

**A JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE CENTRAL COAST BLUE REGIONAL
RECYCLED WATER AUTHORITY**

THIS JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is made and entered into by and between the City of Arroyo Grande, a California municipal corporation ("Arroyo Grande"), the City of Grover Beach, a California municipal corporation ("Grover Beach"), and the City of Pismo Beach, a California municipal corporation ("Pismo Beach"). The cities may be individually referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, each Party to this Agreement is a public agency authorized and empowered to contract for the joint exercise of powers under Articles 1 through 4, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California; and

WHEREAS, in 1983, the Parties hereto entered into a voluntary groundwater management plan to manage the safe yield of the Arroyo Grande Groundwater Basin, which agreement was updated by the Parties through approval of the 2002 Agreement Regarding Management of the Arroyo Grande Groundwater Basin (the "Management Agreement"); and

WHEREAS, on April 30, 2002, the Parties hereto, among others, entered into a settlement agreement (the "Settlement Agreement") related to a 1997 groundwater adjudication litigation filed by the Santa Maria Valley Water Conservation District, which reaffirmed the Management Agreement, established separate water management areas (the "Original Management Areas") to be independently managed by the Parties and others, and requiring the Parties and others to develop an equitable cost sharing agreement for any newly constructed water resource and water production facilities within the Original Management Areas; and

WHEREAS, on June 30, 2005, the Parties hereto entered into a stipulation imposing a physical solution for ensuring the Arroyo Grande Groundwater Basin's long-term stability (the "Stipulation"). The Stipulation adopted a local management approach, establishing three management areas (the "Current Management Areas") and requiring a monitoring program to be established in each of the Current Management Areas; and

WHEREAS, on January 25, 2008, the Santa Clara Superior Court entered Judgment in the Santa Maria Groundwater Adjudication litigation approving the Stipulation, without qualification (the "Adjudication Decree"); and

WHEREAS, the Parties are participating in the Central Coast Blue Project to construct a regional recycled water project that will enhance supply reliability by injecting advanced purified water into the Northern Cities Management Area of the Santa Maria Groundwater Basin ("Project"). The Project will reduce vulnerability to drought and seawater intrusion by creating a seawater intrusion barrier and supplementing the naturally occurring groundwater; and

WHEREAS, Phase 1 of the Project includes construction of an Advanced Treatment Facility ("ATF"), treatment of secondary treated flows from Pismo Beach's Wastewater Treatment Plant ("WWTP"), construction of approximately five injection wells and associated transmission lines, and injection of flows from the WWTP ("Phase 1"). Phase 1 proposes to treat wastewater from Pismo Beach to an advanced purification level to create between nine hundred (900) and one thousand (1,000) acre-feet of additional water per year; and

WHEREAS, Phase 2 of the Project will include upgrades to the ATF to increase capacity, construction of approximately two additional injection wells and associated transmission lines, and injection of flows from the South San Luis Obispo County Sanitation District Wastewater Treatment Plant ("Phase 2"); and

WHEREAS, Arroyo Grande, Grover Beach and Pismo Beach believe that the best way to achieve their joint goals in a way that is mutually beneficial is to form a joint powers agency under Articles 1 through 4, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California ("Joint Exercise of Powers Act"); and

WHEREAS, by forming a joint powers agency ("JPA") under the Joint Exercise of Powers Act, the Parties believe they will be better able to, through a separate JPA, oversee and manage the planning and implementation, including but not limited to construction, operation and administration of, the Project.

NOW THEREFORE, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Parties agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 **Definitions.** Unless the context otherwise requires, the words and terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.

