JOINT POWERS AGREEMENT

creating

PRESIDIO PUBLIC WORKS AGENCY

The CITY OF MONTEREY and the CITY OF SEASIDE ("Members") hereby enter into this Joint Powers Agreement ("Agreement") creating the PRESIDIO PUBLIC WORKS AGENCY ("Agency"). Both Members are public entities organized and existing under the laws of the State of California and each is a public agency as defined in California Government Code section 6500.

ARTICLE I

PURPOSE AND JURISDICTION

SECTION 1. CREATION OF AGENCY.

Pursuant to Government Code Sections 6500 et seq., as amended from time to time, and subject to the terms, conditions, and limitations contained in this Agreement, the cities of MONTEREY and SEASIDE hereby establish and create a separate joint powers agency known as the PRESIDIO PUBLIC WORKS AGENCY.

SECTION 2. PARTIES TO AGREEMENT.

Each Member certifies that it intends to, and does, contract with the other Member in the performance of this Agreement.

SECTION 3. PURPOSE.

The purpose of the Agency is to coordinate a solicitation for proposals, acquire the contract for, and coordinate all aspects and work regarding the operation and maintenance of the PRESIDIO OF MONTEREY ("POM") and PRESIDIO OF MONTEREY ANNEX ("POMA"). It is the intent of this Agreement that Member City of Monterey shall be primarily responsible for operation and maintenance of POM, and Member City of Seaside shall be primarily responsible for operation and maintenance of POMA; however, the Agency shall ultimately be the responsible party for all work performed under this Agreement.

SECTION 4. PUBLIC AGENCY:

The PRESIDIO PUBLIC WORKS AGENCY is a public agency, separate and distinct

from the Member agencies and any obligations, actions or liabilities shall not be construed as those of the Member agencies. The Agency is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement which include, but are not limited to, the following:

- (A) Make and enter into contracts;
- (B) Incur debts, liabilities and obligations, provided that no debt, liability or obligation of the Agency shall be a debt, liability or obligation of any Member except as separately agreed to by a Member agreeing to be so obligated;
 - (C) Receive, collect, invest and expend moneys;
- (D) Acquire, lease, hold, construct, manage, maintain, sell or otherwise dispose of real and personal property by appropriate means as provided by law;
 - (E) Sue and be sued in its own name;
 - (F) Incur debt, as provided by law;
- (G) Exercise all other powers necessary and proper to carry out the purposes of the Agency except as said powers are specifically limited by the provisions of this Agreement.

SECTION 5. DUTIES OF AGENCY AND OF MEMBER AGENCIES.

- (A) <u>Proposal</u>. It is the responsibility of the PRESIDIO PUBLIC WORKS AGENCY to develop a technical and fee proposal for acquisition of the contract for base operations and maintenance at the POM and POMA (the "Contract"). Any expenses related to preparation of the Agency proposal shall be borne by each individual Member. It is understood that the Agency will negotiate the terms of this Agreement with the Directorate of Contracting, Presidio of Monterey.
- (B) Operations. It is the responsibility of the Agency to develop and to implement guidelines to operate and to maintain POM and POMA according to the specifications and requirements as set forth in the Contract. The guidelines shall be set forth in a separate document which shall be approved and ratified by the Board.

SECTION 6. DESIGNATION OF LEAD AGENCY.

The City of Monterey is hereby appointed by the Members to be the lead Member agency ("Lead Agency") in order to execute and administer the provisions of this Agreement and implement programs undertaken by the Agency. The Member cities acknowledge that this designation may cause potential conflicts of interest to arise and waive any liability on the part of the City of Monterey arising out of any such conflict of interest. The City of

Monterey may not be removed as the Lead Agency except by reason of its fraud, gross negligence or gross mismanagement, or by amendment of this Agreement by the Board as provided below.

ARTICLE II.

ORGANIZATION

SECTION 1. BOARD OF DIRECTORS.

- (A) <u>Composition of Board</u>. The Agency Board of Directors shall be comprised of one director for each Member city. Each Member city shall appoint its City Manager as director, and one alternate to serve in the director's absence. Directors and alternate directors are not entitled to compensation and each Member agency shall be responsible for reimbursement of any expenses incurred by its appointed director or alternate director.
- (B) <u>Powers and Duties</u>. The functions, powers and duties of the Board shall include, but not be limited to, the following:
 - 1. Supervising and assisting in completion of the Agency proposal as part of the Contract solicitation process;
 - 2. Final approval of the Agency proposal and submission to the Directorate of Contracting, Presidio of Monterey;
 - 3. Approval and adoption of the base operations Contract, and approval of any subsequent amendments thereto;
 - 4. Delegation of powers for the base operations Contract, including program development, policy formulation and program implementation, to the Agency executive officers as set forth in Section 2 below.
 - 5. Approving the annual Agency budget.
 - 6. Approving any amendments to this Agreement
- (C) Meetings. The Board shall meet as often as it deems necessary during the Contract solicitation process in order to finalize the solicitation. A schedule of such meetings may be established by the Board, and may be amended as required.
- (D) <u>Voting</u>. A majority (unanimous) vote of the Board shall be required in order to authorize the acts set forth in subsection (B) above.

