Meeting Date: 07/11/06

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Mark S. Norris Agenda Item No. I-9

Reviewed By: City Manager City Attorney *Gillig* Finance Public Works Director *Ortega*

DATE: June 13, 2006

TO: City Council

FROM: Mark S. Norris, Assistant Public Works Director
Public Works Department

SUBJECT: **Agreements with the City of Port Hueneme for Sewer Transportation and Encroachment of Sewer Improvements**

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute an agreement with the City of Port Hueneme (A-6679) for sewer transportation and connection into Redwood Trunk Sewer System at Hemlock Street/Patterson Road and Channel Islands Boulevard/Victoria Avenue, in West Oxnard.

2. Approve and authorize the Mayor to execute a license agreement with the City of Port Hueneme (A-6695) allowing the City of Port Hueneme to encroach onto City property pursuant to Agreement A-6679.

DISCUSSION

The City of Port Hueneme owns, pursuant to the 1976 Agreement and adjusted by agreement between Port Hueneme and the Channel Islands Beach Community Services District, dated January 25, 2006, 3.2 million gallons per day (mgd) of peak seasonal average dry weather flow and 5.74 mgd of peak wet weather flow at the Oxnard Wastewater Treatment Plant.

The City of Port Hueneme is contemplating construction of improvements to its wastewater collection system that would result in connecting a portion of its wastewater system to the City's Redwood Trunk Sewer System at Hemlock Street/Patterson Road and Channel Islands Boulevard/Victoria Avenue, in West Oxnard.

The City of Port Hueneme will have the right to transport up to 0.30 mgd of peak dry and 0.45 mgd of peak wet weather flow to the Hemlock Street/Patterson Road connection. Furthermore, the City of Port Hueneme will have the right to transport up to 0.15 mgd of peak dry and 0.225 mgd of peak wet weather flow to the Channel Islands Boulevard/Victoria Avenue connection.

The City will own title to all of the Redwood Trunk Sewer System pipelines, pump stations, vaults, and other ancillary equipment.

The City of Port Hueneme will construct the sewer connections in approximately 24 months. The encroachment agreement permits the City of Port Hueneme pipeline to run beneath City streets.

FINANCIAL IMPACT

The City of Port Hueneme will reimburse the City $811,877 for capital and construction costs associated with the construction of the Redwood Trunk Sewer Project. Once received, these funds will be deposited in the Wastewater Conveyance Fund.

Once the City of Port Hueneme has connected to the City 's system, the City of Port Hueneme will pay the City $6,000 per month for operation and maintenance of the pump station and associated collection system. The operation and maintenance fee will be adjusted yearly during the term of the Agreement. The adjusted fee will be the percentage allocation of the actual cost of operation and maintenance and energy attributable to the City of Port Hueneme.

Attachment #1 – Wastewater Transportation Agreement

#2 – License Agreement to Encroach within City of Oxnard Right-of-Way

MSN:TN:js

WASTEWATER TRANSPORTATION AGREEMENT

THIS WASTEWATER SYSTEM SERVICE AGREEMENT (Agreement) is entered into by and between the City of Oxnard (Oxnard) and the City of Port Hueneme (Port Hueneme) on this ____ day of _____ 2006, with reference to the recitals set forth below and with reference to a Wastewater Service Agreement between Oxnard and Port Hueneme dated October 12, 1976 (the "1976 Agreement").

RECITALS

A. Oxnard is in the process of constructing a trunk wastewater line and ancillary pump stations and transportation facilities to transport sewage to the Oxnard Wastewater Treatment Plant (OWTP). This line and facilities are generally depicted on Exhibit A hereto and will be referred to herein as the "Redwood Trunk Sewer Facility" or "RTSF";

B. Port Hueneme is contemplating construction of improvements to its wastewater system that would result in Port Hueneme connecting a portion of its wastewater system to the RTSF for purposes of transporting Port Hueneme operated and maintained wastewater systems sewage to the "OWTP". Port Hueneme owns, pursuant to the 1976 Agreement and as adjusted by an agreement between Port Hueneme and the Channel Islands Beach Community Services District, dated January 25, 2006, 3.2 million gallons per day ("MGD") of peak seasonal average dry weather flow and 5.74 MGD of peak wet weather flow at the "OWTP" for purposes of wastewater treatment services needed for the wastewater systems owned, operated or maintained by Port Hueneme;

C. The purpose of this Agreement is to set forth the terms and conditions, and the rights and obligations, of the parties with regard to Port Hueneme's capital contribution to and use of the RTSF. This Agreement is not meant in any way to amend or replace the 1976 agreement.