- 1.1.1. Act means Articles 1 through 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of powers common to public agencies.
- 1.1.2. Agreement means this Joint Exercise of Powers Agreement.
- 1.1.3. Ancillary Facilities means injection wells, storage tanks, pump stations, associated piping, and any other equipment located on an Ancillary Facilities Site.
- 1.1.4. Ancillary Facilities Sites means any real property or real property interest held by the Authority for purposes of the Project, excluding the Facility Site.
- 1.1.5. Annual Budget means the budget adopted pursuant to Section 6.2.2 of this Agreement.
- 1.1.6. Authority means the Central Coast Blue Regional Recycled Water Authority, which is created by this Agreement.
- 1.1.7. Board or Board of Directors means the Board of Directors referred to in Article 2 of this Agreement, which is the governing body of the Authority.
- 1.1.8. Bonds means bonds, notes, commercial paper, and any other evidence of indebtedness of the Authority authorized and issued pursuant to the Act, any indebtedness issued or incurred by the Authority pursuant to any act supplementary to the Act, including, but not limited to, refunding bonds authorized and issued pursuant to Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.
- 1.1.9. Cost Sharing Agreement means the Cost Sharing Agreement for the Parties' Participation in the Central Coast Blue Project dated March 14, 2022, a copy of which is attached hereto as Exhibit A and incorporated herein.

- 1.1.10. Director means a member of the Board appointed to the Board pursuant to Section 2.2 of this Agreement.
- 1.1.11. Effective Date means the last date on which all Parties to this Agreement have executed the Agreement.
- 1.1.12. Facility or Facilities means the advanced water treatment facility that will receive and further treat wastewater influent from Pismo Beach's WWTP, in Phase 1, which as of the date of this Agreement is proposed to be constructed on Assessor's Parcel Number 060-543-016 in the City of Grover Beach, including the Facility's equalization basin, injection wells, storage tanks, pump station and associated piping and equipment from the Pismo Beach WWTP, but excluding the joint outfall shared by the South San Luis Obispo County Sanitation District and the City of Pismo Beach which both agencies use to discharge their municipal waste.
- 1.1.13. Facility Site means Assessor's Parcel Number 060-543-016 in the City of Grover Beach, California.
- 1.1.14. Financing Agreement means any agreement between the Authority and a Member Agency securing the obligation of the Member Agency to make payments relating to Bonds or other obligations issued or incurred by the Authority in connection with the financing of the Facilities or the improvement, use or acquisition of real or personal property that is or will be owned or operated by the Authority, or to refinancing of such previously issued or incurred Bonds or other obligations.
- 1.1.15. Manager means the manager of the Authority.
- 1.1.16. Member Agency(ies) means Arroyo Grande, Grover Beach and Pismo Beach and any other entity added to this Agreement by a subsequent amendment.
- 1.1.17. Member of the Board or Board Member means and includes any duly appointed Director, Chair and/or Vice-Chair of the Board.
- 1.1.18. Party(ies) means those entities who have executed this Agreement or any Amendment to this Agreement and who have not withdrawn from the Authority.

1.2 **Purpose.** This Agreement is made pursuant to the Act by Arroyo Grande, Grover Beach and Pismo Beach, each of which is authorized to contract with the other pursuant hereto. The purposes of this Agreement are to create the Authority, provide for the administration of the Authority and to enable the Authority to: (1) take all actions necessary to operate, and maintain Phases 1 and 2 of the Project. Phase 1 includes construction of an ATF, treatment of all secondary treated flows from Pismo Beach's WWTP, construction of approximately five injection wells and associated transmission lines, and injection of flows from the WWTP; and (2) pursue grant funding and financing options for the Project and future projects; and (3) collectively interact with regulatory agencies with oversight over the Parties and the Project.

1.3 **Creation of Authority.** Pursuant to the Act, there is hereby created a public entity known as the "Central Coast Blue Regional Recycled Water Authority." The Authority shall be a public entity separate and apart from the Member Agencies and shall administer this Agreement.

1.4 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the Parties as provided in Article 7 of this Agreement.

