  
Trademarks (916) 653-4984

October 8 1997

Port Hueneme Water Agency  
250 N. Ventura Road  
Port Hueneme, CA 93041

The purpose of this letter is to acknowledge the filing in this office of a Statement of Facts for \_\_\_\_\_ pursuant to \_\_\_\_\_  
Port Hueneme Water Agency  
California Government Code Section 53051. This Statement of Facts was filed as of \_\_\_\_\_ October 6 1997 \_\_\_\_\_.

For future updates we have enclosed a blank Statement of Facts form for your convenience. You may reproduce the form as necessary.

Sincerely,

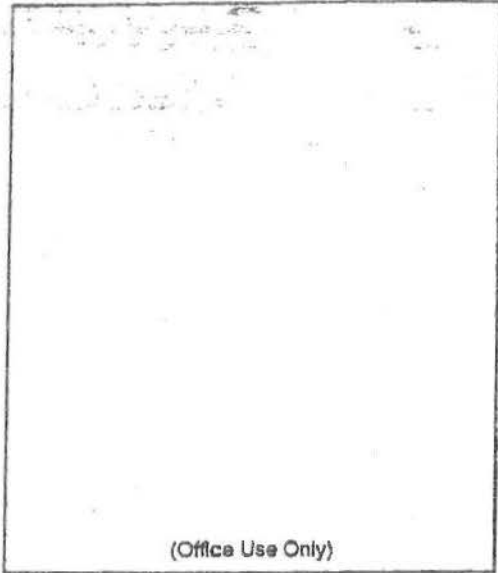
Special Filings Unit

Enclosure

RECEIVED  
OCT 14 1997



State of California  
 Bill Jones  
 Secretary of State



(Office Use Only)

**STATEMENT OF FACTS  
 ROSTER OF PUBLIC AGENCIES FILING**  
 (Government Code Section 53051)

Instructions:

1. Complete and mail to: Secretary of State,  
 P.O. Box 944225, Sacramento, CA 94244-2250 (916) 653-3984
2. A street address must be given as the official mailing address or as  
 the address of the presiding officer.
3. Complete addresses as required.
4. If you need additional space, please include information on an 8½ X 11 page.

New Filing  Update

Legal name of Public Agency: \_\_\_\_\_

Nature of Update: \_\_\_\_\_

County: \_\_\_\_\_

Official Mailing Address: \_\_\_\_\_

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): \_\_\_\_\_

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

Secretary or Clerk (Indicate Title): \_\_\_\_\_

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

Members:

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

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

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

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

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

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Typed Name and Title \_\_\_\_\_



| INVOICE YOUR REF. NO. |          |            |           |               |
|-----------------------|----------|------------|-----------|---------------|
| QTY                   | QUANTITY | UNIT PRICE | EXTENSION | CASH DISC.    |
|                       |          |            |           |               |
|                       |          |            |           | SALES USE TAX |
|                       |          |            |           | +             |
|                       |          |            |           | PRE-PAID FRT. |
|                       |          |            |           | +             |
|                       |          |            | TOTAL     | NET AMOUNT    |
|                       |          |            |           |               |



PURCHASING DEPARTMENT  
 250 N. VENTURA ROAD  
 PORT HUENEME, CA 93041  
 PHONE (805) 488-3625

VOID 60 DAYS AFTER  
 10/1/97  
 CHECK NO. 10919

NOT VALID FOR MORE THAN \$100.00

PAY TO THE ORDER OF  
 SECRETARY OF STATE

AMOUNT \*\*\$5.00\*

*Anthony C. Volante*  
 MAYOR  
*[Signature]*  
 TREASURER

BANK OF AMERICA  
 PORT HUENEME BRANCH 1036  
 755 W. CHANNEL ISLANDS BLVD.  
 PORT HUENEME, CA 93041

⑆010919⑆ ⑆122000661⑆ 10389⑆80050⑆



Bill Jones  
Secretary of State

Limited Partnership Division  
P.O. Box 944225  
Sacramento, CA 94244-2250

Limited Liability Company (916) 653-3795  
Limited Partnership (916) 653-3365  
Special Filings (916) 653-3984  
Trademarks (916) 653-4984

October 10 1997

Port Hueneme Water Agency  
City Of Port Hueneme  
250 North Ventura Road  
Port H;ueneme, CA 93041

*The purpose of this letter is to acknowledge the filing in this office of a Notice of a Joint Powers Agreement for:*

Port Hueneme Water Agency

---

*pursuant to California Government Code Section 6503.5 or 6503.7. This was filed as of: October 6 1997 and assigned file: #1594.*

