



**JOSHUA BASIN WATER DISTRICT**  
**ADJOURNED REGULAR MEETING OF THE BOARD OF DIRECTORS**  
**WEDNESDAY DECEMBER 14, 2011 7:00 PM**  
**HELEN GRAY EDUCATION CENTER**  
**6601 WHITE FEATHER ROAD, JOSHUA TREE, CA 92252.**

**AGENDA**

- |          |    |  |
|----------|----|--|
|          | 1. | <b>CALL TO ORDER</b>   |
|          | 2. | <b>PLEDGE OF ALLEGIANCE</b>  |
|          | 3. | <b>DETERMINATION OF QUORUM</b>   |
|          | 4. | <b>APPROVAL OF AGENDA</b>  |
|          | 5. | <b>PUBLIC COMMENT:</b> At this time, any member of the public may address the Board on matters within the Board’s jurisdiction that are <u>not</u> listed on the agenda. Please use the podium microphone. The Board may not discuss at length or take action on items not on the agenda.<br>During either "Public Comment" Item, please use the podium microphone. State your name and have your information prepared and be ready to provide your comments to the Board. The District is interested and appreciates your comments. A 3-minute time limit may be imposed. Thank you.  |
| Pg 1-19  | 6. | <b>APPOINTMENT OF BOARD MEMBER TO FILL VACANCY</b><br>Recommend that the Board conduct interviews of candidates for the vacant board seat; make appointment by majority vote or continue item.   |
| Pg 20-21 | 7. | <b>AMENDMENT OF ARTICLES III AND VII TO PROVIDE RULES AND REGULATIONS RELATED TO THE WASTE WATER SYSTEM AND TO PROVIDE FOR DEVELOPMENT AGREEMENT WITH PROVISIONS TO EXTEND THE COLLECTION OF CAPACITY FEES</b><br>Recommend that the Board adopt Resolution 11-XXX approving proposed changes to Articles III and VII of the Joshua Basin Water District (JBWD) Rules and Regulations to address various procedures and policies regarding waste water systems; and to provide for development agreements with the potential to collect capacity fees over an extended period of time. |
| Pg 22-41 | 8. | <b>AGREEMENT BETWEEN HI-DESERT MEDICAL CENTER AND JOSHUA BASIN WATER DISTRICT FOR PACKAGE WASTE WATER TREATMENT PLANT</b><br>Recommend that the Board approve the agreement.   |
| Pg 42-45 | 9. | <b>REVISION OF JBWD ADMINISTRATION CODE SECTION 3.07.02 PROVIDING FOR BOARD AGENDA ITEMS NEEDING TO BE ADDRESSED SUBSEQUENT TO POSTING OF AGENDA:</b><br>Recommend that the Board adopt the revision to conform with the California Brown Act, rather than the more restrictive current Administration Code Section.   |

10. COMMITTEE REPORTS
  - A. PUBLIC INFORMATION COMMITTEE: Kathleen Radnich, Public Outreach Consultant
  - B. AD HOC GENERAL MANAGER PERFORMANCE FACILITATED REVIEW PROCESS:  
Vice President Reynolds and Director Long:
11. PUBLIC COMMENT
 

At this time, any member of the public may address the Board on matters within the Board's jurisdiction that are not listed on the agenda. Please use the podium microphone. The Board may not discuss at length or take action on items not on the agenda.
12. GENERAL MANAGER REPORT
13. DISTRICT GENERAL COUNSEL REPORT
- Pg 46 14. SELECTION OF BOARD OFFICERS
 

Recommend that the Board select a President and a Vice President for the 2012 calendar year.
- Pg 47-48 15. APPOINTMENT OF BOARD REPRESENTATIVES TO MOJAVE WATER AGENCY, MORONGO BASIN PIPELINE COMMISSION, AND ASSOCIATION OF THE SAN BERNARDINO COUNTY SPECIAL DISTRICTS
 

Recommend that the Board receive the appointments to be made by the Board President for representatives to the above agencies.
16. DIRECTORS COMMENTS/REPORTS
17. CLOSED SESSION
  - A. At this time, the Board will go into Closed Session to confer with Legal Counsel on existing litigation pursuant to subdivision (a) of Government Code Section 54956.9. (Re Joshua Basin Water District v. Robert Ellis, San Bernardino Superior Court - Joshua Tree District, Case No. CIVMS 900168).
  - B. At this time, the Board will go into Closed Session to confer with Legal Counsel on existing litigation pursuant to subdivision (a) of Government Code Section 54956.9. (Re Joshua Basin Water District v. Ironhead LLC a California Limited Liability Company, Praxedes Beard and Does 1 – 10 inclusive, San Bernardino Superior Court - Joshua Tree District, Case No. CIVMS 1100087).
  - C. At this time, the Board will go into Closed Session to confer with labor negotiator regarding MSC unit pursuant to Government Code 54957.6. District negotiator: Joe Guzzetta.
18. REPORT ON CLOSED SESSION
19. ADJOURNMENT

**INFORMATION**

The public is invited to comment on any item on the agenda during discussion of that item.

Any person with a disability who requires accommodation in order to participate in this meeting should telephone Joshua Basin Water District at (760) 366-8438, at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the District's office located at 61750 Chollita Road, Joshua Tree, California 92252 during normal business hours.

JOSHUA BASIN WATER DISTRICT  
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

December 7, 2011

Report to: President and Members of the Board  
From: Joe Guzzetta, General Manager



TOPIC: APPOINTMENT OF BOARD MEMBER TO FILL VACANCY

RECOMMENDATION: That the Board take the following action:

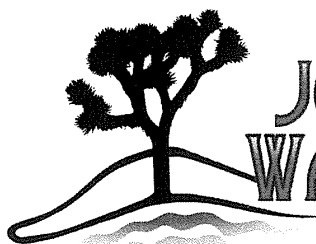
- 1) Conduct interviews of candidates for the vacant Board seat
- 2) By at least majority vote, appoint to fill the vacant position; or if unable to appoint this evening:
- 3) Continue the matter to a meeting not later than Monday, January 9, 2012, to make the appointment.

ANALYSIS: On November 16, the Board determined to fill the vacant Board seat by appointment rather than by election. The vacancy has been posted with a deadline of November 30, 2011 to submit applications. Applications that were received are attached.

After conducting interviews Board Members may appoint an individual to fill the position by majority vote. All voting must be done publicly. The Board may take a "straw vote" prior to formal vote if necessary to achieve a majority.

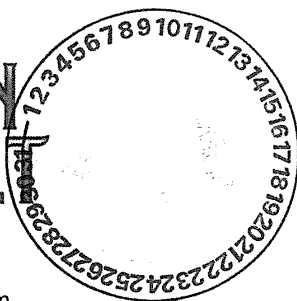
If the Board appoints this evening the individual selected may be sworn in by the General Manager/Board Secretary. The seat would be considered open at the next election of November 2012 at which time the appointed incumbent would need to run for office to continue in the seat until 2014.

If the Board is unable to make an appointment this evening it would be necessary to do so no later than January 9, 2012. After that date, the matter would be submitted to the County Board of Supervisors which would have the option of appointing an individual or setting an election.



# JOSHUA BASIN WATER DISTRICT

61750 Chollita Road PO Box 675 Joshua Tree California  
Ph: 760.366.8438 Fax: 760.366.9528 email: jbwbd@jbwd.com



## **APPLICATION FOR VACANT POSITION ON JOSHUA BASIN WATER DISTRICT BOARD OF DIRECTORS**

Please complete the form below and include the following as attachments:

- 1) Statement of qualifications, resume, limited to two pages (8-1/2 x 11)
- 2) Cover letter defining your interest in serving on the Joshua Basin Water District Board of Directors, limited to one page (8-1/2 x 11)
- 3) Completed Form 700 (Statement of Economic Interests)

Applicant Name PAUL F COATE  
First M.I. Last

Mailing address 61165 MELTON TRAIL

City JOSHUA TREE State CA Zip Code 92252

Residence address 61165 MELTON TRAIL

City JOSHUA TREE State CA Zip Code 92252

Voter registration address 61165 MELTON TRAIL

City JOSHUA TREE State CA Zip Code 92252

Phone: Home: 760-366-2213 Work: 760-830-7308 Cell: 760-668-2065

Emergency or Alternate Contact: Name: KAREN Y COATE  
 Address: 61165 MELTON TRAIL, JOSHUA TREE CA 92252  
 Phone: Home: 760-366-2213 Work: \_\_\_\_\_ Cell: 760-401-1735

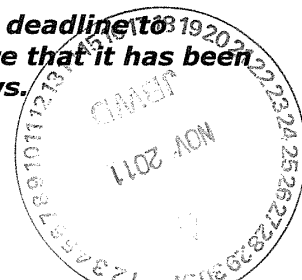
Applicant Signature: Paul F Coate

**APPLICATION DEADLINE: 5:00 P.M. ON WEDNESDAY, NOVEMBER 30, 2011**

**Applications must contain an original signature  
and must include all required attachments.**

**The District will accept applications e-mailed before the deadline to [jbwd@jbwd.com](mailto:jbwd@jbwd.com) provided that you phone the District to assure that it has been received, and provided that a hard-copy follows.**

**Send applications to:**  
**Joshua Basin Water District**  
**Attention: Board of Directors Vacancy**  
**PO Box 675**  
**Joshua Tree, CA 92252**



**Statement of Qualifications**

Paul F Coate

61165 Melton Trail, Joshua Tree, Ca 92252

Home Phone 760-366-2213 Work 760-830-7308 Cell 760-668-2065

E-Mail, FAKCOATE@msn.com

**Work Experience**

1975 – 1977, San Tiago Aqueduct, Los Alisos Ca, Water Treatment

1977 – 1980, Joshua Basin Water District. Joshua Tree Ca, Water Operations

1980 -1983, Bighorn Mountains Water Agency. Landers Ca, General Manager. Water District

1983 – Present Twentynine Palms Marine Base. Utility Supervisor. Water Treatment, Water Distribution, Wastewater Treatment, Wastewater Collections. Boiler Plant & Co-Generation Plant.

**College:**

Santa Ana College: Water Science

Palomar College: Water Science

College of the Desert: Water Science

Other Schooling includes 30 plus years of CWEA, AWWA, Water Quality Control Institute Training and other 3 & 4 day classes pertaining to the field of Water & Wastewater Treatment

**Certifications:**

Water Distribution, D4, and License number 23130

Water Treatment, T3, and License number 6126

Wastewater Treatment, WW4, and License number 5919



**Statement of Interest**

Nov 29, 2011

I have been interested in everything that is and has been going on in the Water District; I have been following the Board Meetings on your web page to keep me up to date. I feel that with my 36 years of Water experience and 28 years of Waste-Water experience that I could be helpful to the Board as it begins to move forward in this direction.

I have lived in this district for 19 years, and love the area, it is my home. I feel that I need to step out and share my experience with my local Community.

Note: I served on the Water Board for a short period of time in 1994, but had to go to Adak Alaska to help do a Base closer and did not get to finish my time on the Board. I would like to take this opportunity to fulfill my service to this Water District and my Community.

A handwritten signature in black ink that reads "Paul E. Coate". The signature is written in a cursive style with a large, stylized 'P' and 'C'.

**STATEMENT OF ECONOMIC INTERESTS**  
**COVER PAGE**

Date Received  
 Official Use Only

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)  
COATE PAUL FRANKLIN

**1. Office, Agency, or Court**

Agency Name  
JOSHUA BASIN WATER DISTRICT - BOARD  
 Division, Board, Department, District, if applicable Your Position

► If filing for multiple positions, list below or on an attachment.

Agency: \_\_\_\_\_ Position: \_\_\_\_\_

**2. Jurisdiction of Office (Check at least one box)**

State  Judge (Statewide Jurisdiction)  
 Multi-County \_\_\_\_\_  County of \_\_\_\_\_  
 City of JOSHUA TREE  Other \_\_\_\_\_

**3. Type of Statement (Check at least one box)**

**Annual:** The period covered is January 1, 2010, through December 31, 2010. **-or-**  **Leaving Office:** Date Left \_\_\_\_/\_\_\_\_/\_\_\_\_  
 (Check one)  
 The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_, through December 31, 2010.  The period covered is January 1, 2010, through the date of leaving office.  
 **Assuming Office:** Date \_\_\_\_/\_\_\_\_/\_\_\_\_  The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_, through the date of leaving office.  
 **Candidate:** Election Year \_\_\_\_\_ Office sought, if different than Part 1: \_\_\_\_\_

**4. Schedule Summary**

Check applicable schedules or "None." ► Total number of pages including this cover page: \_\_\_\_\_

**Schedule A-1 - Investments** - schedule attached  **Schedule C - Income, Loans, & Business Positions** - schedule attached  
 **Schedule A-2 - Investments** - schedule attached  **Schedule D - Income - Gifts** - schedule attached  
 **Schedule B - Real Property** - schedule attached  **Schedule E - Income - Gifts - Travel Payments** - schedule attached

**-or-**  
 **None - No reportable interests on any schedule**

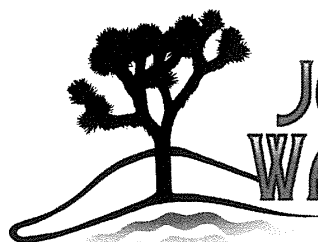
**5. Verification**

MAILING ADDRESS STREET CITY STATE ZIP CODE  
 (Business or Agency Address Recommended - Public Document)  
61165 MELTON TRAIL JOSHUA TREE CA 92252  
 DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS  
(760) 668-2065 PAKCOATE@MSN.COM

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed NOV 29, 2011 Signature Paul J Coate  
(month, day, year) (File the originally signed statement with your filing official.)



