



City of San Leandro

Meeting Date: November 18, 2019

Staff Report

File Number: 19-578

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.I.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution of the City of San Leandro City Council to Authorize the City Manager to Execute a Six-Month Extension to the Current Joint Exercise of Powers Agreement with East Bay Dischargers Authority, with Term Ending June 30, 2020, and to Execute an Amended and Restated Joint Exercise of Powers Agreement with East Bay Dischargers Authority, with Term Ending June 30, 2040

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt a Resolution to approve and authorize the City Manager to execute a six-month extension to the existing Joint Exercise of Powers (JPA) authority agreement with the East Bay Dischargers Authority (EBDA), which will extend the agreement through June 30, 2020. In addition, staff recommends that the City Council adopt a resolution to authorize the City Manager to execute an amendment to the JPA agreement with EBDA, which would commence on July 1, 2020 and end on June 30, 2040.

BACKGROUND

EBDA was created in 1974 for the purpose of discharging treated wastewater to the San Francisco Bay. It collects the discharges from four wastewater treatment plants in the East Bay: Union Sanitary District, City of Hayward, Oro Loma Sanitary District and the City of San Leandro. It dechlorinates these discharges and pumps the water about seven miles to the San Francisco Bay. These four entities, plus Castro Valley Sanitary District, are the five member agencies of EBDA. Each agency sends a representative to serve on the EBDA Commission. Mayor Cutter is currently representing the City on the Commission.

EBDA owns and is responsible for pump stations at each treatment plant, the pipes that convey the wastewater from the treatment plants, the Marina Dechlorination Facility and the outfall pipeline. EBDA's budget is about \$5 million per year, which is funded by the member agencies, pro-rated by the quantity of water each member discharges.

The agreement that created the EBDA JPA has been amended three times since its inception. The term of the current agreement ends on January 1, 2020. The member agency managers and Commission members of EBDA have been negotiating for about the last four years on an amendment to extend the agreement for an additional 20 years.

The EBDA Commission has approved two amendments and recommends that the governing bodies of each agency authorize their execution. The first (Amendment Four) would simply extend the term of the current agreement for six months, until June 30, 2020. This would allow EBDA staff and the member agencies time to prepare for the updated amendment and aligns the term with the fiscal year. The second amendment (Amendment Five) is a substantial restatement of the agreement with a term ending June 30, 2040. Note that Amendment Five attached to the Resolution contains blanks for the dates of Amendment Four. These will be filled in with the date that Amendment Four is fully ratified.

Analysis

The amended agreement makes changes to the governance, funding, and other terms. The changes most relevant to the City are:

- The City will take ownership of the discharge pump station at the Water Pollution Control Plant (WPCP) and the pipeline between the Plant and the Marina Dechlorination Facility. The City will take direct responsibility for maintenance of these facilities, with funding derived from the WPCP's Wastewater Utility Fund.
- Currently, the City shares in the cost of the entire system. Under the amended agreement, the City will no longer pay for costs related to the pump stations and pipelines for the other agencies, which are located south of the Marina Dechlorination Facility.
- Each member agency has agreed to a maximum discharge flow rate. This maximum rate is used to set the percent of EBDA expenses for which each agency is responsible. Any flow rate greater than the maximum will be subject to an overage charge, with one free incident each fiscal year. The City agreed to a maximum flow rate of 14 million gallons per day (MGD) and is very unlikely to exceed this amount.
- Currently, each agency has an equal vote on the Commission, with some votes requiring unanimous agreement (e.g. budget approval, special studies and changes to the agreement). Other decisions, such as for contracts and policies, require four votes. In the proposed amended agreement, nearly all decisions will require both a majority of the members and greater than 50% of a weighted vote based on maximum discharge flow of the member agency. Certain important decisions, including amendment or termination of the amended agreement and changes to the ownership of JPA facilities, will still require a unanimous vote.

Board/Commission Review and Actions

The EBDA Joint Powers Authority Commission approved the amendments at the October 29, 2019 Commission meeting.

Fiscal Impacts

Under the new agreement, the City's Wastewater Utility Fund will have lower payments to EBDA as a result of not paying for other agencies' pipelines and pump stations. However, these savings will be partially offset by increased maintenance and operational costs of the discharge pump station at the Water Pollution Control Plant and pipeline to the Marina Dechlorination Facility. Staff expects there will be a small net savings as a result of efficiencies gained by maintaining these facilities internally.

ATTACHMENTS

Attachment to Staff Report

- East Bay Dischargers Authority Third Amended Joint Exercise of Powers Agreement with term ending January 1, 2020

Attachments to Related Legislative Files

Attached to Resolutions:

- East Bay Dischargers Authority Fourth Amended Joint Exercise of Powers Agreement, with term ending June 30, 2020
- East Bay Dischargers Authority Fifth Amended Joint Exercise of Powers Agreement, effective July 1, 2020 and ending June 30, 2040

PREPARED BY: Justin Jenson, Water Pollution Control Plant Manager
Hayes Morehouse, Water Pollution Control Plant Administrative Analyst II

REVIEWED BY: Craig Labadie, outside counsel representing the City in the JPA negotiations.

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EAST BAY DISCHARGERS AUTHORITY
THIRD 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

EAST BAY DISCHARGERS AUTHORITY
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(510) 278-5910

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1 EAST BAY DISCHARGERS AUTHORITY

2
3 THIRD AMENDED JOINT EXERCISE OF POWERS AGREEMENT

4
5 THIS THIRD AMENDED JOINT EXERCISE OF POWERS AGREEMENT, dated
6 for convenience as of February 15, 2007, is made and entered into by and between
7 the CITY OF HAYWARD, a municipal corporation, hereinafter referred to as "Hayward";
8 CITY OF SAN LEANDRO, a municipal corporation, hereinafter referred to as "San
9 Leandro"; ORO LOMA SANITARY DISTRICT, a public corporation, hereinafter referred
10 to as "Oro Loma"; CASTRO VALLEY SANITARY DISTRICT, a public corporation,
11 hereinafter referred to as "Castro Valley"; and UNION SANITARY DISTRICT, a public
12 corporation, hereinafter referred to as "Union"; each duly organized and existing in the
13 County of Alameda under the constitution and laws of the State of California, and
14 amends that Second Amended Joint Exercise of Powers Agreement dated February 11,
15 1986, duly entered into by said Agencies, as follows:
16

17
18 WITNESSETH:
19

20 WHEREAS, each of the Agencies hereto has power to plan for, acquire,
21 construct, maintain, manage, operate, and control facilities for the collection,
22 transmission, treatment, reclamation, sale and disposal of wastewater; and the
23 Agencies propose by this Agreement to exercise said powers jointly for the purpose of
24 providing for the more efficient disposal of the wastewater produced in each Agency, all
25 to the economic and financial advantage of each Agency and otherwise for the benefit
26 of each Agency; and each of the Agencies is willing to plan with the other Agencies for
27 joint wastewater facilities which will protect all of the Agencies;
28

29 NOW THEREFORE, Hayward, San Leandro, Oro Loma, Castro Valley, and
30 Union, for and in consideration of the mutual promises and agreements herein
31 contained, do agree as follows:
32

1 Section I. Definitions

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

4 Administrative Costs During Construction

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

13 Agency and Agencies

14 The term "Agency" shall mean either Hayward, San Leandro, Oro Loma, Castro
15 Valley, or Union. The term "Agencies" shall mean Hayward, San Leandro, Oro Loma,
16 Castro Valley, and Union.

