



City of San Leandro

Meeting Date: March 2, 2015

Staff Report

File Number: 15-071

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.G.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving the Fourth Amended Joint Exercise of Powers Agreement of the East Bay Dischargers Authority (EBDA) to Conform with Current Agency Policy and State Law

SUMMARY AND RECOMMENDATIONS

An amendment to the EBDA Joint Powers Agreement must be approved by each of the member agencies. Therefore, staff recommends that the City Council approve the East Bay Dischargers Authority Fourth Amended Joint Powers Agreement, which includes administrative updates to ensure conformity with current agency policy and state law.

BACKGROUND

EBDA is a Joint Powers Authority (JPA) of which the City of San Leandro is currently a member. The JPA was formed in 1974 by a "Joint Exercise of Powers Agreement" (the JPA Agreement) entered into by and between the City of Hayward, the City of San Leandro, Oro Loma Sanitary District, Union Sanitary District, and Castro Valley Sanitary District. The JPA currently provides a transport system and outfall to collect effluent from six (6) wastewater treatment plants in the East Bay, including two non-member agencies. EBDA treats wastewater to remove chlorine and any associated toxicity and provides sufficient dilution so that water discharged into the San Francisco Bay presents no harm to water quality.

The JPA Agreement has been amended three times since its creation in 1974. Amendments were approved in 1978, 1986, and 2007. Recently, the JPA Commission, consisting of one representative appointed by each member agency, recognized the need to once again update and revise the JPA Agreement.

Analysis

The JPA Commission determined that the most efficient way to revise the JPA Agreement would be to initiate a two-step process. First, the JPA would make administrative changes to

ensure that all policies are up to date and accurately reflect state law. Second, the JPA would utilize the revised documents as a starting point for negotiations among all the JPA agencies to determine how to best structure the JPA in the future and what substantive changes might be necessary to accomplish these goals.

The changes made in the first phase can be summarized as follows:

- Deletion of outdated references to Phase I Project Facilities, Reclamation/Reuse Studies, and the Water Quality Management Program Phase I Project Report.
- Update division of responsibility pertaining to the roles of controller, auditor, and treasurer.
- Update minor provisions to ensure conformity with current requirements of state law.
- Inclusion of information pertaining to the confidentiality of closed sessions.
- Additional editorial and conforming changes.

Board/Commission Review and Actions

The EBDA JPA Commission reviewed and incorporated non-controversial JPA language changes made by legal counsel November 19, 2014.

The EBDA Commission approved sending the red-lined agreement to the member agencies for their approval November 20, 2014.

Legal Review

The City Attorney's Office reviewed the proposed edits and changes. They are approved as to form.

Fiscal Impacts

There are no fiscal impacts associated with this amended agreement.

ATTACHMENT

Attachment to Resolution

- Red-lined East Bay Dischargers Authority Fourth Amended Joint Exercise of Powers Agreement

PREPARED BY: Judy Walker, Administrative Analyst I, Water Pollution Control Division



City of San Leandro

Meeting Date: March 2, 2015

Resolution - Council

File Number: 15-074

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving the Fourth Amended Joint Exercise of Powers Agreement of the East Bay Dischargers Authority (EBDA) to Conform with Current Agency Policy and State Law

WHEREAS, the East Bay Dischargers Authority is a Joint Powers Authority (JPA) of which the City of San Leandro is currently a member; and

WHEREAS, the JPA was formed in 1974 by a "Joint Exercise of Powers Agreement" (JPA Agreement) entered into by and between the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Union Sanitary District, and Castro Valley Sanitary District; and

WHEREAS, the JPA provides a transport system and outfall to collect effluent from six (6) wastewater treatment plants in the East Bay and treats the collected wastewater to remove chlorine and any associated toxicity and provides sufficient dilution so that water discharged into the San Francisco Bay presents no harm to water quality; and

WHEREAS, the JPA Agreement has been amended three times, in 1978, 1986, and 2007; and

WHEREAS, the JPA recognized the need to update and revise the JPA Agreement to ensure that it is current with all agency policies and state law and to eliminate historical references that are no longer relevant; and

WHEREAS, the JPA Commission determined that the most efficient way to revise the JPA Agreement would be to initiate a two-step process during which the JPA would first make administrative changes to ensure that the JPA policies are up to date, and then utilize the revised documents as a starting point for negotiations among all of the JPA agencies to determine how to best structure the JPA in the future; and

WHEREAS, the partner cities and special districts and their counsel have had the opportunity to review and contribute to the phase one revisions; and

WHEREAS, the City of San Leandro desires to execute the revised Fourth Amended JPA, now entitled the East Bay Dischargers Authority Fourth Amended Joint Exercise of Powers Agreement; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement is hereby approved and execution by the City Manager is hereby authorized.

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EAST BAY DISCHARGERS AUTHORITY
~~THIRD~~ **FOURTH** AMENDED
JOINT EXERCISE OF POWERS AGREEMENT

Supersedes

Joint Powers Agreement	February 15, 1974
First Amended JPA	January 3, 1978
Supplement No. 1	October 5, 1981
Supplement No. 2	February 15, 1983
Supplement No. 3	April 26, 1983
Supplement No. 4	April 26, 1983
Second Amended JPA	February 11, 1986
<u>Third Amended JPA</u>	<u>February 15, 2007</u>

EAST BAY DISCHARGERS AUTHORITY
2651 Grant Avenue
San Lorenzo, California 94580
(510) 278-5910

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1 EAST BAY DISCHARGERS AUTHORITY

2
3 THIRD ~~FOURTH~~ AMENDED JOINT EXERCISE OF POWERS
4 AGREEMENT

5
6 THIS FOURTH AMENDED JOINT EXERCISE OF POWERS AGREEMENT,
7 dated for convenience as of ~~February 15, 2007~~ October [], 2014, is made and
8 entered into by and between the CITY OF HAYWARD, a municipal corporation,
9 hereinafter referred to as "Hayward"; CITY OF SAN LEANDRO, a municipal
10 corporation, hereinafter referred to as "San Leandro"; ORO LOMA SANITARY
11 DISTRICT, a public corporation, hereinafter referred to as "Oro Loma"; CASTRO
12 VALLEY SANITARY DISTRICT, a public corporation, hereinafter referred to as "Castro
13 Valley"; and UNION SANITARY DISTRICT, a public corporation, hereinafter referred to
14 as "Union"; each duly organized and existing in the County of Alameda under the
15 constitution and laws of the State of California, and amends that ~~Second~~-Third
16 Amended Joint Exercise of Powers Agreement dated February 1115, 19862007, duly
17 entered into by said Agencies, as follows:
18

19
20 WITNESSETH:

21
22 WHEREAS, each of the Agencies hereto has power to plan for, acquire,
23 construct, maintain, manage, operate, and control facilities for the collection,
24 transmission, treatment, reclamation, sale and disposal of wastewater; and the
25 Agencies propose by this Agreement to exercise said powers jointly for the purpose of
26 providing for the more efficient disposal of the wastewater produced in each Agency, all
27 to the economic and financial advantage of each Agency and otherwise for the benefit
28 of each Agency; and each of the Agencies is willing to plan with the other Agencies for
29 joint wastewater facilities which will protect all of the Agencies;
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1 NOW THEREFORE, Hayward, San Leandro, Oro Loma, Castro Valley, and
2 Union, for and in consideration of the mutual promises and agreements herein
3 contained, do agree as follows:

4
5 Section I. Definitions

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

8 ~~Administrative Costs During Construction~~

9 ~~The term "Administrative costs During Construction" shall mean those general~~
10 ~~administrative, legal, fiscal, and management expenses associated with the studies,~~
11 ~~reports, design, engineering, inspection, construction contracts, surveys, right of way~~
12 ~~acquisitions, and grants program for all of the Phase I Project facilities for both Joint~~
13 ~~Use and Sole Use, and during the period commencing on February 15, 1974 through~~
14 ~~March 31, 1981. It shall exclude costs directly identified with and directly charged to~~
15 ~~Project Costs or allocated to Planning and Special Studies or Operation and~~
16 ~~Maintenance Costs.~~

17 Agency and Agencies

18 The term "Agency" shall mean either Hayward, San Leandro, Oro Loma, Castro
19 Valley, or Union. The term "Agencies" shall mean Hayward, San Leandro, Oro Loma,
20 Castro Valley, and Union.

21 Agreement

22 The term "Agreement" shall mean this ~~Third~~ **Fourth** Amended Joint Exercise of
23 Powers Agreement.

24 Authority

25 The term "Authority" shall mean the joint powers agency, known as the East Bay
26 Dischargers Authority, which was created by the Joint Exercise of Powers Agreement
27 dated February 15, 1974.-

28 Commission

29 The term "Commission" shall mean the East Bay Dischargers Commission, being
30 the governing body of the Authority.

31 Controller

1 The term "Controller" shall mean that individual designated by the Commission to
2 assure proper expenditure and accountability of funds and responsible for audit and
3 reporting of the accounts and records of the Authority.

4 Disposal

5 The term "Disposal" includes reclamation or reuse of wastewater as well as
6 discharge to San Francisco Bay.

7 Fiscal Year

8 The term "Fiscal Year" shall mean the period commencing on July 1 to and
9 including the following June 30.

10 Income from Operations

11 The term "Income from Operations" shall include income from the sale of
12 reclaimed water or other substances arising out of the operation of Joint-Use Facilities,
13 interest income, income from lease of capacity rights, income from connection fees,
14 income from sale of services and income from sale of assets.

15 Joint Facilities

16 The term "Joint Facilities" shall mean those facilities owned by and operated by
17 the Authority, more specifically identified in Schedule A attached hereto.

18 Manager

19 The term "Manager" shall mean the person designated by the Commission to
20 administer the construction and operation of the Authority or his duly authorized
21 representative.

22 Operation and Maintenance Costs

23 The term "Operation and Maintenance Costs" shall mean all costs directly
24 associated with the operation, maintenance and repair of the Joint Facilities including
25 labor, materials, supplies, power, chemicals, utilities, professional or contractual
26 services, research and monitoring, tools and equipment, "replacement" (as defined by
27 40CFR 35.905-17 of the Federal Grant Regulations), other necessary expenses to keep
28 the facilities in proper operating condition and maintain its useful life, plus general
29 administrative expenses attributable to Operation and Maintenance activities.
30 Operation and Maintenance costs shall commence when any Agency begins
31 discharging to the Joint Facilities.
32

1 Phase I Project

2 ~~The term "Phase I Project" shall mean those projects set forth on Schedule A.~~

3 Planning and Special Studies Costs

4 The term "Planning and Special Studies Costs" shall mean those costs
5 associated with advanced planning, facilities planning, feasibility studies, research and
6 development, environmental evaluations and studies as related to the overall Joint
7 Facilities or of general interest or benefit to all agencies. Such costs will include, but not
8 be limited to, reclamation/reuse studies and that portion of bay water monitoring and
9 research not directly related to predischage or post-discharge monitoring of the Bay
10 Outfall; plus allocated general administrative expenses attributable to Planning and
11 Special Studies activities.

12 Policies And Procedures

13 The term "Policies And Procedures" shall mean all those certain rules and
14 regulations adopted by the Commission from time to time for carrying out all the
15 business of the Authority.

16 Project Costs

17 ~~The term "Project Costs" shall mean all costs directly associated with the
18 planning, design and construction of all facilities for the Phase I Project, including
19 preliminary planning to determine feasibility of the project; engineering, architectural,
20 legal, fiscal or economic investigation or studies; surveys, design, plans, specifications,
21 working drawings or procedures; erection, building, acquisition, alteration, remodeling,
22 improvement or extension of treatment work; inspection and supervision of the
23 construction activities; right of way acquisition, and administration and management
24 directly identified with and charged to the foregoing activities.~~

25 Project Report

26 ~~The term "Project Report" shall mean that report entitled "Water Quality
27 Management Program — Phase I Project", dated February, 1974 and all amendments
28 and supplements thereto approved by the Commission.~~

29 Reclamation/Reuse Study

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1 The term "Reclamation/Reuse Study" shall mean that study as outlined in the
2 plan of study dated June 20, 1977, and approved by the Commission on July 14, 1977,
3 including such additional studies that the Commission shall approve.

4 Report

5 The term "Report" shall mean that study report for East Bay Dischargers,
6 Alameda County, California, entitled, "Water Quality Management Final Program
7 Report" and dated July 7, 1972, prepared by Jenks & Adamson and Kennedy
8 Engineers.

9 Sole-Use Facilities

10 The term "Sole-Use Facilities" shall mean those facilities integral to the
11 operation of the Joint Use Facilities to be owned and operated by an Agency or
12 Agencies other than the Authority, more specifically identified in Schedule A attached
13 hereto.

14 Treasurer

15 The term "Treasurer" shall mean that individual designated by the Commission to
16 have custody of and control disbursements of all funds of the Authority.

18 Section 2. Purpose Authority and Purpose

19 This Agreement is made under the authority of and pursuant to the Joint
20 Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the California
21 Government Code (commencing with Section 6500 et seq.) (the "Act"), relative to the
22 joint exercise of powers common to the Agencies and as otherwise granted by the
23 Act. ~~This Agreement is made pursuant to Chapter 5 of Division 7, Title 1 of the~~
24 ~~California Government Code (Sections 6500 et seq) and relates to the joint exercise of~~
25 ~~powers common to each of the Agencies. The purpose of the Agreement is to jointly~~
26 ~~exercise these common powers in the manner hereinafter set forth.~~

28 Section 3. Term

29 This ~~Third~~ Fourth Amended Agreement shall become effective upon execution
30 by all Agencies and shall continue in force and effect until January 1, 2020, unless
31 sooner terminated by mutual agreement.
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2 Section 4. Creation of Authority

3 The East Bay Dischargers Authority (hereinafter referred to as "Authority") as
4 created by that Joint Exercise of Powers Agreement dated February 15, 1974, shall
5 exercise the powers as hereinafter set forth. The Authority shall be a public entity
6 separate from the Agencies. No debt, liability, or obligation of the Authority shall
7 constitute a debt, liability, or obligation of any Agency, except that where a Grant
8 Anticipation Note is issued at the request of a member agency for its sole-use facilities,
9 such Agency shall be liable to the Authority for such Grant Anticipation Note. The
10 remaining Agencies forming the Authority shall not be liable for the payment of such
11 obligation incurred by the Authority on behalf of a member agency.