# JOSHUA BASIN WATER DISTRICT

61750 Chollita Road PO Box 675 Joshua Tree California  
Ph: 760.366.8438 Fax: 760.366.9528 email: jbwd@jbwd.com



## **APPLICATION FOR VACANT POSITION ON JOSHUA BASIN WATER DISTRICT BOARD OF DIRECTORS**

Please complete the form below and include the following as attachments:

- 1) Statement of qualifications, resume, limited to two pages (8-1/2 x 11)
- 2) Cover letter defining your interest in serving on the Joshua Basin Water District Board of Directors, limited to one page (8-1/2 x 11)
- 3) Completed Form 700 (Statement of Economic Interests)

Applicant Name BARBARA J DELPH  
First M.I. Last

Mailing address 7364 QUAIL SPRINGS ROAD

City JOSHUA TREE State CA Zip Code 92252

Residence address 7364 QUAIL SPRINGS ROAD

City JOSHUA TREE State CA Zip Code 92252

Voter registration address 7364 QUAIL SPRINGS ROAD

City JOSHUA TREE State CA Zip Code 92252

Phone: Home: 760-366-8613 Work: 760-341-6800 Cell: 760-974-6941

Emergency or Alternate Contact: Name: WAYNE FENTGES

Address: 7364 QUAIL SPRINGS ROAD JOSHUA TREE CA 92252

Phone: Home: 760-366-8613 Work: - Cell: -

Applicant Signature:

**APPLICATION DEADLINE: 5:00 P.M. ON WEDNESDAY, NOVEMBER 30, 2011**

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and must include all required attachments.**

**The District will accept applications e-mailed before the deadline to  
jbwd@jbwd.com provided that you phone the District to assure that it has been  
received, and provided that a hard-copy follows.**

**Send applications to:  
Joshua Basin Water District  
Attention: Board of Directors Vacancy  
PO Box 675  
Joshua Tree, CA 92252**



To Whom It May Concern:

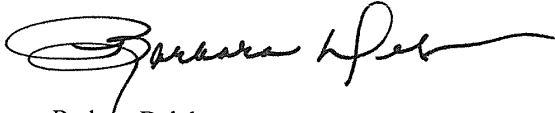
I am interested in serving on the Joshua Basin Water District Board of Directors because I feel I have something to offer to this community and to our water district. I take great pride in our community, and want to be part of the success of our local agencies

I have been an active participant in our water board meetings as a concerned citizen. I have also attended some extraneous informational sessions concerning water and water education. I am a current member of the Citizens Advisory Council, and a current member of the Joshua Tree Municipal Advisory Committee. I have also attended meetings of the Joshua Tree Community Association.

I am concerned that our community must plan ahead to fulfill the obligation of delivering clean, healthy water at a reasonable cost to the customers. JBWD has to have fore-sight to protect the rate-payers from rising costs and overdraft of our water supply.

The desert is a fragile environment, and water is of the upmost concern to keeping our community a viable entity. Team work is of the utmost importance so that we can work together to fulfill this goal.

Thank you for this opportunity,

A handwritten signature in black ink, appearing to read "Barbara Delph". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Barbara Delph  
Applicant for the Board vacancy  
7364 Quail Springs Road  
Joshua Tree, CA 92252  
760-974-6941 – cell  
760-366-8613 - home

***Barbara Delph***  
7364 Quail Springs Road  
Joshua Tree, CA. 92252  
Mobile: 760-974-6941  
Home: 760-366-8613

---

I am an active participant in our local agencies; I attend the JBWD bi-weekly meetings; I am an active member in the CAC (Citizens Advisory Council) and am an active member of the Joshua Tree Municipal Advisory Committee. I take great pride in our community, and want to be part of the success of our local agencies.

***OBJECTIVE***

To obtain the open position for Director, where I can best use by knowledge, education, experience and people skills in a productive manner to enhance the position for which I am applying; as well as allowing for personal growth and development.

***FUNCTIONAL SUMMARY***

I am a responsible, self-motivated individual as well as being a team player. I have managerial and organizational skills with the ability to implement organizational goals and tasks. I am well versed in business acumen and am able to carry out complex tasks.

***EMPLOYMENT***

***Desert Medical Advances***

Responsible for regulatory tasks on 45+ clinical trials. These tasks include communications with major pharmaceutical companies and their representatives; submission and communications with global regulatory boards; submission and oversight of good clinical practices at the site level; and communications and submissions to the FDA (Food and Drug Administration).

***Tri-Con Corporation***

Responsible for multi-store operations, as well as training and profitability of individual stores. Job description included management development of all subordinate managers and their assistants; responsibility for all administrative tasks, including personnel and profit of all line items on the P&L.

***J.J.R. Management Corporation***

Responsible for single-store overall operations; training, profit and customer satisfaction. Job description included management development and training; local store marketing and overall customer satisfaction.

Dates of employment and references are available on request



STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Received
Official Use Only

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)
Delph Barbara J

1. Office, Agency, or Court

Agency Name
Joshua Basin Water District
Division, Board, Department, District, if applicable
Your Position
Director
If filing for multiple positions, list below or on an attachment.
Agency: Position:

2. Jurisdiction of Office (Check at least one box)

State Judge (Statewide Jurisdiction)
Multi-County County of San Bernardino
City of Other

3. Type of Statement (Check at least one box)

Annual: The period covered is January 1, 2010, through December 31, 2010.
-or-
The period covered is / / , through December 31, 2010.
Assuming Office: Date Jan / / 12
Leaving Office: Date Left / / (Check one)
The period covered is January 1, 2010, through the date of leaving office.
The period covered is / / , through the date of leaving office.
Candidate: Election Year Office sought, if different than Part 1:

4. Schedule Summary

Check applicable schedules or "None."
Total number of pages including this cover page:
Schedule A-1 - Investments - schedule attached
Schedule A-2 - Investments - schedule attached
Schedule B - Real Property - schedule attached
Schedule C - Income, Loans, & Business Positions - schedule attached
Schedule D - Income - Gifts - schedule attached
Schedule E - Income - Gifts - Travel Payments - schedule attached
-or-
None - No reportable interests on any schedule

5. Verification

MAILING ADDRESS STREET CITY STATE ZIP CODE
7364 Quail Springs Road Joshua Tree CA 92252
DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS
( 760 ) 974-6941 bdelph@dc.rr.com

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed November 28, 2011
(month, day, year)

Signature (File the originally signed statement with your filing official.)



61750 Chollita Road PO Box 675 Joshua Tree California  
 Ph: 760.366.8438 Fax: 760.366.9528 email: jbwbd@jbwd.com

**APPLICATION FOR VACANT POSITION  
 ON JOSHUA BASIN WATER DISTRICT BOARD OF DIRECTORS**

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- 3) Completed Form 700 (Statement of Economic Interests)

Applicant Name Robert Alan Johnson  
First M.I. Last

Mailing address HCR Box 3039

City Joshua Tree State CA Zip Code 92252

Residence address 63633 Wagon Wheel Rd

City Joshua Tree State CA Zip Code 92252

Voter registration address SAME AS ABOVE

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Phone: Home: 760-366-8888 Work: 760-830-3446 Cell: 760-413-0273

Emergency or Alternate Contact: Name: MIRTA E. JOHNSON

Address: 63633 Wagon Wheel Rd. Joshua Tree, CA

Phone: Home: 760-366-8888 Work: \_\_\_\_\_ Cell: 760-413-3527

Applicant Signature: [Handwritten Signature]

**APPLICATION DEADLINE: 5:00 P.M. ON WEDNESDAY, NOVEMBER 30, 2011**

**Applications must contain an original signature  
 and must include all required attachments.**

**The District will accept applications e-mailed before the deadline to  
[jbwd@jbwd.com](mailto:jbwd@jbwd.com) provided that you phone the District to assure that it has been  
 received, and provided that a hard-copy follows.**

**Send applications to:  
 Joshua Basin Water District  
 Attention: Board of Directors Vacancy  
 PO Box 675  
 Joshua Tree, CA 92252**

November 30, 2011

**Joshua Basin Water District**

Letter to District Board of Directors

My name is Robert Johnson and I am interested in serving on the Joshua Basin Water District. I have been a resident of Joshua Tree, California, since 1993.

I value the Hi-desert and its comfortable style of living. I treasure my home of residence and feel strongly about serving and supporting the community. I am extremely interested in the environment and the development of our desert community. I believe in the stewardship of resources, ensuring that through the use of positive management techniques and care, that our communities well being and quality of life, will remain for future generations. I feel that the community should be served by individuals who share and support the voice of the people.

It is my hope to serve the community, by being a voice and advocate for the compatible and systematic use of our water. We need to ensure that we maintain to a well developed long term plan for water use and sustainable living. We must be vigilant with regard to issues of; overdraft, contaminant discharge, demands for water and future growth.

While serving on the Board, I will endeavor to serve with integrity, honesty and a committed sense of leadership. I believe I can be a valued member of the Board and provide a balance for managing our resources and future stewardship. While serving, I can provide sound managerial skills with tested expertise plus serve as a voice of reason and logic.

It is my hope to serve the Joshua Basin Water District Board by being a trusted team member and representative voice of the Community.



Robert Alan Johnson



## RESUME

**Robert Alan Johnson**  
63633 Wagon Wheel Rd  
HCR Box 3039  
Joshua Tree, Ca 92252  
(760) 366-8888 (Home)

November 30, 2011

### Professional Experience

2009-Present

**Marine Corps Air Ground Combat Center  
G-5 Community Liaison and Plans  
Twentynine Palms, Calif.**

- Community Plans Manager / G-5: Coordinate and research various environmental projects, monitor and report on encroachment activities and/or incompatible land use development activities near the base that could affect its mission, training ranges and special use airspace and maneuver areas.

1983-2009

**California Army National Guard  
(JFHQ) Joint Forces Headquarters,  
Sacramento, Calif.**

- JFHQ State Chaplain (Colonel): ISO/Contingency Operations mobilization: Supervision, administration, support; Army Reserve National Guard, Air National Guard, and State Military Reserve (RST) Religious Support Teams. Brief Adjutant General and senior staff; moral, ethics, religious issues. Coordinate mobilizations-deployments; state / national defense, crisis-emergency support. (LNO) Liaison Officer, National Guard Bureau, NGB-OC. Oversight Religious /Spiritual Programs. Served 20,000 troops plus families. Second largest National Guard in the country. Retired 2009 at the rank of Colonel. Prior enlisted service, Honorable Discharge.

1994-2003

**Department of Defense/Department of the Navy  
Marine Air Ground Task Force Training Command,  
29 Palms, Ca. Twentynine Palms, Ca.  
Program Manager, Intervention and Treatment Center**

- Supervise Family Advocacy Program, domestic violence services and administration supervision of staff
- Supervise the Drug and Alcohol Treatment Program, treatment and administration staff
- Provided therapeutic services to active duty Marines and their families.
- Cases involved: domestic violence / spouse abuse, child abuse / neglect

**1993-1994 Union Rescue Mission, Los Angeles, Ca.**  
**Director of Recovery Programs**

- Program Director residential homeless recovery program, educational center and satellite outreach services. Worked with various civic, non-profit and religious faith groups. Serviced 300+ live-in residents and accommodated hundreds daily. Third largest service program in the country.

**1979-1993 Pastoral Church Experience:**

Associate Pastor Community: United Presbyterian Church, USA.

Served in a variety of positions.

**Formal Education**

Azusa Pacific University, Azusa, Ca.  
Fuller Theological Seminary, Pasadena, Ca.  
San Diego State University, San Diego, Ca.

MA. Marriage and Family  
M.-Divinity. Theology  
BA Social Welfare

**Military Schools:**

Selected to attend: Army War College (relinquished selection)  
Command and General Staff- completed  
Colonels and Installation Class-completed

**Credentials**

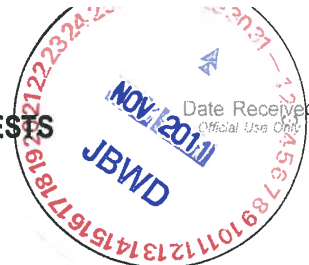
Licensed Marriage and Family Therapist (MFT #23984)  
California State Certified Junior College Teacher (Psychology/Counseling)  
Department of the Navy, Bureau of Medicine and Surgery  
Certified Clinical Supervisor (CCS #40)  
Alcohol and Drug Counselor, ADC II (#0237)  
Ordained Presbyterian Minister ( PCUSA-1981)

**Military Awards:**

Legion of Merit  
Bronze Star  
Order of California  
Additional: Campaign and unit awards  
Honorable Discharge

\* References available upon request.

**STATEMENT OF ECONOMIC INTERESTS**  
**COVER PAGE**



Please type or print in ink.

NAME OF FILER (LAST) JOHNSON (FIRST) Robert (MIDDLE) ALAN

**1. Office, Agency, or Court**

Agency Name Josha Basin Water District (Director)  
 Division, Board, Department, District, if applicable \_\_\_\_\_ Your Position \_\_\_\_\_

▶ If filing for multiple positions, list below or on an attachment.

Agency: \_\_\_\_\_ Position: \_\_\_\_\_

**2. Jurisdiction of Office (Check at least one box)**

State  Judge (Statewide Jurisdiction)  
 Multi-County \_\_\_\_\_  County of SAN BERNARDINO  
 City of \_\_\_\_\_  Other \_\_\_\_\_

**3. Type of Statement (Check at least one box)**

Annual: The period covered is January 1, 2010, through December 31, 2010. **-or-**  Leaving Office: Date Left \_\_\_\_\_ (Check one)  
 The period covered is \_\_\_\_\_, through December 31, 2010.  The period covered is January 1, 2010, through the date of leaving office.  
 Assuming Office: Date 12/1/11  The period covered is \_\_\_\_\_, through the date of leaving office.  
 Candidate: Election Year \_\_\_\_\_ Office sought, if different than Part 1: \_\_\_\_\_

**4. Schedule Summary**

Check applicable schedules or "None." **▶ Total number of pages including this cover page: 1**

Schedule A-1 - Investments - schedule attached  Schedule C - Income, Loans, & Business Positions - schedule attached  
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**-or-**  
 None - No reportable interests on any schedule

**5. Verification**

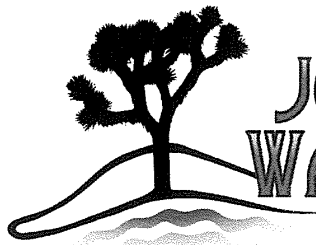
MAILING ADDRESS (Business or Agency Address Recommended - Public Document) STREET CITY STATE ZIP CODE  
HCR Box 3039 Josha Tree CA \_\_\_\_\_ 92252  
 DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS  
760 366-8888 STJOHNSON@MSN.COM

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 11/30/11 (month, day, year) Signature \_\_\_\_\_ (File the originally signed statement with your filing official.)