17 Agreement

18 The term "Agreement" shall mean this Third Amended Joint Exercise of Powers
19 Agreement.

20 Authority

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

24 Commission

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

27 Controller

28 The term "Controller" shall mean that individual designated by the Commission to
29 assure proper expenditure and accountability of funds and responsible for audit and
30 reporting of the accounts and records of the Authority.
31

32

1 Disposal

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

4 Fiscal Year

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

7 Income from Operations

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

12 Joint Facilities

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

15 Manager

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

19 Operation and Maintenance Costs

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

30 Phase I Project

31 The term "Phase I Project" shall mean those projects set forth on Schedule A.
32

1 Planning and Special Studies Costs

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

10 Policies And Procedures

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

14 Project Costs

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

23 Project Report

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

27 Reclamation/Reuse Study

28 The term "Reclamation/Reuse Study" shall mean that study as outlined in the
29 plan of study dated June 20, 1977, and approved by the Commission on July 14, 1977,
30 including such additional studies that the Commission shall approve.
31
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1 Report

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

6 Sole-Use Facilities

7 The term "Sole-Use Facilities" shall mean those facilities to be owned and
8 operated by an Agency or Agencies other than the Authority, more specifically identified
9 in Schedule A attached hereto.

10 Treasurer

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

14 Section 2. Purpose

15 This Agreement is made pursuant to Chapter 5 of Division 7, Title 1 of the
16 California Government Code (Sections 6500 et seq) and relates to the joint exercise of
17 powers common to each of the Agencies. The purpose of the Agreement is to jointly
18 exercise these common powers in the manner hereinafter set forth.

20 Section 3. Term

21 This Third Amended Agreement shall become effective upon execution by all
22 Agencies and shall continue in force and effect until January 1, 2020, unless sooner
23 terminated by mutual agreement.

25 Section 4. Creation of Authority

26 The East Bay Dischargers Authority (hereinafter referred to as "Authority") as
27 created by that Joint Exercise of Powers Agreement dated February 15, 1974, shall
28 exercise the powers as hereinafter set forth. The Authority shall be a public entity
29 separate from the Agencies. No debt, liability, or obligation of the Authority shall
30 constitute a debt, liability, or obligation of any Agency, except that where a Grant
31 Anticipation Note is issued at the request of a member agency for its sole-use facilities,
32

1 such Agency shall be liable to the Authority for such Grant Anticipation Note. The
2 remaining Agencies forming the Authority shall not be liable for the payment of such
3 obligation incurred by the Authority on behalf of a member agency.

4
5 Section 5. Powers

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

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

- 15 (a) to make and enter into contracts;
- 16 (b) to apply for and accept grants, advances and contributions;
- 17 (c) to employ or contract for the services of engineers, attorneys, planners,
18 financial consultants, fiscal agents, and such other persons as it deems
19 necessary;
- 20 (d) to make plans and conduct studies;
- 21 (e) to acquire, construct, manage, maintain, operate, and control any building,
22 works, or improvements;
- 23 (f) to acquire, hold or dispose of property;
- 24 (g) to sue and be sued in its own name;
- 25 (h) to incur debts, liabilities, or obligations, subject to limitations herein set
26 forth;
- 27 (i) to establish rates, tolls, fees, rentals, or other charges in connection with
28 the facilities and services provided by the Authority;
- 29 (j) to develop and adopt policies and procedures for the conduct of business
30 of the Authority;
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1 (k) to plan for, acquire land or rights of way for, construct, operate, or
2 maintain an Agency's Sole-Use Facilities when specifically requested by
3 that Agency, or when necessary to meet joint discharge requirements,
4 subject to the provisions of Section 20 hereof; and

5 (l) to accept ownership of the reclaimed water turn-out on the Alvarado to
6 Hayward Force Main along with other necessary control facilities and
7 provide reclaimed water to EBRPD for the Hayward Marsh Project

8 The above powers are subject to the restrictions upon the manner of exercising
9 said powers set forth in the Sanitary District Act of 1923, as amended, being Sections
10 6400 et seq of the California Health and Safety Code and Sections 20800 et seq of the
11 Public Contracts Code. Notwithstanding any of the above-described provisions, the
12 Authority is empowered to utilize the Alternative Procedure described in Division 2, Part
13 3, Chapter 2, Article 3 (commencing with Section 22030) of the California Public
14 Contracts Code regarding contracting for public projects.

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

17 (a) Article 2, Chapter 5, Title 1, Division 7 of the California Government
18 Code, commencing with Section 6540.

19 (b) Chapter 6, Title 5, Division 2 of the California Government Code
20 commencing with Section 54300.

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23 Section 6. Boundaries

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

27
28 Section 7. Organization

29 (a) East Bay Dischargers Commission

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

1 (i) The affirmative vote of five members of the Commission shall be
2 required to:

- 3 • Approve amendments and supplements to the Project Report;
- 4 • Determine which additional facilities shall be deemed Joint
- 5 Facilities or Sole-Use Facilities;
- 6 • Authorize Planning and Special Studies and Reports;
- 7 • Approve contracts to provide service to other governmental or
- 8 non-governmental entities;
- 9 • Adopt or modify the budget;

10 (ii) The affirmative vote of four members of the Commission shall be
11 required to:

- 12 • Approve plans and specifications for the Phase I Project;
- 13 • Award, modify or accept work under any contract (including but
- 14 not limited to contracts for the acquisition or construction of any
- 15 building, works or improvements for the Phase I Project) in
- 16 excess of \$10,000;
- 17 • Accept any grant agreement;
- 18 • Accept any interest in lands;
- 19 • Grant any licenses or permits;
- 20 • Adopt or modify policies or procedures

21 (iii) Simple majority vote (not less than the affirmative vote of three
22 members) shall be required for approval of all other business of the
23 Authority.
24

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

29 (b) Members

30 The Commission shall consist of five members, one from each Agency. Each
31 Agency shall appoint one person to act as its representative as a member of the
32 Commission and one person as an alternate member to serve in the absence of the

1 Agency's member. Each member and alternate shall hold office from the first meeting of
2 the Commission after his appointment by the Agency which he represents until his
3 successor is selected. Each member and alternate shall serve at the pleasure of the
4 Agency which he represents and may be removed at any time, with or without cause, in
5 the sole discretion of the Agency's governing body.