AGREEMENT

In consideration of the above, the parties agree as follows:

1. Connection and Transportation Rights

1.1 Connection. Oxnard shall allow Port Hueneme to connect its wastewater system to the RTSF at the intersection of Channel Islands Boulevard and Victoria Avenue and the intersection of Patterson Road and Hemlock to transport sewage to the Hemlock Pipeline. It is anticipated that Port Hueneme shall construct the connections within approximately 24 months and that Oxnard will complete the RTSF facilities in order to facilitate this construction schedule. Work within the Oxnard city limits shall be approved by Oxnard and shall meet and be accomplished in accordance with all Oxnard ordinances, resolutions, and permit processes.

1.2 Transportation. During the term of this Agreement, Port Hueneme shall have the right to transport up to .15 MGD of peak dry weather flow and .225 MGD of peak wet weather flow to the Victoria Avenue and Channel Islands Boulevard connection point and the right to transport up to .30 MGD of peak dry weather flow and .45 MGD peak wet weather flow to the Hemlock and Patterson Road connection point, of wastewater conveyed from wastewater systems owned, operated or maintained by Port Hueneme through the RTSF to the OWTP.

1.3 RTSF Facilities. Oxnard shall own title to all of the pipelines, pump stations, vaults, and other ancillary equipment listed in Exhibit B. Port Hueneme shall be entitled to utilize capacity in the infrastructure as provided in this Agreement.

1.4 Destruction or Abandonment of RTSF Facilities. If Oxnard voluntarily abandons all or a portion of the RTSF during the term of this Agreement, Oxnard shall provide Port Hueneme with sufficient capacity in replacement facilities to accommodate Port Hueneme's flows, as detailed in Section 1.2, for the remainder of the term of this Agreement without any additional capital cost, but otherwise based upon the same terms and conditions that are provided for in this Agreement; provided, if extensive repair or replacement of the RTSF is necessary because of acts of nature, god, war, system age and wear, or other reasons beyond the control of Oxnard, Port Hueneme shall contribute to the cost of replacement or repair according to the provisions of Section 2.1.C and the methodology described in Exhibit B, or in the alternative, Port Hueneme may terminate this Agreement.

1.5 Metering of Wastewater. The parties agree that metering of flows and control of flow quality shall be performed as provided in paragraphs VII, VIII and IX of the 1976 Agreement.

2. Compensation

2.1 Fees for Services. From the Commencement Date (the date at which time the RTSF is available for use to Port Hueneme) in exchange for the payments set forth below, Oxnard agrees to continue to transport Port Hueneme flows as outlined in Section 1.2 of this agreement:

A. Service Charge: Port Hueneme shall pay a service charge to Oxnard for the treatment of sewage and wastewater generated within the Port Hueneme service areas to be calculated and paid based upon the Regional Treatment and Disposal Facility User Charge in accordance with the 1976 Agreement and City Ordinance #2632, which implements certain fees and costs based upon the 1976 Agreement, as may be amended from time to time, at agreed upon monitoring locations.

B. Port Hueneme shall pay for its share of maintenance costs of the RTSF. The parties agree that for purposes of simplicity, that once the Port Hueneme tie-in to the RTSF is complete, Port Hueneme shall initially pay to Oxnard a fee of $6,000 per month which shall be for the purpose of paying for the operation and maintenance of the pump station and associated collection system piping related to the RTSF. The fee shall be adjusted on the first day of July after the first full year of operations. An adjustment shall be made for the next fiscal year and yearly thereafter during the term of the Agreement. The adjusted fee shall be the percentage allocation of the actual cost of operation, maintenance and energy attributable to Port Hueneme, based on the percentage of RTSF capacity to which Port Hueneme is entitled, including direct cost of labor and material as well as reasonable overhead and indirect cost. If Port Hueneme does not agree with the cost provided by Oxnard, it shall forthwith monthly pay the amount which it agrees represents such costs, in no event less than (same as above). The parties shall then promptly arbitrate the issue of costs payable under the rules of the American Arbitration Association for commercial arbitration. If the actual cost is determined to be more than the amount paid, Port Hueneme will pay the difference within 30 days of the final decision. If such actual costs are determined to be less than the amount paid, Oxnard shall pay the difference to Port Hueneme within 30 days.