# JOSHUA BASIN WATER DISTRICT



61750 Chollita Road PO Box 675 Joshua Tree California  
Ph: 760.366.8438 Fax: 760.366.9528 email: jbwbd@jbwd.com

## **APPLICATION FOR VACANT POSITION ON JOSHUA BASIN WATER DISTRICT BOARD OF DIRECTORS**

Please complete the form below and include the following as attachments:

- 1) Statement of qualifications, resume, limited to two pages (8-1/2 x 11)
- 2) Cover letter defining your interest in serving on the Joshua Basin Water District Board of Directors, limited to one page (8-1/2 x 11)
- 3) Completed Form 700 (Statement of Economic Interests)

Applicant Name Karen L Tracy  
First M.I. Last

Mailing address 62350 Cummins Way

City Joshua Tree State CA Zip Code 92252

Residence address 62350 Cummins Way

City Joshua Tree State CA Zip Code 92252

Voter registration address 62350 Cummins Way

City Joshua Tree State CA Zip Code 92252

Phone: Home: 760 401 0809 Work: 760 401 0809 Cell: 760 401 0809

Emergency or Alternate Contact: Name: Lori Flippin - sister

Address: 121 Poplar Av. Auburn CA 95603

Phone: Home: 530 268 1641 Work: NA Cell: 530 913 7432

Applicant Signature: Karen Tracy

**APPLICATION DEADLINE: 5:00 P.M. ON WEDNESDAY, NOVEMBER 30, 2011**

**Applications must contain an original signature  
and must include all required attachments.**

**The District will accept applications e-mailed before the deadline to  
jbwd@jbwd.com provided that you phone the District to assure that it has been  
received, and provided that a hard-copy follows.**

**Send applications to:  
Joshua Basin Water District  
Attention: Board of Directors Vacancy  
PO Box 675  
Joshua Tree, CA 92252**

**Dr. Karen Tracy**

62350 Cummins Way  
Joshua Tree 760 401 0809

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November 28, 2011

Joshua Basin Water District  
PO Box 675  
61750 Chollita Road  
Joshua Tree, CA 92252

Dear Board Members:

My formal education and more importantly, my seasoned community experience will prove invaluable in the position of Board Member at the Joshua Basin Water District. With 26 years in the Morongo Basin, 21 of them in Joshua Tree, I claim sophisticated and significant neighborhood networking skills.

Since retiring from dentistry in 2005 I have spent my time in meditation, yoga and community service on both the JBWD CAC, since July, 2008 and the Demonstration Garden planning and docent team since Dec. 2009.

Attached please find my resume. I look forward to hearing from you.

Sincerely,

  
Dr. Karen Tracy

## **KAREN TRACY DDS**

62350 Cummins Way  
Joshua Tree, CA 92252  
760 401 0809

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**OBJECTIVE:** To use my extensive and diverse background for analytical problem solving and community building in service to the Joshua Basin Water District.

### **QUALIFICATIONS:**

With a background in medicine, especially emergency medicine, I inherently possess leadership skills, qualitative risk assessment and 'the-buck-stops-here' outlook. Yucca Valley's first woman Rotarian (1986-1990), United Way Campaign Chairperson for Joshua Tree (1988) and Hospice of Morongo Basin volunteer (2000-2009) demonstrate a broad and compassionate allegiance to this community. With the Public Health Dept. at UCLA, I published 3 separate volumes teaching facilitative communication (available upon request); my 'people skills' are superlative. Further revealing my directorial and involvement capabilities: I founded and led with Dr. Robert Kupps, the Hi Desert Combined Dental Study Club, arranging for speakers/topics and traveled with Flying Samaritans to remote Baja clinics.

### **EDUCATION:**

DDS UCLA 5/1981  
EMT College of the Redwoods 1/1983

### **EMPLOYMENT**

10/2001-8/2005, Joshua Lane Dental, Bruce Jones D.D.S. employer

4/1991-4/1999, Morongo Basin Ambulance, Emergency Medical Technician responding to 911 calls

1982-1991-General Dentistry, various practices in California including the Morongo Basin

### **REFERENCES**

Curt Sauer, former Superintendent, Joshua Tree National Park  
760 366 7502  
[Curt\\_Sauer@nps.gov](mailto:Curt_Sauer@nps.gov)

Deb Bollinger, Bollinger Consulting Group  
760 819 9939  
[deb@bollingerconsultinggroup.com](mailto:deb@bollingerconsultinggroup.com)

John Schuster, Attorney and Local Business Owner  
323 336 1019  
[schuserj@radrunner.com](mailto:schuserj@radrunner.com)

**STATEMENT OF ECONOMIC INTERESTS**

Date Received  
Official Use Only

**COVER PAGE**

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)  
 TRACY Karen Lynn

**1. Office, Agency, or Court**

Agency Name  
 Joshua Basin Water District  
 Division, Board, Department, District, if applicable Your Position

applicant for Board position

▶ If filing for multiple positions, list below or on an attachment.

Agency: \_\_\_\_\_ Position: \_\_\_\_\_

**2. Jurisdiction of Office (Check at least one box)**

- State  Judge (Statewide Jurisdiction)
- Multi-County \_\_\_\_\_  County of \_\_\_\_\_
- City of \_\_\_\_\_  Other Joshua Basin Water District

**3. Type of Statement (Check at least one box)**

- Annual: The period covered is January 1, 2010, through December 31, 2010. **-or-**  Leaving Office: Date Left \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Check one)
- The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_, through December 31, 2010.  The period covered is January 1, 2010, through the date of leaving office.
- Assuming Office: Date 1/9/2012  The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_, through the date of leaving office.
- Candidate: Election Year \_\_\_\_\_ Office sought, if different than Part 1: \_\_\_\_\_

**4. Schedule Summary**

- Check applicable schedules or "None." ▶ Total number of pages including this cover page: 2
- Schedule A-1 - Investments - schedule attached
  - Schedule A-2 - Investments - schedule attached
  - Schedule B - Real Property - schedule attached
  - Schedule C - Income, Loans, & Business Positions - schedule attached
  - Schedule D - Income - Gifts - schedule attached
  - Schedule E - Income - Gifts - Travel Payments - schedule attached
- or-**
- None - No reportable interests on any schedule

**5. Verification**

MAILING ADDRESS STREET CITY STATE ZIP CODE  
 (Business or Agency Address Recommended - Public Document)  
 62350 Cummins Way Joshua Tree CA 92252

DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS  
 (760) 401 0809 oktracy@mac.com

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 11/29/11 (month, day, year) Signature Karen Tracy (File the originally signed statement with your filing official.)

**SCHEDULE C**  
**Income, Loans, & Business**  
**Positions**  
 (Other than Gifts and Travel Payments)

**CALIFORNIA FORM 700**  
 FAIR POLITICAL PRACTICES COMMISSION

Name \_\_\_\_\_

1. INCOME RECEIVED	1. INCOME RECEIVED
NAME OF SOURCE OF INCOME <u>Instant Karma Yoga</u>	NAME OF SOURCE OF INCOME
ADDRESS (Business Address Acceptable) <u>61738 29 Palms Hwy, J.T. 92352</u>	ADDRESS (Business Address Acceptable)
BUSINESS ACTIVITY, IF ANY, OF SOURCE <u>Yoga Studio</u>	BUSINESS ACTIVITY, IF ANY, OF SOURCE
YOUR BUSINESS POSITION <u>yoga instructor - ind. contractor</u>	YOUR BUSINESS POSITION
GROSS INCOME RECEIVED <input type="checkbox"/> \$500 - \$1,000 <input checked="" type="checkbox"/> \$1,001 - \$10,000 <input type="checkbox"/> \$10,001 - \$100,000 <input type="checkbox"/> OVER \$100,000	GROSS INCOME RECEIVED <input type="checkbox"/> \$500 - \$1,000 <input type="checkbox"/> \$1,001 - \$10,000 <input type="checkbox"/> \$10,001 - \$100,000 <input type="checkbox"/> OVER \$100,000
CONSIDERATION FOR WHICH INCOME WAS RECEIVED <input type="checkbox"/> Salary <input type="checkbox"/> Spouse's or registered domestic partner's income <input type="checkbox"/> Loan repayment <input type="checkbox"/> Partnership <input type="checkbox"/> Sale of _____ <small>(Property, car, boat, etc.)</small> <input type="checkbox"/> Commission or <input type="checkbox"/> Rental Income, list each source of \$10,000 or more	CONSIDERATION FOR WHICH INCOME WAS RECEIVED <input type="checkbox"/> Salary <input type="checkbox"/> Spouse's or registered domestic partner's income <input type="checkbox"/> Loan repayment <input type="checkbox"/> Partnership <input type="checkbox"/> Sale of _____ <small>(Property, car, boat, etc.)</small> <input type="checkbox"/> Commission or <input type="checkbox"/> Rental Income, list each source of \$10,000 or more
<input checked="" type="checkbox"/> Other <u>independent contractor</u> <small>(Describe)</small>	<input type="checkbox"/> Other _____ <small>(Describe)</small>

**2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

\* You are not required to report loans from commercial lending institutions, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*	INTEREST RATE	TERM (Months/Years)
ADDRESS (Business Address Acceptable)	_____ % <input type="checkbox"/> None	_____
BUSINESS ACTIVITY, IF ANY, OF LENDER	SECURITY FOR LOAN	
	<input type="checkbox"/> None <input type="checkbox"/> Personal residence	
HIGHEST BALANCE DURING REPORTING PERIOD	<input type="checkbox"/> Real Property _____	<small>Street address</small>
<input type="checkbox"/> \$500 - \$1,000		<small>City</small>
<input type="checkbox"/> \$1,001 - \$10,000	<input type="checkbox"/> Guarantor _____	
<input type="checkbox"/> \$10,001 - \$100,000	<input type="checkbox"/> Other _____	<small>(Describe)</small>
<input type="checkbox"/> OVER \$100,000		

Comments: \_\_\_\_\_

JOSHUA BASIN WATER DISTRICT  
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

December 7, 2011

Report to: President and Members of the Board  
From: Joe Guzzetta, General Manager

TOPIC: AMENDMENT OF ARTICLES III AND VII TO PROVIDE RULES AND REGULATIONS RELATED TO THE WASTE WATER SYSTEM AND TO PROVIDE FOR DEVELOPMENT AGREEMENT WITH PROVISIONS TO EXTEND THE COLLECTION OF CAPACITY FEES

RECOMMENDATION: That the Board adopt Resolution 11-XXX, approving proposed changes to Articles III and VII of the Joshua Basin Water District (JBWD) Rules and Regulations to address various procedures and policies regarding waste water systems; and to provide for development agreements with the potential to collect capacity fees over an extended period of time.

ANALYSIS: When the District first adopted a waste water strategy the Article XIII of the District Rules and Regulations were modified to assure that the District could charge appropriate capacity, user, and other fees. Staff has now drafted changes to Article **III**, "*Application and Review Procedures for Subdivisions, and Multiple Residential, Commercial, Industrial, Public, Agricultural and Individual Residential Water System mainline Extensions*" and Article **VII**, "*Refund and Reimbursement Agreements*" to apply those articles to future waste water facilities as well. Articles III and VII currently apply to water facilities, so in **most cases the changes just add the words "and waste water"** to the procedures that have already been in place for water.

The main **changes other than to add "waste water"** are as follows:

**Article 3.15 "Priority Service for Low income Housing Projects"** was not extended to waste water pending review by legal counsel to determine if state law requires the District to give priority to Low Income Housing Projects for waste water.

**Article 7.3 "Oversizing"** was modified to state that the District *may* pay for oversizing of new pipes rather than "*will*" pay for oversizing of pipes. This applies to instances where a new development proposes to install a facility, such as pipe, whose

ultimate size should be larger than what is needed strictly for the development. The District may not be in a financial position to pay for the oversizing when the developer is ready to install the facility.

Previously, a line over 6 inches in residential areas and 8 **inches in commercial areas was considered "oversized."** The proposed regulations state that the District Engineer will define **what is considered to be "oversizing"** recognizing that each situation and each facility may be different.

Previously, the incremental cost of oversizing (that would be **paid by the District) was determined by "the bid method."** This probably was established when the District installed new service lines and obtained bids from contractors. Now most facilities are installed by the developer which means that the District would not have bids to use as a basis for identifying the incremental cost. This has been changed to state that the District Engineer will determine the cost of the incremental oversizing.

Article 3.9.1 is new and requires the developer to provide all facilities that are necessary to treat waste water, similar to current Article 3.9 which requires the developer to provide all facilities for water service.

Article 3.16 is new and provides that the District may enter into a development agreement for water or waste water facilities to assure that the developer installs all facilities needed; and to assure that the developer will have access to water and waste water service once the facilities are installed.

Concern has been raised recently by the Board that if the District allows the Hi Desert Medical Center to pay waste water capacity fees over an extended period of time, the District should give the same benefit to other developers. Article 3.16 provides that if capacity fees exceed \$100,000 they *may* be paid over an extended period if the District does not need the funds during that period to acquire land or plan or construct facilities that are funded by capacity fees; and provided that there is a mechanism for assuring that there will be no default due to bankruptcy, foreclosure, or other means. The specifics would be subject to a Development Agreement.

Adoption of this resolution will specify rules for waste water treatment facilities and will provide for capacity fees to be paid over a period of time subject to Development Agreement.

## Article III

### APPLICATION AND REVIEW PROCEDURES FOR SUBDIVISIONS, AND MULTIPLE RESIDENTIAL, COMMERCIAL, INDUSTRIAL, PUBLIC, AGRICULTURAL AND INDIVIDUAL RESIDENTIAL WATER AND WASTE WATER SYSTEM FACILITIES

This Article will apply to all water and waste water facilities for water or waste water service initiated by the property owner or project developer (collectively, "Applicant") for the purpose of providing service to such Applicant's parcel or parcels.

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#### ARTICLE 3.1 PROJECT INITIALIZATION

The Applicant must present a completed application to the District describing the project and including tentative parcel maps or tentative tract maps, if applicable. The Applicant shall demonstrate that Applicant is owner of the property or has authority from the property owner to submit the application. After completion of the application, a design conference with the District general manager or his/her designate must be arranged. District staff will review the proposed water and/or waste water demand requirements and will determine if the project is compatible with the existing District facilities.

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As a result of the design conference, the Applicant will make his/her/its final determination of cost feasibility and sign the District's standard form, water and/or waste water service agreement indicating his/her/its intent to continue with the preparation of the project design drawings.

Comment [a1]: Does the property owner have to show he/she/it owns the property or has authority from the property owner?

Comment [JG2]: We haven't in the past, but we should

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#### ARTICLE 3.2 ORGANIZATION OF PARTICIPANTS

The initiation of and Applicant organization and coordination for a water and/or waste water system project is the Applicant's responsibility. If there are other potential participants in the project it shall be the responsibility of the Applicant to organize the effort and obtain commitments from potential participants.