1.5 **Phase 1, Project Facility Site Ownership, Construction Financing, and Operation**

1.5.1. **Phase 1 of Project.** As set forth in Article III, Section 1 – Lead Agency Duties of the Cost Sharing Agreement, Pismo Beach will be Lead Agency and act as project developer through final completion of Phase 1 of the Project. As the Lead Agency, Pismo Beach will act as the construction manager for Phase 1 and will provide administration of construction and start-up of Phase 1 on behalf of the Member Agencies. The Parties shall pay their pro rata shares of Pre-Construction costs for any professional service expenses incurred by Pismo Beach in connection with obtaining such Phase 1 approvals, in accordance with Section 6.3.2 below.

1.5.2. **Ownership of Facility Sites and Facilities.** Pismo Beach has previously purchased the Facility Site, which is located in Grover Beach and identified as Assessor’s Parcel Number 060-543-016 (“Facility Site”). Within sixty (60) days of the Effective Date of this Agreement, Pismo Beach shall transfer the Facility Site to the Authority. The Authority shall own all Facilities located at the Facility Sites, including, but not limited to, the real property, buildings, water and treatment facilities, and support infrastructure and assets, injection wells and related transmission lines.

1.5.3. **Ownership of Ancillary Facilities Sites and Ancillary Facilities.** The Authority shall own all Ancillary Facilities Sites and Ancillary Facilities located thereon.

1.5.4. **Financing of Construction Costs.** To finance Construction Costs, as defined in the Cost Sharing Agreement, the Authority shall apply for and obtain financing for such costs through the issuance of Bonds, entering into loans or Financing Agreements or any other financing mechanisms not otherwise covered by grant funding awarded to the Project. Any loans entered into and secured for construction of the Project may consist of separate installment sale agreements based on the respective share of each Member Agency, and any prepayment may be paid either directly to the Authority by each Party consistent with the Water Purveyor Contribution percentages identified in Section 6.3.2 hereof or directly to the grant funding agency or bond trustee, depending on the funding mechanism. In the event that the Authority is not able to finance the Construction Costs as described in this Section 1.5.4, the Parties will seek financing consistent with the financing plan described in Article III, Section 1.c of the Cost Sharing Agreement for its respective share of Construction Costs.

1.5.5. **Operation and Maintenance of the Facilities.** The Authority will have total responsibility for the operation and maintenance of the Facilities.

1.5.6. **Procurement Methods.** The Board may adopt such policies relating to procurement of services, equipment, supplies and other materials needed to accomplish the purposes of this Agreement.

1.6 **Powers of Authority**

- 1.6.1. General Powers. The Authority shall exercise, in the manner herein provided, the powers which are common to each of the Member Agencies, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement.
- 1.6.2. Specific Powers. Subject to the limitations set out in Section 1.6.1, the Authority is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:
- i. To make and enter contracts, including contracts with its Member Agencies;
 - ii. To employ agents, attorneys, consultants and employees or to contract for personnel to fulfill its mission and purpose. The Authority shall not contact employees of the Member Agencies at their current places of employment about employment opportunities with the Authority;
 - iii. To lease, acquire, construct, manage, maintain or operate any building, works or improvements;
 - iv. To lease, acquire, hold or dispose of real or personal property;
 - v. To acquire and hold property, including funds, Project agreements and other obligations of any kind, and pledge, encumber or assign the same, or the revenues therefrom or any portion of such revenues, or other rights, whether then owned or possessed, or thereafter acquired, for the benefit of the bondholders, and as security or additional security for any bonds or the performance of obligations under an indenture;
 - vi. To provide for the advance of bond proceeds and other funds pursuant to Project agreements as necessary to pay or reimburse for Project costs;
 - vii. To borrow money and issue Bonds and incur debts, liabilities or obligations for the purpose of paying all or any part of the costs of the Project or for any other authorized purpose, which do not constitute a debt, liability or obligation of any Member Agency;
 - viii. To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions and donations;
 - ix. To fix the compensation, if any, paid to the Board of Directors, Secretary, Treasurer, Controller and Attorney, in compliance with all applicable laws;
 - x. To prescribe the duties, compensation and other terms and conditions of employment of other agents, officers and employees;
 - xi. To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Authority;