6 Each member and alternate must be a member of the governing body of the
7 Agency which he represents. No member or alternate shall be a member of more than
8 one Agency.

9 Each Agency shall be empowered to vote through its designated member or
10 alternate.

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

16 (c) Principal Office

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

22 (d) Officers

23 The Authority shall have five officers: Chairman, Vice-Chairman, Manager,
24 Treasurer, and Controller. The members of the Commission shall select from the
25 Commission a Chairman and Vice-Chairman who shall hold office for a period of one
26 year, commencing July 1 of each and every Fiscal Year; provided, however, the first
27 Chairman and Vice-Chairman appointed shall hold office from the date of appointment
28 to the following June 30; provided further, that in the event that an Agency removes
29 from the Commission a member serving as an officer, the Commission shall appoint a
30 member of the Commission to fill that vacant office for the remainder of that Fiscal Year.
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1 (e) Chairman

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

11 (f) Vice-Chairman

12 The Vice-Chairman shall serve as Chairman in the absence of the regularly
13 elected Chairman. In the event both the Chairman and Vice-Chairman are absent from
14 a meeting which otherwise would constitute a quorum and a Chairman pro tem was not
15 designated by the Chairman at the last regular meeting, any member may call the
16 meeting to order and a chairman pro tem may be elected by majority vote to serve until
17 the Chairman or Vice-Chairman is present.

18 (g) Manager

19 The Commission shall employ or contract for the services of a manager to
20 coordinate the business and operations of the Authority, prepare, distribute and
21 maintain minutes of Commission meetings and official actions of the Authority, approve
22 payment of amounts authorized in the budget or otherwise authorized by the
23 Commission, and carry out other duties as may be assigned by the Commission. The
24 Manager shall make monthly reports to the Commission and the Treasurer of all
25 expenditures for the preceding month. The Manager shall be responsible for filing
26 notices in accordance with Section 6503.5 and 53051 of the California Government
27 Code. The Manager may be a staff member of one of the Agencies. The Manager or his
28 designated representative shall attend the Commission meetings, report on
29 administrative business, and take direction from the Commission, by appropriate action
30 and authorization of the Commission, for the conduct of business of the Authority.
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1 (h) Treasurer

2 The Treasurer of Alameda County shall be Treasurer of the Authority, be the
3 depository, and have custody of all the money of the Authority from whatever source;
4 except that the Treasurer or ex-officio Treasurer of one of the Agencies with said
5 Agency's consent, may be designated Treasurer of the Authority by unanimous
6 approval of the Commission. In lieu of the designation of the Treasurer in this manner,
7 the Commission may appoint one of its officers or employees to the position of
8 Treasurer.

9 The Treasurer so designated shall:

- 10 (i) Receive and receipt for all money of the Authority and place it in the
11 treasury of the Treasurer to the credit of the Authority.
- 12 (ii) Be responsible upon his official bond for the safekeeping and
13 disbursement of all Authority money so held by him.
- 14 (iii) Pay, when due, out of money of the Authority so held by him, all
15 sums payable on outstanding bonds and coupons of the Authority.
- 16 (iv) Pay any other sums due from the Authority from Authority money, or
17 any portion thereof, only upon warrants of the public officer
18 performing the functions of the Controller of the Authority.
- 19 (v) Invest all of the Authority's funds not currently required in the manner
20 provided by law and collect interest thereon for account of the
21 Authority.
- 22 (vi) Annually render to the Commission and each member agency a
23 statement of investment policy.
- 24 (vii) Render a monthly report to the Commission showing the amount of
25 money he holds for the Authority, the amount of receipts since his
26 last report, the amount paid out since his last report, the type of
27 investments, institution, date of maturity, amount of deposit, current
28 market value for all securities with a maturity of more than 12
29 months, rate of interest and relationship to the statement of
30 investment policy.
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1 (i) Controller

2 The Commission shall designate a Controller, which person shall be of the
3 same public agency as the Treasure. The Controller shall draw warrants to pay
4 demands against the Authority when the demands have been duly authorized by the
5 Commission and approved by the Manager. The Commission may designate the same
6 person to serve as Treasurer and Controller. There shall be strict accountability of all
7 Authority funds and report of all receipts and disbursements and compliance with Article
8 1, Chapter 5, Division 7, Title 1 of the California Government Code (Sections 6500 et
9 seq). The Controller shall either make or arrange for a contract with a certified public
10 accountant or public accountant to make an annual audit of the accounts and records of
11 the Authority. In each case the minimum requirements of the audit shall be those
12 prescribed by the State Controller for special districts under Section 26909 of the
13 California Government Code and shall conform to generally accepted auditing
14 standards. The records and accounts of the Authority shall be audited annually, and a
15 report thereof shall be filed as a public record with the Commission, each Agency, and
16 the Alameda County Auditor not later than six months following the end of the Fiscal
17 Year under examination unless said filing date is extended by the Commission. Any
18 costs of the audit, including contracts with or employment of a certified public
19 accountant, shall be borne by the Authority.

20 (j) Access to Property

21 The Treasurer and Manager are hereby designated as the persons who have
22 charge of, handle, and have access to the property of the Authority. Each such person
23 shall file with the Authority an official bond in an amount to be fixed by the Commission.
24 Cost of said bond shall be paid by the Authority.

25 (k) Officers, Employees and Agents

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

29 All privileges and immunities from liability, all exemptions from laws, ordinances
30 and rules, and all pension, relief, disability, worker's compensation, and other benefits
31 which apply to the activities of officers, agents, or employees of an Agency when
32

1 performing their respective functions shall apply to them to the same degree and extent
2 while engaged in the performance of any of the functions and other duties under this
3 Agreement.

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

7 (l) Charges for Services

8 The governing body of the same public entity as the Treasurer and Controller
9 shall determine charges to be made against the Authority for the services of the
10 Treasurer and Controller.