12 Section 5. Powers

13 The Authority shall have power to plan for, acquire, construct, manage, maintain,
14 operate, and control facilities for the collection, transmission, treatment, reclamation,
15 sale and disposal of wastewater and to enter into contracts to provide services to other
16 governmental or non-governmental entities within or outside its boundaries. It shall also
17 have the power to plan for, prepare studies and reports, and make recommendations for
18 proper wastewater management.

19 The Authority is hereby authorized, in its own name, to perform all acts
20 necessary for the exercise of said powers, as allowed by law, including but not limited to
21 any or all of the following:

- 22 (a) to make and enter into contracts;
23 (b) to apply for and accept grants, advances and contributions;
24 (c) to employ or contract for the services of engineers, attorneys, planners,
25 financial consultants, fiscal agents, and such other persons as it deems
26 necessary;
27 (d) to make plans and conduct studies;
28 (e) to acquire, construct, manage, maintain, operate, and control any building,
29 works, or improvements;
30 (f) to acquire, hold or dispose of property;
31 (g) to sue and be sued in its own name;
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- 1 (h) to incur debts, liabilities, or obligations, subject to limitations herein set
2 forth;
- 3 (i) to establish rates, tolls, fees, rentals, or other charges in connection with
4 the facilities and services provided by the Authority;
- 5 (j) to develop and adopt policies and procedures for the conduct of business
6 of the Authority;
- 7 (k) to plan for, acquire land or rights of way for, construct, operate, or
8 maintain an Agency's Sole-Use Facilities when specifically requested by
9 that Agency, or when necessary to meet joint discharge requirements,
10 subject to the provisions of Section ~~20-16~~ hereof; and
- 11 (l) to accept ownership of the reclaimed water turn-out on the Alvarado to
12 Hayward Force Main along with other necessary control facilities and
13 provide reclaimed water to ~~EBRPD~~ **East Bay Regional Parks District** for
14 the Hayward Marsh Project

15 The above powers are subject to the restrictions upon the manner of exercising
16 said powers set forth in the Sanitary District Act of 1923, as amended, being Sections
17 6400 et seq of the California Health and Safety Code and Sections 20800 et seq of the
18 Public Contracts Code. Notwithstanding any of the above-described provisions, the
19 Authority is empowered to utilize the Alternative Procedure described in Division 2, Part
20 3, Chapter 2, Article 3 (commencing with Section 22030) of the California Public
21 Contracts Code regarding contracting for public projects.

22 The Authority shall have the additional power and authority to issue Grant
23 Anticipation Notes and to issue revenue bonds in accordance with the following laws:

- 24 (a) Article 2, Chapter 5, Title 1, Division 7 of the California Government
25 Code, commencing with Section 6540.
- 26 (b) Chapter 6, Title 5, Division 2 of the California Government Code
27 commencing with Section 54300.
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1 Section 6. Boundaries

2 The boundary of the Authority shall be the consolidated boundaries of the
3 Agencies. In the event of withdrawal from this Agreement by an Agency, the boundary
4 shall be revised to exclude the area under jurisdiction of said Agency.

5
6 Section 7. Organization

7 (a) East Bay Dischargers Commission

8 The Authority shall be governed by the East Bay Dischargers Commission which
9 shall exercise all powers and authority on behalf of the Authority, subject to the following
10 limitations:

- 11 (i) The affirmative vote of five members of the Commission shall be
12 required to:
- 13 • ~~Approve amendments and supplements to the Project Report;~~
 - 14 • Determine which additional facilities shall be deemed Joint
15 Facilities or Sole-Use Facilities;
 - 16 • Authorize Planning and Special Studies and Reports;
 - 17 • Approve contracts to provide service to other governmental or
18 non-governmental entities;
 - 19 • Adopt or modify the budget;
- 20 (ii) The affirmative vote of four members of the Commission shall be
21 required to:
- 22 • ~~Approve plans and specifications for the Phase I Project;~~
 - 23 • Award, modify or accept work under any contract (including but
24 not limited to contracts for the acquisition or construction of any
25 building, works or improvements for the Phase I Project) in
26 excess of \$10,000;
 - 27 • Accept any grant agreement;
 - 28 • Accept any interest in lands;
 - 29 • Grant any licenses or permits;
 - 30 • Adopt or modify policies or procedures
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1 (iii) Simple majority vote (not less than the affirmative vote of three
2 members) shall be required for approval of all other business of the
3 Authority.

4 Any documents required to be executed by the Authority shall be signed by the
5 Chairman and Manager upon proper authorization by the Commission provided
6 however, that the Commission may, by adoption of policies and procedures, authorize
7 execution of documents in some other manner.

8 (b) Members

9 The Commission shall consist of five members, one from each Agency. Each
10 Agency shall appoint one person to act as its representative as a member of the
11 Commission and one person as an alternate member to serve in the absence of the
12 Agency's member. Each member and alternate shall hold office from the first meeting of
13 the Commission after his appointment by the Agency which he represents until his
14 successor is selected. Each member and alternate shall serve at the pleasure of the
15 Agency which he represents and may be removed at any time, with or without cause, in
16 the sole discretion of the Agency's governing body.

17 Each member and alternate must be a member of the governing body of the
18 Agency which he represents. No member or alternate shall be a member of more than
19 one Agency.

20 Each Agency shall be empowered to vote through its designated member or
21 alternate.

22 Commission members shall receive compensation in an amount established by
23 the Commission, but not to exceed the maximum amount permitted by law for each day
24 of attendance at a meeting of the Commission or for each day's service rendered as a
25 Commissioner by request of the Commission, not exceeding a total of four days in any
26 calendar month, together with any expenses incident thereto.

1 (c) Principal Office

2 The principal office of the Authority shall be located within the boundaries of the
3 Authority and shall be established by the Commission. The Commission is hereby
4 granted full power and authority to change said principal office from one location to
5 another, provided at least fifteen day's' notice is given to each Agency, the Regional
6 Water Quality Control Board and to such agencies or offices as required by law.

7 (d) Officers

8 The Authority shall have ~~five~~ **four** officers: Chairman, Vice-Chairman, Manager,
9 **and** Treasurer, ~~and Controller Auditor~~. The members of the Commission shall select
10 from the Commission a Chairman and Vice-Chairman who shall hold office for a period
11 of one year, commencing July 1 of each and every Fiscal Year; provided, however, the
12 first Chairman and Vice-Chairman appointed shall hold office from the date of
13 appointment to the following June 30; provided further, that in the event that an Agency
14 removes from the Commission a member serving as an ~~officer~~ **Chair, Vice-Chair or**
15 **Treasurer,** the Commission shall appoint a member of the Commission to fill that
16 vacant office for the remainder of that Fiscal Year.

