

JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE
CALIFORNIA MARITIME INFRASTRUCTURE AUTHORITY

November 1, 1995

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This agreement, dated as of November 1, 1995, by and among the Humboldt Bay Harbor, Recreation and Conservation District, the Stockton Port District, the Sacramento-Yolo Port District and the San Diego Unified Port District (collectively, the "Initial Members"), and any other Harbor Agency (as hereinafter defined) that may hereafter be added as a party pursuant to the terms hereof (with the Initial Members, collectively referred to herein as the "Members", subject to any withdrawals pursuant to the terms hereof).

W I T N E S S E T H:

WHEREAS, the Members are empowered by Chapters 1 and 2 of Part 1 of Division 6 of the Harbors and Navigation Code of the State of California (the "Act") and Chapter 7 of Division 7 of Title of the Government Code of the State of California (the "Joint Powers Law") to create a joint powers entity for the purpose, among others, of establishing or administering an infrastructure fund or funds, receiving or administering federal, state and private grants, financing Port or Harbor Infrastructure (as hereinafter defined) and any other purpose permitted under the Joint Powers Law or the Act; and

WHEREAS, the Members have determined that a joint exercise of powers authority should be formed pursuant to the Act and the Joint Powers Law for such purposes;

NOW, THEREFORE, the Members, for and in consideration of the mutual premises and agreements herein contained, do each agree as follows:

SECTION 1. Definitions

Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Agreement have the meanings herein specified.

Act

"Act" means Part 1 of Division 6 of the Harbors and Navigation Code of the State of California (commencing with Section 1690 thereof), as now in effect or as it may from time to time hereafter be amended or supplemented.

Agreement

"Agreement" means this Agreement as the same now exists or as it may from time to time be amended by any supplemental agreement entered into pursuant to the provisions hereof.

Authority

"Authority" means the California Maritime Infrastructure Authority created by this Agreement.

Board

"Board" means the governing board of the Authority as described in Section 7.

Boardmember

"Board member" means a duly appointed member of the Board.

Bonds

"Bonds" means bonds, notes, bond anticipation notes, commercial paper, or other evidences of indebtedness or warrants or lease, installment sale, or other agreements or certificates of participation therein.

Harbor Agency

"Harbor Agency" means any state or local agency, city, county, city and county, harbor district, port district, harbor improvement district, river port district, small craft harbor district, or other public district, entity, board, commission, or agency that operates a port or harbor in the State of California.

Initial Member

"Initial Member" means the Humboldt Bay Harbor, Recreation and Conservation District, the Stockton Port District, the Sacramento-Yolo Port District and the San Diego Unified Port District.

Joint Powers Law

"Joint Powers Law" means Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with Section 6500 thereof), as now in effect or as it may from time to time hereafter be amended or supplemented.

Marks-Roos Local Bond Pooling Act of 1985

"Marks-Roos Local Bond Pooling Act of 1985" means Article IV of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with Section 6584 thereof), as now in effect or as it may from time to time hereafter be amended or supplemented.

Member

"Member" means each Initial Member and any other Harbor Agency that is added as a party to this Agreement pursuant to the terms hereof.

Membership Category

"Membership Category" means each of the following: (1) Large Deep Draft Harbors (harbors handling 3-million tons of cargo and over annually); (2) Medium Deep Draft Harbors (harbors handling from 700,000 to 2,999,999 tons annually); (3) Small Deep Draft Harbors (harbors handling less than 700,000 tons annually); (4) Large Shallow Draft Harbors (harbors or marinas having 2,500 boat berths and over); (5) Medium Shallow Draft Harbor (harbors or marinas having from 1,000 to 2,499 boat berths) and (6) Small Shallow Draft Harbors (harbors or marinas having less than 1,000 berths).

Port or Harbor Infrastructure

"Port or Harbor Infrastructure" shall have the meaning set forth in the Act, and any properties, buildings, structures, facilities, improvements or equipment necessary or convenient to a Harbor Agency with respect to operations of other than a port or harbor, including, without limitation, airport or real estate operations. Port or Harbor Infrastructure may be privately owned or operated, if the Authority determines it will materially benefit the applicable Harbor Agency or its operations or purposes.

