

RESOLUTION No. 484

BE IT RESOLVED BY Sunnyslope County Water District, that the President and Secretary of the Sunnyslope County Water District be and is hereby authorized and directed, for and on behalf of the Sunnyslope County Water District and as its act and deed, to execute the Joint Exercise of Powers Agreement with City of Hollister, dated November 18, 2002.

PASSED AND ADOPTED this 19th day of November 2002, by the following votes:

AYES: Directors Hailstone, Nelson, R. Anderson, D.
Anderson, & Rosskamp

NOES: None.

ABSENT: None.

ABSTAINED: None.

SUNNYSLOPE COUNTY WATER DISTRICT

By: *Stephen P. Hailstone*
Stephen Hailstone, President

(Seal)

ATTEST: *Bryan M. Yamaoka*
Bryan M. Yamaoka, Secretary

**JOINT EXERCISE OF POWERS AGREEMENT CREATING THE
HOLLISTER-SUNNYSLOPE WATER TREATMENT AGENCY
FOR WATER TREATMENT AND TRANSMISSION FACILITIES
IN THE HOLLISTER AREA**

This Agreement is entered into this 19 day of November, 2002, by and between the CITY OF HOLLISTER, a municipal corporation, hereinafter referred to as "CITY", and the SUNNYSLOPE COUNTY WATER DISTRICT, organized and existing under the laws of the State of California, hereinafter referred to as "DISTRICT", collectively sometimes referred to in this Agreement as "the Parties."

WHEREAS, the San Benito County Water District has water available from the San Felipe portion of the Central Valley Project for supplemental service of municipal and industrial water through its local distribution system; and

WHEREAS, the LESSALT plant is designed and constructed with a capacity of 3.5 million gallons per day average dry weather flow (MGD) The design capacity contemplates serving drinking water to customers which shall meet the standards required by the California Department of Health Services; and

WHEREAS, it is in the best interests of CITY and DISTRICT for regulatory and financing purposes to form a joint powers agency under California Government Code sections 6500 and following, for the purpose of owning and operating the existing, "LESSALT", water treatment facility, and such other water treatment and transmission facilities as the CITY and the DISTRICT may later agree to convey to or have constructed or otherwise acquired by the joint powers agency; and

WHEREAS, the CITY and DISTRICT (hereinafter "the Parties") are the only Parties to this Agreement, and each of them is a public agency duly authorized and empowered by law to contract for the joint exercise of powers under Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (§§ 6500 et seq.), and they have the common power and authority to acquire, construct, maintain and operate facilities for the transmission and treatment of water for potable and nonpotable use for the benefit of lands and inhabitants within their respective boundaries and authorized service areas.

NOW, THEREFORE, the Parties, pursuant to resolution or ordinance duly adopted by each of them, and in consideration of the mutual promises and covenants contained in this Agreement, agree and covenant as follows:

ARTICLE 1
CREATION OF AGENCY

1.1 Joint Powers Agency. Pursuant to sections 6500 and following of the California Government Code, the Parties hereby create a Joint Powers Agency, with the powers and authority set forth in this Agreement.

1.2 Name of Agency. The Joint Powers Agency created hereby shall be known and designated as the "Hollister-Sunnyslope Water Treatment Agency," hereinafter referred to as the "Agency."

1.3 Purpose. The purpose of this Agreement is to create a separate public agency, to undertake and implement the common power and authority of its members to study, plan for, design, construct, own, operate, maintain and use water treatment facilities and transmission pipelines for the benefit of lands and inhabitants within their respective boundaries and authorized service areas, subject to the requirement that water received from the San Benito County Water District's San Felipe Project or water drawn from the underground which originates within the San Benito County Water District's established boundary of Zone 6 must be used within Zone 6 and may not be exported from Zone 6 as it currently exists or as it may be modified in the future, and to do all things reasonably necessary to provide for their operation, maintenance and use in accordance with the terms and conditions of this Agreement.