SECTION 2. OFFICERS.

- (A) Executive Officers. Each Member city shall appoint its Director of Public Works, and one alternate, as executive officers of the Agency. The executive officers are not entitled to compensation and each Member agency shall be responsible for reimbursement of any expenses incurred by its appointed executive officer or alternate.
- (B) <u>Powers and Duties</u>. The functions, powers and duties of the executive officers shall include, but not be limited to, the following:
 - 1. Carrying out all duties and functions as required by the base operations Contract;
 - 2. Negotiating changes to the contract.
- (C) <u>Meetings</u>. The Executive Officers shall establish a quarterly meeting and shall meet at least quarterly, and may call special meetings as are necessary to accomplish the business of the Agency.

SECTION 3. OTHER PERSONNEL.

- (A) The Board shall appoint a Secretary to the Agency. The Secretary shall provide such normal administrative and clerical services to carry out the Agency business.
- (B) The Finance Director/Treasurer of Member City of Monterey shall be appointed Chief Financial Officer to the Agency. The Chief Financial Officer shall be responsible for all financial matters involving the Agency, as further set forth in Part II, Section 3 below.
- (C) The Board may designate other personnel to provide further services as may be required to carry out the duties and responsibilities of the Agency.

ARTICLE III

FINANCIAL PROVISIONS

SECTION 1. BUDGET

The Board may adopt, at its sole discretion, an annual or multi-year budget not later than sixty (60) days before the beginning of a fiscal year. It is understood that there will be

no contribution of funds from members required in order to establish and maintain the Agency, and that the members may provide personnel, equipment or property in lieu of other contributions or advances.

SECTION 2. FINANCE

Revenue derived from services provided by the Agency for base operations and maintenance of POM and POMA under the Contract shall be received and accounted for by the Chief Financial Officer and disbursed, as appropriate, to the member agencies based upon the services and materials provided by each agency for the work performed.

Any property acquired as a result of the joint exercise of powers under this agreement shall be disposed, divided and distributed to the member agencies based upon contributions made by each. After completion of the purpose of the Agency or upon termination of the Agency, any surplus funds or property shall be returned to the members in proportion to the contributions made.

Purchasing and selection of subcontractors for Agency work shall be performed by each member agency in accordance with that member's city charter and/or ordinance regarding bidding and purchasing.

SECTION 3. DUTIES OF CHIEF FINANCIAL OFFICER

The Chief Financial Officer shall:

- (A) Receive and receipt for all money of the Agency and place it in the treasury of the treasurer so designated to the credit of the Agency;
- (B) Be responsible upon his or her official bond for the safekeeping and disbursement of all agency or entity money so held by him or her;
- (C) Pay, when due, out of money of the Agency so held, all sums payable on outstanding bonds and coupons of the Agency;
- (D) Pay any others sums due from the Agency from Agency money, or any portion thereof, only upon warrants of and approved by the Chief Financial Officer; and,
- (E) Verify and report in writing the first day of July, October, January and April of each year to the Agency and to the Member cities, the amount of money being held for the Agency, the amount of receipts since the last report, and the amount paid out since the last report.

SECTION 4. FISCAL YEAR.

The first fiscal year of the Agency is the period from the date of this Agreement through June 30, 1998. Each subsequent fiscal year shall be from July 1 though June 30.

SECTION 5. AUDITS.

The Chief Financial Officer will cause an annual financial audit to be made by an independent certified public accountant with respect to all Agency receipts, disbursements, and other transactions. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code. A report of the financial audit will be filed as a public record with each Member. Such report shall be filed within 12 months after the end of the fiscal year or the years under examination.

The Agency shall pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

Notwithstanding the above, the Agency may, by unanimous request of the Board, replace the annual special audit with an audit covering a two-year period.

ARTICLE IV.

OTHER PROVISIONS.

SECTION 1. EFFECTIVE DATE - TERM OF AGENCY.

Upon termination of the Agency, any and all property and/or surplus money of the Agency shall be dispersed to the Member cities in proportion to the contributions made, if any.

SECTION 2. BONDING.

The executive officer of the Lead Agency is hereby designated as the individual responsible for property of the Agency. The executive officer of the Lead Agency shall file an official bond in the amount of \$10,000.00 in accordance with Govt. Code section 6505.1.