17 (e) Chairman

18 The Chairman shall preside at the meetings of the Commission. The Chairman's
19 duties shall be to call meetings to order, adjourn meetings, announce the business
20 before the Commission in order in which it is to be acted upon, recognize members and
21 non-members entitled to the floor, put to vote all questions moved and seconded,
22 announce results of votes, maintain the rules of order, execute documents on behalf of
23 the Commission when duly approved for action, and carry out other duties as may be
24 set forth in policies and procedures. The Chairman shall be entitled to exercise his full
25 voting rights on all questions before the Commission and need not relinquish the chair
26 to discuss a question before the Commission.

27 (f) Vice-Chairman

28 The Vice-Chairman shall serve as Chairman in the absence of the regularly
29 elected Chairman. In the event both the Chairman and Vice-Chairman are absent from
30 a meeting which otherwise would constitute a quorum and a Chairman pro tem was not
31 designated by the Chairman at the last regular meeting, any member may call the
32

1 meeting to order and a chairman pro tem may be elected by majority vote to serve until
2 the Chairman or Vice-Chairman is present.

3 (g) Manager

4 The Commission shall employ or contract for the services of a manager to
5 coordinate the business and operations of the Authority, prepare, distribute and
6 maintain minutes of Commission meetings and official actions of the Authority, approve
7 payment of amounts authorized in the budget or otherwise authorized by the
8 Commission, and carry out other duties as may be assigned by the Commission. The
9 Manager shall make monthly reports to the Commission and the Treasurer of all
10 expenditures for the preceding month. The Manager shall be responsible for filing
11 notices in accordance with Section 6503.5 and 53051 of the California Government
12 Code. The Manager may be a staff member of one of the Agencies. The Manager or his
13 designated representative shall attend the Commission meetings, report on
14 administrative business, and take direction from the Commission, by appropriate action
15 and authorization of the Commission, for the conduct of business of the Authority.

16 (h) ~~Treasurer and Auditor~~

17
18 **The Commission shall appoint one or more of the Authority's officers**
19 **or employees to either or both of the positions of the position of Treasurer or Auditor as**
20 **provided in the Act, section 6505.6. The Treasurer shall be the auditor or controller**
21 **of the Authority. The Treasurer will cause an annual financial audit to be made by**
22 **an independent certified public accountant with respect to all Authority receipts,**
23 **disbursements, other transactions and entries into the books. A report of the**
24 **financial audit will be filed as a public record with each Party. The audit will be**
25 **filed no later than required by State law. The Authority will pay the cost of the**
26 **financial audit in the same manner as other administrative costs.**

27 ~~The Treasurer of Alameda County shall be Treasurer of the Authority, be the~~
28 ~~depository, and have custody of all the money of the Authority from whatever source;~~
29 ~~except that the Treasurer or ex officio Treasurer of one of the Agencies with said~~
30 ~~Agency's consent, may be designated Treasurer of the Authority by unanimous~~
31 ~~approval of the Commission. In lieu of the designation of the Treasurer in this manner,~~
32 ~~the Commission may appoint one of its officers or employees to the position of~~
~~Treasurer.~~

1 The Treasurer so designated shall:

2 ~~(i) Receive and receipt for all money of the Authority and place it in the~~
3 ~~treasury of the Treasurer to the credit of the Authority.~~

4 ~~(ii) Be responsible upon his official bond for the safekeeping and~~
5 ~~disbursement of all Authority money so held by him.~~

6 ~~(iii) Pay, when due, out of money of the Authority so held by him, all~~
7 ~~sums payable on outstanding bonds and coupons of the Authority.~~

8 ~~(iv) Pay any other sums due from the Authority from Authority money, or~~
9 ~~any portion thereof, only upon warrants of the public officer~~
10 ~~performing the functions of the Controller of the Authority.~~

11 ~~(v) Invest all of the Authority's funds not currently required in the manner~~
12 ~~provided by law and collect interest thereon for account of the~~
13 ~~Authority.~~

14 ~~(vi) Annually render to the Commission and each member agency a~~
15 ~~statement of investment policy.~~

16 ~~(vii) Render a monthly report to the Commission showing the amount of~~
17 ~~money he holds for the Authority, the amount of receipts since his~~
18 ~~last report, the amount paid out since his last report, the type of~~
19 ~~investments, institution, date of maturity, amount of deposit, current~~
20 ~~market value for all securities with a maturity of more than 12~~
21 ~~months, rate of interest and relationship to the statement of~~
22 ~~investment policy.~~

23
24 ~~(i) Auditor~~

25 ~~The Commission shall designate a Controller, which person shall be of the~~
26 ~~same public agency as the Treasurer. The Controller shall draw warrants to pay~~
27 ~~demands against the Authority when the demands have been duly authorized by the~~
28 ~~Commission and approved by the Manager. The Commission may designate the same~~
29 ~~person to serve as Treasurer and Controller. There shall be strict accountability of all~~
30 ~~Authority funds and report of all receipts and disbursements and compliance with Article~~
31 ~~1, Chapter 5, Division 7, Title 1 of the California Government Code (Sections 6500 et~~
32 ~~seq). The Controller shall either make or arrange for a contract with a certified public~~

1 accountant or public accountant to make an annual audit of the accounts and records of
2 the Authority. In each case the minimum requirements of the audit shall be those
3 prescribed by the State Controller for special districts under Section 26909 of the
4 California Government Code and shall conform to generally accepted auditing
5 standards. The records and accounts of the Authority shall be audited annually, and a
6 report thereof shall be filed as a public record with the Commission, each Agency, and
7 the Alameda County Auditor not later than six months following the end of the Fiscal
8 Year under examination unless said filing date is extended by the Commission. Any
9 costs of the audit, including contracts with or employment of a certified public
10 accountant, shall be borne by the Authority.

11 (ij) Access to Property

12 The **As provided in section 6505.1 of the Act**, Treasurer and Manager are
13 hereby designated as the persons who have charge of, handle, and have access to the
14 property of the Authority. Each such person shall file with the Authority an official bond
15 in an amount to be fixed by the Commission. Cost of said bond shall be paid by the
16 Authority.

17 (kj) Officers, Employees and Agents

18 Any officer, employee, or agent of the Authority may also be an officer,
19 employee, or agent of any Agency. The appointment or employment by the Commission
20 of such a person shall constitute a determination that the two positions are compatible.

21 All privileges and immunities from liability, all exemptions from laws, ordinances
22 and rules, and all pension, relief, disability, worker's compensation, and other benefits
23 which apply to the activities of officers, agents, or employees of an Agency when
24 performing their respective functions shall apply to them to the same degree and extent
25 while engaged in the performance of any of the functions and other duties under this
26 Agreement.

27 None of the officers, agents, or employees directly employed by the Authority
28 shall be deemed, by reason of their employment by the Authority, to be employed by
29 any Agency or to be subject to any of the requirements of any Agency.

30 (kl) Charges for Services

1 The governing body of the same public entity as the Treasurer and Controller
2 Auditor shall determine charges to be made against the Authority for the services of the
3 Treasurer and Controller Auditor.