C. Capital Buy-In: Port Hueneme shall pay for its share as provided in Exhibit B of the capital and construction costs of the RTSF in progress payments as set forth in Exhibit "B" which is attached hereto and incorporated herein. Exhibit B shall be updated by Oxnard periodically until construction is completed. The parties further agree that said progress payments shall be not more often than once a month and request for such payments shall be in writing by Oxnard, and shall be in a form mutually agreeable by the parties. Port Hueneme agrees that within twenty (20) days after the receipt of the request for a progress payment, it will make payment or set forth its reasons for refusing to make a payment. Oxnard's request for a progress payment shall include Oxnard's representation that, to Oxnard's knowledge, information and belief that the work has progressed to the point indicated and that the conditions precedent to Oxnard being entitled to such payments have been fulfilled.

2.2 <u>Billing and Payment</u>.

A. Term: This Agreement shall be for a term of thirty (30) years from the date of execution by both parties. Except as provided in Section 2.3, neither party shall have the right to terminate this Agreement during the term of this Agreement but each shall have as its sole and exclusive remedy the right to seek specific performance or damages from the other utilizing the dispute resolution methods set forth in Section 4.11 of this Agreement.

2.3 **Default Remedies.** Oxnard shall have the right to terminate this Agreement based on Port Hueneme's failure to pay undisputed charges or amounts which a Court has found to be due for a period in excess of 90 days after imposition of the charge or Court finding. In addition, should Port Hueneme violate state, federal, or local law or regulations or the 1976 Agreement concerning the quality of its influent into the RTSF, Section VIII B of the remedies set forth in the 1976 Agreement apply.

3. Indemnification

3.1 **By Oxnard.** Oxnard shall indemnify, defend and hold harmless Port Hueneme, its elected and appointed officials, directors, manager or other employees and agents ("Indemnitees") from and against any and all claims, demands, losses, costs, expenses, litigation, liabilities, damages, recoveries and deficiencies of any nature whatsoever, including interest, penalties and reasonable attorney's fees, arising out of or in connection with the negligent acts, errors or omissions or intentional misconduct by Oxnard, and its elected and appointed officials, directors, manager, or other employees and agents in the performance of the services under this Agreement. If Oxnard, within a reasonable time after written notice, fails to so defend, indemnify and hold harmless Port Hueneme and its Indemnitees, Port Hueneme shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter on behalf of Port Hueneme and its Indemnitees and shall retain all legal and equitable against Oxnard based upon Oxnard's failure to defend, indemnify and hold harmless Port Hueneme and its Indemnitees.

3.2 **By Port Hueneme.** Port Hueneme shall indemnify, defend and hold harmless Oxnard, its elected and appointed officials, directors, manager or other employees and agents ("Indemnitees") from and against any and all claims, demands, losses, costs, expenses, litigation, liabilities, damages, recoveries and deficiencies of any nature whatsoever, including interest, penalties and reasonable attorney's fees, arising out of or in connection with the negligent acts, errors or omissions or intentional misconduct by Port Hueneme, and its elected and appointed officials, directors, manager, or other employees and agents in the performance of the services under this Agreement. If Port Hueneme, within a reasonable time after written notice, fails to so defend, indemnify and hold harmless Oxnard and its Indemnitees, Oxnard shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter on behalf of Oxnard and its Indemnitees and shall retain all legal and equitable against Port Hueneme based upon Port Hueneme's failure to defend, indemnify and hold harmless Oxnard and its Indemnitees.

4. Standard Provisions

4.1 **Recitals.** The recitals stated at the beginning of this Agreement of any matters or facts shall be conclusive proof of their truthfulness, and the terms and conditions of the recitals, if any, shall be deemed a part of the Agreement.

4.2 **Notices.** All notices, approvals, acceptances, requests, demands and other communications required or permitted, to be effective, shall be in writing and shall be delivered, either in person or by mailing the same by United States mail (postage prepaid, registered or certified, return receipt requested) or by Federal Express or other similar overnight delivery service, to the party to whom the notice is directed at the address of such party as follows:

To: Port Hueneme	City of Port Hueneme Attn: City Clerk 250 N. Ventura Road Port Hueneme, California 93041
To: Oxnard	City of Oxnard Attn: Assistant Public Works Director 300 W. Third Street Oxnard, CA 93030
With a copy to:	City of Oxnard Attn: City Attorney 300 W. Third Street Oxnard, CA 93030

Any communication given by mail shall be deemed delivered two (2) business days after such mailing date, and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the other party written notice of its new address.