*In the future, if additional information concerning this Joint Powers is to be reported to the Secretary of State's Office, please use the revised form which is enclosed.*

*If it is determined that this entity meets the requirements for inclusion on the Roster of Public Agencies pursuant to Government Code Section 53051, please complete a Statement of Facts form and submit it for filing. A form is enclosed for your convenience.*

*Sincerely,*

*Special Filings Unit*

*Enclosures*

RECEIVED  
OCT 14 1997



# State of California

Bill Jones

Secretary of State

FILE NO. \_\_\_\_\_

## NOTICE OF A JOINT POWERS AGREEMENT

(Government Code Section 6503.5 or 6503.7)

### Instructions:

1. Complete and mail to: Secretary of State, P.O. Box 944225, Sacramento, CA 94244-2250 (916) 653-3984
2. Include filing fee of \$5.00.
3. Do not include attachments, unless otherwise specified.

(Office Use Only)

The name of the agency or entity created under the agreement and responsible for the administration of the agreement

is: \_\_\_\_\_

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

Provide a short title of the agreement if applicable: \_\_\_\_\_

The public agencies party to the agreement are:

(1) \_\_\_\_\_

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

(3) \_\_\_\_\_

If more space is needed, continue on a separate sheet and attach it to this form.

The effective date of the agreement is: \_\_\_\_\_

Provide a condensed statement of the agreement's purpose or the powers to be exercised: \_\_\_\_\_

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Typed Name and Title \_\_\_\_\_

**JPA Agreement  
Amendment 2**

**AMENDMENT NO. 2 TO AGREEMENT FOR  
FORMATION OF A JOINT POWERS AGENCY  
(PORT HUENEME WATER AGENCY)**

This AMENDMENT NO. 2 TO AGREEMENT FOR FORMATION OF JOINT POWERS AGENCY ("Joint Powers Agreement") is made and entered into by and between the parties to the Joint Powers Agreement, to wit: The City of Port Hueneme, a municipal corporation ("City") and the Channel Islands Beach Community Services District, a community services district ("District"), (collectively "Members"), effective as of June 30, 2000.

**RECITALS**

This Agreement to Amend the Joint Powers Agreement is made and entered into with respect to the following facts and in recognition of the following purposes:

Certain disputes have arisen between the City and the District concerning the respective duties and obligations of each under the Joint Powers Agreement. Those disputes were resolved by an agreement between City and District, the terms of which are memorialized in the June 15, 1999 letter attached hereto as Exhibit A. The purpose of this Amendment Agreement is to make the Joint Powers Agreement consistent with, and to give effect to, the terms of the Letter Agreement attached as Exhibit A to this Amendment.

**AGREEMENT**

It is agreed by and between City and District that the provisions of the Joint Powers Agreement listed below are amended as follows:

Section 8. Governing Board Proceedings.

f. Withdrawal from Participation in Certain Agency Actions.

(4) For purposes of this subsection f., "actions" include the following:

- (b) Acquisition of Real Property Rights. Acquisition of interests in real property (including fee ownership and easement rights) other than those interests acquired for the construction of the water desalination plant and necessary transport facilities, after June 30, 2000.

- (c) Expansion and/or Modification of Water Facilities. Except as required by law, subsequent expansion and/or modification of any of the water facilities initially constructed pursuant to this Agreement, beyond any contracts let for such work on or before June 30, 2000.

Section 17. Financial Obligations of Members.

b. Obligations of Members.

(1) Capacity Rights. The following costs shall be prorated between the Members in accordance with the Cost Allocation and Water Pricing Formula Review for the Port Hueneme Water Agency, dated April 12, 2000, by Willdan (hereafter "the Final Cost Allocation"), attached hereto as Exhibit B to this Agreement and incorporated herein by this reference:

- (a) Capital construction costs;
- (b) Replacement costs;
- (c) Real property acquisition; and
- (d) Debt service costs (the obligation of District for debt service costs shall be at the rate of 8% simple interest beginning 12/12/94. Any overpayment by District of the costs listed in Section 17(b)(1)(a-d) shall be reimbursed by the Agency plus 8% simple interest from the date of overpayment.)

(2) Fixed Operations and Maintenance Costs. Fixed operations and maintenance costs shall be annually apportioned to the Members based on their respective aggregate share of all of the water facilities as referenced in the Final Cost Allocation.

(4) Cost Allocation. Final allocation of all costs referenced in subsection b.(1)(a) through (d), respectively, shall be apportioned among the Members in accordance with the Final Cost Allocation.

