

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made and entered into this 18<sup>th</sup> day of July, 2018, by and between the Costa Mesa Sanitary District (“CMSD”), a California sanitary district, and Mesa Water District (“Mesa Water”). CMSD and Mesa Water are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

### Recitals

WHEREAS, on or about March 29, 2017, CMSD, through its attorney, Alan R. Burns of Harper & Burns, LLP, submitted a request for records to Mesa Water (the “Records Request”), under the California Public Records Act, Government Code sections 6250 *et seq.* (“CPRA”). The Records Request sought, *inter alia*, records in Mesa Water’s possession relating to a proposed consolidation between CMSD and Mesa Water, including but not limited to records pertaining to any studies prepared or commissioned by Mesa Water concerning that subject.

WHEREAS, on or about June 5, 2017, CMSD filed a lawsuit in Orange County Superior Court, *The Costa Mesa Sanitary District v. Mesa Water District*, OCSC Case No. 30-2017-00923819-CU-PT-CJC (the “Action”). The Action alleged, *inter alia*, that Mesa Water’s response to the Records Request was inadequate, and sought to compel Mesa Water to produce additional documents in response thereto.

WHEREAS, Mesa Water has disputed, and continues to dispute, the allegations made by CMSD in the Action, including but not limited to CMSD’s claim that Mesa Water has failed to produce all responsive documents.

WHEREAS, the Parties have agreed to resolve the Action and related disagreements on the terms set forth herein, without any admission of liability or wrongdoing by any Party.

### Agreement

NOW, THEREFORE, based on the foregoing Recitals, and the terms, conditions, and consideration set forth in this Agreement, the Parties hereto agree as follows:

1. **Recitals.** The Recitals set forth above are hereby integrated into this Agreement and made part of the terms and representations hereof.
2. **Joint Statement.** By approving this Agreement, each of the Parties and their respective Boards of Directors approves and adopts the following joint statement (the “Joint Statement”), which Joint Statement shall be kept by each of the Parties in the form attached hereto as Exhibit “A,” and made reasonably available to members of the public upon request:

Because the Costa Mesa Sanitary District Board of Directors does not support consolidation, the Mesa Water District Board of Directors will not support consolidation unless the Costa Mesa Sanitary District

changes its position on the subject.

Glenn Huntley is a fictitious person. The Costa Mesa Sanitary District disavows, and does not endorse or support, any of the statements attributed to Glen Huntley in the OC Daily relating to Mesa Water District.

3. **Dismissal of Litigation.** Within five (5) court days after the full execution of this Agreement by representatives of each of the Parties, CMSD shall cause the Action to be dismissed in its entirety, with prejudice.

4. **Withdrawal of May 13, 2018 Public Records Request.** CMSD and its counsel, the law firm of Harper & Burns, LLP, do hereby withdraw the public-records request sent by Harper & Burns, LLP, to Mesa Water, dated May 13, 2018, requesting, *inter alia*, records in the possession of Mesa Water Boardmember Jim Fisler relating to CMSD, including but not limited to records on his personal electronic devices (the "May 13<sup>th</sup> Records Request"). CMSD hereby releases Mesa Water and Mr. Fisler from any and all obligations they may have to produce records in response to the May 13<sup>th</sup> Records Request. CMSD agrees, on behalf of itself, as well as its employees, agents, and Boardmembers, that it will not submit any further records request to Mesa Water or Mr. Fisler relating to the matters encompassed in the May 13<sup>th</sup> Records Request.

5. **Withdrawal of Support of FPPC Investigation Regarding Mesa.** CMSD hereby agrees that neither CMSD itself, nor any of its individual employees, agents, staff members, Boardmembers (including Board President Michael Scheafer), affiliates, and/or attorneys, will provide any support whatsoever for the matter currently under investigation by the Fair Political Practices Commission ("FPPC") that was initiated as a result of the letter from CMSD Board President Michael Scheafer to the Enforcement Division Chief of the FPPC dated October 24, 2017 (the "Mesa Water FPPC Matter"). Moreover, within five (5) days after the full execution of this Agreement by the Parties hereto, CMSD Board President Michael Scheafer shall submit a new letter to the Enforcement Division Chief of the FPPC that (a) expressly withdraws his October 24, 2016 complaint that led to the initiation of the Mesa Water FPPC Matter, (b) states that neither he nor CMSD supports the allegations made in the October 24, 2016 letter any longer, and (c) requests that the FPPC cease investigating the Mesa Water FPPC Matter.

6. **Declaration of Non-Support for FPPC investigation of CMSD.** Mesa Water hereby agrees that it will not support the matter designated as FPPC Case No. 17-1177.

7. **Understanding that FPPC Operates Independently.** All Parties understand and acknowledge that the FPPC operates independently of the Parties, and that any actions taken as a result of this Agreement may not impact the determinations, actions, or investigations made by the FPPC.