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

14
15 Section 8. Meetings of the Commission

16 (a) Regular Meetings

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

20 (b) Special Meetings

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

23 (c) Notice And Conduct of Meetings

24 All meetings of the Commission shall be held subject to the provisions of the
25 Ralph M. Brown Act, being Sections 54950 et seq of the California Government Code,
26 and other applicable laws of the State of California. Meetings shall be conducted in
27 accordance with latest revised "Robert's Rules of Order", subject to their being
28 consistent with the provisions of this Agreement.
29
30
31
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1 (d) Minutes

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

5 (e) Quorum

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

8 (f) Budget

9 The Commission shall adopt an Annual Budget for the ensuing Fiscal Year prior
10 to June 1 of each year. The Budget shall include sufficient detail to constitute a fiscal
11 control guideline, specify cash flow requirements from each Agency, grant
12 reimbursements, and cash receipts and expenditures to be made for Project Costs,
13 Operation and Maintenance Costs, Administration Costs During Construction and
14 Planning and Special Studies Costs for the Joint Facilities and any authorized Sole-Use
15 Facilities. Approval of the Budget by the Commission shall constitute authority for the
16 Manager to bill the Agencies for their contributions, expend funds after appropriate
17 award of contract and for the purposes outlined in the approved Budget and receive
18 State and Federal grant funds. It shall also constitute authority for the Treasurer to draw
19 warrants for expenditures duly approved by the Manager.
20

21 Section 9. Elections

22 For the purpose of holding any election in the Authority, the Commission may call
23 and hold an election to submit propositions to the electors of the Authority in the same
24 manner as the board of supervisors of a county may call and hold county elections, and
25 the electors of the Authority shall have the right to petition for referendum on any
26 ordinance enacted by the Commission in the same manner and subject to the same
27 rules as set forth in Sections 3751 to 3754 inclusive of the California Elections Code,
28 except that all computations referred to in those sections and the officers of the county
29 mentioned in those sections shall be construed to refer to comparable computations
30 and officers of the Authority. For the purposes of any such election or referendum
31 petition, the electors residing within the boundaries of the Authority who would be
32

1 qualified to vote for candidates for Governor at any general election shall be the electors
2 of the Authority.

3
4 Section 10. Phase I Project

5 All Agencies have, by previous agreement, agreed to the preparation of the
6 Project Report for the Phase I Project. Only by approval by the Commission of the
7 Project Report may the Authority proceed with the preparation of plans and
8 specifications for said Project. Only by the approval by the Commission of said plans
9 and specifications may the Authority call for construction bids for any portion of said
10 Project. Upon approval by the Commission of the plans and specifications for the
11 Phase I Project, each Agency agrees to take the necessary steps to obtain funds to
12 bear its share of the cost of the Phase I Project. Upon certification from each Agency of
13 the availability of its share of the projected cash flow requirements of the Phase I
14 Project or the Authority's approval of an Agency's request to issue revenue bonds for
15 the Agency's share of the projected cash flow requirements, the Authority may award
16 construction contracts and proceed with the construction of the Phase I Project.

17 Funds required by the Authority for the Phase I Project will be payable by the
18 Agencies on demand and shall be paid by each Agency within thirty (30) days of billing.
19 The Authority's billing shall certify that the funds received pursuant to the billing will be
20 needed for disbursements within a period of not exceeding six (6) months from date of
21 billing. All or any portions of the Phase I Project may be acquired or constructed by the
22 Authority, save and except reclamation/ reuse projects which shall be subject to further
23 agreement by the Agencies. The Authority shall have the power to design, construct,
24 maintain and operate Skywest Irrigation Project and to acquire and maintain rights of
25 way therefore.
26

27
28 Section 11. Ownership of Joint Facilities

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

1 Section 12. Capacity Rights

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

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

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

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

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

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

21
22 Section 13. Distribution of Project Costs for the Phase I Project

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

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

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

17
18 Section 14. Distribution of Operation and Maintenance Costs

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

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

27
28
29 Section 15. Payment of Operation and Maintenance Costs and Operating
30 Reserve

31 Not later than March 1st of each year, the Authority shall notify each Agency of
32 its allocated share of the estimated Operation and Maintenance Costs for the

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

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

20
21 Section 16. Distribution of Administrative Costs During Construction

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

24 Each Agency shall advance its share of Administrative Costs During Construction
25 in accordance with Section 10 of this Agreement and the monies so paid to the
26 Authority shall be paid out by it in payment of actual costs incurred. Such Funds
27 advanced by the Agencies, contributions or reimbursements from other agencies or
28 entities, and grant funds received from State and Federal Governments shall be
29 deposited in the General Fund and applied to Administrative Costs During Construction.
30 Funds remaining after completion of the acquisition and construction of all of the Phase
31 I Project shall be returned to each Agency in proportion to its contributions.
32

1
2 Section 17. Distribution of Planning and Special Studies Cost

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

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

15
16 Section 18. Records and Accounts

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

28
29 Section 19. Income from Operations

30 Income arising out of the operation of Joint-Use Facilities including the sale of
31 reclaimed water, shall be retained as part of the Fund Balance in the fund in which it is
32 earned. Any interest earned on the fund balance shall also be retained in the fund. The

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

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

8
9 Section 20. Failure to Meet Discharge Requirements

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

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

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 21. 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. This Agreement is subject to modification in the event all
19 Agencies desire to do so.

20
21 Section 22. Contributions, Payments and Advances, Use of Personnel,
22 Equipment or Property; Exchange of Services

23 It is hereby agreed that:

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

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

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

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

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 23. 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 24. 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 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.
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32

1 Section 25. Amendments

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

4
5 Section 26. 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 27. 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 Section 28. Successors: Assignment

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

27 No Agency may assign any right or obligation hereunder without the consent of
28 each of the others.
29

30 Section 29. 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 30. 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 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
8 duly executed and attested by their respective officers, duly authorized to so act, on the
9 dates set forth.

10 **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

(SEAL)
Attest:

Date: _____

Secretary

CITY OF HAYWARD
A Municipal Corporation

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

(SEAL)
Attest:

Date: _____

City Clerk

CITY OF SAN LEANDRO
A Municipal Corporation

By: _____
Mayor
835 East 14th Street
San Leandro, Ca 94577

(SEAL)
Attest:

Date: _____

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%

- 15
16
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 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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City of San Leandro

Meeting Date: November 18, 2019

Resolution - Council

File Number: 19-579 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Authorize the City Manager to Execute Amendment Four to the East Bay Dischargers Authority Joint Exercise of Powers Agreement to Extend the Term of the Agreement to June 30, 2020

WHEREAS, Amendment Four of the agreement between the City and the other members of the East Bay Dischargers Authority Joint Powers Authority, a copy of which is attached hereto and incorporated herein by reference, was presented to the City Council; and

WHEREAS, the Commission of the East Bay Dischargers Authority has approved of said agreement; and

WHEREAS, the City Council is familiar with the contents thereof and desires to continue to be a party to said agreement; and

WHEREAS, Craig Labadie, outside counsel to the City in matters related to this agreement, has reviewed this Resolution and the agreement and recommends the City Council approve this resolution; 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:

1. That the City Council authorizes the City Manager to execute the agreement; and
2. That an original executed agreement shall be attached to and made part of this resolution.