Section 18. Capacity Rights in Water Facilities.

a. The right to use a portion of each of the water facilities to be constructed and operated by the Agency, and the right to take water produced and available from each of the facilities, shall be apportioned between the Members in accordance with the Final Cost Allocation to this Agreement.

b. Each Member, individually, shall own an undivided interest, equal to its pro rata contribution, in all property and facilities acquired or otherwise taken over by Agency. City shall bear financial responsibility for and all rights to the portion of the water facilities capacity attributable to its own capacity and the capacity attributable to Agency customers, including the Navy-CBC and NAWC-Pt. Mugu. District shall bear financial responsibility for and all rights to the portion of its water facilities capacity as set forth in the Final Cost Allocation. Capacity rights of the Members shall not be assigned or otherwise transferred by Agency, although it is recognized that each Member subject to its obligations herein under may transfer such rights.

Section 21. Obligations of Agency Members.

a. Several Liability. Members' responsibility for the debts, liabilities and obligations of the Agency shall be strictly several, and not joint and several, and nothing herein shall be construed as creating any type of partnership, joint venture, association or trust between the Members. City and District shall respectively bear such Agency debts, liabilities and obligations in the aggregate proportions set forth in the Final Cost Allocation and in accordance with the respective financial responsibilities of the Members as referenced in Section 18.b., except to the extent that the indemnification provisions of Section 23 may alter such several responsibility.

Section 22. Indemnity Obligations. City acknowledges that it is Agency Operator pursuant to this Agreement and that it shall undertake direct responsibility for the construction, operation and maintenance of the water facilities intended by this Agreement. City as Operator and not as a Member shall at its own expense indemnify, defend and hold District harmless from all liabilities, claims, demands, costs, penalties, fines, losses, actions and proceedings arising from any act, error or omission caused by the sole negligence of, or the gross negligence or willful misconduct of, City or its officers, employees or agents. For purposes of this section, City shall not be deemed "solely negligent" for an act, error or omission if it acted in accordance with directions of the Governing Board or the Operating Committee. In no event shall the City's obligation to the District exceed the greater of \$2,000,000 or the then-current replacement cost of the District's capacity rights in the water facilities as referenced in the Final Cost Allocation.

Section 29. Disposition of Assets Upon Termination.

a. Disposal and Distribution. After payment of or satisfaction of all obligations of the Agency, any assets remaining shall be disposed of or sold by Operator. The proceeds shall be distributed to the Members in the proportion reflecting each Members' capacity rights in each of the water facilities in accordance with the Final Cost Allocation.

2. Effective Date. This Amendment shall have the effective date first set forth above.

The City and District, as Members of the Joint Powers Agreement have caused this Amendment Agreement to be executed on their behalf, respectively, as follows:

CITY OF PORT HUENEME

By: *Dr. Robert E. Turner*  
Dr. Robert E. Turner, Mayor

Approved as to form:

By: *DK*  
Don G. Kircher, City Attorney

CHANNEL ISLANDS BEACH  
COMMUNITY SERVICES DISTRICT

By: *Anna Spanopoulos*  
Anna Spanopoulos, President  
Board of Directors

Approved as to form:

ARNOLD, MATHEWS,  
WOJKOWSKI & ZIRBEL, LLP

By: *David R. Worley*  
David R. Worley, Legal Counsel for  
District



JPA Agreement  
Amendment 2, Exhibit A

ARNOLD, MATHEWS, WOJKOWSKI & ZIRBEL, LLP

ATTORNEYS AT LAW

ATTORNEYS

GARY D. ARNOLD  
JOHN M. MATHEWS  
JAMES WOJKOWSKI  
MARK A. ZIRBEL  
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DENNIS P. MCNULTY

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OF COUNSEL

KATHLEEN J. BACK

WRITER'S E-MAIL  
dworley@atozlaw.com

June 15, 1999

VIA FAX  
805/482-9834

Don G. Kircher, Esq.  
BURKE, WILLIAMS & SORENSON, LLP  
2310 E. Ponderosa Drive., Suite 1  
Camarillo, CA 93010

Re: *Negotiations Between CIBCSO and Port Hueneme*

Dear Don:

This is to confirm my understanding of Port Hueneme's position.

1. Verification of Cost Allocations (Audit)

PH will agree to verification of the cost allocation percentages among PHWA members by an independent engineer (selected by and agreed to by the negotiating group), whose conclusions will be binding upon CIBCSO and Port Hueneme. The cost of this review will be born by the PHWA, as an administrative expense, and billed to each member agency according to its proportionate responsibility for administrative expenses. The approved percentages would then be utilized for PHWA annual audits and any final audit of project costs.