- xii. To apply for, accept, receive and disburse grants, loans and other aid from any agency of the United States of America or of the State of California;
- xiii. To sue and be sued in its own name;
- xiv. To enter into Financing Agreements, state funding agreements and federal funding agreements relating to the Project, and assume rights and obligations pursuant to these agreements;
- xv. To invest money in the treasury, pursuant to Government Code Section 6505.5, that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 53601 of the Government Code;
- xvi. To contract and pay compensation for professional, financial, and other services;
- xvii. To carry out and enforce all provisions of this Agreement;
- xviii. To exercise any and all powers which are provided for in the Act and in Government Code section 6584 et seq., including, without limitation, Government Code section 6588, as they exist on the Effective Date of this Agreement or may hereafter be amended;
- xix. To exercise any power necessary or incidental to the foregoing powers.

ARTICLE 2 BOARD OF DIRECTORS

2.1. **Creation.** The Authority shall be governed by a board of three (3) members, which is hereby established and which shall be composed of one (1) representative appointed from each Member Agency. The governing board shall be known as the "Board of Directors of the Central Coast Blue Regional Recycled Water Authority." All voting power shall reside in the Board.

2.2. **Members of the Board of Directors.**

2.2.1. **Directors Appointed.** Upon the Effective Date of this Agreement, each Member Agency which has not already done so shall designate and appoint, by resolution or minute order of its governing body, one (1) member of its governing body to act as its representative on the Board of Directors, and one individual to act as an alternate to each Director so appointed. The alternate appointed by each Member Agency shall have the authority to attend, participate in and vote at any meeting of the Board when the regular member is absent.

2.2.2. **Membership.** Each Director and alternate of the Board of Directors shall serve until a successor is appointed; provided, however, each Director and alternate serves at the pleasure of the appointing Member Agency's governing body and may be removed at any time, with or without cause, at the sole discretion of the appointing Member Agency governing body. If a Director or alternate's membership on the appointing Member Agency's governing body ceases, his or her membership on the Board shall also cease.

- 2.2.3. **Chair.** The Board of Directors shall elect one of its members as Chair of the Board. The term of office for the Chair of the Board shall be one (1) year. The Chair of the Board shall preside at all meetings and shall perform such other duties as are specified by the Board of Directors.
- 2.2.4. **Vice-Chair.** The Board of Directors shall elect one of its members as Vice-Chair. The term of office for the Vice-Chair shall be one (1) year. The Vice-Chair shall perform all the duties of the Chair of the Board in the absence of the Chair of the Board or in the event the Chair of the Board is unable to perform such duties, and shall perform such other duties as are specified by the Board of Directors.
- 2.2.5. **Board Compensation.** Except for reimbursement for actual costs and expenses, the Board shall serve without compensation from the Authority. Compensation may be provided as approved by the Member Agencies appointing each Director and alternate, and any such compensation will be the responsibility of the Member Agency.
- 2.2.6. **Reimbursement of Costs.** Each Board Member is entitled to reimbursement for their travel, meals, lodging and other actual and necessary expenses incurred in the performance of the duties required or authorized by the Board pursuant to Government Code Section 53232.2.
- 2.3. **Powers of the Board.** All the power and authority of the Authority shall be exercised by the Board of Directors.
- 2.4. **Provision for Bylaws.** The Board may cause to be developed and may adopt, from time to time, such bylaws for the Authority to govern its day-to-day operations. Each Member Agency shall receive a copy of any bylaws developed and adopted under this Section.

ARTICLE 3 MEETINGS OF THE BOARD

- 3.1 **Meetings.** The Board shall provide for its regular meetings by resolution; provided, however, that at least one regular meeting shall be held each fiscal quarter. The date, hour and place of the regular meetings shall be fixed by resolution of the Board and filed with the governing body of each of the Member Agencies. The Board may meet in joint session with other public agencies and advisory bodies in accordance with State law.
- 3.2 **Ralph M. Brown Act.** All meetings of the Board, including, without limitation, regular, adjourned regular, special, adjourned special, and emergency meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act, commencing with section 54950 of the Government Code.
- 3.3 **Voting.** Each Board Member shall have one vote. Except as otherwise provided by law or by this Agreement, all actions of the Board shall be approved on the affirmative vote of a majority of the Members of the Board.
- 3.4 **Quorum.** A majority of the Members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.
- 3.5 **Minutes.** The Secretary of the Authority shall cause minutes of regular, adjourned regular, special, adjourned special, and emergency meetings to be kept and shall, as soon as possible after each

meeting, cause a copy of the minutes to be forwarded to each Member of the Board and to each Member Agency.