SECTION 2. Purpose

This Agreement is made pursuant to the Joint Powers Law to provide for the joint exercise of powers common to the Members; to provide for the exercise of additional powers given to a joint powers entity under the Joint Powers Law, including, but not limited to, the Marks-Roos Local Bond Pooling Act of 1985; and to provide for the exercise of additional powers given to a joint powers authority under the Act. These powers include, but are not limited to, issuing Bonds, establishing or administering an infrastructure fund or funds, receiving or administering federal, state and private grants, expending tax revenues or other appropriated funds received or administered by the Authority, financing Port or Harbor Infrastructure and any other purpose or activity permitted under the Joint Powers Law or the Act. These powers will be exercised in the manner hereinafter set forth.

SECTION 3. Creation of Authority; Membership; Limitations on Obligations

There is hereby created pursuant to the Joint Powers Law an agency and public entity to be known as the "California Maritime Infrastructure Authority." As

provided in the Joint Powers Law, the Authority shall be a public entity separate from the Members.

Any Harbor Agency shall be added as a new Member upon the approval of the governing body of such Harbor Agency and approval of the Board. The addition of any new Member shall become effective upon the execution on behalf of such Member of a counterpart of this Agreement and payment to the Authority of a pro-rata share of organization, planning and other costs and charges as determined by the Board.

This Agreement shall remain in effect as to any Member, unless and until it is terminated as to such Member by notice in writing to all other Members given by the withdrawing Member at least thirty (30) days in advance of the effective date of such termination; provided that such termination by and as to any Member shall not terminate this Agreement as to the remaining Members or the existence of the Authority herein created.

Any Member so terminating shall be obligated to pay any amounts such Member owes to the Authority and its pro-rata share of any encumbrances and indebtedness of the Authority which have been assumed by resolution of the governing body of such Member, all as of the date of service of notice of termination on the Authority, as a condition precedent to such termination and withdrawal.

The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any Member, unless assumed in a particular case by resolution of the governing body of the Member to be charged. The debts, liabilities and obligations of any Member shall not constitute debts, liabilities or obligations of any other Member by virtue of this Agreement.

SECTION 4. Term

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by a supplemental agreement executed by each Member; provided, however, that in no event shall this Agreement terminate while any Bonds of the Authority remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued.

SECTION 5. Powers

(a) The Authority shall have the powers to exercise any and all common powers of the Members; any and all powers given to a joint powers authority under the Joint Powers Law, including, but not limited to, the Marks-Roos Local Bond Pooling Act of 1985; and any and all powers given to a joint powers authority under the Act.

(b) The powers of the Authority include, but are not limited to, the following:

(i) To administer an infrastructure fund pursuant to the Act.

(ii) To make and accept grants, gifts, fees and allocations from the State of California or its political subdivisions, the Federal government, foreign governments and any other private sources, and to expend any tax revenues or other appropriated funds, under Federal or State law, received or administered by the Authority.

(iii) To issue Bonds in the manner set forth in the Joint Powers Law or Act, in order to finance or refinance any Port or Harbor Infrastructure or to make deposits into the infrastructure fund.

(iv) To make loans to, or to enter into a lease, installment sale or other agreement with, any Member or other Harbor Agency or any other person for the purpose of financing or refinancing any Port or Harbor Infrastructure.

(v) To purchase, refinance, or restructure bonds issued by any Member or other Harbor Agency or any other person in whole or in part to finance or refinance any Port or Harbor Infrastructure.

(vi) To secure or guarantee, or to purchase, pay for, or reimburse any guaranty, insurance, or other credit enhancement of, any bonds issued by the Authority, any Member, or any Harbor Agency, or any other person, if the bonds were issued in whole or in part to finance or refinance any Port or Harbor Infrastructure.