1.4 "Water Treatment Facilities". Wherever the term "water treatment facilities" is used in this Agreement, it shall refer to all facilities commonly associated with water treatment plants, transmission pipelines and all appurtenances thereto.

1.5 "Water Transmission Facilities". Whenever the term "water transmission facilities" is used in this Agreement, it shall refer to all facilities used to transport water to or from any water treatment facilities owned or operated by the Agency.

1.6 Powers. The Agency shall have all powers necessary to carry out the purpose of this Agreement, except the power to tax. The Agency shall have the power, in its own name, to do any and all of the following:

1.6.1 To make and enter into contracts;

1.6.2 To employ agents and employees and to contract for professional services;

1.6.3 To acquire, convey, construct, manage, maintain and operate buildings, works and improvements;

1.6.4 To acquire, hold and convey real and personal property;

1.6.5 To sue and be sued in its own name;

1.6.6 To incur debts, liabilities and obligations;

1.6.7 To issue bonds, notes, warrants and other evidences of indebtedness to finance costs and expenses incidental to the projects of the Agency;

1.6.8 To apply for and execute appropriate grants or contracts of financial assistance from state and federal agencies;

1.6.9 To issue revenue bonds in accordance with the State of California statutes more specifically set forth in Article 4, paragraph 4.1 of this Agreement;

1.6.10 To apportion costs to the Parties and collect from the Parties the share of costs so apportioned for the use of the water treatment and transmission facilities owned or operated by the Agency, in accordance with the terms of this Agreement;

1.6.11 To exercise the power of eminent domain and condemn any real property necessary to carry out the objects or purposes of the Agency; and

1.6.12 To the extent not herein specifically provided for, to exercise any and all other powers common to the Parties, insofar as such exercise is not inconsistent with section 6508 of the Government Code.

1.7 Separate Legal Entity. The Agency created hereby is a public entity duly formed and existing under the laws of the State of California, and is a legal entity separate and distinct from its member entities, the Parties. The debts, duties and obligations created pursuant to this Agreement shall not be the obligation of its officers, employees, or members of the Governing Board, but shall be debts, liabilities, and obligations of the Parties, in accordance with section 6508.1 of the Government Code.

ARTICLE 2 ORGANIZATION

2.1 Governing Board. The Governing Board of the Agency consisting of four members shall be created upon execution of this Agreement. The CITY shall be represented by two City Council Members selected by vote of the City Council. The DISTRICT shall be represented by two members of the District's governing Board, selected by vote of the District Board. As provided in section 6508 of the Government Code, the Governing Board may delegate its functions to a Coordinating Committee, constituted as set forth in paragraph 2.2, for the purposes of program development, policy formulation, or program implementation, provided, however, that the annual budget of the Agency must be approved by the Governing Board. If the Governing Board creates a Coordinating Committee and makes such delegation, all provisions for organization, meetings, quorums, procedure and voting for the Governing Board shall apply also to the Coordinating Committee.

2.2 Coordinating Committee. If appointed by the Governing Board, the Coordinating Committee will consist of four members. The CITY will be represented by the City Manager and the Director of Public Works or City Engineer. The DISTRICT will be represented by the District Manager and the District's Engineer.

2.2.1 Alternate Members. CITY and DISTRICT may each appoint alternate members of the Governing Board and the Coordinating Committee. The alternates appointed shall serve in the place and stead of any regular member whenever the regular member is absent.

2.2.2 Board Organization. At its first regular meeting in each fiscal year, the Governing Board shall select one of its members to serve as chairman. The chairman shall serve until the election of his successor the next fiscal year unless his membership terminates earlier for whatever reason. Any vacancies in the office of chairman during the fiscal year shall be filled by vote of the Governing Board until the next regular election.

2.2.3 Chairman Duties. The chairman shall preside at all meetings of the Governing Board. In the event the chairman shall be absent from any meeting, the members of the Governing Board may elect a vice chairman to serve during his absence.

2.2.4 Secretary. The CITY shall provide a secretary for the Governing Board. The secretary shall keep minutes of the Governing Board's proceedings, shall maintain custody of all books, records and documents of the Governing Board, and shall have the power to certify Agency documents as required by law. The secretary shall serve at the pleasure of the Governing Board.