SECTION 3. AMENDMENT.

Any proposed amendment to this Agreement shall be submitted to each Member at least ten (10) days prior to its adoption by the Board, and provided further no provision shall be added which imposes financial liability or responsibility on a Member without its consent.

SECTION 4. WITHDRAWAL

A member may withdraw from participation in the Agency upon giving 60 days written notice to the Board.

The members may mutually agree to terminate this agreement at any time. In addition, withdrawal of any Member shall constitute termination of the JPA.

SECTION 5. PRIVILEGES AND IMMUNITIES.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any Member city when performing their respective functions within the territorial limits of their respective cities, shall apply to them to the same degree and extent while engaged in the performance of their functions and duties extraterritorially under the provisions of the Agreement.

SECTION 6. HOLD HARMLESS/INDEMNIFICATION.

Each Member under this Agreement agrees to indemnify, defend and hold all other Members, their agencies, officers, and employees harmless from and against any and all costs, expenses or liability incurred as a result of any claim, suit, lien or other legal proceeding (including attorney's fees) against the Member resulting from the performance or lack of performance of this agreement.

SECTION 7. INSURANCE.

Each Member under this Agreement shall include the JPA as an additional insured where appropriate or extend liability coverage in the same manner if the member is legally self-insured or un-insured.

SECTION 8. ASSIGNMENT

No member may assign a right, claim, or interest it may have under this Agreement.

SECTION 9. SEVERABILITY

If any portion, term, condition or provision of this Agreement is determined by a court to be illegal or in conflict with a law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected.

SECTION 10. GOVERNING LAW

This Agreement will be governed by and constate of California.	strued in accordance with the laws of the
IN WITNESS WHEREOF, the parties hereto have example 2 day of December 1997.	secuted this Agreement as of the
ATTEST	CITY OF MONTEREY
CYNTHIA PARHAM, City Clerk	DANIEL ALBERT, Mayor
Resolution No.97-200 Date: 11 4 9 7	
WILLIAM B. CONNERS, City Attorney	
ATTEST	CITY OF SEASIDE
LINDA R. DOWNING, City Clerk	DON JORDAN, Mayor
Resolution No Date:	
Approved as to from:	
DONALD G. FREEMAN, City Attorney	

court to be illegal or in conflict with a law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected.

SECTION 10. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed, 1997.	this Agreement as of the
ATTEST	CITY OF MONTEREY
CYNTHIA PARHAM, City Clerk	DANIEL ALBERT, Mayor
Approved as to form:	
WILLIAM B. CONNERS, City Attorney	
ATTEST Maa LOWKING LINDA R. DOWNING, City Clerk	CITY OF SEASIDE DON JORDAN, Mayor

2nd AMENDMENT TO JOINT POWERS AGREEMENT

for

PRESIDIO MUNICIPAL SERVICES AGENCY (formerly known as Presidio Public Works Agency)

* * * * * * *

That certain Joint Powers Agreement entered into by and between the City of Seaside and the City of Monterey (as "Members") on or about November 4, 1997, creating the Presidio Public Works Agency ("Agency"), as amended on ______ (the "Agreement"), is hereby amended by mutual agreement of the Members as follows:

- 1. The name of the Agency shall be changed from Presidio Public Works Agency to PRESIDIO MUNICIPAL SERVICES AGENCY.
- All rights, titles and duties originally conferred upon the Presidio Public Works Agency under the Agreement shall hereinafter be transferred to the PRESIDIO MUNICIPAL SERVICES AGENCY.
 - 3. A new Section 4.1 shall be added to the Agreement to read as follows:

"SECTION 4.1. ASSIGNMENT OF RIGHTS UPON TERMINATION OF AGENCY.

Upon termination of the Agency caused by the mutual agreement of the members, withdrawal of a Member from the Agency, or any other action resulting in termination of the Agency, all rights, title, interest and duties of the Agency under this Agreement shall be transferred to the City of Monterey. Such assignment includes the transfer of all Agency's rights, title, interest and duties in any existing contracts between the Agency and third parties, including but not limited to the contract between the Agency and the U.S. Army for base operations and maintenance at the POM and POMA, and any contracts between the Agency and third parties for services related to said base operations and maintenance."

4. All other terms and provisions of the Joint Powers Agreement, including all

amendments thereto, shall remain in full force and effect.

	City of Monterey
	By:
Approved as to form:	Daniel Albert, Mayor
William B. Conners, City Attorney	
Attest:	
City Clerk	
City of Monterey Resolution No(Amending Reso No) Date:	
	City of Seaside
	By: Don Jordan, Mayor
Approved as to form:	
Donald G. Freeman, City Attorney	
Attest:	
City Clerk	
City of Seaside Resolution No.	