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#### ARTICLE 3.3 DISTRICT'S DETERMINATION OF FEASIBILITY

District customers do not have an automatic or unconditional right to have a water or waste water service project constructed. Project feasibility and approval are determined by the District and based on a number of factors, including, but not limited to, availability of water, and water and waste water facilities.

Water and/or waste water service to any housing development of ten (10) units or more must be pre-approved by the District Board of Directors ("Board") before a water and/or waste water service letter will be issued. The Board will provide final review and acceptance of all feasibility studies.

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### ARTICLE 3.4 INITIAL DEPOSIT OF PLAN CHECK AND FEASIBILITY FEES

Deposits will be required for all projects accepted for plan check. Once a deposit has been paid, a set of instructions, insurance requirements, standard construction drawings and specifications for water and/or waste water facilities will be provided to the Applicant. Any cost associated with plan check will be deducted from the deposit made by the Applicant. The District will keep an itemized listing of all plan check and feasibility costs incurred. If the deposit is insufficient to pay all costs incurred by the District for plan check, a bill for the balance will be sent to the Applicant and must be paid by the Applicant before service will be initiated to the project. If the deposit exceeds the amount required for plan check, the District will refund the balance to the Applicant. The plan check fees are established in Article 13.

### ARTICLE 3.5 PREPARATION OF DESIGN PLANS AND DRAWINGS

Engineering plans, construction cost estimates, and construction of water and/or waste water facilities in accordance with District specifications are the responsibility of the Applicant unless the District specifically determines to provide those services at Applicant's cost and expense. The District specifications provide detailed instructions for design of water and waste water facilities.

The Applicant's engineer shall prepare the final drawings for water and/or waste water facilities in accordance with the District's specifications and the rule and regulations of other regulatory agencies. After compliance with the foregoing, Applicant shall proceed to obtain all certificates, permits, encroachment permits, clearances from all other agencies and approval bodies in accordance with District's requirements. Such documents should be presented to District staff for review and approval.

Reasonable consultation with District staff during preparation of the drawings is expected. The design package should be completed before it is submitted to the District for checking. Four (4) sets of plan check prints must be submitted to District in such format as determined by the District. The District staff or designee will check the design drawings and return one (1) set to the Applicant's engineer with any necessary corrections noted. The Applicant's engineer will then make all corrections required by District or its designee and return the final drawings to the District for review and approval. In the event District does not approve the drawings, the foregoing procedure shall be continued until the drawings have been approved by the District. Upon approval of the drawings, the District shall sign the documents indicating the District's acceptance for construction. After the design drawings have been accepted, the District will issue a notice to proceed.

### ARTICLE 3.6 INSPECTION FEE DEPOSIT

Inspection fee deposits will be required for all projects accepted for construction. Once a deposit has been paid, the Applicant must notify the District of the project construction schedule in order to coordinate with the District's inspector. Any cost associated with inspection by or on

- Comment [a3]: What determines if refundable or not?
- Comment [JG4]: I think this is intended to make it clear that some or all of the deposit may retained so that the applicant doesn't have an expectation of having any or all returned.
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- Comment [a5]: What are the refundability rules?
- Comment [JG6]: Same as above, I think this is meant to say that the deposit may or may not be refunded depending on the amount of work performed by JBWD on behalf of project.
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behalf of the District will be charged to the Applicant. The District will keep an itemized listing of all inspection costs incurred. If the deposit is insufficient to pay all costs incurred by the District for inspection, a bill for the balance will be sent to the Applicant and must be paid by Applicant before water service and/or waste water connection will be initiated to the project. If the deposit exceeds the amount required for inspection, the District will refund the balance to the Applicant. The inspection fees are established in Article 13.

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### ARTICLE 3.7 REFUND AGREEMENT

When an Applicant constructs a water and/or waste water system facility, he/she/it may be eligible for a partial refund of costs in connection with such facilities as determined in Article 7.

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### ARTICLE 3.8 FEES REQUIRED DUE TO NEW DIVISIONS OF PARTICIPATING PARCELS

New parcels resulting from a subdivision of real property participating in an earlier water and/or waste water facility project will not have entitlement to a water service and/or waste water service before payment by Applicant of all pertinent fees including water and/or waste water facility fees, or refund to Applicant if there is an applicable refund agreement. A land division may require additional water and/or waste water facilities before service can be provided, in which case the Applicant will be required to comply with applicable District Rules and Regulations.

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### ARTICLE 3.9 REQUIREMENT FOR ALL FACILITIES NECESSARY TO PRODUCE WATER SUPPLY

Applicants requiring water system mainline extensions, whether it be a main extension or complete facilities for a development project, shall provide all facilities necessary to produce the water supply, including, but not limited to, reservoirs for storage, pumps for pumping of wells and/or booster stations, water transmission and distribution mains, valves, fire hydrants, air valves, blow-offs, pressure control stations, residential customer service installations and easements. Any of the above facilities may be required to provide the proper level of water service, in accordance with the District rules and regulations, and all policies, water master plans, and the like which are in effect at the time, for the type of facility extension contemplated and which are necessary to meet the requirements of other government regulatory agencies.

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#### Article 3.9.1 Requirements for All Facilities Necessary to Treat Waste Water or Connect to Existing Waste Water System

Applicants requiring a waste water system, whether it be a main extension or complete facilities for a development project, shall provide all facilities necessary to connect to the District's existing waste water treatment facilities, or provide a new waste water treatment facility, including, but not limited to, package waste water treatment plant, pumps and/or booster stations, waste water transmission and distributions mainlines, valves, pressure control stations, customer service installations and easements. Any of the above facilities may be required to provide the proper level of waste water service, in accordance with the District rules and regulations, and all policies, waste water master plans, and the like which are in effect at the time, for the type of

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facility extensions contemplated and which are necessary to meet the requirements of other government regulatory agencies.

**ARTICLE 3.10 LENGTH OF WATER OR WASTE WATER MAINLINE EXTENSIONS**

Water and Waste Water Mainline extensions shall be brought to the furthest parcel line of the most distant Applicant, unless the District determines that there is no need to do so. If the District waives the extension to the furthest parcel line but anticipates the need to extend the line in the future, the District shall collect an extension in-lieu fee. The fee shall be the estimated current cost of extending the line to the furthest parcel line.

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The District will pay the cost to extend the water mainline across the additional footage where water mainline extensions were installed to the closest parcel line of the most distant Applicant in conformance with the Rules and Regulations in effect between May 1997 and January 2005.

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For subdivisions, the water and/or waste water mainlines shall be adjacent to front parcel line of all parcels created by the subdivision and a customer service facility shall be required for all parcel lots.

**Comment [a7]:** What is a customer service facility?

**Comment [JG8]:** A customer service facility includes a service connection, meter, and probably sewer lateral, or anything else between the mainline and the meter.

**ARTICLE 3.11 INSPECTION DURING CONSTRUCTION**

All water and waste water facilities shall be inspected by the District or its authorized agent, at the Applicant's cost and expense, and the District shall approve the completed project prior to acceptance of title to the facilities. The inspector shall have the authority to approve, reject, or require modifications to the facilities in conformance with the District's rules, regulations and specifications.

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**ARTICLE 3.12 RESPONSIBILITY OF APPLICANT TO OBTAIN PERMITS**

All permits, easements, street dedications and rights-of-way involved with all water and waste water facilities, including the [customer service line] shall be the responsibility of the Applicant at the Applicant's cost and expense and shall be in such location acceptable to the District. Easements, in the name of the District will be required of all affected parcel owners and will be obtained at the expense of the Applicant. All easements will be conveyed to the District prior to approval of the final drawings as set forth in Article 3.5. Easement documents shall be satisfactory to District (in the District's sole and absolute discretion) and shall include a complete legal description and a plat map, both of which shall be prepared by a licensed land surveyor or a licensed civil engineer. The easement description and the easement plat map shall show the licensed civil engineer or surveyor's seal or stamp with his signature.

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All construction shall be completed by a contractor, licensed by the State of California and such contractor shall be qualified to install all of the facilities required, proof of which will be provided, in writing, to the District prior to the initiation of construction. During the performance of work under these rules and regulations, the contractor will have the minimum insurance coverage set forth in the Certificate of Insurance Coverage Requirements form, naming the District, its officers, employees and agents as additionally insured before construction is authorized to commence. The endorsements set forth on such certificates in favor

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of the District are mandatory. The District may require that the contractor provide performance, payment and labor and material bonds.

**ARTICLE 3.13 BILL OF SALE TO DISTRICT**

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After completion of construction and final inspection and acceptance by the District of the water and/or waste water facilities, the Applicant shall execute a bill of sale on a form provided by the District, and shall submit the same to District for final approval by the Board. Upon final approval by the Board, the bill of sale which conveys ownership of all water and/or waste water facilities will be accepted by the District and such facilities will belong to and be maintained by the District.

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**ARTICLE 3.14 DISTRICT INSTALLED MAINLINE EXTENSION**

The District may recoup monies from customers who request service connection to a new water and/or waste water mainline, which has been installed after May 21, 1997. Applicants will reimburse the District on a price-per-foot basis, determined by measuring the distance of the parcel between property lines where the mainline is installed.

**ARTICLE 3.15 PRIORITY SERVICE FOR LOW INCOME HOUSING PROJECTS**

The District shall devote its commercially reasonable efforts to plan for and, to a reasonable degree (as determined on a case-by-case basis) prioritize providing water connections to the lower income housing element of a general plan adopted by the legislative body of a county or city that pertains to development within the District's boundaries.

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Development projects that include lower income housing units shall not be denied approval of an application for service, nor shall conditions be imposed thereon or services reduced which are applied for, unless the District makes specific written findings that the denial, condition, or reduction is necessary due to the existence of one or more of the following:

- (a)insufficient water supply or insufficient water treatment or distribution capacity;
- (b)a State Department of Health Services order prohibiting new water connections;
- (c)insufficient sewer treatment or collection capacity;
- (d)a Regional Water Quality Control Board order prohibiting new sewer connections; or
- (e)the applicant has failed to agree to reasonable terms and conditions.

The District shall not discriminate in any manner when processing and considering requests for services by developments that include lower income housing units.

**ARTICLE 3.16 DEVELOPMENT AGREEMENT**

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The District may enter into a development agreement with Applicant for the purpose of identifying the specific facilities required to serve a residential, commercial, industrial, institutional or other development, including but not limited to, any facilities required by Article 3.9. Such development agreement may establish a timetable for installing such facilities, Subject

**Deleted:** and will assure that the development will have access to water once the agreement is approved in acknowledgement of the extensive time that may be required to install such facilities.

to the compliance with the development agreement, payment of all fees and compliance with all other District rules and regulations, District shall provide water and/or waste water service to Applicant's project, subject to the circumstances within the District's control or as otherwise provided by District's rules, regulations, policies and procedures, as may be amended from time to time.

The ddevelopment agreement may (a) specify the duration of the development agreement and the period for which new connections will be made available; (b) include conditions, terms, restrictions and requirements for the subsequent discretionary actions; and (c) provide that the construction of the facilities shall be commenced and completed within a specified time. In the event Applicant is required to pay capacity fees in excess of One Hundred Thousand Dollars (\$100,000.00) the development agreement may also provide for the payment of capacity fees over an extended period of time (as determined by the District in its sole and absolute discretion) provided that a mechanism is in place to protect the District from default due to foreclosure, bankruptcy, or other means, as shall be acceptable to the District in its sole and absolute discretion. Such extension will not exceed the time beyond which the District has a need to use such fees in order to acquire land or plan or construct facilities that are funded by capacity fees. The ddevelopment agreement shall include such terms and conditions as District shall determine, including, but not limited to, the Applicant financing of necessary facilities and subsequent reimbursement over time.

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## Article VII

### REFUND AND REIMBURSEMENT AGREEMENTS

#### ARTICLE 7.1 . REFUND AGREEMENTS

A refund agreement may apply in cases where water and/or waste water system facilities have been installed by an Applicant under the terms of the Water and Waste Water System Facilities Policy. See Article 3.

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Comment [a1]: Does the cost of easements and rights-of-way get refunded?

Comment [JG2]: I'm not sure what our practice has been, but it seems reasonable.

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#### ARTICLE 7.2. EXTENT OF REFUND

An Applicant having paid all or part of the cost of a water and/or waste water facility may be entitled to a refund agreement. Such refund shall not exceed the amount actually collected by the District under the Water and Waste Water System Facilities Policy, and in no event will the refund exceed the Applicant's actual cost. The Applicant's actual cost may include an appropriate pro rata portion of the cost of engineering, easements, rights-of-way, and construction expenses directly attributable to the water and/or waste water system facility. The District's plan check processing fees, inspection fees, capacity fees, customer service facility installation and all other normal District charges and fees in connection with the facility shall not be included in the determination of the refundable amount. Where construction was done by the Applicant, the equivalent amount of the District's normal customer service facility installation charge will be deducted from the Applicant's actual cost in the determination of the refundable amount.

#### ARTICLE 7.3. OVERSIZING

When District policy requires the oversizing of the water and/or waste water system facility, the cost of such oversizing maybe paid by the District for the water and/or waste water facility Extension Project.

Costs paid by the Applicant for oversizing may qualify for a refund agreement. The Applicant paying for the oversizing of the water and/or waste water system facility may be given credit for part of the capacity fee subject to a development agreement or other agreement. Such credit cannot exceed the cost of the oversizing. Such credit is also deducted from the refundable amount.

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Any water or waste water facility will be considered oversized if the size of such facility exceeds the "base size" capacity required to service the Applicant's development as determined by the District Engineer; provided that the minimum size of a pipeline for water and/or waste water service shall be eight inches (8") in diameter.

The incremental cost of the oversizing shall be determined by the District Engineer.

Comment [a3]: Same title as Article 7.1.

#### ARTICLE 7.4. REFUND AGREEMENT

After the completion of any water and/or waste water system facility which qualifies for a refund agreement, the District shall prepare a final and complete accounting of the refundable costs. A

refund agreement prepared on a standard form provided by the District will be presented to the Applicant which shows the complete and total terms of the refund and the refundable cost attributable to each adjacent benefited parcel.

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Subject to receipt of such amount, the District will refund any refundable portion provided for in the refund agreement for each adjacent parcel that has water and/or waste water services installed. Such refund will be paid within ninety (90) days of the receipt of payment from the adjacent parcel property owner for the new customer service facilities.