2.2.5 Controller. Pursuant to section 6505.5 of the Government Code the DISTRICT's financial officer shall serve as the Agency's controller, with the duties and functions and authority provided by sections 6505 and 6505.5 of the Government Code, and as otherwise provided by law and this Agreement.

2.2.6 Time and Place of Regular Meetings. Regular meetings of the Governing Board shall be held at a time and place to be determined by the Governing Board. Special meetings may be called at any time by the chairman or by two other members, to be held at a reasonable time and place specified in the notice calling such meeting. Such notice shall be given of special meetings as may be required by resolution of the Governing Board. Except as may otherwise be provided by resolution of the Governing Board, the procedure to be followed by the Governing Board at its meetings shall be that set forth in Robert's Rules of Order.

2.2.7 Public Meetings. All meetings of the Governing Board shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, sections 54950 and following of the California Government Code.

2.2.8 Quorum. A quorum of the Governing Board for the transaction of Agency business shall consist of two members from the CITY and two members from the DISTRICT.

2.2.9 Voting. Except as specifically otherwise provided herein, the vote of a majority of the members of the Governing Board present at any regular, adjourned or special meeting shall be sufficient to pass and act upon any matter properly before the Agency, and each member of the Governing Board shall have one vote at the respective meetings of the Governing Board. Any action to establish, incur or increase the financial obligation or liability of the CITY or the DISTRICT shall require the express ratification by the governing bodies of the Parties.

2.2.10 Powers and Duties of Governing Board. In addition to the powers and duties granted elsewhere in this Agreement, the Governing Board shall have the following powers and duties:

(a) Approve the Agency's annual budget.

(b) Advise and inform CITY and DISTRICT about any and all matters relating to the water treatment facilities and the maintenance, repair, expansion, replacement, improvement and operation policies of same, including, without limitation, the advisability of entering into contracts with other persons, districts or political subdivisions desiring to use the water treatment facilities, and recommendations for insurance.

(c) Advise the CITY and DISTRICT about amendments to this Agreement.

2.2.11 Governing Board Expenses. It is mutually agreed that the members of the Board shall be reimbursed for all expenses reasonably incurred by them in performance of their duties. Provisions for same shall be considered an operating cost of the Agency and shall be included in the annual budget for the Agency.

2.3 Facility Operation. The Agency may contract with the CITY, with the DISTRICT, or with independent third parties, for personnel necessary to operate the water treatment and transmission facilities owned by the Agency. The creation of any employee positions shall require the ratification of the Parties' governing bodies. The Agency shall contract with the DISTRICT for a person to serve as the Agency's manager and treatment plant operator. The person serving as treatment plant operator shall have the licenses and certifications required by law to operate water treatment and transmission facilities for the treatment and transmission of safe drinking water, and shall have the authority and responsibility to cause the Agency's water treatment and transmission facilities to be operated in accordance with applicable laws.

2.4 Engineers. The Governing Board shall nominate and recommend to CITY and DISTRICT an engineering firm to provide professional engineering services for the purposes specified in this Agreement. The CITY and DISTRICT shall thereafter each consent to the Governing Board's nomination or advise the Governing Board to nominate another engineering firm to provide professional engineering services for the purposes specified in this Agreement.

2.5 Other Employees. The Governing Board may employ such other employees and assistants as may be appropriate, after the positions are ratified by the governing bodies of the

Parties. Any such person shall be an at will employee serving at the pleasure of the Governing Board.

ARTICLE 3 FINANCIAL PROVISIONS

3.1 Contributions; Payments and Advances; Use of Personnel, Equipment or Property. Funds may be paid to and disbursed by the Agency as follows:

3.1.1 Contributions from the treasuries of the Parties may be made for the purposes set forth in this Agreement;

3.1.2 Payments of public funds may be made to defray the cost of such purposes;

3.1.3 Advances of public funds may be made for the purposes set forth in this Agreement, such advances to be repaid as provided in this Agreement;

3.1.4 Personnel, equipment or property of the Parties may be used in lieu of other contributions or advances, as provided in this Agreement.