EAST BAY DISCHARGERS AUTHORITY
FOURTH AMENDMENT TO
THE JOINT EXERCISE OF POWERS AGREEMENT

This FOURTH AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT ("Amendment") is entered into effective as of January 1, 2020 ("Effective Date") by the CITY OF HAYWARD, a municipal corporation; CITY OF SAN LEANDRO, a municipal corporation; ORO LOMA SANITARY DISTRICT, a public corporation; CASTRO VALLEY SANITARY DISTRICT, a public corporation; and UNION SANITARY DISTRICT, a public corporation ("Agencies"); each duly existing and organized in the County of Alameda under the Constitution and laws of the State of California.

WHEREAS, the Agencies first entered into a Joint Exercise of Powers Agreement on February 15, 1974; amended such Agreement on January 3, 1978; supplemented such Agreement on October 5, 1981, February 15, 1983, and twice on April 26, 1983; and further amended the Joint Exercise of Powers Agreement on February 11, 1986, and February 15, 2007; and

WHEREAS, the Agencies have negotiated an Amended and Restated Joint Exercise of Powers Agreement which, if executed, will take effect on July 1, 2020; and

WHEREAS, to allow for uninterrupted service, the Agencies desire to extend the term of the February 15, 2007 Amended Joint Exercise of Powers Agreement through June 30, 2020.

NOW, THEREFORE, the Third Amended Joint Exercise of Power Agreement, dated February 15, 2007, is amended as follows:

1. **Section 3 "Term"** is deleted in its entirety and replaced with the following:

"This Fourth Amended Agreement shall become effective upon execution by all Agencies and, provided all Agencies have approved this amendment on or before January 1, 2020, the effective date will be January 1, 2020. It will continue in force and effect until June 30, 2020, unless sooner terminated by mutual agreement."

2. Except as expressly modified by this Fourth Amendment, all terms and conditions in the Third Amended Joint Exercise of Powers Agreement dated February 15, 2007 shall remain in full force and effect.

3. Execution of this Fourth Amendment may be accomplished by execution of separate counterparts by each signatory. The separate executed counterparts, taken together, shall constitute a single agreement.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the Effective Date.

UNION SANITARY DISTRICT
A Public Corporation

By: _____

Date: _____

(SEAL)
Attest:

Secretary

CITY OF HAYWARD
A Municipal Corporation

By: _____

Date: _____

(SEAL)
Attest:

City Clerk

CITY OF SAN LEANDRO
A Municipal Corporation

By: _____

Date: _____

(SEAL)
Attest:

City Clerk

ORO LOMA SANITARY DISTRICT
A Public Corporation

By: _____

(SEAL)
Attest:

Date: _____

Secretary

CASTRO VALLEY SANITARY DISTRICT
A Public Corporation

By: _____

(SEAL)
Attest:

Date: _____

Secretary



City of San Leandro

Meeting Date: November 18, 2019

Resolution - Council

File Number: 19-580 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Authorize the City Manager to Execute Amendment Five to the East Bay Dischargers Authority Joint Exercise of Powers Agreement to Restate the Agreement and Extend the Term to June 30, 2040

WHEREAS, Amendment Five of an agreement between the City and the other members of the East Bay Dischargers Authority Joint Powers Authority, a copy of which is attached hereto and incorporated herein by reference, was presented to the City Council; and

WHEREAS, the Commission of the East Bay Dischargers Authority has approved of said agreement; and

WHEREAS, the City Council is familiar with the contents thereof and desires to continue to be a party to said agreement; and

WHEREAS, Craig Labadie, outside counsel to the City in matters related to this agreement, has reviewed this Resolution and the agreement and recommends City Council approve this resolution; 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:

1. That the City Council authorizes the City Manager to execute the agreement; and
2. That an original executed agreement shall be attached to and made part of this resolution.

EAST BAY DISCHARGERS AUTHORITY
AMENDED AND RESTATED

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
Third Amended JPA	February 15, 2007
Fourth Amended JPA	_____

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

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EAST BAY DISCHARGERS AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT, dated for convenience as of July 1, 2020, is made and entered into by and between the CITY OF HAYWARD, a municipal corporation, hereinafter referred to as "Hayward"; CITY OF SAN LEANDRO, a municipal corporation, hereinafter referred to as "San Leandro"; ORO LOMA SANITARY DISTRICT, a public corporation, hereinafter referred to as "Oro Loma"; CASTRO VALLEY SANITARY DISTRICT, a public corporation, hereinafter referred to as "Castro Valley"; and UNION SANITARY DISTRICT, a public corporation, hereinafter referred to as "Union"; each duly organized and existing in the County of Alameda under the constitution and laws of the State of California, and amends and restates that Fourth Amended Joint Exercise of Powers Agreement dated _____, duly entered into by said Agencies, as follows:

WITNESSETH:

WHEREAS, each of the Agencies hereto has power to plan for, acquire, construct, maintain, manage, operate, and control facilities for the collection, transmission, treatment, reclamation, sale and disposal of wastewater; and the Agencies propose by this Agreement to exercise said powers jointly for the purpose of providing for the more efficient disposal of the wastewater produced in each Agency, all to the economic and financial advantage of each Agency and otherwise for the benefit of each Agency; and each of the Agencies is willing to plan with the other Agencies for joint wastewater facilities which will protect all of the Agencies;

WHEREAS, the Agencies first entered into a Joint Exercise of Powers Agreement on February 15, 1974; amended such Agreement on January 3, 1978; supplemented such Agreement on October 5, 1981, February 15, 1983, and twice on April 26, 1983; and amended such Joint Exercise of Powers Agreement on February 11, 1986, February 15, 2007 and [], 2019;

WHEREAS, the Agencies desire that this Amended and Restated Joint Exercise of Powers Agreement supersede and supplant all previous iterations of this Agreement as set forth above;

WHEREAS, Union and the East Bay Dischargers Authority (“Authority”) entered into a Memorandum of Understanding, dated December 13, 2010 addressing the Hayward Marsh and related capacity issues (“Hayward Marsh MOU”), specific provisions of which are relevant to this Agreement and substantively addressed herein; and

WHEREAS, although the Livermore-Amador Valley Water Management Agency (“LAVWMA”) is not a party to this Agreement, on the date this Amended and Restated Joint Exercise of Powers Agreement was approved by its member Agencies, there was a separate agreement between the Authority and LAVWMA, in particular the Master Agreement, dated April 26, 2007, as that agreement may have been amended or extended, which established certain standards as to the scope and conditions under which LAVWMA may export wastewater to and through Authority Facilities, including but not limited to the rights of the Authority to interrupt the discharge of wastewater from LAVWMA through the Authority Facilities, subject to certain rights of individual Agencies under the Master Agreement. By entering into this Amended and Restated Joint Exercise of Powers Agreement, no Agency with individual rights under the Master Agreement intends to waive, and each such Agency intends to preserve fully, its rights under the Master Agreement and under any separate agreement with LAVWMA; and