4 Charges for the services of the Manager and other administrative or operating
5 personnel supplied by any Agency shall be jointly agreed upon with the Agency or
6 Agencies furnishing the services.

7
8 Section 8. Meetings of the Commission

9 (a) Regular Meetings

10 The Commission shall hold at least one regular meeting each year. The date
11 upon which, and the hour and place at which each such regular meeting shall be held,
12 shall be fixed by resolution of the Commission.

13 (b) Special Meetings

14 Special meetings of the Commission may be called in accordance with the
15 provisions of Section 54956 of the California Government Code.

16 (c) Notice And Conduct of Meetings

17 All meetings of the Commission shall be held subject to the provisions of the
18 Ralph M. Brown Act, being Sections 54950 et seq. of the California Government Code,
19 and other applicable laws of the State of California. Meetings shall be conducted in
20 accordance with latest revised "Robert's Rules of Order", subject to their being
21 consistent with the provisions of this Agreement.

22 (d) Closed Sessions

23 In accordance with section 54956.96 of the California Government Code,
24 all information received by the legislative body of an Agency in a closed session
25 related to the information presented to the Authority in closed session shall be
26 confidential. However, a member of the legislative body any Agency may disclose
27 information obtained in a closed session that has direct financial or liability
28 implications for that local agency to the following individuals:

- 29
30 1. Legal counsel of that Agency for purposes of obtaining advice on
31 whether the matter has direct financial or liability implications for
32 that Agency.

- 1 2. Other members of the legislative body of the Agency present in a
2 closed session of that Agency.
3 3. Any designated alternate member of the Commission who is also
4 a member of the legislative body of a member Agency and who is
5 attending a properly noticed meeting of the Authority in lieu of a
6 local agency member's regularly appointed member to attend
7 closed sessions of the joint powers agency.

8 The Authority, upon the advice of its legal counsel, may conduct a closed
9 session in order to receive, discuss, and take action concerning information
10 obtained in a closed session pursuant to paragraph (1) of subdivision (a) of
11 section 54956.96 of the Brown Act.

12 (d)e) Minutes

13 The Manager shall cause minutes of all meetings of the Commission to be kept
14 and shall, as soon as possible after each meeting, cause a copy of the minutes to be
15 forwarded to each member of the Commission and to each Agency.

16 (e) Quorum

17 A majority of the members of the Commission shall constitute a quorum for the
18 transaction of business, except that less than a quorum may adjourn from time to time.

19 (f) Budget

20 The Commission shall adopt an Annual Budget for the ensuing Fiscal Year prior
21 to June 1 of each year. The Budget shall include sufficient detail to constitute a fiscal
22 control guideline, specify cash flow requirements from each Agency, grant
23 reimbursements, and cash receipts and expenditures to be made for ~~Project Costs,~~
24 ~~Operation and Maintenance Costs, Administration Costs During Construction~~ and
25 ~~Planning and Special Studies Costs~~ for the Joint Facilities and any authorized Sole-Use
26 Facilities. Approval of the Budget by the Commission shall constitute authority for the
27 Manager to bill the Agencies for their contributions, expend funds after appropriate
28 award of contract and for the purposes outlined in the approved Budget and receive
29 State and Federal grant funds. It shall also constitute authority for the Treasurer to draw
30 warrants for expenditures duly approved by the Manager.
31
32

1 Section 9. Elections

2 For the purpose of holding any election in the Authority, the Commission may call
3 and hold an election to submit propositions to the electors of the Authority in the same
4 manner as the board of supervisors of a county may call and hold county elections, and
5 the electors of the Authority shall have the right to petition for referendum on any
6 ordinance enacted by the Commission in the same manner and subject to the same
7 rules as set forth in Sections 3751 to 3754 inclusive of the California Elections Code,
8 except that all computations referred to in those sections and the officers of the county
9 mentioned in those sections shall be construed to refer to comparable computations
10 and officers of the Authority. For the purposes of any such election or referendum
11 petition, the electors residing within the boundaries of the Authority who would be
12 qualified to vote for candidates for Governor at any general election shall be the electors
13 of the Authority.
14

15 Section 10. ~~Phase I Project~~

16 ~~All Agencies have, by previous agreement, agreed to the preparation of the~~
17 ~~Project Report for the Phase I Project. Only by approval by the Commission of the~~
18 ~~Project Report may the Authority proceed with the preparation of plans and~~
19 ~~specifications for said Project. Only by the approval by the Commission of said plans~~
20 ~~and specifications may the Authority call for construction bids for any portion of said~~
21 ~~Project. Upon approval by the Commission of the plans and specifications for the~~
22 ~~Phase I Project, each Agency agrees to take the necessary steps to obtain funds to~~
23 ~~bear its share of the cost of the Phase I Project. Upon certification from each Agency of~~
24 ~~the availability of its share of the projected cash flow requirements of the Phase I~~
25 ~~Project or the Authority's approval of an Agency's request to issue revenue bonds for~~
26 ~~the Agency's share of the projected cash flow requirements, the Authority may award~~
27 ~~construction contracts and proceed with the construction of the Phase I Project.~~
28

29 Section 1011. Ownership of Joint Facilities

30 The Authority shall own and hold title to the Joint Facilities. Each Agency shall
31 own an undivided portion of the Authority equal to the percentage of the Project Cost of
32 the Joint Facilities paid for by it as provided in Schedule A.

1
2 Section 1211. Capacity Rights

3 Each Agency has acquired, by satisfying all terms of the Agreement, the capacity
4 and right to discharge to the Joint Facilities, the following maximum flow rate:

5 City of San Leandro	22.3 million gallons per day
6 Oro Loma/Castro Valley	69.2 million gallons per day
7 City of Hayward	35.0 million gallons per day
8 Union Sanitary District	42.9 million gallons per day

9 Should any Agency exceed its maximum flow rate capacity, it shall, upon
10 notification by the Authority take measures to reduce its flows within the allocated
11 capacity. If the Agency is unable to make necessary reduction in flow, it may:

- 12 (a) Purchase capacity from any other Agency which has surplus or unused
13 capacity, or
14 (b) At its expense, provide for modifications to pumping and/or conveyance
15 facilities to accommodate additional flows, or
16 (c) Make arrangements with any other Agency or Agencies to utilize their
17 capacity allocation for short term peak flows.

18 Prior to the effective date of any of the above three actions, the Agency shall give
19 notice of such action to the Authority.

20 Should the Agency fail to accommodate flows, the Authority may take action
21 under the appropriate provisions of this Agreement.