3.6 **Rules.** The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

ARTICLE 4 OFFICERS AND EMPLOYEES OF THE AUTHORITY

4.1 **Secretary.** The Board of Directors shall appoint a Secretary who shall serve at the pleasure of the Board. The Secretary may, but need not, be a member of the Board of Directors. The Secretary shall be responsible for the minutes and other records of the proceedings of the Board of Directors and shall perform such other duties as the Board of Directors specifies.

4.2 **Treasurer and Auditor Controller.** Pursuant to Government Code Sections 6505.5 and 6505.6, the Authority's Treasurer and Auditor/Controller shall be the Manager's senior financial officer (such as its chief financial officer, director of finance, or finance manager as designated by the Manager. The Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, and shall have all of the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code. The offices of Treasurer and Auditor/Controller may be held by separate individuals, or combined and held by one individual as the Board may elect. The Treasurer and Auditor/Controller shall serve at the pleasure of the Manager and may be removed at any time, with or without cause, in the sole discretion of the Manager.

4.3 **Authority Attorney.** The Attorney for the Authority, who may not be counsel to one of the Member Agencies, shall be engaged by the Board of Directors. The Attorney for the Authority or a designated deputy shall attend or participate in meetings of the Board of Directors; provided, however, that the absence of the Authority Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties the Board of Directors specifies.

4.4 **Official Bond.** Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount to be fixed by the Parties to this Agreement.

4.5 **Additional Officers and Employees.** The Board shall have the power to appoint such additional officers and to employ such employees, assistants, contractors, consultants and others as may be appropriate. Such power shall include, but not be limited to, the power to appoint a Manager for the purposes of managing and administering the Authority, and an Operator for the purposes of providing operations, maintenance, and similar services to the Authority. A Member Agency may be appointed as the Authority's Manager and/or Operator pursuant to a written agreement with the Authority.

ARTICLE 5 COMMITTEES

5.1 **Committees.** The Board of Directors, by a majority vote, may form committees for any purpose. Such vote shall designate the method for appointing committee members, the scope of the duties and responsibility of the committee, whether the committee is a standing or ad hoc committee, and such other matters as the Board may deem appropriate.

ARTICLE 6 FINANCES

Fiscal year. The Fiscal Year of the Authority shall be the period commencing on July 1 of each year and ending on and including the following June 30.