WHEREAS, on the date this Amended and Restated Joint Exercise of Powers Agreement was approved by its member Agencies, there were separate agreements between Castro Valley and LAVWMA (and others), in particular, and without limitation: Agreement Between the County of Alameda and the Castro Valley, dated July 25, 1999; Agreement [Right of Entry] Between Castro Valley and LAVWMA, dated June 21, 2000; Agreement [Improvements with Castro Valley Sanitary District] Between Castro Valley and LAVWMA, dated June 21, 2000; Settlement Agreement Between Castro Valley and LAVWMA, dated June 21, 2000; and Encroachment Agreement for Castro Valley Reach of LAVWMA’s Export Pipeline Facilities Project, dated July 25, 2000; as well as other separate agreements between Castro Valley and LAVWMA (collectively, “the Castro Valley-LAVWMA Agreements”) and between Castro Valley and others not party to the Amended and Restated Joint Powers Agreement (“the Third Party Agreements”). By entering into this Amended and Restated Joint Exercise of Powers Agreement, Castro Valley does not intend to waive, and expressly preserves fully, its rights under the Castro Valley-LAVWMA Agreements and/or the Third Party Agreements.

NOW THEREFORE, Hayward, San Leandro, Oro Loma, Castro Valley, and Union, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Definitions

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

Agency and Agencies

The term "Agency" means either Hayward, San Leandro, Oro Loma, Castro Valley, or Union. The term "Agencies" will mean two or more of these entities.

Agreement

The term "Agreement" means this Amended and Restated Joint Exercise of Powers Agreement.

Auditor

The term "Auditor" means that individual designated by the Commission to assure proper expenditure and accountability of funds and who is responsible for auditing and reporting of the accounts and records of the Authority.

Authority

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

Capital Cost

The term "Capital Cost" means the cost of projects, involving construction, reconstruction, erection, alteration, renovation, painting, waterproofing, improvement, demolition or major repair work on the Facilities.

Commission

The term "Commission" means the East Bay Dischargers Authority Commission, being the governing body of the Authority.

Facilities

The term "Facilities" or "Authority Facilities" means those facilities owned and operated by the Authority, as more specifically identified in Schedule A, attached hereto and incorporated by this reference.

Failure

The term "Failure" means a state in which the Transport System is no longer able to convey flows reliably without spilling.

Fiscal Year

The term "Fiscal Year" means the period commencing on July 1 to and including the following June 30.

General Manager

The term "General Manager" means the person designated by the Commission to administer the construction and operation of the Authority or his or her duly authorized representative.

Income from Operations

The term "Income from Operations" means all income from Authority operations, including, without limitation, income from the sale of recycled water or other substances arising out of the operation of the Facilities, interest income, income from lease of capacity rights, income from connection fees, income from sale of services and income from sale of assets.

Maximum Flow Rate Capacity

The term "Maximum Flow Rate Capacity" means each Agency's capacity and right to discharge to the Authority Facilities based on a 3-hour average, as set forth in Schedule F.

Operation and Maintenance Costs

The term "Operation and Maintenance Costs" means all costs directly associated with the operation, maintenance and routine repair of the Facilities, including labor, materials, supplies, power, chemicals, utilities, professional or contractual services, research and monitoring, tools and equipment, other necessary expenses to keep the Facilities in proper operating condition and maintain their useful life, and general administrative expenses attributable to such activities.

“Operation and Maintenance Costs” does not include “Capital Costs” or “Planning and Special Studies Costs.”

Planning and Special Studies Costs

The term "Planning and Special Studies Costs" means those costs associated with advanced planning, facilities planning, feasibility studies, research and development, environmental evaluations and studies as related to the overall Facilities or of general interest or benefit to all Agencies. Such costs will include, but not be limited to, reclamation/reuse studies and that portion of Bay water monitoring and research not directly related to pre-discharge or post-discharge monitoring of the Bay Outfall; and allocated general administrative expenses attributable to such activities. The term “Planning and Special Studies Costs” does not include costs associated with fines, studies or other requirements imposed by regulatory agencies, or other liabilities arising out of the Transport System.

Policies and Procedures

The term "Policies and Procedures" means all those certain rules and regulations adopted by the Commission from time to time for carrying out all the business of the Authority. Nothing in Policies and Procedures may contradict the terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Policies and Procedures, this Agreement will control.

Transport System

The term "Transport System" means the pipelines and related structures, excluding any pump stations, used to transport effluent from the Union Effluent Pump Station to the Marina Dechlorination Facility, as shown in Schedule G.

Treasurer

The term "Treasurer" means that individual designated by the Commission to have custody of, and control disbursements of, all funds of the Authority.

Section 2. Authority and Purpose

This Agreement is made under the authority of and pursuant to the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the California Government Code (commencing with Section 6500 et seq.) (the “Act”), relative to the joint exercise of powers common to all Agencies

and as otherwise granted by the Act. The purpose of the Agreement is to provide for the more efficient disposal (discharge to San Francisco Bay as well as reclamation or reuse of wastewater) of the wastewater produced in each Agency's jurisdiction, all to the economic and financial advantage of each Agency and otherwise for the benefit of each Agency.

Section 3. Term

This Amended and Restated Agreement will become effective on July 1, 2020 and will continue in full force and effect until June 30, 2040, unless sooner terminated by mutual agreement as set forth in Section 20.

Section 4. Creation of Authority

The Authority will exercise the powers as hereinafter set forth. The Authority is a public entity separate from the Agencies. No debt, liability, or obligation of the Authority will constitute a debt, liability, or obligation of any Agency, except as expressly provided for herein.

Section 5. Powers

(a) General Powers

The Authority will exercise, in the manner herein provided, the powers which are common to each Agency, or as otherwise permitted under the Act, and all incidental, implied, expressed, or necessary powers to accomplish the purposes of this Agreement. The Authority will have power to plan for, acquire, construct, manage, maintain, operate, and control facilities for the collection, transmission, treatment, reclamation, sale and disposal of wastewater and to enter into contracts to provide services to other governmental or non-governmental entities within or outside its boundaries.

(b) Specific Powers

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

- (a) to make and enter into contracts;
- (b) to employ agents and employees;

- (c) to apply for and accept grants, advances and contributions;
- (d) to make plans and conduct studies;
- (e) to acquire, construct, manage, maintain, or operate, any building, works, or improvements;
- (f) to acquire, hold or dispose of property;
- (g) to sue and be sued in its own name;
- (h) to incur debts, liabilities, or obligations, subject to limitations herein set forth;
- (i) to issue indebtedness;
- (j) to establish rates, tolls, fees, rentals, or other charges in connection with the Facilities and services provided by the Authority;
- (k) to develop and adopt Policies and Procedures for the conduct of business of the Authority;
- (l) to plan for, acquire land or rights of way for, construct, operate, or maintain facilities owned by an Agency when necessary to meet joint discharge requirements, subject to the provisions of Section 16 hereof; and
- (m) to enter into joint exercise of powers agreements pursuant to the Act.