22
23 ~~Section 13. Distribution of Project Costs for the Phase I Project~~

24 ~~Project Costs for the Phase I Project shall be allocated to each Agency in~~
25 ~~accordance with Schedule A attached hereto and made a part hereof. Each Agency~~
26 ~~shall advance its share of all Project Costs to the Authority and the monies so paid to~~
27 ~~the Authority shall be paid out by it in payment of actual costs incurred. If any Agency is~~
28 ~~unable to contribute its share of Project Costs in cash for the Joint Facilities, the~~
29 ~~Authority, if requested by that Agency, may cause revenue bonds to be issued with~~
30 ~~revenue to be provided by lease of facilities to the Agency requesting such issuance.~~
31 ~~Funds advanced by the Agencies, contributions or reimbursements from other agencies~~
32

1 or other entities, and grant funds received from State and Federal Governments shall be
2 deposited in the Construction Fund and applied to the Project Costs except that (1)
3 grant funds received from the United States of America or the State of California or
4 agencies thereof for reimbursement of joint use facilities, costs may be used to repay
5 principal or interest on any Grant Anticipation Notes issued by the Authority to
6 temporarily finance any joint use facilities, and (2) grant funds received from the United
7 States of America or the State of California or agencies thereof for reimbursement of
8 specific sole use facilities costs may be used to repay principal or interest on any Grant
9 Anticipation Notes issued by the Authority to temporarily finance such specific sole use
10 facilities.

11 The Authority, in any resolution or other instrument authorizing or securing an
12 issue of such notes, may pledge specific grants for the payment of such specific issue
13 of notes, provided, however, such resolution shall be in accordance with the terms
14 hereof. Funds remaining after completion of the acquisition and construction of the
15 Phase I Project shall be returned to each Agency in proportion to its contributions,
16 except for proceeds from revenue bond sales which shall be transferred to the
17 appropriate bond fund.

18
19 Section 1412. Distribution of Operation and Maintenance Costs

20 Operation and Maintenance Costs shall be allocated to each Agency as set forth
21 in Schedule B attached hereto and hereby made a part of this Agreement.

22 At the points at which effluent from the sewage treatment facilities of Union,
23 Hayward, the combined facilities of Oro Loma and Castro Valley and San Leandro
24 connect to the Joint Facilities, meters shall be installed to measure the discharge of
25 sewage effluent from each such facility into the Joint Facilities. By the tenth day of each
26 month, each Agency shall report to the Manager its previous month's total daily metered
27 effluent flow contribution to the Joint Facilities.
28

29
30 Section 1513. Payment of Operation and Maintenance Costs and
31 Operating Reserve
32

1 Not later than March 1st of each year, the Authority shall notify each Agency of
2 its allocated share of the estimated Operation and Maintenance Costs for the
3 forthcoming Fiscal Year. Each Agency hereby agrees to include in each annual budget
4 approved by the governing body of such Agency amounts estimated to be sufficient to
5 pay all such charges and to pay to the Authority within thirty days of receipt of a
6 statement of the Agency's allocated share of the actual Operation and Maintenance
7 Costs for the billing period. The billing period shall be determined by the Commission.
8 The Authority is hereby authorized to take any or all legal actions necessary and
9 permitted by law to enforce the collection of such charges or any other compliance with
10 this Agreement, including, but not limited to, actions or proceedings in mandamus to
11 require each Agency to include the amounts estimated to be necessary in each such
12 estimated annual budget, or to collect such charges from the taxpayers, landowners, or
13 users of any of the Joint Facilities of the Phase I Project.

14 ~~The budget for the first year in which Operation and Maintenance costs are~~
15 ~~anticipated to be incurred shall establish an Operating Reserve in accordance with the~~
16 ~~State Water Resources Control Board Revenue Program Guidelines. Annual~~
17 ~~adjustment to the assessment to each Agency for the Operating Reserve for Joint Use~~
18 ~~Facilities shall be in accordance with the Fixed Costs distribution of Schedule B,~~
19 ~~attached hereto and made a part hereof. Funds remaining upon reduction or elimination~~
20 ~~of the Operating Reserve or withdrawal of any Agency shall be returned to each Agency~~
21 ~~in proportion to its contributions.~~

22
23
24 ~~Section 16. Distribution of Administrative Costs During Construction~~

25 ~~Administrative Costs During Construction shall be allocated to each Agency as~~
26 ~~set forth in Schedule D attached hereto and made a part hereof.~~

27 ~~Each Agency shall advance its share of Administrative Costs During Construction~~
28 ~~in accordance with Section 10 of this Agreement and the monies so paid to the~~
29 ~~Authority shall be paid out by it in payment of actual costs incurred. Such Funds~~
30 ~~advanced by the Agencies, contributions or reimbursements from other agencies or~~
31 ~~entities, and grant funds received from State and Federal Governments shall be~~
32 ~~deposited in the General Fund and applied to Administrative Costs During Construction.~~

1 Funds remaining after completion of the acquisition and construction of all of the Phase
2 I Project shall be returned to each Agency in proportion to its contributions.

3
4 Section 17. Distribution of Planning and Special Studies Cost

5 Planning and Special Studies Costs shall be allocated to each Agency on the
6 basis of Average Dry Weather Design Flow as in Schedule C. Planning and Special
7 Studies performed at the request of and for the benefit of an individual Agency shall be
8 paid for directly by the Agency for which the work is being performed.

9 Each Agency shall advance its share of Planning and Special Studies Cost in
10 accordance with Section 10 of the Agreement and the monies so paid to the Authority
11 shall be paid out by it in payment of actual costs incurred. Such funds advanced by the
12 Agencies, contributions or reimbursements from other agencies or entities, and grant
13 funds received from State and Federal Governments shall be deposited in the Planning
14 and Special Studies Fund and applied to Planning and Special Studies Cost. Funds
15 remaining after all Planning and Special Studies are complete and all financial
16 obligations are met shall be returned to each Agency in proportion to its contributions.

17 Section 1814. Records and Accounts

18 The Authority shall cause to be kept accurate and correct books of account,
19 showing in detail the costs and expenses of any construction and the maintenance,
20 operation and administration of the Joint Facilities and all financial transactions of the
21 Agencies relating to the Joint Facilities, which books of account shall correctly show any
22 receipts and also any costs, expenses, or charges to be paid by all or any of the
23 Agencies hereunder, and also records of the sewage flow from each of the Agencies,
24 together with the strength of effluent delivered from each of the Agencies. Time records
25 and books of account shall be open to inspection at all times by any representative of
26 any of the Agencies, or by any accountant or other person authorized by any Agency to
27 inspect said books of account.
28

29
30 Section 1915. Income from Operations

31 Income arising out of the operation of Joint-Use Facilities including the sale of
32 reclaimed water, shall be retained as part of the Fund Balance in the fund in which it is

1 earned. Any interest earned on the fund balance shall also be retained in the fund. The
2 fund balance may be used as an operating reserve or, upon approval of the
3 Commission, to fund additional study, design or construction of reclamation facilities, or
4 upon approval by the Commission may be refunded to member agencies on the basis
5 of the Fixed O&M Costs Distribution Formula applicable for the current year in
6 accordance with Schedule B.

7 Income from the lease of capacity rights, sale of services or assets or connection
8 fees shall be deposited in the Replacement Fund.