(vii) To pay the costs of administering the infrastructure fund or the Authority, including any costs of issuance of Bonds issued by the Authority to finance or refinance Port or Harbor Infrastructure.

(viii) To undertake any other purpose, activity, project or program permitted by the Joint Powers Law or the Act.

(c) The Authority is also authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts; to accept the assignment of contracts entered into by any Member prior to the establishment of or becoming a Member of the Authority which relate to the purposes of this Agreement; to employ agents, attorneys, consultants and employees; to acquire, construct, manage, maintain and operate any building, works or improvements; to acquire, hold or dispose of property; to incur debts, liabilities or obligations which do not constitute debts, liabilities or obligations of any Member; and to sue and be sued in its own name.

Such powers shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon the Humboldt Bay Harbor, Recreation and Conservation District in the exercise of similar powers, as provided in Section 6509 of the Joint Powers Law.

(d) Subject to the applicable provisions of any indenture, trust agreement or resolution providing for the investment of moneys held thereunder, the Authority shall have the power to invest any money in the treasury pursuant to Section 9(b) hereof that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

SECTION 6. Termination of Powers

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement, except that if any Bonds are issued and delivered, then in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made.

SECTION 7. Governing Board

(a) The Authority shall be administered by the Board. During such time as there are less than ten (10) Members, the Board shall consist of the chief executive officer of each Member, who shall serve ex officio.

(b)(i) During such time as there are ten (10) or more Members, the Board shall consist of six (6) Boardmembers, each of whom shall represent a different Membership Category. In the event each Membership Category is not represented by the Members, the number of Boardmembers shall equal the number of Membership Categories represented by the Members. At such time as the addition of the tenth (10th) Member becomes effective, the Members shall elect the new Boardmembers, with each Member entitled to vote only for a Member in its Membership Category. Each Member shall vote through its chief executive officer (or its chief financial officer if its chief executive officer is unavailable) without the requirement of any approval or other action by its governing body, and the Board shall consist of the chief executive officer of each of the elected Members, who shall serve ex officio.

(ii) During such time as there are ten (10) or more Members, Boardmembers of such Board shall serve a term of three years. Successors to such Boardmembers shall be selected in the manner in which the respective initial Boardmember was selected and shall serve a term of three years. Any vacancy on the Board shall be filled pursuant to the terms and provisions of the By-Laws of the Authority.

(c) The chief financial officer of a Member, or such other officer as designated by resolution of the Member filed with the Secretary of the Authority, shall be the alternate Boardmember for the chief executive officer of such Member, and shall have the power to act as such Boardmember in his or her place and stead to all intents and purposes as though the Boardmember were personally present, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, to execute and deliver documents, and to vote upon any and all matters.

(d) Boardmembers shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Boardmember if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

SECTION 8. Meetings of the Board

(a) The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The date upon which, and the hour and place at which, each such regular meeting shall be held shall be fixed by resolution of the Board.

(b) All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 54950 thereof), as now in effect or as it may from time to time hereafter be amended or supplemented.

(c) The secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Boardmember and to each Member.

(d) A majority of the Boardmembers shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.

SECTION 9. Officers; Duties; Official Bonds

(a) The Board shall elect a chair of the Authority and a vice-chair of the Authority from among its members and shall appoint a secretary, a treasurer and an auditor of the Authority who may, but need not, be a member of the Board and who may, but need not be, the same person.

(b) Subject to the applicable provisions of any indenture, trust agreement or resolution providing for a trustee or other fiscal agent, the treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Law.

(c) The auditor shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Law. The auditor shall submit an annual report regarding receipts and expenditures from the infrastructure fund and all financing activities of the Authority to the State Controller and California Debt Advisory Commission pursuant to Section 1706(b) of the Act.

(d) The treasurer and auditor of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer shall file an official bond with the secretary of the Authority in the amount of \$100,000. If and to the extent permitted by law, any such officer may satisfy this requirement by filing an official bond in at least said amount obtained in connection with another public office.