4.3 **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, successors and assigns. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties or their respective heirs, successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

4.4 **Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and executed by the party so waiving. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained herein, and in any documents delivered or to be delivered pursuant to this Agreement. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

4.5 Headings. The section headings contained in this Agreement are for convenience and reference only, and shall not affect the meaning or interpretation of this Agreement.

4.6 Severability. If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null, void or against policy, the remaining provisions of this Agreement shall remain in full force and effect, and shall not be affected, impaired or invalidated. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives set forth in this Agreement.

4.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

4.8 Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, with venue proper only in the County of Ventura, State of California.

4.9 Arbitration. [intentionally omitted]

4.10 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action against any party to this Agreement.

4.11 Dispute Resolution Fees and Costs. If arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party (as determined by the dispute resolver) shall be entitled to recover its reasonable costs (including, without limitation, reasonable fees and expenses of counsel and experts or consultant fees and costs, and other costs) incurred in that action (including the costs to enforce or preserve the rights awarded in the proceeding). If the dispute resolver determines that the decision is not clearly against one party on one or more issues, the dispute resolver shall have the authority to determine that each party shall bear its own costs.

4.12 Cooperation. The parties shall, whenever and as often as reasonably requested to do so by the requesting party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this Agreement, provided that the requesting party shall bear the costs and expense of such further instruments or documents (except that each party shall bear its own attorney's fees).

4.13 **Good Faith.** The parties agree to exercise their best efforts and utmost good faith to effectuate all the terms and conditions of this Agreement and to execute such further instruments and documents as are necessary or appropriate to effectuate all of the terms and conditions of this Agreement.

4.14 **Construction.** The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party, as each party has participated in the drafting of this document and had the opportunity to have its counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and all masculine shall include the feminine and neuter, and vice versa.

4.15 **Several Obligations.** Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

4.16 **Authority.** The individuals executing this Agreement represent and warrant that they have the authority to enter into this Agreement and to perform all acts required by this Agreement, and that the consent, approval or execution of the Agreement by any third party is not required to legally bind either party to the terms and conditions of this Agreement.

4.17 **Entire Agreement.** This Agreement contains the entire understanding and agreement of the parties, and supersedes all prior agreements and understandings, oral and written, between the parties. There have been no binding promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature, except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives its future right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year and at the place first written above.

CITY OF OXNARD

By_____
Dr. Thomas E. Holden, Mayor

ATTEST:

By_____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

By_____
Gary Gillig, City Attorney

APPROVED AS TO INSURANCE:

By_____
Marcie Medina, Finance Director

APPROVED AS TO CONTENT:

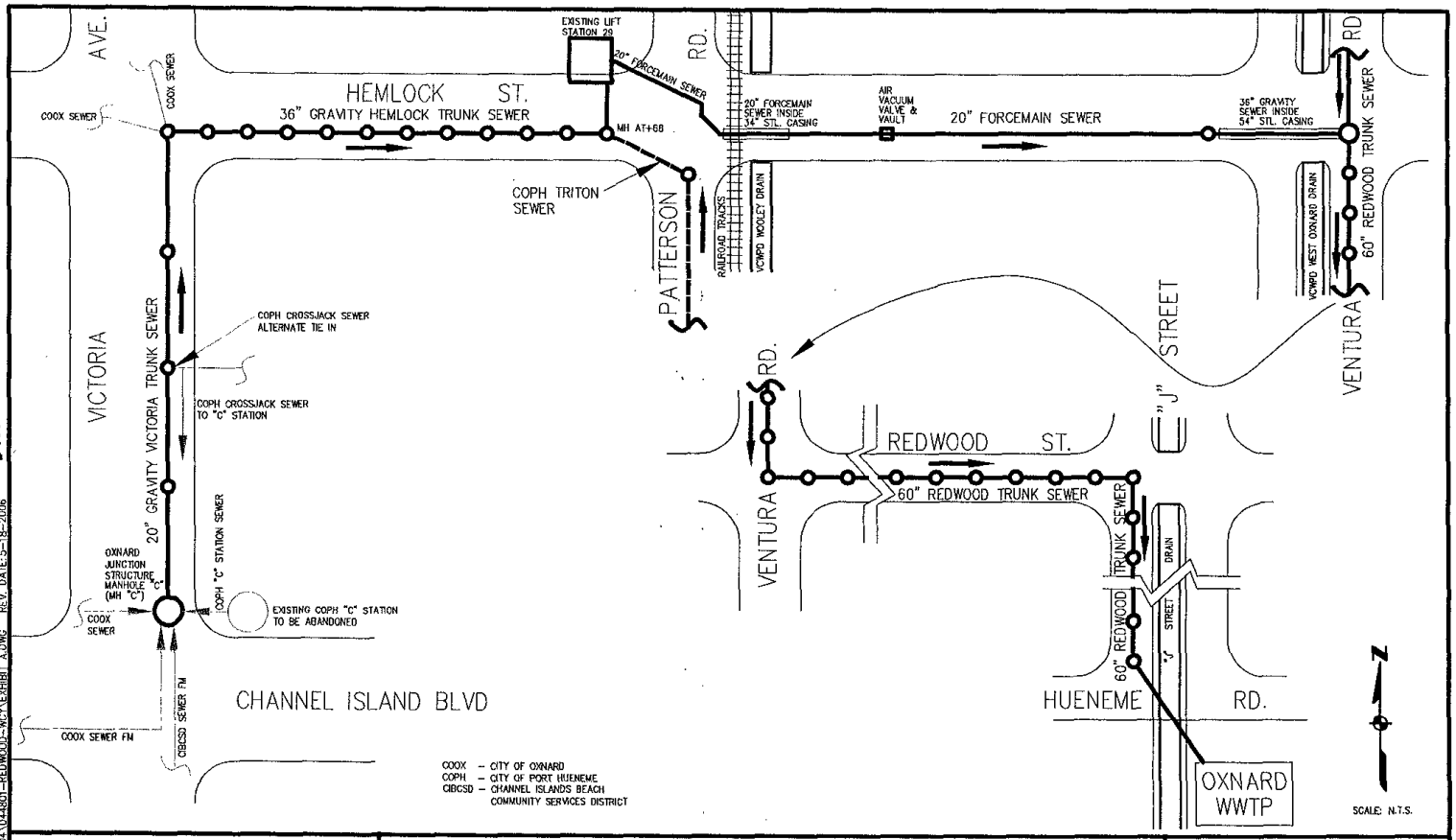
By_____
Mark S. Norris, Assistant Public Works Director

CITY OF PORT HUENEME

By_____
Robert Hunt, City Manager

APPROVED AS TO FORM:

By_____
Mark Hensley, City Attorney



Kennedy/Jenks Consultants 1000 HILL ROAD, SUITE 200 VENTURA, CALIFORNIA 93003	MEMORANDUM OF UNDERSTANDING	EXHIBIT A

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MEMORANDUM OF UNDERSTANDING

EXHIBIT B WORKSHEET

Reach	Description	Peak Capacity (MGD)	COOX (MGD)	% Capacity	COPH PWWF (MGD)	% Capacity	CIBCSD PWWF (MGD)	% Capacity
1	Victoria Avenue Line	2.15	1.03	47.67	0.225	10.47	0.9	41.86
2	Hemlock Trunk to MH AT+68	11.69	10.57	90.38	0.225	1.92	0.9	7.70
3	Hemlock Trunk - MH AT+68 to LS 29	11.69	10.12	86.53	0.675	5.77	0.9	7.70
4	LS 29 and Hemlock Force Main	18.3	16.73	91.39	0.675	3.69	0.9	4.92
5	Redwood Trunk Sewer	45.63	44.06	96.55	0.675	1.48	0.9	1.97

Reach	Description	Construction Bid Cost	Change Orders Cost	Const. Mgmt. Cost	Eng. Costs	Total Costs	
1	Victoria Avenue Line (estimate)	$960,000	$0	$250,000	$87,500	$1,297,500	Open Cut Construction
2	Hemlock Trunk to MH AT+68	$4,182,407	$1,287,500	$366,995	$144,450	$5,981,352	
3	Hemlock Trunk - MH AT+68 to LS 29	$46,518	$0	$4,082	$1,613	$52,213	
4	LS 29 and Hemlock Force Main	$3,951,772	$0	$1,006,416	$607,436	$5,565,624	
5	Redwood Trunk Sewer	$21,652,269	$584,911	$1,017,715	$585,154	$23,840,049	