9
10 Section 2016. Failure to Meet Discharge Requirements

11 The Authority shall cause the combined effluent of all Agencies as well as the
12 receiving water of the combined discharge to be monitored to determine whether or not
13 Federal and/or State discharge requirements are being met. In addition, the Authority
14 shall cause the effluent of each Agency to be monitored. If the combined effluent of all
15 Agencies at the point of ultimate discharge into the receiving water fails to meet
16 discharge requirements, the Agency or Agencies responsible for the violations shall be
17 solely responsible for any fines levied or criminal sanctions imposed. In this regard, the
18 Agency or Agencies responsible for the violations shall hold harmless the Authority and
19 the other non-violating Agencies from all liability and/or damages incurred by said
20 Authority and/or Agencies as a result of a cease and desist order or court injunction
21 from any State or Federal agency restricting construction within the jurisdictional limits
22 of said Authority or Agency. In the event two or more Agencies are responsible for
23 failure of the combined effluent to meet discharge requirements as above provided, the
24 Agencies responsible for the violation shall be jointly and severally responsible to the
25 Authority and to the other non-violating Agencies. Upon notification of such violation, the
26 Agency or Agencies shall take prompt, corrective action as necessary to meet said
27 discharge requirements.
28

29 If any Agency fails to take such action, the Authority by unanimous vote of the
30 Commission (excluding those members of the Commission who are representatives of
31 the Agency or Agencies who are in violation of the discharge requirements) may elect to
32 do either one or both of the following:

1 (a) Have undertaken at the cost and expense of the violating Agency or
2 Agencies the operation of existing facilities or construction and operation
3 of additional treatment facilities as necessary to meet said discharge
4 requirements.

5 (b) Impose a prohibition of additional connections to the collection system of
6 the Agency or Agencies in violation.

7 Nothing in this Section shall preclude one or more Agencies from providing
8 additional levels of treatment to insure meeting waste discharge requirements for the
9 combined effluent. In the event that one or more Agencies are obligated to provide
10 additional levels of treatment to meet waste discharge requirements for the combined
11 effluent, all Agencies requiring the additional levels of treatment shall participate in the
12 costs of such treatment based on their relative contribution of waste characteristics to
13 be treated and the costs of providing such treatment.

14
15 Section 2117. Future Projects

16 It is understood that it may be in the interest of the Agencies for the Authority to
17 acquire and construct additional phases of the ~~wastewater management facilities~~
18 ~~envisioned in the Report~~ **Joint Use Facilities**. This Agreement is subject to modification
19 in the event all Agencies desire to do so.
20

21
22 Section 2218. Contributions, Payments and Advances, Use of Personnel,
23 Equipment or Property; Exchange of Services

24 It is hereby agreed that:

25 (a) Contributions from an Agency's treasury may be made for the purpose set
26 forth in this Agreement.

27 (b) Payments of public funds of Agency may be made to defray the cost of
28 such purpose.

29 (c) Each of the Agencies may make advances of public funds, to be repaid as
30 set forth in this Agreement.

31 (d) Subject to approval of the Manager, personnel, equipment, or property
32 may be used in lieu of other contributions or advances.

1 (e) The Agencies may exchange services without payment of any
2 consideration other than such services; or an Agency may agree to
3 provide all or any portion of such services to another Agency.

4 (f) The Commission may provide for the repayment or return to an Agency of
5 all or any part of any contributions, payments, or advances made by that
6 Agency.

7
8 Section 2319. Arbitration

9 All controversies arising out of the interpretation or application of this Agreement
10 or the refusal of any Agency to perform the whole or any part thereof may with the
11 mutual consent of the parties to said controversy be settled by arbitration in accordance
12 with the provisions of this Section. Upon receipt of said written consent from the parties
13 involved in said controversy, the controversy shall be submitted to a board of arbitrators
14 (the Board), one of which shall be appointed by each side to said controversy within
15 fifteen (15) days of the written agreement to submit said matter to arbitration. None of
16 the arbitrators shall be a resident of or a taxpayer in or own property in or have a place
17 of business in or be an officer or employee of any of the parties to the controversy. The
18 arbitrators so selected shall in the event of a controversy between two parties select a
19 third arbitrator within fifteen (15) days of the initial selection of the first two arbitrators by
20 the two parties a sufficient number of arbitrators shall be selected within thirty (30) days
21 of the initial appointment of the first arbitrator so as to have an odd number of
22 arbitrators, in no event, however, more than seven. If the parties to the controversy are
23 unable to decide upon a neutral third or odd numbered arbitrator, either party on five (5)
24 days' notice may cease said arbitration proceedings and revert to legal action or such
25 other appropriate remedy to resolve said controversy. Once said Board of Arbitrators
26 has been selected, the decision of said Board of Arbitrators shall be binding upon all
27 parties to said controversy. Once said Board of Arbitrators has been selected, the
28 decision of said Board of Arbitrators shall be binding upon all parties to said controversy
29 who have submitted said issue to said Arbitration Board. The Board shall hold at least
30 one hearing and at least ten days before said hearing shall give each party to said
31 controversy written notice thereof. The arbitration shall be restricted to matters relative
32

1 to those stated in the agreement to arbitrate. Each party to said arbitration will be given
2 an opportunity to be heard and to present evidence. Upon inclusion of the hearing or
3 hearings, the Board shall state its findings of fact and conclusions of law and decision in
4 writing and shall sign the same and deliver one signed copy thereof to each party to
5 said controversy. Such award shall be final and binding upon each party to such
6 controversy. A majority finding shall govern if the arbitrators' determination is not
7 unanimous. Each participant shall pay his own expenses, including the expenses of the
8 arbitrator which it nominates. The administrative costs of the arbitration proceedings
9 and the cost of the neutral arbitrator shall be shared equally by all of the parties to said
10 controversy who have submitted said matter to said arbitration.

11
12 Section 2420. Withdrawal from Authority. Disposition of Assets

13 This agreement shall terminate only upon its expiration by its terms or upon
14 agreement of all the Agencies, such agreement being authorized by the governing body
15 of each of the Agencies. Upon the termination of this Agreement, the Capital assets of
16 the Authority shall be divided among the then parties to the Agreement in proportion to
17 their investment in the ~~Phase I Project~~ Joint Use Facilities as determined by Schedule A
18 attached hereto. Remaining funds shall be divided among the then parties to this
19 Agreement in proportion to their contributions from inception of the Authority.

20 An Agency may not withdraw from the Authority, prior to the termination of the
21 Authority by expiration of its terms, unless such Agency has arrived at an agreement
22 with the Authority or another Agency which is a party to this agreement whereby the
23 Authority or said other Agency acquires all of the rights in this Agreement and in said
24 Authority of said Agency desiring to terminate and likewise assume all liability including
25 bonded indebtedness of said Agency desiring to terminate this Agreement. Each party
26 to this Agreement waives its right to seek a judicial portion of any interest it may have in
27 the Authority and/or in any assets of the Authority, including real property,
28 improvements which constitute a part of the real property, and/or personal property.
29
30
31
32

1 Section 2521. Amendments

2 This Agreement may be amended only by an agreement approved and executed
3 by all of the Agencies.

4
5 Section 2622. Filing with the Secretary of State

6 The Manager shall file with the Secretary of State notices in accordance with
7 California Government Code Sections 6503.5 and 53051.