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The refund agreement will have attached as Exhibit A the list of the benefited parcels, and a benefited parcel plat showing the relationship of the benefited parcels to the facility extension provided by the Applicant. Benefited parcels in this case are defined as those that are situated alongside the water and/or waste water mainline and did not previously have an adjacent mainline, and do not extend beyond the end of the mainline,. Refunds shall continue until the term of the refund agreement shall end, or until the total refundable cost has been refunded to the Applicant, whichever is earlier.

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Each refund agreement will expire at the end of fifteen (15) years from the date of execution, or when the Applicant has been fully repaid for the cost that is refundable to him, whichever first occurs. All non-refunded charges collected thereafter shall belong to the District.

Comment [a4]: I recommend the ten (10) year period which was the previous rule.

Comment [JG5]: What's the reason for limiting the time to 10 years? We have made it for 15 years recently because costs have been so expensive and we didn't as a downside.

Refund agreements may be sold, conveyed, or assigned by the original signatory Applicant. The District will honor the agreement which has been transferred, provided that such transfer is evidenced by a document recorded with the County Recorder.

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#### ARTICLE 7.5 REIMBURSEMENT FOR DISTRICT-INSTALLED MAINLINE EXTENSIONS

Where the District has installed new water and/or waste water mainlines or replaced water and/or waste water mainlines adjacent to parcels not currently connected to the water system, the District will be reimbursed a Front Footage Fee. The footage is measured along the side of the parcel that sits adjacent to the water and/or waste water mainline, from property corner to property corner. In situations where the mainline sits adjacent to two sides of the parcel, the shortest measurement will be used to compute the fee. The fee is computed by taking all of the costs incurred to install or upgrade the water and/or waste water mainline divided by the number of feet of water and/or waste water mainline installed then divided in half to allocate the charge to parcels on both sides of the street. The Front Footage Fee is calculated by multiplying the footage measurement by the fee. The Board will adopt each Front Footage Fee subject to reimbursement separately as projects are completed. Adopted reimbursement fees are listed in Article 13.18.1

Comment [a6]: I do not recommend transferability.

Comment [JG7]: Our intent would be to allow the agreement to be transferred from one person to another in order to keep this with the property. If it can't be transferred and stayed with the developer, we'd have no way of tracking down the developer x number of years hence.

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JOSHUA BASIN WATER DISTRICT  
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

September 7, 2011

Report to: President and Members of the Board  
From: Joe Guzzetta, General Manager

TOPIC: AGREEMENT BETWEEN HI DESERT MEDICAL CENTER AND  
JOSHUA BASIN WATER DISTRICT FOR PACKAGE WASTE  
WATER TREATMENT PLANT

RECOMMENDATION: That the Board approve an agreement between Hi Desert Medical Center (HDMC) and Joshua Basin Water District (JBWD) to provide for a package wastewater treatment to be paid by the HDMC and constructed, owned, and operated by Joshua Basin Water District.

ANALYSIS: In planning for its future expansion the Hi Desert Medical Center anticipates the need to provide waste water treatment to meet the requirements of the Colorado River Basin Region California Water Quality Control Board (Regional Board) and JBWD. In 2009 JBWD adopted its waste water strategy which lays the foundation for addressing the HDMC needs.

In November 2009 JBWD and HDMC agreed to work together toward an agreement that would provide for JBWD to design, construct, own and operate a package waste water treatment plant to serve HDMC, with the cost to be paid by HDMC. **The basic provisions of this agreement are consistent with JBWD's** waste water requirements for all development in Joshua Tree, except that it stretches out or defers the payment of certain fees recognizing that HDMC is a governmental agency, and recognizing the cooperative and mutually beneficial nature of this agreement.

The major points of the agreement are noted below. The attached summary shows more detail. Also attached is the full agreement.

- JBWD will design and construct a 52,000 gallon per day (gpd) average daily flow waste water treatment plant with a maximum flow of 73,000 gpd. This will serve the 23,500 square feet of planned offices and all of the existing HDMC facilities including the Continuing Care Center, except the chillers. The waste water treatment plant has been designed to expand in the future (Phase



2) to bring the total to 104,000 average and 146,000 gpd maximum flow for 100,000 square feet of future hospital facilities.

- HDMC will pay for all costs of constructing the project, which HDMC would incur even absent this agreement.
- HDMC will pay to JBWD a capacity fee of \$1,245,636.36 less a credit of \$126,480 for a net of \$1,119,156.36. Although this fee would normally be required at the onset, the agreement allows HDMC to pay over a period of 16 years with interest at the rate that JBWD would otherwise receive on the funds. This capacity fee is for **the future "central" waste water treatment plant that** JBWD is expected to need to comply with the Regional Board. This fee is required of all similar projects.
- The package waste water treatment plant has a designed life of 15 years, although the life could be longer. JBWD regulations would require HDMC to pay for the replacement over a 15-year period. In lieu of that, this agreement provides for HDMC to pay for the replacement whenever the plant needs to be replaced.
- HDMC will pay a monthly fee for operation and maintenance of the plant.
- **Whenever JBWD constructs the "central plant" the package plant will be abandoned and HDMC will be connected to the "central plant."**
- The design of the plant has already been completed by Dudek & Associates, district engineers for JBWD. It would require about 12 months for construction.

This agreement is mutually beneficial to both agencies. It enables the HDMC to expand its facilities at a cost anticipated to be the same or lower than if it were constructed by HDMC. It relieves HDMC of operating a waste water treatment plant. It furthers the goals of JBWD for clean water by reducing the nitrates that otherwise would enter the ground water, and it provides a prototype of future waste water treatment plants in JBWD consistent with the JBWD Waste Water Strategy.

The agreement has been reviewed by the appropriate committees of the Hi Desert Medical Center and the Joshua Basin Water District and they concur with this recommendation.

EXECUTIVE SUMMARY OF THE PROPOSED WASTE WATER AGREEMENT (“AGREEMENT”) BETWEEN HIGH DESERT MEDICAL CENTER (“HDMC”) AND JOSHUA BASIN WATER DISTRICT (“JBWD”)

- HDMC proposes to expand its Acute Care Hospital in Joshua Tree, California (“Acute Care Facility”). In connection with the expansion, the parties desire to enter into the Agreement wherein JBWD would design, build, own and operate the Phase 1 package waste water treatment plant, subject to HDMC’s right to take over such plant as discussed below, with a 52,000 gallon-per-day (gpd) average daily flow and 73,000 gpd maximum daily flow. Phase 1 of the project is intended to treat waste water from a building addition of 23,500 square feet in addition to all current septic waste from the Acute Care Facility with the exception of water used for the chillers.
- In the future HDMC may construct up to 100,000 square feet of building at the Acute Care Facility which would require Phase 2 of the package waste water treatment plant with a 104,000 gpd average flow and a 146,000 gpd maximum flow. Phase 2 of the project shall also be designed, constructed, owned and operated by JBWD, subject to HDMC’s right to take over such plant as discussed below.
- HDMC would pay for all of the costs to design, build, and operate Phase 1 and Phase 2 of the package treatment plant. HDMC has, in certain circumstances, the ability to abandon or assume responsibility for the planning, design, and/or construction of Phase 1 and/or Phase 2 of the project if the parties are unable to come to agreement at various points on items such as (1) what improvements are to be constructed, (2) the cost of bids for each phase, (3) change orders required during construction,(4) initiation of the Phase 2 improvements, and (5) rates and charges levied by JBWD. The right to abandon or take over the project are subject to the conditions set forth in the Agreement.
- Within 30 days of the effective date of the Agreement HDMC will deposit \$200,000 with JBWD to provide for planning, engineering, advertising, bidding and other costs incurred by JBWD prior to award of the construction contract.
- If HDMC decides to proceed with the design of Phase-2 of the project, HDMC will place a deposit at that time with JBWD for pre-construction costs which amount shall be determined by JBWD.
- JBWD will use commercially reasonable efforts to obtain all licenses, permits, entitlements, consents, or authority to construct the project.  
HDMC shall have the opportunity to review and comment on plans, bids and change orders in connection with the project. Upon the opening of bids, HDMC shall have the option of (1) approving the bids and depositing with JBWD the construction costs; or (2) taking over the project or (3) abandoning the project (or abandoning Phase 2, if Phase 1 is in effect). The right to abandon or take over the project are subject to the conditions set forth in the Agreement. In the event of (2) or (3) above, HDMC shall pay to JBWD or JBWD may use the deposit to pay all costs incurred by JBWD to date.
- HDMC shall provide an easement at the Acute Care Facility to JBWD of such a size which JBWD considers reasonable, at no cost, for construction, operation and maintenance of the project.
- HDMC shall be responsible, at HDMC’s sole cost and expense, for all CEQA review and approvals.
- During construction, HDMC shall have the opportunity to review, approve, or disapprove all proposed change orders. If disapproved, the Agreement shall terminate if the disapproval is to a Phase 1 change order. If the disapproved change order relates to Phase 2, the Agreement will terminate as to Phase 2. In either event HDMC shall pay to JBWD or JBWD may use the deposit to pay all costs incurred by JBWD to date.

- JBWD may use the services of a construction manager which shall be paid by HDMC.
- If HDMC elects not to use all the capacity herein described and JBWD determines that capacity exists to serve other off-site properties, those off-site properties may be connected to the package treatment plant provided that they reimburse HDMC for their pro-rata share of the costs and expenses incurred by HDMC.
- HDMC shall pay to JBWD a capacity fee required of all similar developments, for the purpose of construction of a future central waste water treatment plant ("Central Plant"). The estimated fee is \$1,245,636.36. JBWD shall apply a credit of \$126,480 thereto resulting in an estimated fee of \$1,119,156.36. Recognizing that HDMC is a governmental agency, and considering the cooperative nature of the Agreement, the fee may be paid over a period of 15 years with interest at a rate comparable to what JBWD receives on its investments.
- HDMC shall pay rates and charges to JBWD for operation of the package treatment plant, subject to the HDMC's right to take over such plant as discussed above.
- The package treatment plant is anticipated to have a useful life of 15 years. HDMC shall pay to JBWD the *replacement cost* of the package treatment plant over a 15-year period for Phase I of such plant and for Phase 2 if it is constructed. In lieu of making payments for the replacement of the package treatment plant, HDMC will have the option of deferring payments and providing for payment at the time that JBWD determines such plant needs to be replaced. In the event HDMC does not want to pay the replacement costs, HDMC shall take over the package treatment plant subject to the conditions set forth in the Agreement.
- At such time as a Central Plant is constructed, the package treatment plant will be abandoned. HDMC will have the option of paying to remove such plant or retaining such plant.
- The Agreement provides for a penalty of 5% for payments to JBWD that are late, to compensate for additional administrative costs, provided that any costs over \$500 must be documented. The Agreement also provides for interest at the highest of the following (1) a rate equal to the return that JBWD receives on instruments of \$1M; (2) the rate paid by the Local Agency Investment Fund; or (3) costs incurred by a third party contractor if the late payment results in additional contract costs.
- The Agreement provides for disputes to be resolved through a dispute resolution process.

Recording Requested by  
When Recorded Return to

JOSHUA BASIN WATER DISTRICT  
P O BOX 675  
JOSHUA BASIN CA 92252  
ATTN: GENERAL MANAGER

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN:

### AGREEMENT

THIS AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 (“**Effective Date**”) by and between **JOSHUA BASIN WATER DISTRICT**, a public agency of the State of California (“**JBWD**”) and **HI DESERT MEDICAL CENTER**, a public agency of the State of California (“**HDMC**”). JBWD and HDMC are referred to in this Agreement collectively as the “**Parties**” and each individually as a “**Party**.”

### RECITALS

A. HDMC owns and operates a general acute care hospital in Joshua Tree, California, and is the owner of certain real property located in the County of San Bernardino, State of California, legally described on Exhibit A attached hereto and by this reference incorporated herein (“**HDMC Property**”).

B. JBWD is a public agency of the State of California and operates in the County of San Bernardino, State of California.

C. HDMC desires to expand its present infrastructure, and JBWD desires to expand its capacity to provide water treatment and other services to HDMC.

D. HDMC desires to enter into an agreement for JBWD to construct and operate, principally for HDMC's benefit, a waste water treatment plant (“**Project**”). The Project shall be constructed in two (2) phases. The first phase of the Project (“**Phase 1 of the Project**”) shall consist of the expansion of certain existing building(s) and constructing new building(s) on the HDMC Property. Phase 1 of the Project shall consist of approximately **Twenty-Three Thousand Five Hundred** (23,500) square feet of improvements on the HDMC Property. Phase 1 of the Project is generally depicted on Exhibit B attached hereto and by this reference incorporated herein. The second phase of the Project (“**Phase 2 of the Project**”) shall consist of approximately **One Hundred Thousand** (100,000) square feet of improvements on the HDMC Property. HDMC has not decided, as of the date hereof, the exact improvements which will consist of Phase 2 of the Project.

E. HDMC desires that JBWD provide sanitary sewer service to the HDMC Property and JBWD is willing to provide such sanitary sewer service to such property by the construction of a waste water package treatment plant and appurtenances thereto ("**Package Plant**") on the terms and subject to the conditions set forth in this Agreement.

F. In or about 2009 JBWD adopted a waste water treatment strategy ("**Strategy**"). The Strategy, in part, provided for the potential design, land acquisition and construction of a centralized waste water treatment plant, trunk sanitation system and appurtenances for the collection and treatment of sewage and industrial wastes of a liquid nature (collectively, "**Treatment Plant**"). In the event the Treatment Plant is constructed, the Parties anticipate that the Package Plant will be abandoned and the Project will be connected to the Treatment Plant in accordance with the rules, regulations, ordinances, policies and procedures developed by JBWD.

G. San Bernardino County approved the Mitigated Negative Declaration concerning the Project on December 16, 2008 ("**Negative Declaration**").

H. JBWD approved the Project on April 13, 2010.

I. The Parties desire to enter into this Agreement to set forth certain commitments and agreements of the Parties with respect to (i) the design, construction, ownership and financial contributions of the Parties concerning the Package Plant and (ii) the provision of sanitary sewer service to the Project.

J. This Agreement is consistent with the Negative Declaration and there have been no changes in the Project that would warrant any supplemental environmental analysis.

**IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, AND UPON THE CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

1. The facilities to be constructed as part of the Package Plant with respect to Phase 1 of the Project are generally described on Exhibit C attached hereto and by this reference incorporated herein (collectively, "**Phase 1 Improvements**"). It is contemplated that the Phase 1 Improvements shall allow JBWD to process approximately **fifty-two thousand** (52,000) gallons per day ("**gpd**") average daily flow and **seventy-three thousand** (73,000) gpd maximum daily flow. This Agreement recognizes the capacity limit of the Package Plant with the Phase I Improvements is projected to be up to **seventy-three thousand** (73,000) gpd, which is the projected maximum waste water need of HDMC with respect to Phase 1 of the Project. Should these capacity needs change, HDMC shall timely notify JBWD and the Parties will subsequently negotiate appropriate modifications to this Agreement. At the time HDMC determines to construct Phase 2 of the Project, JBWD shall determine the facilities which are necessary to serve Phase 2 of the Project ("**Phase 2 Improvements**"), provided that JBWD shall meet and confer with HDMC as to what constitutes the Phase 2 Improvements. [In the event the Parties are unable to agree, after meeting and conferring, with respect to what constitutes the Phase 2 Improvements, either; (a) the Phase 2 Improvements shall not be constructed and the provisions herein concerning the design, construction, operation and maintenance and ownership of the Phase 2 Improvements shall be null and void; or (b) HDMC shall elect, in writing, to design and

construct such Phase 2 Improvements as HDMC shall desire; provided that the conditions of Section 12 are satisfied. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, the Phase 2 Improvements shall not be constructed and the provisions herein concerning the design, construction, operation, maintenance and ownership of the Phase 2 Improvements shall be null and void.] It is anticipated that the Phase 2 Improvements shall allow JBWD to process approximately **one hundred four thousand** (104,000) gpd average daily flow and **one hundred forty-six thousand** (146,000) gpd maximum daily flow, if JBWD constructs the Phase 2 Improvements pursuant to the terms hereof. This Agreement recognizes the capacity limits of the Package Plant as expanded is projected to be up to **one-hundred forty-six thousand** (146,000) gpd, which is the projected maximum waste water needs of HDMC with respect to Phase 2 of the Project. Should these capacity needs change, HDMC shall timely notify JBWD and the Parties will subsequently negotiate appropriate modifications to this Agreement. The Phase 1 Improvements and the Phase 2 Improvements (if constructed) shall sometimes be collectively referred to herein as the "**Improvements.**"

2. (a) HDMC shall, at HDMC's sole cost and expense, be responsible for compliance with the California Environmental Quality Act ("**CEQA**") and all other applicable state and federal environmental laws and all requirements of the Federal Endangered Species Act and the California Endangered Species Act arising out of or in connection with the design and construction of the Improvements and for compliance with all conditions and mitigation measures which must be satisfied in connection with the same. HDMC represents to JBWD that HDMC may, pursuant to federal, state and local law, act as lead agency for the purpose of complying with CEQA. Pursuant to the foregoing representation, HDMC shall act as lead agency for the purpose of complying with CEQA. As part of its obligation to fund the CEQA process, HDMC shall prepare or cause to be prepared all supplemental environmental instruments, documents, reports and other like or kind writings required to be prepared and/or filed by CEQA.

(b) HDMC shall, upon request by JBWD, and at no cost to JBWD, furnish JBWD with such information as HDMC possesses or has available to it from any consultants, engineers, contractors or other persons engaged by or under the control of HDMC relating to the environmental assessment relative to the creation of the Improvements. In this regard, nothing herein contained shall be construed or interpreted to require JBWD to take or participate in any legal action pertaining to compliance with CEQA and/or other state and federal environmental laws and requirements.

3. (a)(i) Subject to the following, HDMC shall fund the cost of the design and construction of the Improvements including any related costs and expenses arising out of or in connection with the same. JBWD will obtain bids for the construction of the Improvements. Upon the opening of the bids, JBWD shall provide HDMC with copies of such bids. HDMC shall, within [time period], have the option to (A) approve the bids; provided that HDMC understands and acknowledges that the board of directors of JBWD ("**Board**") may select the lowest responsible bidder as determined by such Board or reject all bids, or (B) take over the construction of the Improvements; provided that the conditions of Section 12 are satisfied. In the event HDMC elects to take over the Project, HDMC may deduct from the deposits made pursuant to Subsections 3.(b) or 3.(c), whichever is applicable, such amount as JBWD considers

sufficient to pay for the costs and expenses paid or incurred by JBWD prior to HDMC's election. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, this Agreement shall terminate if such occurs with respect to the Phase 1 Improvements and HDMC shall pay all costs and expenses that District paid or incurred prior to the deemed termination of this Agreement; provided that if the issue is with the Phase 2 Improvements and the Phase 1 Improvements have been constructed and are then being operated by JBWD, this Agreement shall only terminate as to the Phase 2 Improvements. In the event HDMC approves the bids and JBWD awards the construction contact for the Improvements, JBWD will use commercially reasonable efforts to minimize additional Improvement costs. However, the Parties recognize and agree that additional costs may be warranted for a variety of reasons, including, but not limited to, unforeseen circumstances or need for work not contemplated by the Phase 1 Plans or Phase 2 Plans, as the case may be, as those terms are defined in Section 5. JBWD shall be authorized to pay such costs. Such costs shall be paid by HDMC in accordance with this Agreement. .

(ii) HDMC may demand an accounting as to the status of the account of all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(b) HDMC shall deposit with JBWD within **thirty** (30) days after the Effective Date, the sum of **Two Hundred Thousand Dollars** (\$200,000.00) ("**Phase 1 Deposit**"). The Phase 1 Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the creation of the Phase 1 Improvements, except construction costs, which shall be handled pursuant to Section 7, including, but not limited to, the costs of the plans and specifications, Entitlements (as that term is defined in Section 4), advertising and bidding of the construction of the Phase 1 Improvements (including preparation of the bid documents) and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Phase 1 Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Phase 1 Deposit separate from its general funds and HDMC shall not be entitled to interest on the Phase 1 Deposit. If there are any funds left in the Phase 1 Deposit after the Phase 1 Improvements are completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within **ten** (10) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(c) Within a period of time as mutually agreed after HDMC notifies JBWD of its election to construct the Phase 2 Improvements, HDMC shall deposit with JBWD such sum as shall be reasonably determined by JBWD ("**Phase 2 Deposit**"). The Phase 2 Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the creation of the Phase 2 Improvements, except construction costs, which shall be handled pursuant to Section 7, including, but not limited to, the costs of the plans and specifications, Entitlements, advertising and bidding of the construction of the Phase 2 Improvements (including preparation of the bid documents) and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Phase 2 Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Phase 2 Deposit

separate from its general funds and HDMC shall not be entitled to interest on the Phase 2 Deposit. If there are any funds left in the Phase 2 Deposit after the Phase 2 Improvements are completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within **ten** (10) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

**4.** On or after receipt of the Phase 1 Deposit or Phase 2 Deposit, as the case may be, JBWD shall, at HDMC's sole cost and expense, use commercially reasonable efforts to obtain or cause to be obtained through consultants and/or third parties, all consents, approvals, permits, authority, licenses or entitlements ("**Entitlements**") as shall be required for the design, construction, operation and maintenance of the Improvements with respect to the appropriate phase, including Entitlements from the County of San Bernardino and the California Regional Water Quality Control Board, Colorado River Basin Region. Nothing herein shall be construed as a guaranty that JBWD shall obtain such Entitlements. HDMC agrees to cooperate, in all respects with JBWD, or such other individuals or entities designated by JBWD, in connection with the obtaining of the Entitlements including, without limitation, attending meetings, testifying in public hearings and the execution of all applications, petitions and documents reasonably necessary in the Entitlement process.

**5.** (a) On or after the receipt of the Phase 1 Deposit, JBWD shall employ, or cause to be employed, at HDMC's cost and expense, Dudek Engineering, in coordination with the existing Agreement between HDMC and Dudek Engineering ("**Engineer**") to plan, design and prepare detailed construction plans, drawings and specifications for the Phase 1 Improvements ("**Phase 1 Plans**"). JBWD shall submit the Phase 1 Plans to HDMC for review and comment. HDMC shall have **sixty** (60) business days after receipt of the Phase 1 Plans to comment thereon. Failure of HDMC to comment within such **sixty** (60) business-day period shall be deemed a waiver by HDMC of the right to do so. In the event that HDMC does comment within the **sixty** (60) business-day period, JBWD shall, in good faith, consider such comments, but shall not be required to amend the Phase 1 Plans in accordance therewith. HDMC shall cooperate with the Engineer with respect to the preparation of the Phase 1 Plans.

(b) On or after the receipt of the Phase 2 Deposit, JBWD shall employ, or cause to be employed, at HDMC's cost and expense, a qualified professional engineering firm to plan, design and prepare detailed construction plans, drawings and specifications for the Phase 2 Improvements ("**Phase 2 Plans**"). JBWD shall submit the Phase 2 Plans to HDMC for review and comment. HDMC shall have such time as the Parties shall agree, to review and comment on the Phase 2 Plans. HDMC shall cooperate with the engineering firm with respect to the preparation of the Phase 2 Plans.

**6.** Upon the Effective Date, HDMC shall execute, cause to be executed and delivered the easement attached hereto as Exhibit D and by this reference incorporated herein ("**Easement**"). The Easement provides for the construction, operation and maintenance of the Improvements on that portion of the HDMC Property described therein ("**Easement Area**") together with the reasonable right of access to and from said Easement for purposes of exercising the rights granted therein. In connection therewith, HDMC hereby irrevocably grants to JBWD



and its agent, contractors, employees, representatives and consultants the right to enter on the Easement Area to investigate matters which pertain to the design and construction of the Improvements, including, without limitation, soil and surface conditions and to conduct environmental studies, engineering studies, land use and such other investigations as JBWD, in its reasonable discretion, may desire.

7. (a)(i) Upon completion of the Phase 1 Plans and satisfaction of the CEQA requirements by HDMC, JBWD shall, at HDMC's sole cost and expense, advertise and bid the construction of the Phase 1 Improvements. The Parties recognize, acknowledge and agree that the construction and installation of the Phase 1 Improvements is a public works project. As such, it is the intent of JBWD to comply with the provisions of the California Labor Code, Government Code and Public Contract Code, including, without limitation, prevailing wage requirements. Subject to the provisions of California law relating to public works projects applicable to JBWD, and subject to HDMC's rights under Section 3.(a)(i), JBWD shall award the work to the lowest responsible bidder ("**Phase 1 Contractor**"). The Parties agree that JBWD shall be the awarding body without the approval or consent from HDMC, except as provided in Section 3.(a)(i). Subject to HDMC's rights under Section 3.(a)(i), JBWD shall negotiate and enter into all contracts and Agreements with the Phase 1 Contractor with respect to the construction of the Phase 1 Improvements. Subject to HDMC's rights under Section 3.(a)(i), HDMC shall fund the cost of the design and construction of the Phase 1 Improvements and any related costs and expense arising out of or in connection with the same. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(ii) The Phase 1 Contractor shall install the Phase 1 Improvements in substantial accordance with the Phase 1 Plans. HDMC understands and acknowledges that change orders for the construction of the Phase 1 Improvements may be warranted due to a variety of reasons, including, but not limited to, unforeseen circumstances or the need for construction of additional or changed improvements not contemplated by the Phase 1 Plans. In the event of a change order which increases the cost of the installation of the Phase 1 Improvements, JBWD shall submit the change order to HDMC for approval or disapproval. HDMC shall have five (5) business days from receipt of a request of a change order to approve or disapprove, in writing, of the same. Failure to disapprove of a change order, in writing, within the five (5) business day period shall be deemed approval thereof by HDMC. In the event HDMC disapproves, in writing, a change order within the five (5) business day period, the Parties shall meet and confer over a five (5) business day period after the disapproval to resolve the change order. In the event the Parties are unable to resolve the change order within such five (5) business day period, this Agreement shall terminate; provided that if the issue is with the Phase 2 Improvements and the Phase 1 Improvements have been constructed and are then being operated by JBWD, this Agreement shall only terminate as to the Phase 2 Improvements. JBWD shall pay from the Phase 1 Construction Deposit (as that term is defined below) all amounts owed or accrued with respect to the construction of the Phase 1 Improvements including, but not limited to, any amount required to be paid as a result of the early termination of the construction contract. After payment of such amount, JBWD shall return to HDMC all funds remaining in the Phase 1 Construction Deposit less Ten Percent (10%) of the unexpended funds which may be held for an additional period of ninety (90) days for work owed or accrued with respect to the construction of the Phase 1 Improvements. In the event there are costs that are incurred as a

result of the foregoing process of approving a change order, HDMC shall bear those costs and JBWD is hereby authorized to deduct such amount from the Phase 1 Construction Deposit. The Parties acknowledge and agree that the construction of the Improvements is for the benefit of the HDMC Property and JBWD is not required to expend any funds of the JBWD to create the Improvements including design and construction of the same.

(iii) JBWD may, but is not required, to retain the services of a project manager(s) as a cost of the installation of the Phase 1 Improvements paid by HDMC, to (A) oversee the furnishing and installation of the Phase 1 Improvements; and (B) inspect the installation of the Phase 1 Improvements.

(iv) HDMC shall pay the costs for installation of the Phase 1 Improvements as more particularly provided in this Subsection 7.(a). HDMC shall deposit with JBWD an amount equal to all estimated construction costs including the bid to be awarded, the cost of construction management, plus a **ten percent (10%) contingency ("Phase 1 Construction Deposit")** within \_\_\_\_\_ (\_\_\_\_) days after written notice from JBWD of an intent to accept the bid referred to in Subsection (a) above. The Phase 1 Construction Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the construction of the Phase 1 Improvements and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Phase 1 Construction Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Phase 1 Construction Deposit separate from its general funds and HDMC shall not be entitled to interest on the Phase 1 Construction Deposit. If there are any funds left in the Phase 1 Construction Deposit after the Phase 1 Improvements are completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within thirty (30) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

(v) From time to time JBWD shall submit progress reports to HDMC with respect to the installation of the Phase 1 Improvements. JBWD shall provide HDMC at least semi-annual construction progress reports signed by the project/construction manager or the district engineer.

(vi) HDMC shall cooperate with JBWD, the Phase 1 Contractor and any consultants and representatives of JBWD in the construction of the Phase 1 Improvements. JBWD or the Phase 1 Contractor shall provide HDMC with prior written notice of such date the Phase 1 Contractor shall initiate construction of the Phase 1 Improvements on the Easement Area.