3.1.5 Grant funds may be received from any state or federal agency or any private source; and

3.1.6 Funds may be received and disbursed from the sale of revenue bonds issued by the Agency; and

3.1.7 Funds may be received and disbursed from other lawful financing methods.

For the purposes of any election held regarding the issuance of bonds by the Agency, the boundaries of the Agency shall be deemed to be the same as the service area of the Agency, which includes the jurisdictional boundaries of the Parties.

3.2 Determination of Costs. In determining a cost to be borne by the Parties, all costs necessary or properly incurred by the Agency in connection with the acquisition of right-of-way, construction, reconstruction, operation, maintenance or repair pursuant to this Agreement shall be included and such costs shall include, but not be limited to, contract prices, engineering, supervisory and legal expenses, road construction and repair and all direct costs of men, materials and equipment and the like.

3.3 Exchange of Services. The CITY and DISTRICT shall each pay the costs of services provided to or for the Agency by employees of the CITY and DISTRICT, respectively. Except as otherwise provided in this Agreement, the Parties agree to provide for the mutual exchange of services without payment of any consideration other than such services, pursuant to section 6506 of the Government Code.

3.4 Apportionment of Costs.

3.4.1 Water Treatment Facility Costs. CITY and DISTRICT shall each bear the cost and expense of providing water meters of a recognized and acceptable design and construction to meter the amount of water sent to each Party's distribution system from the joint facilities. The cost of operating and maintaining said joint facilities shall be divided in proportion to the volume of water delivered to each Party. DISTRICT and CITY each shall pay, in advance on the first day of each calendar quarter, one-half of the budgeted cost of operating and maintaining the joint treatment facility. If the advance payments are not adequate to pay the costs for the quarter, the Parties shall each pay one-half of any additional costs incurred by the Agency for that quarter, upon notice from the Agency's controller of the need for such additional payment. Within fifteen days after the end of each calendar quarter, the proportionate share of costs to be borne by each Party shall be calculated and adjusted based on the metered volume of water delivered to each Party, and the payments for the next calendar quarter shall be adjusted based on metered flow for the prior quarter.

3.4.2 Transmission Facility Costs. The costs of maintaining and repairing any transmission pipelines held and operated by the Agency shall be divided equally between the CITY and DISTRICT.

3.4.3 Treatment Plant Site Acquisition and Facilities Costs. The cost for acquisition of the LESSALT treatment plant site and for construction and right-of-way acquisition costs for the LESSALT Treatment Plant Facilities have been shared equally between the CITY and the DISTRICT. Except as otherwise provided in paragraph 3.7 of this Agreement, the cost of future treatment plant site and rights-of-way acquired through the Agency and water treatment facilities constructed through the Agency shall also be shared equally by the Parties.

3.4.4 Right-of-Way and Construction Costs. The cost of rights-of-way acquired through the Agency for transmission facilities and the costs of transmission facilities constructed through or conveyed by the Parties to the Agency shall be borne by the Parties on the basis of present and projected portions of the capacity of each section of the facilities required by each Party. The portion of the capacity of such facilities to be allotted to each Party shall be based on engineering reports and approved by the Governing Board.

3.5 Taxes. The Parties shall each pay one-half of any taxes lawfully assessed against the Agency.

3.6 Payment of Costs. Unless otherwise provided in this Agreement, the Parties will pay their respective shares of costs upon receipt of a statement for payment, but no later than forty five (45) days after receiving the statement from the Agency's controller. Each Party agrees to pay to the Agency a late charge of ten percent of the amount of any payment not made by the Party when due.

3.7 Expansion. Either Party may pay the cost to expand or enlarge the water treatment facilities, and require the Agency to make the enlargement or expansion. If the other

Party later uses the expanded capacity, that Party shall reimburse the Party originally causing the expansion or enlargement for 50% of all direct and indirect costs as set forth in section 3.2 of this Agreement. The Parties shall each pay 50% of the cost of any expansion or enlargement approved in advance by both Parties.