Reach	Description	COOX Cost	COOX %	COPH Cost	COPH %	CIBCSD Cost	CIBCSD %
1	Victoria Avenue Line	$618,576	47.67	$135,785	10.47	$543,140	41.86
2	Hemlock Trunk to MH AT+68	$5,405,730	90.38	$115,124	1.92	$460,498	7.70
3	Hemlock Trunk - MH AT+68 to LS 29	$45,178	86.53	$3,015	5.77	$4,020	7.70
4	LS 29 and Hemlock Force Main	$5,086,615	91.39	$205,289	3.69	$273,719	4.92
5	Redwood Trunk Sewer	$23,017,168	96.55	$352,663	1.48	$470,218	1.97
	Totals	$34,173,267		$811,877		$1,751,594	

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5/18/2006

LICENSE AGREEMENT TO ENCROACH WITHIN CITY OF OXNARD RIGHT-OF-WAY

This License Agreement to Encroach within City of Oxnard right-of-way ("this Agreement") is entered into this _____ day of _____, 2006, by and between the City of Oxnard, a municipal corporation ("Licensor"), and City of Port Hueneme, a municipal corporation ("Licensee"). Licensor and Licensee are hereinafter collectively referred to as "the Parties."

WHEREAS, the Parties have entered into Wastewater Transportation Agreement No. A-6679 ("Agreement No. A-6679"), by this reference made a part hereof; and

WHEREAS, Licensor owns the Right of Way, as shown on the Exhibit A; and said Agreement No. A-6679 allows, subject to certain conditions, Licensee the right to make connections to facilities owned, operated and maintained by Licensor ("Connections"); and

WHEREAS, said Connections require the construction of wastewater pipelines and appurtenances of various sizes within Licensor's right-of-way ("Improvements").

NOW, THEREFORE, incorporating the above recitals and in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. License Granted

Subject to the conditions contained in this Agreement and Agreement A-6679, Licensor hereby grants to Licensee a revocable license to construct, operate and maintain the Improvements as described in the recitals above, and as depicted in Exhibit A.

2. Possessory Interest

Neither party believes that this Agreement creates a possessory interest that is subject to property taxation. Licensee, however, agrees to pay any possessory interest property tax imposed on the encroachments and the Improvements for which this Agreement is granted.

3. Construction of Improvements

A. Prior to construction of any of the Improvements contemplated under this Agreement, Licensee shall obtain from Licensor an encroachment permit. Said encroachment permit will authorize the construction, operation and maintenance of the Improvements within Licensee's right-of-way for the purposes of Connection. Licensee shall obtain a separate encroachment permit for each Connection contemplated.

B. Licensee shall install, construct, and maintain said Improvements in accordance with the terms and conditions set forth in this Agreement. Licensee's contractor for the installation shall pay prevailing wages related to construction of the Improvements.

C. Licensee shall protect existing utilities in place or shall immediately repair damaged improvements to the satisfaction of the Licensor .

4. Acknowledgments

A. Licensee agrees that for the life of said improvements, Licensor may, at any time and without prior notice, inspect that portion of the Improvements within Licensor's right-of-way. Licensee shall repair any defects noted in accordance with the provisions set forth in Section 6. "Maintenance" herein.

B. Licensee acknowledges and agrees that future City of Oxnard improvements may require the County to relocate portions of subject City of Port Hueneme improvements as necessitated by future City of Oxnard projects. The City of Port Hueneme shall, at its sole expense relocate sewer lines or manholes that City Staff determines will interfere with future City of Oxnard improvements. Said relocations shall take place in a timely fashion so as not to delay timely construction of City's improvements, provided, however, that City shall provide Licensee with, at a minimum six months notice of the need to relocate. In the event that City of Port Hueneme Improvements are not relocated in a timely fashion as requested, the City may at its option and at City of Port Hueneme expense, cause such improvements to be relocated. The City of Port Hueneme shall reimburse the City within three months of completion of any such relocation.

5. Compensation to Licensor

To compensate Licensor for the license granted herein, Licensee shall pay all subject encroachment permit fees including, without limitation, permit inspection fees. Licensee shall construct all improvements as shown on the encroachment permit and plans submitted to obtain the permit.