(vii) Upon completion of the construction and installation of the Phase 1 Improvements, JBWD shall give HDMC notice of the same and require the Phase 1 Contractor to file a notice of completion for recording in the Office of the County Recorder. Upon completion of the Phase 1 Improvements, the facilities constructed as part of the Phase 1 Improvements shall be owned by the JBWD. Upon the request of JBWD, HDMC shall execute and deliver to JBWD a bill of sale in such form and content as shall be reasonably determined by

the Parties. The Parties further agree that all personal property associated with the Phase 1 Improvements shall also become the sole property of the JBWD, including, without limitation, all Entitlements, Phase 1 Plans, operating manuals, surveys and as-built drawings associated with the construction of the Phase 1 Improvements. Subject to the terms of Section 10, JBWD shall thereafter repair, replace and maintain the Phase 1 Improvements. Once the Phase 1 plant is completed and transferred to JBWD the operation/maintenance and compliance costs will be periodically billed to HDMC. If other dischargers become additionally serviced by the Package Plant, such expenses shall be proportionately billed to those additional parties.

(b) The provisions of Section 7.(a)(i) through 7.(a)(vii) shall apply to the advertising, bidding and construction of the Phase 2 Improvements; provided that the deposit of funds by HDMC to construct the Phase 2 Improvements shall be in an amount reasonably determined by the JBWD.

8. (a) Upon completion and acceptance of the Phase 1 Improvements and compliance by HDMC with the terms of this Agreement and including, but not limited to, the payment of fees and charges, the JBWD shall provide or cause to be provided, sanitary sewer service to Phase 1 of the Project, subject to circumstances within the control of JBWD or consistent with the JBWD's rules, regulations, policies and procedures as may be amended from time to time; provided that HDMC has not elected to take over the Project and satisfied the obligations set forth in Section 12 JBWD agrees that it shall take all commercially reasonable steps to assure that the Package Plant shall meet all requirements of the California Regional Water Quality Control Board (Colorado River Basin Region) and that such plants shall be operated in such commercially reasonable fashion to appropriately handle the waste water of HDMC in compliance with waste discharge requirements, and all other applicable requirements.

(b) Upon completion and acceptance of the Phase 2 Improvements and compliance by HDMC with the terms of this Agreement and including, but not limited to, the payment of fees and charges, the JBWD shall provide or cause to be provided, sanitary sewer service to Phase 2 of the Project subject to circumstances within the control of JBWD or as otherwise provided by the JBWD's rules, regulations, policies and procedures as may be amended from time to time; provided that HDMC has not elected to take over the Project and satisfied the obligations set forth in Section 12. JBWD agrees that they shall take all commercially reasonable steps to assure that the Package Plant shall meet all requirements of the California Regional Water Quality Control Board (Colorado River Basin Region) and that such plants shall be operated in such commercially reasonable fashion to appropriately handle the waste water of HDMC in compliance with waste discharge requirements, and all other applicable requirements.

(c) After acceptance of the Phase 1 Improvements and/or the Phase 2 Improvements and subject to the provisions of Section 1, JBWD may determine, in its reasonable discretion, that capacity exists in the Package Plant to provide sanitation service to other real property ("**Off Site Property**"), in addition to that portion of the Project to be served by the Package Plant. The Parties hereby agree that JBWD shall have the absolute right to provide sanitation service to such Off Site Property from the Package Plant on such terms and conditions as the JBWD shall agree with such Off Site Property owners ("**Off Site Owner(s)**") provided that such Off Site Owners pay the prorata portion of all the costs and expenses incurred by

HDMC in the design and installation of the appropriate Improvements. Thus, for example, (i) if the total cost of the Phase 1 Improvements which was paid by HDMC is One Million Five Hundred Thousand Dollars (\$1,500,000.00); (ii) HDMC uses on average seventy-five percent (75 %) of the capacity of the Package Plant attributable to the Phase 1 Improvements; (iii) an Off Site Owner is calculated to use on average five percent (5 %) of the capacity of the Package Plant attributable to the Phase 1 Improvements, then as a condition to sanitation service from the Package Plant, the Off Site Owner shall pay to JBWD the sum of Seventy-Five Thousand Dollars (\$75,000.00) ( $\$1,500,000.00 \times 5\%$ ) of the capacity fee. JBWD shall remit such amount to HDMC within a reasonable amount of time after JBWD receives such amount from the Off Site Owner.

9. (a)(i) Prior to any sanitary service to Phase 1 of the Project, HDMC shall pay to JBWD, a capacity fee equal to Five Thousand Two Hundred Seventy Dollars (\$5,270.00) times the number of equivalent dwelling units ("EDU") generated by Phase 1 of the Project as reasonably determined by the JBWD based on the average flow of two hundred twenty (220) gallons per day per EDU. EDU's for Phase I are estimated at **two hundred thirty six and six/tenths** (236.6) with the capacity fee estimated at One Million Two Hundred Forty-Five Thousand Six Hundred Thirty-Six and 36/100 Dollars (\$1,245,636.36). Notwithstanding the foregoing, HDMC shall be exempted from payment of the first twenty-four (24) EDUs (e.g., One Hundred Twenty-Six Thousand Four Hundred Eighty Dollars (\$126,480.00) so that the total due shall be One Million One Hundred Nineteen Thousand One Hundred Fifty-Six and 36/100 Dollars (\$1,119,156.36). In lieu of depositing the full amount of the capacity fee prior to any sanitary service to Phase 1 of the Project, HDMC may elect to enter into an agreement in such form and content attached hereto as Exhibit E and by this reference incorporated herein ("**Payment Agreement**"), with HDMC to make annual principal installments over a period of fifteen (15) years with additional annual interest payments based on the annual interest earned by other JBWD funds that could have been available for investment of the capacity fees. HDMC must affirmatively elect, in writing, to enter into the Payment Agreement within thirty (30) days of the Effective Date; and if so elected, to execute and deliver the Payment Agreement to JBWD within thirty (30) days of the Effective Date. Failure to timely satisfy the foregoing conditions shall be deemed an election to pay the full amount of the capacity fee prior to any sanitary service to Phase 1 of the Project.

(ii) Pay to JBWD such rates and charges related to sanitation service to Phase 1 of the Project in accordance with the rules, regulations, ordinances, policies and procedures developed by JBWD. In the event HDMC disputes any rates and charges, or proposed rates and charges, related to sanitation service to Phase 1 of the Project, HDMC shall (A) waive such objections, or (B) elect to take over operation, maintenance and ownership of Phase 1 of the Project; provided that the conditions of Section 12 are satisfied. In the event HDMC disputes any rates and charges, HDMC shall have [number of days] to elect Subsection (A) or Subsection (B) above, in writing. Failure to make any such election, in writing, within such [time period] shall be deemed an election of Subsection (A) above. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, HDMC shall be deemed to have elected Subsection (A). During the time that HDMC is attempting to satisfy the conditions set forth in Section 12, JBWD may charge the rates and charges it proposes.

(b) (i) Prior to any sanitary service to Phase 2 of the Project, HDMC shall pay to JBWD, the capacity fee in effect at the time of payment, times the number of EDUs generated by Phase 2 of the Project as reasonably determined by the JBWD based on the average flow of **two hundred twenty** (220) gallons per day per EDU.

(ii) Pay to the JBWD such rates and charges related to sanitation service to Phase 2 of the Project in accordance with the rules, regulations, ordinances, policies and procedures developed by the JBWD. Any dispute regarding rates and charges related to sanitation service to Phase 1 of the Project must be negotiated by JBWD and HDMC and HDMC shall (A) waive such objections, or (B) elect to take over operation, maintenance and ownership of Phase 1 of the Project; provided that the conditions of Section 12 are satisfied. In the event HDMC disputes any dates and charges, HDMC shall have [number of days] to elect Subsection (A) or Subsection (B) above, in writing. Failure to make any such election, in writing, within such [time period] shall be deemed an election of Subsection (A) above. In the event HDMC cannot satisfy the conditions set forth in Section 12 within the time frames set forth therein, HDMC shall be deemed to have elected Subsection (A). During the time that HDMC is attempting to satisfy the conditions set forth in Section 12, JBWD may charge the rates and charges it proposes.

**10.** (a) (i) HDMC acknowledges that the Package Plant has a useful life of approximately fifteen (15) years. Notwithstanding anything contained in this Agreement, HDMC shall be required to pay for the replacement of the Package Plant, if HDMC is the sole user of the Package Plant, or a prorata portion of the replacement of the Package Plant if there are other users pursuant to Section 8.(c).

(ii) HDMC hereby agrees to pay for the replacement of the portion of the Package Plant attributable to the Phase 1 Improvements (or HDMC's prorata share of such) either pursuant to this subsection or subsection 10.(d) below. On or before one (1) year after the acceptance of the Phase 1 Improvements, JBWD will estimate the cost of the replacement of the Package Plant which is attributable to the Phase 1 Improvements, which includes a ten percent (10 %) contingency amount ("**Replacement Cost**"). The Parties agree that interest on the Replacement Cost shall accrue at the rate equal to the annual increase in the Engineering News-Record Construction Cost Index (ENR-CCI 20 Cities). JBWD shall give HDMC written notice of the Replacement Cost, and HDMC's portion thereof ("**HDMC's Share**"), which HDMC Share shall be amortized over **fifteen** (15) **years**. HDMC shall have the right for a period of **six** (6) months after receipt of the amount of the replacement costs from JBWD to either (A) pay the replacement costs as hereinafter provided; or (B) pay the replacement costs pursuant to subsection 10.(d) below. In the event HDMC elects Subsection (A), the first payment shall be due and payable to JBWD **two** (2) **years** after the acceptance of the Phase 1 Improvements and continuing every year thereafter until the HDMC Share and interest thereon are paid in full. The HDMC Share may be prepaid at any time without penalty.

(iii) HDMC hereby agrees to pay for the replacement of the portion of the Package Plant attributable to the Phase 2 Improvements (or HDMC's prorata share of such) either pursuant to this subsection or subsection 10.(d) below. On or before one (1) year after the acceptance of the Phase 2 Improvements, JBWD will estimate the Replacement Cost of the replacement of the Package Plant attributable to the Phase 2 Improvement. The Parties agree

that interest on the Replacement Cost shall accrue at the rate equal to the annual increase in the Engineering News-Record Construction Cost Index (ENR-CCI 20 Cities). JBWD shall give HDMC written notice of HDMC's Share of the Replacement Cost attributable to the Phase 2 Improvements, which HDMC Share shall be amortized over **thirteen (13) years**. HDMC shall have the right for a period of **six (6) months** after receipt of the amount of the replacement costs from JBWD to either (A) pay the replacement costs as hereinafter provided; or (B) pay the replacement costs pursuant to subsection 10.(d) below. In the event HDMC elects Subsection (A) the first payment shall be due and payable to JBWD **two (2) years** after the acceptance of the Phase 2 Improvements and continuing every year thereafter until the HDMC Share and interest thereon are paid in full. The HDMC Share may be prepaid at any time without penalty.

(b) HDMC shall be responsible for any subsequent replacement costs and elections at **fifteen (15) year** intervals on the same terms and conditions as set forth in Section 10(a)(ii) in the event that HDMC is not connected to the Treatment Plant.

(c) At the time that HDMC is connected to the Treatment Plant and all expenses paid, there shall be a project accounting prepared and any funds remaining in the "replacement fund" shall be applied to costs to connect HDMC to the Treatment Plant. Any funds remaining after payment for the costs to connect HDMC to the Treatment Plant shall be returned to HDMC.

(d) In lieu of making annual payments toward the replacement of any phase noted in Sections 10(a)(ii), 10(a)(iii) or 10(b) above, HDMC may elect to defer all payments for the replacement of the Package Plant until JBWD determines, in its sole and absolute discretion, that the Package Plant needs to be replaced. HDMC shall provide the replacement amount to JBWD within \_\_\_\_\_ (\_\_\_) days after receipt of written notice from JBWD. HDMC shall have the right for a period of **six (6) months** after receipt of the amount of the replacement costs from JBWD to either (A) pay the replacement costs as hereinafter provided; or (B) take over the ownership of the Project Plant, provided the conditions of Section 12 are satisfied. Failure to make such election, in writing, within the **six (6) month** period shall be deemed an election of Subsection (A). In the event HDMC cannot satisfy the conditions set forth therein, HDMC shall be deemed to have elected Subsection (A). In the event HDMC elects Subsection (A) or Subsection (A) is deemed elected, whether making annual payments for the cost of replacement or paying at the time that the replacement is needed, HDMC shall be responsible for the cost of full replacement or any portion thereof, when needed, including, but not limited to, replacement due to failure of the system and/or failure to comply with the regulatory discharge requirements of JBWD and/or the California Regional Water Quality Control Board, Colorado River Basin Region.

**11.** Upon the completion of the Treatment Plant and the hook-up of the HDMC Property and other properties serviced by the Package Plant thereto in accordance with the rules, regulations ordinances, policies and procedures developed by the JBWD, HDMC shall give JBWD written notice of HDMC's election to: (a) retain the Package Plant; or (b) require JBWD to remove, at HDMC's sole cost and expense, the Package Plant from the HDMC Property. In the event HDMC does not elect in writing, to require JBWD to remove the Package Plant from the HDMC Property within **one hundred twenty (120) days** after receipt of the written notice, then HDMC will be deemed to have elected to retain the Package Plant. In the event HDMC

elects or is deemed to have elected to retain the Package Plant on the HDMC Property, JBWD shall deliver to HDMC, a bill of sale for the Package Plant in the same form and content as required pursuant to Section 7.(a)(vii). The Package Plant shall be transferred to HDMC free of all liens and encumbrances. In the event HDMC elects to cause JBWD to remove the Package Plant from the HDMC Property, HDMC shall deposit with JBWD a sum reasonably determined by the JBWD ("**Removal Deposit**") within **sixty** (60) days after written notice from JBWD. The Removal Deposit shall be held by JBWD for all costs and expenses of JBWD with respect to the removal of the Package Plant from the HDMC Property and any other matter related to or arising out of the same. HDMC hereby authorizes JBWD to use, apply or retain all or any other part of the Removal Deposit to offset its costs and expenses related to the foregoing. JBWD shall not be required to keep the Removal Deposit separate from its general funds and HDMC shall not be entitled to interest on the Removal Deposit. If there are any funds left in the Removal Deposit after the removal of the Package Plant from the HDMC Property is completed and accepted, such excess shall be returned to HDMC. If further funds are necessary, HDMC shall, within **thirty** (30) days after written demand therefor, deposit cash with JBWD in an amount which JBWD considers sufficient to pay for the costs and expenses to be incurred hereunder. Upon the complete removal of the Package Plant, JBWD shall quitclaim to the owner of the HDMC Property, all of JBWD's rights, title and interest in and to the Easement. HDMC may demand an accounting as to the status of the account and all deposits and expenditures at any time, and JBWD shall provide such accounting in a reasonable time.