6.2 Annual Budget.

- 6.2.1 **Interim Budget.** The Board shall, within one hundred and twenty days (120) days of the Effective Date of this Agreement, approve an interim budget, which shall constitute the operating budget until the Annual Budget is adopted.
- 6.2.2 **Annual Budget.** Except for costs related to construction of Phase I, which shall be subject to the Cost Sharing Agreement, annually, in March of each year, the Board shall adopt a preliminary budget and an allocation of contributions from Member Agencies for presentation to each Member Agencies' governing body. The governing body of each Member Agency shall, no later than May 31 of each year, review and comment on the preliminary budget and allocation of contributions. Thereafter, annually, prior to July 1 of each year, the Board shall adopt a final budget for all expenses to be made by the Authority during the ensuing Fiscal Year and adopt an allocation of contributions from Member Agencies consistent with Section 6.3.2. Each annual budget shall be adopted and shall be effective on the affirmative unanimous vote of the Directors, except that the first Annual Budget may be adopted by an affirmative vote of a majority of the Directors. Contributions for each Member Agency shall be due and payable to the Authority on a monthly basis with the first payment being made within thirty (30) days of approval of the budget.
- 6.2.3 **Failure to Obtain Budget Approval.** In the event the Board does not adopt a budget prior to the beginning of a fiscal year, the budgeted amounts of all expenses and allocation of contributions from Member Agencies shall remain the same as the amounts last approved by the Board in its most recently adopted budget; provided, however, that the amounts shall be increased by the Consumer Price Index ("CPI") with a minimum increase of no less than two percent (2%). The CPI shall mean the Consumer Price Index, Bureau of Labor Statistics, U.S. Department of Labor Consumer Price Index-All Urban Consumers, All Items, Los Angeles-Long Beach-Anaheim CA for the twelve (12) month period ending the February prior to the beginning of the fiscal year, or if this index no longer exists, an index approved by a majority of the Board. This factor shall be applied to the budget until such time as a new budget is adopted by the Board. Any shortfall in revenues shall be made up from available reserves dedicated by the Board for such purpose and, if insufficient to cover the shortfall, any available reserve funds which have not been designated by the Board for a particular purpose or otherwise legally restricted for other purposes. Reserves shall mean any available cash or investments.
- 6.3 **Funds, Accounts and Reports.** There shall be strict accountability of all funds and reporting of all receipts and disbursements.
 - 6.3.1 **Sources of Funds.** The sources of funds available to the Authority may include, but are not limited to, the following:

- i. Grants, donations, and loans received by the Authority from local, State, or Federal agencies or from individuals or businesses.
- ii. Funds collected as user charges or user fees by Member Agencies.
- iii. Funds collected from Members pursuant to this Agreement.
- iv. Funds received from State and Federal disaster relief agencies.
- v. Funds obtained by issuing Bonds.
- vi. Funds collected pursuant to a Financing Agreement.
- vii. "In kind" contributions from Member Agencies.
- viii. Funds from any other source derived.

The Authority shall arrange for the receipt of such funds from the above sources as are available to the Authority and as are necessary for the conduct of the Authority's activities. Member Agencies may, in the appropriate circumstances: (a) make contributions from their treasuries for the purposes set forth in this Agreement; (b) make payments of public funds to defray the cost of such purposes; and (c) make advances of public funds for such purposes. The provisions of Government Code section 6513 are incorporated into this Agreement.

- 6.3.2 **Water Purveyor Contributions.** The Parties shall pay their pro rata share of all Pre-Construction and Construction Costs incurred by Pismo Beach in connection with Phase 1 of the Project.

The Parties agree to the following cost allocation of the total Pre-Construction and Construction costs for Phase 1 for each Party:

- i. Arroyo Grande shall contribute 25%.
- ii. Grover Beach shall contribute 36%.
- iii. Pismo Beach shall contribute 39%.

As provided in Section 6.2.2, annual contributions by Member Agencies for ongoing operations shall be consistent with the above percentages.

- 6.3.3 **Accounts.** Revenues or funds received or made available to the Authority from any source whatsoever, shall be deposited into accounts that may be established by the Authority and may be expended by the Authority in any legal manner, subject to such reservations as may be imposed by the Authority from time to time.

- 6.3.4 **Reports.** The Treasurer shall, within one hundred and eighty days (180) days after the close of each Fiscal Year, give a complete written report of all financial activities for such fiscal year to the Board of Directors and to each Member Agency. The Authority's books and records shall be open to inspection at all reasonable times by representatives of each Member Agency.

6.4 **Payments and Advances.** No expenditures in excess of those budgeted shall be made without approval of a revised or amended budget, which may from time to time be submitted to and approved by the Board of Directors.

6.5 **Audit.** The Treasurer and Auditor/Controller shall cause an annual audit of the accounts and records of the Authority to be made and reported in accordance with Sections 6505 through 6505.6 of the Government Code. The audit shall be conducted by an independent certified public accountant. The audit shall conform to generally accepted auditing standards. Such report shall be filed within twelve (12) months of the end of the Fiscal Year under examination.