3.8 Budget. On or before the 1st day of February of each fiscal year, the Agency shall prepare and submit to the governing bodies of CITY and DISTRICT a proposed budget for the ensuing fiscal year, as approved by the Governing Board of the Agency, for the purchase of water, maintenance, repair, replacement and operation of the water treatment facilities. Upon receipt of the proposed budget from the Governing Board, the governing bodies of DISTRICT and CITY shall each consider the same and may recommend the increase, decrease or omission of any item or the insertion of any items. The Governing Board shall receive and consider the recommendations from the DISTRICT and the CITY and shall adopt a budget which shall be the official budget for the fiscal year for the maintenance, repair, replacement, improvement and operation of the water treatment facilities.

3.9 Insurance. Throughout the term of this Agreement the Agency, directly or through one or both of the Parties, shall maintain in force a comprehensive policy of liability insurance with minimum coverage of \$5,000,000 combined single limit, insuring the Agency, its Board and members thereof, and its officers, employees and agents, from any loss, liability, damages or claims arising out of or in any way connected with this Agreement or the operations of the Agency, covering personal injury or death to any person and property damage arising out of any dangerous or defective condition in the treatment plant facilities or any part or property thereof, or arising or resulting from any act or omission of the Agency or the Parties, and their respective officers, agents or employees, in the control, administration, construction, installation, operation, maintenance or repair of the treatment plant facilities. The Agency shall also procure property damage insurance for all water treatment facilities and water transmission facilities owned by the Agency, in an amount determined by the Governing Board of the Agency. The cost of such insurance shall be charged as part of the operating costs of the treatment plant. The Agency shall procure such insurance directly or through one or both of the Parties, and shall charge the costs thereof to operating costs. In addition, in contemplation of the provisions of Government Code section 895.2, imposing certain tort liability upon public entities which are parties to a joint powers agreement, such policies shall name the Parties as additional insureds under the coverage afforded. Such insurance may be primary and non-contributing with respect to any other insurance policies available to the Parties and, if so, each of them shall include a severability of interests (cross-liability) clause. Each policy for the Agency shall afford the Agency and the Parties at least thirty (30) days' unqualified prior notice of cancellation, non-renewal or material change in coverage, and shall otherwise be in the form or forms approved by the Agency.

3.10 Workers' Compensation Insurance. The Agency shall maintain workers' compensation plans covering all of the Agency's employees as required by Labor Code section 3700. The Parties' existing workers' compensation program shall satisfy the requirements of this paragraph. CITY and DISTRICT, instead of the Agency, shall maintain the required workers'

compensations plans for their respective employees who provide services to and for the Agency.

3.11 No Power to Tax. The Agency shall have no power to raise money by taxation or assessment.

3.12 Fiscal Year. The fiscal year of the Agency shall be from March 1 to the following February 28.

3.13 Accounting Procedures. Full books and accounts shall be maintained for the Agency in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies (see Government Code §26909). In particular, the controller and treasurer of the Agency shall comply strictly with the requirements of the statutes governing joint powers agencies as set forth in sections 6500 and following of the Government Code.

3.14 Audit. The controller of the Agency shall cause the accounts and records of the Agency to be audited annually in accordance with the provisions of Government Code section 6505, and copies of each such audit report shall be filed with the San Benito County Auditor and each Party within twelve months of the end of the fiscal year under examination.

3.15 Official Bonds. The manager, controller and such other employees or agents as the Governing Board may direct shall file an official bond in the amount determined by the Governing Board. The cost of any such bond shall be paid by the Agency.