6. Maintenance

A. Licensee shall periodically inspect the Improvements, and at all times shall maintain them in a state of good repair. Licensor shall provide reasonable access from Licensor's facilities for this purpose. Licensee shall coordinate all inspections and repairs with Licensor, and shall provide Licensor with seven (7) days notice prior to access. Licensee shall repair all failed or settling trenches for the life of the improvements.

B. Damage identified through Licensor's inspection shall be promptly repaired by Licensee. Should Licensee fail to make repairs in a timely manner, then Licensor, through its City Manager, shall notify Licensee in writing. If within 15 days, Licensee does not make arrangements for repair satisfactory to Licensor, Licensor may cause necessary repairs to be made

to the Improvements, and all costs related thereto shall become the responsibility of Licensee. Except in cases of imminent threat to health, safety or property, Licensor may make repairs without notice. Except in cases of dispute, Licensee shall pay all invoices related to such within 30 days of receipt.

7. Revocation of License; Removal of Improvements

A. Licensor may, upon 30 days notice, revoke the License for default of Licensee hereunder.

B. On or before the effective date of revocation, and at Licensee's own expense, Licensee shall remove all above ground Improvements and abandon in place and in accordance with Licensor's standards, all underground Improvements. At the completion of the removal and abandonment, the Licensee shall return Licensor's right-of-way to as near a condition and appearance as practical as existed prior to the construction of the Improvements. If Licensee does not make such timely removals the Licensor may do so and invoice Licensee for the cost thereof. Except in cases of dispute, Licensee shall pay such invoice within 30 days.

8. Indemnity

Licensee agrees to indemnify, hold harmless and defend Licensor, its City Council, and each member thereof, and every officer, employee, representative or agent of Licensor, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this License performed by Licensee or its agents, employees, consultants and other persons acting on Licensee's behalf, or from the condition or existence of the Improvements. This agreement to indemnify, hold harmless and defend shall apply whether such acts, omissions, condition or existence are the product of active negligence, passive negligence, willfulness or acts for which Licensee or its agents, employees, consultants and other persons acting on Licensee's behalf would be held strictly liable. This section does not apply to the acts or omissions of Licensor.

9. Insurance

A. While this License is in effect, Licensee shall obtain and maintain insurance coverage's satisfactory to the Licensor's Risk Manager, unless the Risk Manager waives, in writing, the requirement that Licensee obtain and maintain such insurance coverages. Licensor acknowledges that Licensee is self-insured under applicable provisions of California Law, and so long as Licensee remains self-insured under California Law, the Insurance requirements of this Agreement are deemed satisfied.

B. Licensee shall, prior to performance of any services, file with the Licensor's Risk Manager evidence of insurance coverage.

C. Maintenance of proper insurance coverages by Licensee is a material element of this License. Licensee's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

10. Disputes

A. Disputes related to this Agreement will be resolved by mutual agreement between the Parties, but if the Parties cannot agree, the Licensor will make the final determination.

B. The term "prompt" as used in this Agreement shall mean the briefest interval of time required for a considered reply. The term "final determination" as used in this Agreement shall mean that the determination of the Licensor will be final; provided, however, that the decision will be subject to the scope of judicial review provided in such cases under California case law.

11.. Governing Law

The construction and interpretation of this License and the rights and duties of Licensor and Licensee hereunder shall be governed by the laws of the State of California.

12. Compliance with Laws

Licensee agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to Licensee's installation and maintenance of subject Improvements.

13. Notices

A. Notices to Licensee shall be delivered personally or by mail addressed to the City of Port Hueneme City Clerk, 250 N. Ventura Road, Port Hueneme, CA 93041.

B. Notices to Licensor shall be delivered personally or by mail addressed to the City Manager, 300 West Third Street, Oxnard, California 93030.

14.. Assignment

Licensee may not delegate its rights or duties under this License without the written consent of the Licensor's City Manager, which consent may be withheld for any reason.

15.. Successors and Assigns

This License shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

16. Amendment

The terms and conditions of this License may be amended by a written amendment to this Agreement.

17. Entire Agreement

This License constitutes the entire agreement of the Parties regarding the subject matter described herein and supersedes all prior communications, licenses, and promises, both oral and written.