It is not contemplated that the independent engineer will reinvent the wheel by starting over from scratch. Rather, the engineer is to verify the accuracy of the cost allocation percentages by Kennedy-Jenks. The guideline for this verification is that cost is to be allocated according to benefit, as expressed in the contract documents. Where the independent engineer's results differ from those of Kennedy-Jenks, they will attempt to reach an agreement acceptable to both. Where the independent engineer remains in disagreement with Kennedy-Jenks, its determination shall be binding upon CIBCSO and Port Hueneme, and shall become the position of the PHWA. It is expressly understood that this agreement cannot, and does not, abrogate any contractual rights held by the U.S. Navy.

CIBCSO and PH shall each have the right, but not the obligation, to submit questions or "areas of concern" to the independent engineer for its consideration in reviewing Kennedy-Jenks'

Don Kircher, Esq.

Re: *Negotiations between CIBCSD and Port Hueneme*

June 15, 1999

Page 2

work. It is anticipated that these will be ordinary technical questions concerning cost allocations, which will not expand the scope of work. The independent engineer shall consider these questions, but will not be required to issue any report responding to them. Any questions or requests that go beyond these parameters will result in the associated extra costs being billed to the party making them.

CIBCSD had requested replacement of the auditor. This is acceptable upon the following conditions. The existing auditor will be allowed to finish the 1998 audit, using the cost allocation percentages stated by Kennedy-Jenks in their 4-1-99 spreadsheets. CIBCSD will confirm those percentages for 1998 audit, specifically reserving its right to a change in those percentages based upon the review by the independent engineer. The audit will include a footnote stating that the cost allocation percentages are subject to change based upon the independent engineer's review.

Selection of the independent engineer and the new auditor shall be done by the same negotiating teams that fashioned this agreement.

2. CLINS Formula

The "new" CLINS formula developed by Black & Veatch shall also undergo a binding review by the same independent third party expert that does the cost allocation verification, the costs to be born by the PHWA as above. The intent is to verify that the new formula is indeed an equitable refinement of the original formula and consistent with the intent of the original formula. Annual reconciliation of the billings under the new formula shall be done as part of the budget, due on or before June 30. The annual reconciliation is not to be done by an independent third party, but, rather, in the normal course of business.

3. Emergency Fire Flow

The PH emergency interconnect will be opened immediately upon ratification of this conceptual agreement in open session by the governing bodies of CIBCSD and Port Hueneme. PH will use its good offices (including, as needed, letters, telephone calls and/or personal meetings) to reasonably assist the District in attempting to get the Calleguas interconnect valves opened. CIBCSD withdraws any past claim it has against PH for water flowing into the PH System; PH withdraws its claim against CIBCSD for \$1,000.00.

CIBCSD shall be responsible for reasonably necessary inspection and maintenance of the PH emergency interconnect as described on Attachment A. If one of the listed components of the PH emergency interconnect should fail, CIBCSD can contract with a third party for the replacement/repair of such component(s), provided that the work meets applicable standards.

Don Kircher, Esq.

Re: *Negotiations between CIBCSD and Port Hueneme*

June 15, 1999

Page 3

4. 8% Interest

The District will pay 8% simple interest from 12/12/94. Capital costs are to be repaid on one of the two following terms:

i. Capital costs are to be paid in full on or before 11/1/99, subject to reconciliation according to the review by the independent engineer.

ii. Capital costs are to be amortized over 25 years, at 8% simple interest, memorialized by a formal loan agreement providing the same security to PH as is currently given by CIBCSD to its bond holders.

4. Connection to Cross Base Pipeline

The District will consider the commencement date of the cross-base pipeline connection as 1/1/99.

5. March 3, 1999 Invoice

(1) The 10% late fee is omitted, (2) It was acknowledged that the contract does not now specify that payment is due in 30 days but there shall be an amendment to that affect which applies to all purchasers and, (3) Invoices for both fixed O and M costs and capital costs begin January 1, 1999.

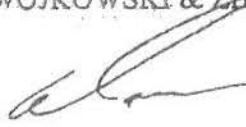
7. General

Agreement on each of these issues is contingent upon a global settlement which resolves all of them. It is intended that this process result in an agreement that resolves all known remaining issues between the parties to date. The agreements will be memorialized in a settlement/release document and, where appropriate, amendments to the Joint Powers Agreement and/or Water Sales Contract.