12. The following shall be conditions precedent to HDMC's election pursuant to Sections [1, 8(a), 8(b), 9(a), 9(b), 10(a) and 10(d) ("Option Sections") ]:

(a) HDMC shall take title to the Package Plant as is, where is, with all faults.

(b) HDMC shall have obtained all entitlements to own and operate the Package Plant from all governmental agencies having jurisdiction thereof, including entitlements from the County of San Bernardino and the California Regional Water Quality Board, Colorado River Basin Region.

(c) The written consent of any off site owners using or contractually entitled to use the Package Plant.

The conditions set forth in this Section must be satisfied on or before [time period] after HDMC has made an election pursuant to the Option Sections.

13. (a) All notices or other communications between the JBWD and HDMC required or permitted hereunder shall be in writing and personally delivered or sent by certified mail, return receipt requested and prepaid, or sent by reputable overnight courier (such as Federal Express, UPS or DHL), or transmitted by electronic facsimile transmission (with electronic confirmation of receipt) to the following addresses:

JBWD: Joshua Basin Water District  
P O Box 675  
61750 Chollita Road  
Joshua Tree CA 92252  
Attn: \_\_\_\_\_  
Telephone: 760-366-8438  
Facsimile: 760-366-9528

HDMC: Hi Desert Medical Center  
6601 White Feather Road  
Joshua Tree, CA 92252  
Attn: Dan McClure, Chief Information Officer  
Telephone: 760-366-6137  
Facsimile: 760-366-6240

COPY TO: Cathy Deubel Salenko  
Best Best & Krieger LLP  
400 Capitol Mall, Suite 1650  
Sacramento, CA 95814  
Telephone: 916-325-4000  
Facsimile: 916-325-4010

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m., otherwise on the day following personal delivery, or on the date of receipt, if transmitted by electronic facsimile transmission (with electronic confirmation of receipt) prior to 5:00 p.m. or otherwise on the next day, provided receipt of such transmission shall be confirmed by follow-up notice within **seventy-two** (72) hours by another method authorized above, or **two** (2) business days following the date the notice is postmarked, if mailed, or on the day following delivery to the applicable overnight courier, if sent by overnight courier. Any Party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

(b) Time is of the essence of this Agreement and each and every term and provision hereof.

(c) This Agreement shall be construed as if prepared by all of the Parties. Accordingly, any rule of law (including California Civil Code Section 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. This Agreement shall be construed, interpreted and governed by the laws of the State of California and the laws of the United States of America prevailing in California.

(d) If any provision of this Agreement shall be ruled invalid, illegal or unenforceable, the parties shall: (i) promptly negotiate a substitute for the provision which shall, to the greatest extent legally permissible, effect the intent of the parties in the invalid, illegal or unenforceable provision, and (ii) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction



with Subsection (i) above to give effect to the intent of the parties without the invalid, illegal or unenforceable provision. To the extent the parties are unable to negotiate such changes, substitutions or additions as set forth in the preceding sentence, and the intent of the parties with respect to the essential terms of the Agreement may be carried out without the invalid, illegal or unenforceable provision, the balance of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if the invalid, illegal or unenforceable provision did not exist.

(e) The terms and provisions set forth in this Agreement shall be deemed provisions, terms and/or covenants running with the HDMC Property in accordance with applicable law, including, without limitation, Section 1468 of the California Civil Code and shall pass to and be binding upon the successor owners of the HDMC Property. As such, all successor owners of the HDMC Property will have any of the rights, responsibility and liabilities of HDMC as if such person or entity originally executed this Agreement in place and stead of HDMC. Each and every contract, deed or other instrument hereafter executed covering or conveying the HDMC Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such terms and conditions regardless of whether such terms and conditions are set forth in such contract, deed or other instrument. No transfer of the HDMC Property shall relieve HDMC of any responsibility or liability under this Agreement.

(f) Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to business days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

(g) In the event of any legal action to interpret this Agreement or enforce the rights or remedies of any Party to this Agreement, the prevailing Party in such legal action shall be entitled to recover its costs and expenses (including attorneys' fees) of such action.

(h) Except as otherwise provided in Section 7(a)(ii), the Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the state courts located in San Bernardino County, California or the federal court located in Riverside County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

(i) In the event any undisputed amount due to JBWD hereunder is not paid when due, HDMC shall pay to JBWD an additional five percent (5%) for each payment due as an administrative processing charge provided that any cost in excess of Five Hundred Dollars (\$500.00) shall be documented and itemized. The Parties agree that this late charge represents a fair and reasonable estimate of the costs the JBWD will incur by reason of such late payment to JBWD. Any payment not paid when due shall bear interest at the highest of the following rates: 1) The rate of interest that JBWD earns during the period of delinquency, from the Local Agency Investment Fund or other investment of One Million Dollars (\$1,000,000) whichever is greater; 2) If the payment is for a contract, HDMC will reimburse JBWD at the rate that JBWD would owe the Contractor for the delinquent payment; 3) If the payment is for a capacity fee or other construction fund, the rate of interest represented by the change in the Engineering New-Record Construction Cost Index (ENR-CCI 20 Cities) (provided such amount shall not exceed the maximum rate allowed under California law); from the date due until paid in full.

(j) This Agreement, together with any other written agreements referred to herein, is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the agreement between the Parties. As such, this Agreement supersedes any prior understandings between the Parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all Parties hereto.

(k) No delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(l) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

(m) Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named Parties.

(n) HDMC shall have a period of one hundred twenty (120) days after the Effective Date to cause any monetary liens and encumbrances recorded against the HDMC Property to be subordinated to the lien of this Agreement.

**14. Dispute Resolution**

Should any dispute arise between the parties relative to construction, deposits, operations, transfer or any other provision of the Agreement, the complaining/initiating party shall timely provide notice to the other party/parties.

Within **thirty** (30) days after receipt of such notice, the parties shall meet and confer over the dispute.

If the parties do not reach agreement, the dispute shall be transferred to the American Arbitration Association and resolved in accordance to their rules of commercial arbitration as more fully referenced in Section 7(a)(ii).

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first above written.

**"JBWD"**  
**JOSHUA BASIN WATER DISTRICT, a**  
**public agency of the State of California**

**"HDMC"**  
**HI DESERT MEDICAL CENTER, a**  
**public agency of the State of California**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

## EXHIBIT LIST

Exhibit A	Legal Description of the HDMC Property
Exhibit B	Depiction of Project
Exhibit C	Description of Package Plant Facilities
Exhibit D	Easement
Exhibit E	Payment Agreement

JOSHUA BASIN WATER DISTRICT  
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

December 7, 2011

Report to: President and Members of the Board  
From: Joe Guzzetta, General Manager

TOPIC: REVISION OF JOSHUA BASIN WATER DISTRICT (JBWD)  
ADMINISTRATION CODE SECTION 3.07.02 PROVIDING FOR  
BOARD AGENDA ITEMS NEEDING TO BE ADDRESSED  
SUBSEQUENT TO POSTING OF THE AGENDA

RECOMMENDATION: That the Board adopt revised Section 3.07.02 to conform with  
the California Brown Act, rather than the more restrictive  
current Administration Code Section.

ANALYSIS: When the Board wishes to consider an item that was received  
after posting of the agenda, and when only four board  
members are present, the JBWD Administrative Code requires  
a unanimous vote to consider the item, while the California  
Government Code 54954 (Brown Act) only requires a 2/3  
majority vote, or 3 affirmative votes to consider the item. This  
action would change the JBWD Administrative Code to be  
consistent with the Brown Act. The JBWD Administrative Code  
is already consistent with the Brown Act when three or five  
board members are present, requiring a 2/3 majority vote in  
those instances.

The Brown Act limits Board action to items that were posted  
on the published agenda. However, there are some  
exceptions. Once such exception is Section 54954.2 (2) which  
**states:** *"Upon a determination by a two-thirds vote of the  
members of the legislative body present at the meeting, or if  
less than two-thirds of the members are present, a unanimous  
vote of those members present, that there is a need to take  
immediate action and that the need for action came to the  
attention of the local agency subsequent to the agenda being  
posted as specified in subdivision (a)."*

Under this provision, four of five board members, three of four board members, or three of three board members present at a **meeting can make the finding.** JBWD's more restrictive Administration Code Section 3.07.02 states:

***"Upon a determination by a four (4) member vote of the board or, if less than four members are present, a unanimous vote of those Directors present, the Board of Directors may take action on items if the Board determines that there is a need to take action and the need for action arose subsequent to the Agenda being posted."***

The proposed change below comes directly from the Government Code:

Proposed Section 3.07.02

*Upon a determination by a two-thirds vote of the members of the Board present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, the Board of Directors may take action on items if the board determines that there is a need to take immediate action and that the need for action came to the attention of the District subsequent to the Agenda being posted.*

This discrepancy came to light after the last meeting when the Board voted to consider the endorsement of Judy Corl-Lorono for the Benefits Management Authority of the Association of California Water Agencies, Joint Powers Insurance Authority (JPIA). Since the Board's vote was 3/1 rather than 4/0, the action was not valid and staff did not forward the action to the JPIA.

## § 54954.1

## LOCAL AGENCIES Title 5

constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

(Added by Stats.1973, c. 1070, p. 2151, § 1. Amended by Stats.1990, c. 1198 (A.B. 4065), § 1; Stats.1997, c. 253 (S.B.138), § 4; Stats.2002, c. 300 (A.B.3035), § 6.)

### Cross References

City government, ordinances, publication, see Government Code § 36933.

"Legislative body" defined for purposes of this Chapter, see Government Code § 54952.

"Meeting" defined for purposes of this Chapter, see Government Code § 54952.2.

### Library References

Municipal Corporations Ⓢ89.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 224 to 230,  
233.

### Research References

#### Encyclopedias

CA Jur. 3d Administrative Law § 123, Compliance With Americans With Disabilities Act.

CA Jur. 3d Administrative Law § 137, Request for Agenda.

#### Treatises and Practice Aids

9 Witkin Cal. Proc. 5th Administrative Proceedings § 26, (S 26) in General.

9 Witkin Cal. Proc. 5th Administrative Proceedings § 28, in General.

### United States Code Annotated

Equal opportunity for individuals with disabilities, prohibition against discrimination, see 42 U.S.C. § 12132.

### Notes of Decisions

#### Executive sessions 2

#### Fees 1

##### 1. Fees

Under this section, a reasonable charge for sending such notice is a factual question and the charge should be based upon the estimated

cost of providing the service. 62 Op.Atty.Gen. 658, 10-31-79.

##### 2. Executive sessions

Local agencies, including school boards, may hold executive sessions only during regular or special meetings for which adequate notice has been given as required by provisions of secret meeting law. 43 Op.Atty.Gen. 79, 2-18-64.

## § 54954.2. Agenda; posting; action on other matters

(a)(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

**CITIES, COUNTIES AND OTHER AGENCIES**

**§ 54954.2**

**Div. 2**

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(Added by Stats.2005, c. 72 (A.B.138), § 12, eff. July 19, 2005.)

**Historical and Statutory Notes**

Sections 16 and 17 of Stats.2005, c. 72 (A.B. 138), provide:

"SEC. 16. The Legislature finds and declares that Sections 54954.2 and 54957.1 of the Government Code are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

"SEC. 17. (a) Notwithstanding any other provision of law, the Commission on State Mandates, no later than June 30, 2006, shall reconsider its test claim statement of decision in CSM-4202 on the Mandate Reimbursement Program to determine whether Chapter 486 of the Statutes of 1975 and Chapter 1459 of the

Statutes of 1984 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted. If a new test claim is filed on Chapter 890 of the Statutes of 2004, the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202. The commission, if necessary, shall revise its parameters and guidelines in CSM-4485 to be consistent with this reconsideration and, if practicable, shall include a reasonable reimbursement methodology as defined in Section 17518.5 of the Govern-

JOSHUA BASIN WATER DISTRICT  
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

December 7, 2011

Report to: President and Members of the Board  
From: Joe Guzzetta, General Manager



TOPIC: SELECTION OF BOARD OFFICERS

RECOMMENDATION: That the Board select a President and a Vice President for the 2012 calendar year.

ANALYSIS: The District Administration Code states that a President and Vice President be selected at the last regular meeting of the calendar year. There are no rules or practices concerning rotation or selection, other than that the officers are selected by majority vote.



JOSHUA BASIN WATER DISTRICT  
SUPPLEMENTAL DATA SHEET

Regular Meeting of the Board of Directors

December 7, 2011

Report to: President and Members of the Board  
From: Joe Guzzetta, General Manager



TOPIC: APPOINTMENT OF BOARD REPRESENTATIVES TO MOJAVE WATER AGENCY TECHNICAL ADVISORY COMMITTEE, MORONGO BASIN PIPELINE COMMISSION, AND ASSOCIATION OF THE SAN BERNARDINO COUNTY SPECIAL DISTRICTS

RECOMMENDATION: That the Board receive the appointments to be made by the Board President for representatives to the above agencies.

ANALYSIS: The District participates in three organizations that require official appointment of representatives. They are:

- Morongo Basin Pipeline Commission
- Association of San Bernardino County Special Districts (ASBCSD)
- Mojave Water Agency Technical Advisory Committee (MWA TAC)

The purpose of the Morongo Basin Pipeline Commission is to make recommendations to MWA regarding rates, taxes, and other issues pertaining to the pipeline which brings state project water to the Morongo Basin. The meetings are held 3 or 4 times per year on a weekday at a water agency within the Morongo Basin, and are about one and one half hours long. JBWD has one voting seat on this commission.

Mojave Water Agency TAC meets about 4 to 6 times per year on a Wednesday from 9:00 am to noon in Apple Valley. This is an informal committee which is open to all "stakeholders" with an interest in MWA. The Joshua Basin Water District General Manager typically attends. Attendance by the JBWD board is not limited, so that all board members could attend if there were interest. The TAC provides recommendations to the MWA board on the Regional Water Management Plan, rates and fees, strategies for securing future water, etc.

The Association of San Bernardino County Special Districts meets monthly, at a dinner meeting usually in the west end of San Bernardino County. JBWD has one vote at meetings of this agency.

The meetings consist of a program and/or discussion of issues of interest to special districts in San Bernardino County. This association also has a formal role in making appointments to positions on the Local Agency Formation Commission.

The Board practice is for the president to make the appointments of representatives to these organizations.