8
9 Section 2723. Notices

10 All notices which any Agency or the Authority may give to another Agency or the
11 Authority in connection with this Agreement shall be given in writing and shall be served
12 by personal delivery during usual business hours at the principal office of the person
13 being served to an officer thereof or to a person apparently in charge of said office or by
14 depositing same in the United States mail, postage prepaid, and addressed to the
15 Agency at its address given below or to the Authority at its principal office, as the case
16 may be, or to such other address as any Agency or the Authority may designate from
17 time to time by written notice given as provided in this paragraph. Service of notice
18 pursuant to this paragraph shall be deemed complete on the day of service by personal
19 delivery or deposit in the mail.
20

21
22 Section 2824. Successors: Assignment

23 This Agreement shall be binding upon and shall inure to the benefit of the
24 successors of the Agencies. In the event of the consolidation of some, but less than all,
25 of the Agencies, the consolidated Agency shall retain all of the rights and
26 responsibilities of the former individual Agencies which consolidated.

27 No Agency may assign any right or obligation hereunder without the consent of
28 each of the others.

29
30 Section 2925. Severability

31 Should any part, term, or provision of this Agreement be decided by a final
32 judgment of a court to be illegal or in conflict with any law of the State of California, or

1 otherwise be rendered unenforceable or ineffectual, the validity of the remaining
2 portions or provisions shall not be affected thereby.

3
4 Section 3026. Section Headings

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

7
8 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
9 duly executed and attested by their respective officers, duly authorized to so act, on the
10 dates set forth.

11 **SIGNATURE BLOCKS ON FOLLOWING PAGES**
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UNION SANITARY DISTRICT
A Public Corporation

By: _____
Board President
5072 Benson Road
Union City, CA 94587-2508

Date: _____

(SEAL)
Attest:

Secretary

CITY OF HAYWARD
A Municipal Corporation

By: _____
City Manager
777 B Street
Hayward, Ca 94541

Date: _____

(SEAL)
Attest:

City Clerk

CITY OF SAN LEANDRO
A Municipal Corporation

By: _____
~~Mayor~~ **City Manager**
835 East 14th Street
San Leandro, Ca 94577

Date: _____

(SEAL)
Attest:

City Clerk

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ORO LOMA SANITARY DISTRICT
A Public Corporation

By: _____

Board President
2655 Grant Avenue
San Lorenzo, Ca 94580

(SEAL)
Attest:

Date: _____

Secretary

CASTRO VALLEY SANITARY DISTRICT
A Public Corporation

By: _____

Board President
21040 Marshall Street
Castro Valley, CA 94546-6098

(SEAL)
Attest:

Date: _____

Secretary

SCHEDULE A
DISTRIBUTION OF PROJECT COSTS

A. Joint Facilities: Joint Facilities shall include the following:

1. Control System
2. Operations Center
3. Bay Outfall
4. Marina Dechlorination Facility
5. San Leandro Pump Station
6. San Leandro to Marina Force Main
7. Oro Loma Pump Station
8. Marina to Oro Loma Force Main
9. Oro Loma to Hayward Force Main
10. Hayward Pump Station
11. Hayward to Alvarado Force Main
12. Alvarado Pump Station
13. Skywest Irrigation Project
14. Other such additional facilities as determined by the Commission to be Joint Facilities

The distribution of Project Costs of the Joint Facilities shall be as follows:

San Leandro	18.6%
Oro Loma/Castro Valley	29.7%
Hayward	33.0%
Union	18.7%

B. Sole-Use Facilities: The Sole-Use Facilities shall include the following:

1. San Leandro Treatment Plant Improvements
2. San Leandro Roughing Filter and Solids Facilities
3. Oro Loma/Castro Valley Treatment Plant Secondary Improvements
4. Oro Loma/Castro Valley Incinerator Modifications and Additions

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5. Oro Loma Castro Valley Dechlorination Facilities
6. Oro Loma/Castro Valley Solids Handling Facilities
7. Oro Loma/Castro Valley Wet Weather Flow Facilities
8. Hayward Treatment Plant Improvements
9. Hayward San Filter and Solids Facilities
10. Alvarado Treatment Plant
11. Union Dechlorination Facilities
12. Alvarado to Newark Force Main
13. Newark Pump Station
14. Newark to Irvington Force Main
15. Irvington Pump Station
16. Other such facilities as requested by an Agency and as determined by the Commission to be Sole-Use Facilities.

Project Costs of Sole-Use Facilities shall be borne exclusively by the member agency owning said facilities.

1 SCHEDULE B

2 DISTRIBUTION OF OPERATION AND MAINTENANCE COSTS

3 Effective July 1, 1986

4
5 Operation and Maintenance Costs for Joint Use Facilities shall be divided into two
6 categories, Fixed Costs and Variable costs.

- 7
8 1. Fixed Costs include all Operation and Maintenance costs not defined below as
9 "Variable Costs". Fixed Costs, not recovered from other sources shall be
10 apportioned to member agencies on their capacity rights as follows:

11	City of San Leandro	22.3 MGD	13.2%
12	Oro Loma/Castro Valley	69.2 MGD	40.8%
13	City of Hayward	35.0 MGD	20.7%
14	Union Sanitary District	42.9 MGD	25.3%

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17 2. Variable Costs shall be deemed to be costs of energy used for pumping,
18 chemical costs used in operation of the Joint Facilities and maintenance and
19 repair charges incurred in the operation and maintenance of the system. Variable
20 Costs, after receipt of revenue from other sources shall be allocated to member
21 agencies in proportion to the total flow contributed to the Joint Facilities during
22 the previous 12 month period ending the last day of February. The member
23 agency's percentage of variable costs shall be determined each year on March
24 1st and will be the percentage utilized for the following fiscal year in preparation
25 of the budget and invoicing of the O&M variable costs for the balance of the
26 current fiscal year and the next fiscal year through February. Costs invoiced
27 from July through February of the current fiscal year shall then be adjusted to
28 reflect the revised actual allocation calculation on March 1.

29 Operation and Maintenance Costs for Sole Use Facilities, including an allocation of
30 general administrative expenses to be agreed upon between the Agency (or Agencies)
31 and Authority when service is requested shall be born exclusively by the Agency (or
32 Agencies) owning said facilities.

SCHEDULE C
DISTRIBUTION OF PLANNING
AND SPECIAL STUDIES COSTS

Distribution of Planning and Special Studies Costs for the Joint Facilities shall be in proportion of Average Dry Weather Design Flows as Set forth in the Final Supplement to the ~~Project Report~~ **Water Quality Management Program - Phase I Project Report dated February, 1974** ~~dated August, 1976~~, and shall be as follows:

San Leandro	13%
Oro Loma/Castro Valley	24%
Hayward	30%
Union Sanitary District	33%

Planning and Special Studies Costs for other than Joint Facilities and at the request of and solely benefiting one or more Agencies shall be borne exclusively by the Agency or Agencies requesting such studies, including an allocation of general administrative expenses to be agreed upon by the Agency (or Agencies) and Authority when said service is requested.

SCHEDULE D
DISTRIBUTION OF ADMINISTRATIVE
COSTS DURING CONSTRUCTION

Administrative Costs During Construction shall be allocated in the following manner:

San Leandro	14.8%
Oro Loma/Castro Valley	21.3%
Hayward	22.4%
Union	41.5%

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