ARTICLE 7 COST ALLOCATION

7.1 **Operations and Maintenance Costs.** Each Party shall pay its allocated share of all expenses incurred by the Authority for administration, operation, and maintenance of its Facilities and Ancillary Facilities based on the Water Purveyor Contribution percentages.

7.2. **Capital Improvement Costs.** Capital improvement costs to acquire, construct, or improve Facilities and Ancillary Facilities shall be subject to allocation between the Parties based on the Water Purveyor Contribution percentages.

7.3 **Debt Service.** In connection with the issuance of Bonds or the incurrence of other obligations by the Authority to finance or refinance Construction Costs or capital improvement costs to acquire, construct or improve Facilities and Ancillary Facilities, each Party shall negotiate a Financing Agreement with the Authority that includes provisions by which each Party shall make payments with respect to such Party's share of debt service on the Bonds or other obligations incurred by the Authority, consistent with any pre-existing contractual obligations of each Party.

Each Financing Agreement will stipulate that the debt service payments made by a Party to the Authority will be subject to the payment limitations set forth in Article IV, Section 5 of the Cost Sharing Agreement. For purposes of this Section 7.3, the provisions of Article IV, Section 5 of the Cost Sharing Agreement shall continue in full force and effect in the event that the Cost Sharing Agreement shall terminate.

At the time of a Bond issuance or the entering into of any other obligation by the Authority, if a Party elects to pay its share of the capital improvement costs in full with cash, it will not be allocated any share of the debt service on such Bonds or other obligations incurred by the Authority, and will not be required to enter into a Financing Agreement with the Authority, for that Bond issuance or obligation.

ARTICLE 8 TERMINATION/WITHDRAWAL/AMENDMENT

8.1 **Duration and Termination.** This Agreement shall become effective as of the Effective Date and shall continue in full force and effect until terminated by the mutual written agreement of all Member Agencies, which agreement shall meet the requirements imposed by the terms and conditions of all outstanding bonds, notes, warrants, indentures and other evidences of indebtedness; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

8.2 **Withdrawal.** Notwithstanding any other provision of this Agreement, any Member Agency may withdraw from the Authority by providing the Authority with one hundred eighty (180) days written notice of its intent to withdraw. A withdrawal from the Authority constitutes a withdrawal of that Member Agency's representatives from the Board of Directors.

8.3 **Effect of Withdrawal.** The withdrawal of a Member Agency shall not terminate its responsibility to contribute its share of any obligation incurred by the Authority, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member Agency or (2) budgeted expenses for the Fiscal Year in which notice of intent to withdraw is given. Except as the withdrawing Member Agency may agree, in writing, with the Board, the withdrawing Member Agency shall automatically relinquish all rights as a Member Agency under this Agreement, on the effective date of the withdrawal. Upon termination of this Agreement, a Member Agency that has withdrawn will be treated like all other Member Agencies for purposes of disbursement of Authority assets, unless otherwise agreed in writing.

8.4 **Disbursement.** Upon termination of this Agreement and after payment of all liabilities, costs, expenses and charges validly incurred under this Agreement, all remaining assets of the Authority shall be disbursed among Member Agencies, including any Member Agencies which previously withdrew from the Authority. All assets shall be divided among the Member Agencies in accordance with and proportionate to the Water Purveyor Contribution amounts stated in Section 6.3.2, if it is feasible to do so.

8.5 **Amendment.** This Agreement may be amended at any time by the written approval of the governing body of each Member Agency upon recommendation of a majority of the Board of Directors of the Authority.

ARTICLE 9 SPECIAL PROVISIONS

9.1 **Insurance.** The Authority shall maintain types and levels of insurance coverage for the Authority as the Board of Directors determines to be reasonably adequate, provided, however, that each Member Agency shall be named as an additional insured on such policy of and/or agreement for insurance coverage.