ARTICLE 4 BOND FINANCING

4.1 Revenue Bonds. The Agency shall have the power and authority to issue and sell revenue bonds in accordance with the procedures and requirements set forth in:

4.1.1 Article 2, Chapter 5, Division 7, Title 1 of the California Government Code, commencing with §6540;

4.1.2 Chapter 6, Division 7, Title 5 of the California Government Code, commencing with §54300;

4.1.3 Any other then-applicable law regarding or permitting the issuance of revenue bonds by a joint powers agency.

ARTICLE 5 OPERATIONAL PROVISIONS

5.1 Operation and Maintenance. The Agency's water treatment and transmission facilities shall be maintained in sound operating condition in accordance with recognized standards for maintaining and operating such facilities. Written operation and maintenance

guidelines shall be established by the Governing Board.

5.2 Plans and Specifications. The plans and specifications for facilities constructed through the Agency, together with related contract documents, shall be prepared by the selected engineering firms and shall be approved by the State Department of Health Services and the Parties. The plans and specifications and contract documents shall all be approved by the Governing Board and the respective governing bodies of CITY and DISTRICT.

5.3 Bid Award. Construction shall be accomplished by the lowest responsible bidder, as recommended by the Governing Board to the DISTRICT and CITY after public advertisement for bids. The work may be performed in separate sections and separate plans and specifications may be prepared by the engineers for separate sections of the work, and bids may be called for and contracts let for portions of the total work contemplated by this Agreement. The clerk for the CITY shall, upon request of the Governing Board, advertise for and receive bids. The Governing Board and the governing bodies of CITY and DISTRICT shall authorize the acceptance of the bid and the execution of the contract with the successful bidder.

5.4 Capacity Use. Excepting additional capacity from expanded or enlarged facilities paid for by one Party pursuant to paragraph 3.7, water treatment capacity from the Lessalt plant shall be allocated to DISTRICT and CITY on a fifty-fifty basis. Upon completion of the facilities, the Parties shall have the right to deliver treated water up to their respective allotted portions of the total capacity of said facilities.

5.5 Supervision and Right-of-Way Acquisition. The Agency's engineering firm shall supervise the construction of the work contemplated in this Agreement for all preliminary right-of-way work, consisting of the selection of the right-of-way to be acquired, determining the owners and other persons having any interest of record in the various parcels.

5.6 Eminent Domain. The Agency shall have the power of eminent domain. In the event it is necessary for the Agency to acquire property by eminent domain, the Governing Board, with the approval of the governing bodies of the Parties, shall pass a resolution of necessity authorizing the eminent domain action. The court costs, legal and other expenses of conducting an eminent domain proceeding and obtaining a final judgment shall be paid equally by the Parties.

5.7 Control of Distribution Systems. Neither this Agreement nor any of its provisions shall have any effect on any of the water distribution systems or treatment facilities of either of the parties hereto that are not directly involved in the joint use or joint construction projects herein contemplated. The powers and duties of the Agency shall relate only for the purposes of the joint facilities as contemplated herein and shall have no powers or duties over the individual facilities of each of the parties except as otherwise specifically provided.

5.8 Plant and Transmission Facilities Site Location. The site location of any water treatment plant and transmission facilities shall be ratified by the governing bodies of the Parties.

ARTICLE 6 PROPERTY RIGHTS

6.1 Agency Facilities. All facilities, assets and property acquired or constructed by the Agency shall be held in the name of the Agency for the benefit of the Parties in accordance with the terms of this Agreement. Upon execution of this Agreement, the Parties shall convey to the Agency the LESSALT facility, including the LESSALT water treatment plant, site, rights of way and appurtenances.

6.2 Transfer of Facilities Upon Dissolution. Upon termination of this Agreement and dissolution of the Agency as hereinafter provided, the facilities, assets and property of the Agency shall be transferred and conveyed to any successor entity as may be created hereafter by the Parties, or to the Parties, or either of them, as the Parties may agree.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Effective Date. This Agreement shall become effective and the Agency shall be created when the Agreement is fully executed pursuant to due authorization by the governing bodies of the Parties.

7.2 Termination. This Agreement may be terminated and the Agency dissolved by a three-fourths (3/4) of the Governing Board, ratified by the affirmative action of two-thirds (2/3) of the governing body of each of the Parties; provided, however, that there shall be no termination and dissolution until any and all revenue bond debt incurred by the Agency for the construction or acquisition of property or facilities has been fully amortized and retired or such debt is properly assumed or refinanced by the Parties.