8. **Mutual Release.** In consideration for this Agreement, CMSD and Mesa Water hereby release and forever discharge each other, and each of their respective present and

former employees, agents, shareholders, officers, directors, board members, attorneys, subsidiaries, insurance companies, and divisions or affiliated districts or organizations, whether previously or hereafter affiliated in any manner, ("the Released Parties"), from any and all claims, demands, causes of action, obligations, damages, attorneys' fees, costs, and liabilities, of any nature whatsoever, whether or not now known, suspected, or claimed, which each of them now have, or may claim to have, as of the date of this Agreement, against the Released Parties (whether directly or indirectly), or any of them, by reason of any act or omission, relating to or arising out of the Records Request, the Action, and/or the May 13<sup>th</sup> Records Request, including but not limited to any claims asserted or that could have been asserted in the Action.

9. **Section 1542 Acknowledgement.** Each Party to this Agreement acknowledges and affirms that it is familiar with Section 1542 of the California Civil Code ("Section 1542", which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT EXISTS IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

To the extent applicable to specific releases, each Party knowingly and voluntarily waives the protections of Section 1542, as against each party released hereby with regard to claims released herein, and acknowledges and agrees that this waiver is an essential and material term of the settlement or compromise that led to this Agreement, and that without such waiver, the settlement or compromise reflected in this Agreement would not have been entered into.

10. **No Admission of Liability.** The Parties acknowledge and agree that nothing in this Agreement shall constitute an admission of liability, wrongdoing, or responsibility on behalf of any Party.

11. **Enforcement.** In any action or suit to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

12. **Miscellaneous.**

*a. Successors.* This Agreement shall inure to the benefit of and be binding on each Party's predecessors, successors, assigns, officers, directors, principals, employees, agents, affiliated entities, and subsidiaries.

*b. Integration.* This Agreement constitutes the entire agreement between the Parties concerning the matters referenced herein and supersedes any and all prior discussions, agreements, or understandings relating thereto. There are no promises, representations, or agreements between the Parties hereto relating to the subjects discussed herein other than as set forth in this Agreement.

c. *Governing Law.* This Agreement and all claims arising hereunder or in connection herewith shall be governed by the laws of the State of California. If any lawsuit arises between the Parties hereafter relating to this Agreement, such lawsuit shall be filed in Orange County, California. The Parties agree to jurisdiction and venue in any court sitting in Orange County, California.

d. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original. Copies of signatures transmitted by facsimile from counsel of the signatory shall be deemed an original counterpart hereunder at all times until receipt of the original signature.

e. *Waivers Must Be In Writing.* The provisions of this Agreement, including this paragraph, may be modified or waived only in a writing signed by the Parties. No waiver with respect to any portion of this Agreement shall apply to any other portion of the Agreement, and a waiver of a breach on one occasion shall not be deemed to be a waiver of any other breach on a future occasion.

f. *No Construction Against Any Party.* This Agreement shall be deemed jointly drafted and written by all Parties and shall not be construed or interpreted against any particular Party, regardless of which Party or counsel originated or drafted any portion of it.

g. *Execution of Other Documents.* All Parties shall cooperate fully with each other in the execution of any and all other documents and in the completion of any additional acts that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

h. *Voting and Consent Effect of Document.* Each of the persons executing this Agreement below represents and warrants that all voting, notice, consent, and approval requirements set forth under any of their codes, respective by-laws, or other applicable law, that may be required to adopt this Agreement, have been obtained as required by applicable law.

i. *Savings Clause.* If any term or provision of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons, entities, or circumstances other than those as to which is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

j. *Warranty of Authority.* Each signatory to this Agreement expressly warrants to the other Parties that he, she, or it has the authority to execute this Agreement on behalf of the Party or Parties to be bound by his, her, or, its signature, and on behalf of each and every principal or other owner of a legal, equitable, or beneficial interest in such Party or Parties, and that all necessary approvals for such signature have been obtained prior to signing.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date

**EXHIBIT A**  
**JOINT STATEMENT**

**Joint Statement Between The Costa Mesa Sanitary District and  
Mesa Water District Relating to Consolidation**

Jointly Agreed Upon – July 2018

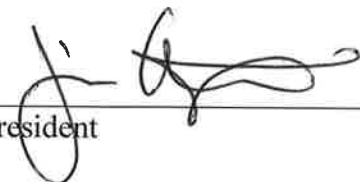
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Glenn Huntley is a fictitious person. The Costa Mesa Sanitary District disavows, and does not endorse or support, any of the statements attributed to Glen Huntley in the OC Daily relating to Mesa Water District.

set forth below, provided, however, that the Effective Date of this Agreement shall be deemed to be as defined above.

**MESA WATER DISTRICT**, a California county water district

Dated: 7/17/18

By:   
President

**COSTA MESA SANITARY DISTRICT**, a California sanitary district

Dated: 7/18/18


By:   
President

Dated: 7/18/18

By:   
Secretary

**APPROVED AS TO FORM:**

BURKE, WILLIAMS & SORENSEN, LLP

By:   
Mark J. Austin  
Attorneys for Mesa Water District

HARPER & BURNS LLP

By:   
Alan R. Burns  
Attorneys for the Costa Mesa Sanitary District