9.2 **Liability of Authority, Board, Officers, Employees.** Pursuant to Government Code section 6508.1, the debts, liabilities, and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Member Agencies or any of their respective members, officers, directors, employees or agents. The Authority, its Directors, officers, employees, staff and agents shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Member Agency, its officer, director or employee shall be responsible for any action taken or omitted by any other Member Agency, or its officers, or employees or the Authority, its officers, or employees.

9.3 **Indemnity.** The Authority shall indemnify, defend and hold harmless the Board of Directors, the individual Member Agencies, and their elected officials, members, officers, directors, employees and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, including, but not limited to those related to the use of any property and/or facility of any Member Agency. The Authority shall indemnify, defend and hold harmless the individual Member Agencies, and their elected officials, members, officers, directors, employees and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and

fees of litigation or arbitration) of every nature, arising out of any willful misconduct of the Authority Board of Directors or its Board Members, officers or employees. Further, the duty of the Authority to indemnify, defend and hold harmless shall not extend to the activities of the individual Member Agencies, and their members, officers, directors, employees and agents that are outside the scope of this Agreement. The Authority's duty to indemnify each Member Agency pursuant to this Agreement shall survive that Member Agency's withdrawal from the Agency. This section shall not be deemed to supersede, extinguish, or modify the indemnification provisions in the Cost Sharing Agreement.

9.4 **Conflict of Interest Code.** The Authority shall, by resolution, adopt a conflict of interest code as required by law.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 **Severability.** If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to the other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

10.2 **Notices.** Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to the respective Parties, as follows:

City of Arroyo Grande
Attention: City Manager
300 E Branch Street
Arroyo Grande, CA 93420

City of Pismo Beach
Attention: City Manager
760 Mattie Road
Pismo Beach, CA 93449

City of Grover Beach
Attention: City Manager
154 S. Eighth Street
Grover Beach, CA 93433

10.3 **Other Obligations.** The responsibilities and obligations of each Party to this Agreement shall be solely as provided in this Agreement, or as may be provided for in other agreements to be executed by the Parties, including but not limited to the Cost Sharing Agreement. In the event there is any conflict between this Agreement and the Cost Sharing Agreement, the provisions of this Agreement shall be controlling.

10.4 **Consent.** Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be unreasonably withheld.

10.5 **Other Agreements Not Prohibited.** Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.

10.6 **Assignment.** The rights, titles and interests of any Party to this Agreement shall not be assignable or transferable without the consent of the governing body of each Party hereto and the Board of Directors. Any assignment of a membership in the Authority made under this Section 10.6 by the governing body of any Party hereto will not result in the novation of the assignor Member Agency's obligations with respect to this Agreement, a Financing Agreement or any other agreement which may obligate the assignor Member Agency, unless such novation is agreed to in writing by such consenting Member Agency, the assignee and the assignor Member Agency.

10.7 **Section Headings.** The section headings herein are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

10.8 **Laws of California.** This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.

10.9 **Construction of Language.** It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

10.10 **Cooperation.** The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.

10.11 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.

10.12 **Enforcement.** The Authority is hereby authorized to take any and all legal or equitable actions, including, but not limited to, an injunction and specific performance, necessary or permitted by law to enforce this Agreement.

10.13 **Integration.** This Agreement constitutes the full and complete Agreement of the Parties.

10.14 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have caused this Joint Exercise of Powers Agreement to be executed and attested by their proper officers thereunto duly authorized on the day and year set forth below, making the same effective on the date signed by the last of all Parties hereto.

CITY OF ARROYO GRANDE:

By: _____
Caren Ray Russom, Mayor
Date: _____

ATTEST:

By: _____
Jessica Matson, City Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
Timothy J. Carmel, City Attorney
Date: _____

CITY OF GROVER BEACH:

By: _____
Jeff Lee, Mayor
Date: _____

ATTEST:

By: _____
Wendi Sims, City Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
David P. Hale, City Attorney
Date: _____

CITY OF PISMO BEACH:

By: _____
Ed Waage, Mayor
Date: _____

ATTEST:

By: _____
Erica Inderlied, City Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
David M. Fleishman, City Attorney
Date: _____