CITY OF OXNARD

Dr. Thomas E. Holden, Mayor

CITY OF PORT HUENEME

Carrie Mattingly, Director of Utility Services

APPROVED AS TO FORM:

Gary L. Gillig, City Attorney

APPROVED AS TO FORM:

Mark Hensley, City Attorney

APPROVED AS TO INSURANCE:

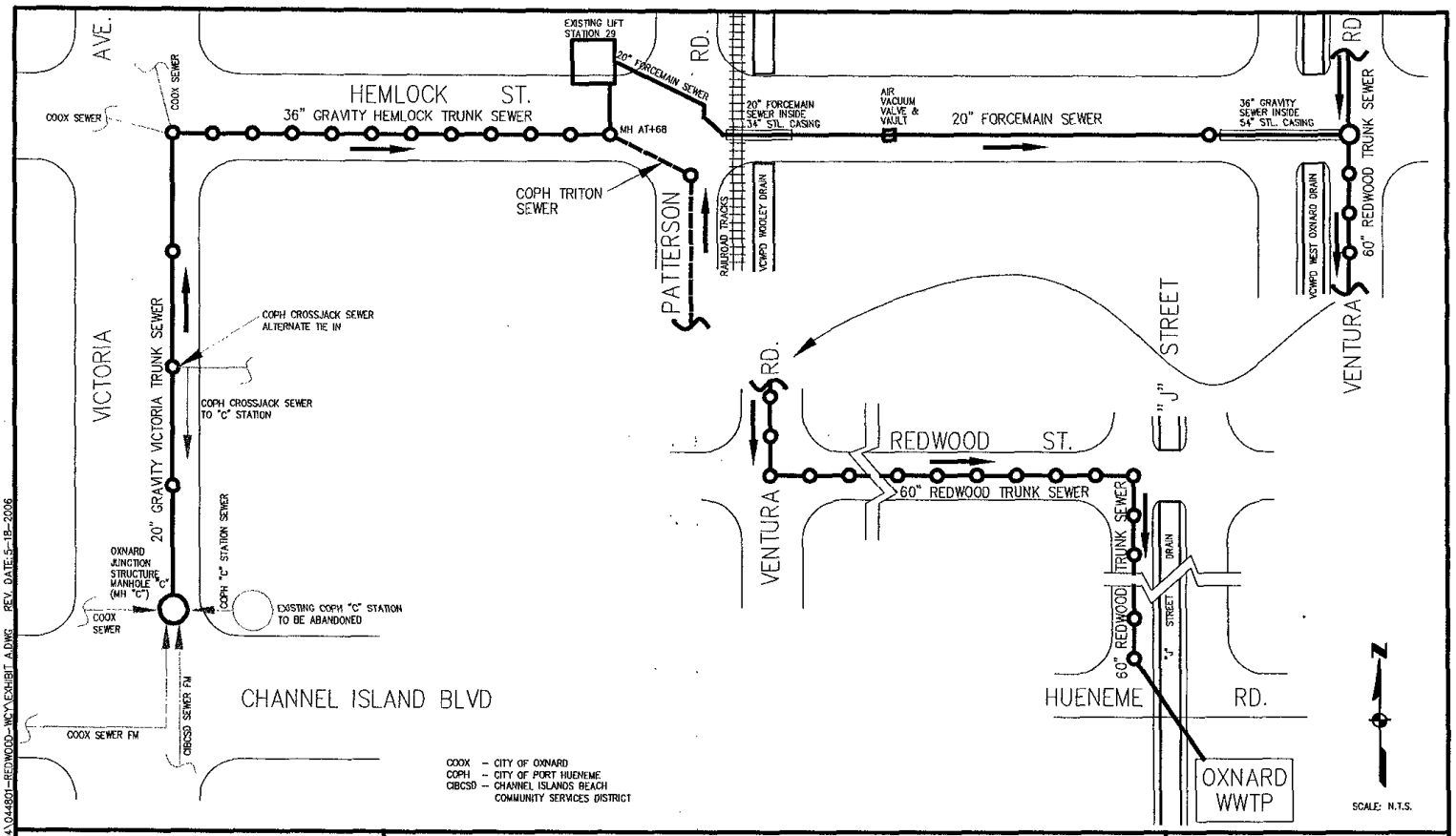
Marcie Medina, Finance Director

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO CONTENT:

Mark S. Norris, Assistant Public Works Director



Kennedy/Jenks Consultants 1000 HILL ROAD, SUITE 200 VENTURA, CALIFORNIA 93003	MEMORANDUM OF UNDERSTANDING	EXHIBIT A

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