Please let me know if I have missed or misunderstood anything. Thank you.

Very truly yours,

ARNOLD, MATHEWS,  
WOJKOWSKI & ZERBEL, LLP



David R. Worley

Port Hueneme Water Agency / Channel Islands Beach CSD  
 10-inch Emergency Interconnection from City of Port Hueneme Water System  
 Summary of Equipment & Maintenance

| Equipment  | Age                  | Corrective Maintenance  |                                    | Preventative Maintenance                    |  |
|--|----------------------|-------------------------|------------------------------------|---|--|
|  |                      | Est. Replacement Value  | Type                               | Estimated Cost for Service                  |  |
| <b>Biannual Inspection &amp; Maintenance (Scheduled Work Order):</b> |                      |                         |                                    |   |  |
| 10-inch Water Meter  | Calibrated May, 1999 | New Head: \$1,300 + T/M | Calibration (in 1500)              | \$900 + 3 workers @ 10 hrs + equipment      |  |
| Remote Device: Usual Pressure  | Calibrated May, 1999 | \$400 + T/M             | Included with Calibration          | Included in time above                      |  |
| Sump Pump/Check Valve  | Replaced 1998        | \$200 + T/M             | Inspector                          | Included in time above                      |  |
| Concrete Vault   | Sealed 1995          | Good Condition          | High pressure clearing with Vector | Included in time above                      |  |
| Swing Check Valve  | Replaced 1998        | \$7,000 includes T/M    | Inspection/Pressure holding test   | Included in time above                      |  |
| <b>Estimated Total Biannual Cost for Service:</b>                    |                      |                         |                                    | <b>\$2,400 or \$1,200/year or \$100/mo.</b> |  |
| <b>As-Needed/Unanticipated Maintenance (Unscheduled Work Order):</b> |                      |                         |                                    |   |  |
| 2 Pressure Transducers   | Installed 1996       | 1400 each               | Check continuity & replace         | T/M   |  |
| Vault Metal Cover  | Repaired 1998        | Cracked cover           | Welding/Replace                    | T/M   |  |

**Notes:**

1. Cost for Service based on productive hourly labor rate @ \$35/hr. + trucks @ 67/hr. + confined space entry equipment
2. Confined Space Entry required for repairs in vault: Minimum 3 workers @ 3 hours + equip. = \$400/entry for greater depending on type of repair
3. T/M = Time and materials based on COPH work order system
4. All figures are estimated based on 1999 dollars
5. All expenses for service can be capitalized each year or invoiced annually or monthly as desired by CIBCSD
6. Monthly PHWA meter reading will indicate any potential problems with meter or pressure transducers
7. Bi-annual (every 2 years) calibration involves removing meter head/tenon and shipping to Water Specialist and reinstalling head/tenon and testing
8. This O&M Summary does not include cost for water or COPH wheeling charges.

10/20/99

DRAFT 6/7/99

ATTACHMENT A

JPA Agreement  
Amendment 2, Exhibit B



DEPARTMENT OF THE NAVY  
SOUTHWEST DIVISION  
NAVAL FACILITIES ENGINEERING COMMAND  
1220 PACIFIC HIGHWAY  
SAN DIEGO, CA 92132-5190

2/12/04

Make sure this is  
in PHWA Contract  
Log

11300  
5GPW2.DG  
13 December, 2000

Port Hueneme Water Agency  
Attn: Douglas Breeze  
250 North Ventura Road  
Port Hueneme, CA 93041

Mr. Breeze,

The Navy has reviewed the Willdan Final Audit Report titled "Cost Allocation and Water Pricing Formula Review for the Port Hueneme Water Agency" dated April 2000. Based on our review we concur with the following recommended changes as it relates to contract N68711-95-C-7665.

1. Cost allocation change for the United States Bureau of Reclamation (USBR) contribution. We agree the contribution should not be allocated as a lump sum. Rather, this contribution should be separated into its separate components and each component allocated separately to all agencies.
2. Cost allocation change concerning the Calleguas Municipal Water District (CMWD) investment. We agree the investment made by CMWD should be credited to the Port Hueneme Water Agency (PHWA) member agencies based on their share of the overall investment costs.

Since the Navy did not perform the audit, we are unable to verify the numbers provided in the report. However, the above methodology does appear to be fair, reasonable, and equitable. Therefore, we have modified Appendix A of contract N68711-95-C-7665 as indicated in modification P00007. Should you have any questions regarding this matter, please contact David Garcia at 619-532-1451.

Sincerely,

  
H. D. Powell  
Contracting Officer