7.3 Amendments. This Agreement may be amended only by a writing signed by authorized representatives of the Parties.

7.4 Interpretation. This Agreement has been negotiated by and between persons knowledgeable in the subject matter of this Agreement and each party has had the opportunity to have this Agreement and all exhibits to it reviewed by legal counsel. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement and the exhibits to this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

7.5 Counterparts. This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document, constituting one agreement, binding on the parties.

7.6 Compliance With Laws. This Agreement and the performance of each term of this Agreement are subject to compliance with applicable laws, ordinances, rules, regulations and

orders.

7.7 Further Actions. The Parties agree to execute such other documents and take such actions as may be necessary to give effect to the provisions of this Agreement.

7.8 Approval; Cooperation. Whenever consent or approval or cooperation of a Party is required to give effect to any of the provisions of this Agreement, that Party shall not unreasonably withhold such consent or approval or cooperation.

7.9 Waiver. The waiver by either Party of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

7.10 Effect. This Agreement shall bind and benefit the Parties and their successors. Except as otherwise provided in this Agreement, this Agreement constitutes the full and complete agreement of the parties regarding its subject matter, and any prior agreements or arrangements are hereby superseded.

7.11 Captions. Titles or captions of articles, sections and paragraphs contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision of it.

7.12 Severability. If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

7.13 Dispute Resolution Procedure. If any dispute arises between the parties as to the proper interpretation or application of this Agreement, the Parties shall first seek to resolve the dispute in accordance with this Agreement, and, except where the dispute involves the payment of money by one Party to another, the Parties will submit the dispute to binding arbitration in accordance with paragraph 7.17.

7.14 Duty to Meet and Confer. If any dispute under this Agreement arises, the Parties shall first meet and confer, in an attempt to resolve the matter between themselves. Each party shall make all reasonable efforts to provide to the other Party all the information that the Party has in its possession that is relevant to the dispute, so that both Parties will have ample information with which to reach a decision.

7.15 Arbitration. If the dispute is not resolved by meeting and conferring, the matter shall be submitted to binding arbitration. The Parties shall jointly select a single arbitrator, or, if the Parties are unable to agree, they shall each select an arbitrator, and the matter shall be handled by two arbitrators. The two arbitrators may, if they deem it appropriate and warranted by the nature and significance of the dispute and after consultation with the parties, themselves select a third arbitrator. Any person selected as an arbitrator shall be a qualified professional with expertise in the area that is the subject of the dispute. Before commencement of the

arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure sections 1280 et seq., including the right to discovery pursuant to Code of Civil Procedure section 1283.05, and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association for arbitration of construction law disputes. The decision of the arbitrator or arbitrators shall be binding.

7.16 Expenses, Attorney's Fees and Costs. Each Party agrees to pay all expenses and costs incurred by such Party in connection with this Agreement. In the event it should become necessary for either Party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing Party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

7.17 Assignment. The Parties shall not assign any rights or obligations under this Agreement without the written consent of both Parties.

7.18 Prior Agreements Superseded. This Agreement supersedes the Joint Agreement dated April 15, 1991, and the Cost Sharing Agreement dated August 30, 1995. Except as to the enforcement of rights and obligations already incurred by the Parties in implementing the Joint Agreement and the Cost Sharing Agreement, the Joint Agreement and the Cost Sharing Agreement shall have no further force or effect after the Parties sign this Joint Exercise of Powers Agreement.

CITY OF HOLLISTER

SUNNYSLOPE COUNTY WATER DISTRICT



TONY LOBUE, Mayor



STEPHEN HAILSTONE, President

ATTEST:



FRANK D. FELICE, City Clerk

ATTEST:



BRYAN YAMAOKA, Secretary

APPROVED AS TO FORM:



Elaine M. Cass, City Attorney

APPROVED AS TO FORM:



Lloyd Lowrey, District Counsel