For the purposes of California Government Code Section 6509, the powers of the Authority will be exercised subject to the restrictions upon the manner of exercising such powers as are imposed on the City of Hayward, a charter city.

Section 6. Boundaries

The boundary of the Authority will be the consolidated boundaries of all Agencies, as may be amended from time to time.

Section 7. Organization

(a) East Bay Dischargers Authority Commission

The Authority will be governed by a five-member Commission, which will exercise all powers and authority on behalf of the Authority.

(b) Members

The Commission will consist of five members, one from each Agency (“member” or “commissioner”). Each Agency will appoint one person to act as its representative as a member of the Commission and one person as an alternate member to serve in the absence of the Agency's member. Each member and alternate will hold office from the first meeting of the Commission after their appointment by the Agency which they represent until their successor is selected. Each member and alternate will serve at the pleasure of the Agency which they represent and may be removed at any time, with or without cause, in the sole discretion of the Agency's governing body.

Each member and alternate must be a member of the governing body of the Agency which they represent. Each Agency will be empowered to vote through its designated member or alternate, but only the member or the alternate may vote on a given action.

(c) Voting

Approval by: (a) three or more commissioners; and (b) greater than fifty percent of the weighted votes based on Maximum Flow Rate Capacity is required to adopt any action, except as set forth in subsections (2) and (3) below.

(1) Commissioner and Weighted Voting Calculations

Every action will be subject to two vote calculations. The first is a calculation of the commissioners' votes, and each commissioner is allocated one vote. The second is a calculation of weighted votes based on the Maximum Flow Rate Capacity, and the commissioners will be allocated votes as set forth in Schedule E.

In the event that one or more Agencies' Maximum Flow Rate Capacity is increased pursuant to Section 11(d), the General Manager will recalculate the percentages set forth in Schedule E and such revisions will be automatically incorporated in this Agreement.

(2) Actions Requiring Unanimous Approval

Notwithstanding the foregoing, the following actions require unanimous approval of the entire membership of the Commission:

1. Amendment of this Agreement;
2. Termination during the Term;
3. Approval of modifications to, or extension of, the Master Agreement between the Livermore-Amador Valley Water Management Agency ("LAVWMA") and the Authority, dated April 26, 2007;
4. Approval of any agreement that would result in the utilization of the Facilities to dispose of brine pursuant to Section 23(b)(1);
5. Changes to the ownership of Authority Facilities; and
6. Approval of the Authority Policies and Procedures regarding purchasing and brine.

(3) Other Actions

For the purpose of Commission actions related to effluent violations addressed in Section 16(b), the unanimous vote requirement will not include the violating Agency(ies) and the commissioner from the violating Agency(ies) will not be permitted a vote.

(d) Principal Office

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

(e) Officers

The Authority will have the following officers: Chair, Vice-Chair, General Manager, Treasurer, and Auditor (the positions of Treasurer and Auditor may be held by a single individual). The members of the Commission will select from the Commission a Chair and Vice-Chair who will hold office for a period of one year, commencing July 1 of each and every Fiscal Year; provided, however, that in the event that an Agency removes from the Commission a member serving as an officer or an officer resigns his or her position, the Commission will select

a member of the Commission to fill that vacant office for the remainder of that Fiscal Year. The positions of General Manager, Treasurer, and Auditor may be filled by any qualified person, except with regard to the Treasurer and Auditor as provided in Section 6(g)(1).

(f) General Manager

The Commission will employ or contract for the services of a General Manager. The General Manager may be a staff member of one of the Agencies.

(1) Duties

The Commission will prescribe the duties, compensation, and terms and conditions of employment of the General Manager. At a minimum, the General Manager will coordinate the business and operations of the Authority, attend Commission meetings, prepare, distribute and maintain minutes of Commission meetings and official actions of the Authority, and carry out other duties as may be assigned by the Commission. The General Manager will make monthly reports to the Commission and the Treasurer, if the General Manager is not also serving as the Treasurer, of all expenditures for the preceding month. The General Manager serves at the pleasure of the Commission.

(2) Delegated Authority

The General Manager will have the full power and authority to employ and discharge employees of the Authority; prescribe the duties of employees; and fix and alter the compensation of employees, within the Commission adopted budget and Compensation Plan. Once the Commission adopts a budget, the General Manager also has delegated authority to take actions consistent with the approved budget and Policies and Procedures, pursuant to Section 8(e).

(g) Treasurer and Auditor

(1) Appointment

The Commission may at any time appoint one or more qualified persons to either or both of the positions of Treasurer or Auditor as provided in the Act, Section 6505.6. In the event such appointment is not made, the treasurer and auditor of Alameda County, respectively, are designated the Treasurer and Auditor of the Authority with the powers, duties, and responsibilities specified in the Act, including, without limitation, Sections 6505 and 6505.5 thereof. Current

Agency staff members or elected officials are not eligible to serve as Treasurer or Auditor of the Authority.

(2) Accountability

There will be strict accountability of all Authority funds and report of all receipts and disbursements and compliance with the Act.

(h) Bonding Persons having Access to Property

As provided in Section 6505.1 of the Act, the Treasurer and General Manager are hereby designated as the persons who have charge of, handle, and have access to the property of the Authority. The Commission may require such persons to file an official bond in an amount to be fixed by the Commission. If required, cost of said bond will be paid by the Authority.

(i) Officers, Employees and Agents; Compatible Offices; Compensation

Except as provided herein, any officer, employee, or agent of the Authority may also be an officer, employee, or agent of any Agency, provided that the Commission or General Manager determines that the two positions are compatible.

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

None of the officers, agents, or employees directly employed by the Authority will be deemed, by reason of their employment by the Authority, to be employed by any Agency or to be subject to any of the requirements of any Agency. Charges for the services of the General Manager and other administrative or operating personnel supplied by any Agency will be jointly agreed upon with the Agency or Agencies furnishing the services.

(j) Rules of the Commission

The Commission will adopt, and from time to time amend, the Rules of the Commission as necessary or convenient in the determination of the Commission to achieve or facilitate the purposes hereof.

Section 8. Meetings; Budget and Contributions

(a) Regular Meetings

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

(b) Special Meetings

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

(c) Notice And Conduct of Meetings

All meetings of the Commission will be held subject to the provisions of the Ralph M. Brown Act, Section 54950 et seq. of the California Government Code, and other applicable laws of the State of California.

(d) Quorum

A majority of the members (or, in the absence of a member, that member's alternate) of the Commission will constitute a quorum.