(e) If the treasurer and auditor appointed by the Board as set forth in subsection (a) of this Section are not the treasurer and auditor, respectively, of one of the Members, the Board shall appoint one of its officers or employees to either or both of such positions. The offices of treasurer and auditor may be held by separate officers or employees of the Authority or combined and held by one officer or employee; provided that such person or persons shall comply with the duties and responsibilities of such office or offices as set forth in the Joint Powers Law. In the event the Board designates its officers or employees to fill the functions of treasurer or auditor, or both, such officers or employees shall cause periodic independent audits to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Government Code of the State of California.

(f) The Board shall have the power to appoint such other officers and employees, including without limitation, an executive director, as it may deem necessary and to retain independent counsel, consultants and accountants.

SECTION 10. Fiscal Year

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to June 30, 1996.

SECTION 11. Disposition of Assets

Upon dissolution of the Authority as a legal entity, all debts of and advances to the Authority shall be paid, and then the property of the Authority, whether real or personal, shall be divided among and distributed to all of the Harbor Agencies who at any time during the existence of the Authority were Members in proportion to the costs borne by each such Member to the Authority during its legal existence by non-reimbursed contributions made pursuant to Section 15.

SECTION 12. Bonds

The Authority shall have power to issue Bonds or any other form of indebtedness in accordance with the provisions of the Act or Joint Powers Law or any other source of legal authority for the purpose of raising funds necessary to carry out its powers under this Agreement and to enter into any appropriate agreements to secure said Bonds or other form of indebtedness.

SECTION 13. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other financing programs and to issue other obligations. This Agreement shall not be deemed to amend or alter the terms of other agreements among the Members, except as expressly provided herein.

SECTION 14. Conflict of Interest Code

The Authority, to the extent required by law, shall adopt a Conflict of Interest Code.

SECTION 15. Contributions and Advances

Additional contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the advancing Member and the Authority at the time of making such advance.

SECTION 16. Filings, Accounts and Reports

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Joint Powers Law.

The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any resolution or indenture of the Authority securing the Bonds. The books and records of the Authority shall be open to inspection at all reasonable times by each Member and its representatives. The Authority shall give a written report of all financial activities for each fiscal year to each Member within 120 days after the close of each fiscal year.

Subject to Section 9(e), the auditor of the Authority shall either make, or contract with a certified public accountant or public accountant to make, an annual

audit of the accounts and records of the Authority. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each Member. Such report shall be filed within 12 months of the end of the fiscal year under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

All the books, records, accounts and files referred to in this Section shall be open to the inspection of holders of Bonds to the extent and in the manner provided in any resolution or indenture providing for the issuance of Bonds.

SECTION 17. Breach

If default shall be made by any Member in any covenant contained in this Agreement, such default shall not excuse any Member from fulfilling its obligations under this Agreement, and each Member shall continue to be liable for the performance of all conditions herein contained. Each Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member hereby grants to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

SECTION 18. Severability

Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

SECTION 19. Successors; Assignment

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 20. Amendment of Agreement

This Agreement may be amended by supplemental agreement executed by each Member (a) at any time prior to the issuance of Bonds or (b) at any time after the issuance of Bonds subject to the conditions and restrictions set forth in the resolution or resolutions or indenture or indentures or trust agreement or agreements authorizing the issuance of Bonds.

SECTION 21. Waiver of Personal Liability

No member, officer or employee of the Authority or any Member shall be individually or personally liable for any claims, losses, damages, costs, injury and liability of every kind, nature and description arising from the actions of the Authority or the actions undertaken pursuant to this Agreement.

SECTION 22. Execution in Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall collectively constitute one and the same instrument.

SECTION 23. Section Headings

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized, as of the day and year first above written.

HUMBOLDT BAY HARBOR,
RECREATION AND CONSERVATION
DISTRICT

By _____

STOCKTON PORT DISTRICT

By _____

SACRAMENTO-YOLO PORT DISTRICT

By _____

SAN DIEGO UNIFIED PORT DISTRICT

By _____

PORT OF REDWOOD CITY

By _____