(e) Budget; Contributions; Delegation of Authority

(1) Budget

The Commission will adopt an annual or biennial budget for the ensuing Fiscal Year(s) prior to July 1. The budget will include sufficient detail to constitute a fiscal control guideline, specify cash flow requirements from each Agency, grant reimbursements, and cash receipts and expenditures to be made for Operation and Maintenance Costs, Planning and Special Studies Costs, and Capital Costs for the Facilities, and other necessary and appropriate expenditures.

(2) Contributions; Delegation of Authority

Approval of the budget by the Commission will constitute authority for the General Manager to bill the Agencies for their contributions, expend funds after appropriate award of contract and for the purposes outlined in the approved budget, and receive grant funds.

Additionally, the Authority may bill the Agencies for any Capital Costs approved by the Commission.

Section 9. Elections

For the purpose of holding any election within the Authority's boundaries, the Commission may call and hold an election to submit propositions to the electors of the Authority in the same manner as the board of supervisors of a county may call and hold county elections, and the electors of the Authority will have the right to petition for referendum on any ordinance enacted by the Commission in the same manner as the electors of a county, except that all computations referred to in those sections and the officers of the county mentioned in those sections will be construed to refer to comparable computations and officers of the Authority. For the purposes of any such election or referendum petition, the electors residing within the boundaries of the Authority who would be qualified to vote for candidates for Governor at any general election will be the electors of the Authority.

Section 10. Ownership of Authority Facilities; Responsibility for Failure of the Transport System

(a) Ownership of Authority Facilities.

The Authority will own and hold title to the Authority Facilities, as specifically outlined in Schedule A. Each Agency will own an undivided portion of the Authority Facilities proportional to each Agency's Maximum Flow Rate Capacity as set forth in the Fixed Operation and Maintenance Costs allocation in Schedule B. Except as set forth below, the Authority will be responsible for all costs and expenses related to the operation, maintenance, and repair of Authority Facilities.

(b) Transfer of Ownership of the Pump Stations.

At the end of the Term, or upon earlier termination pursuant to Section 20, the Oro Loma Effluent Pump Station will become the joint property of all Agencies, except San Leandro, in proportion to each Agency's Maximum Flow Rate Capacity at the time of termination; the Hayward Effluent Pump Station will become the sole property of Hayward; and the Union Effluent Pump Station will become the sole property of Union, unless transferred sooner as set

forth in this subsection 10(b). Upon termination or expiration of the Agreement, the Authority Facilities (excluding the pump stations) will be disposed of as set forth in Section 20.

In the event Union relocates the Union Effluent Pump Station from its location as of the effective date of this Agreement, ownership of the pump station will transfer to Union at that time. Union and the Authority agree to execute any and all documents necessary to effectuate such transfer. At such time, the General Manager will update Schedule A and the revised Schedule A will be automatically incorporated in this Agreement. Operation and Maintenance costs of the Union Effluent Pump Station will continue to be allocated as outlined in Schedule B for the duration of the Term, irrespective of ownership.

(c) Responsibility for Failure of the Transport System.

(1) State or Federal Reimbursement.

In the event of Failure of the Transport System, the Authority will be the applicant for the purposes of any state or federal reimbursement, if applicable.

(2) Determination of Failure.

The General Manager is responsible for determining whether a Failure has occurred, in accordance with applicable Policies and Procedures. In the event of such determination, the Authority will provide written notice of the Failure to the Agency(ies) using the relevant segment of the Transport System affected by the Failure within 24 hours of the determination. The General Manager's determination may be appealed to the Commission in accordance with applicable Policies and Procedures.

(3) Temporary and Emergency Repair.

In the event of Failure, the Authority will be responsible for performing any required temporary and emergency repair reasonably necessary to prevent further harm to the Transport System, to other Authority Facilities, or to third parties or the environment, and to promptly restore the function of that portion of the Transport System that failed.

(4) Permanent Repair.

In the event of Failure of the Transport System, the Agencies currently using the relevant segment of the Transport System affected by the Failure may determine whether or not to: (a) undertake a permanent (20-years or more) repair to the Transport System in order to

restore or maintain the functionality of the Transport System, or (b) permanently abandon the relevant segment and, if needed, which Agency should manage the project. Such decision must be unanimous among the Agencies using the relevant segment of the Transport System, and must be evidenced by written notification from such Agencies' general managers or city managers. If the Authority does not receive such correspondence within 90 days of the notice from the Authority regarding the initial Failure, the Authority will repair the Transport System. At the request of one or more of the Agencies using the relevant segment of the Transport System, the Authority may extend the 90 day period. If the Agency(ies) currently using the relevant segment of the Transport System determines not to undertake a permanent repair, the failed segment of the Transport System must be permanently isolated, and the abandonment of the segment may not render other parts of the Transport System inoperable.

Any decision not to repair a segment of the Transport System will not impact an Agency's Maximum Flow Rate Capacity rights and obligations, as set forth in Section 11.

(5) Allocation of Costs of Repairing Failure of the Transport System or Abandoning a Segment of the Transport System.

The costs associated with all Failure(s) of the Transport System, including costs related to any repairs, whether such repairs are performed by the Agencies or the Authority and whether such repairs are temporary emergency repairs or permanent repairs, or abandonment of one or more segments of the Transport System, as well as costs associated with environmental liability or third party claims arising from such Failure(s), will be allocated as set forth herein. The first One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) in aggregate costs for all Failures will be allocated based on the table set forth in Schedule H. All costs over One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) will be allocated based on the table set forth in Schedule G.

Depending on the extent of the Failure, it is likely that the Authority will not have sufficient funds in its reserve to pay for the repairs or abandonment and will require funds from the financially responsible Agencies, based on the allocations set forth above, in advance of performing any repair or abandonment. The Authority need not exhaust its reserve before requiring advance payment as described in this subsection.

(6) Failures Arising from the Acts Authority Employees or Third-Party Contractors.

The Authority may engage its own staff, or the staff of an Agency or a third-party contractor, to perform construction and maintenance projects on the Transport System. If in the implementation or performance of such project there is a Failure caused by the negligent, reckless, or willfully wrongful acts of those Authority-engaged personnel, any costs to address the Failure, including costs associated with environmental and third party claims, will be reimbursed by such party's insurance or as agreed to in the required indemnification provisions described in this subsection 10(c)(6). The Authority will maintain insurance to cover its potential liabilities under this subsection as may be approved by the Commission and will require any Agency or third-party contractor performing work on the Authority's behalf to indemnify the Authority, in a form to be approved by the Commission, against all losses that may arise out of the performance of the work. The Authority will require that any Agency or third-party contractor performing such work on behalf of the Authority maintain insurance in such types and amounts as the Authority may from time to time establish and naming the Authority and the Agencies as additional insureds. The Authority will adopt Policies and Procedures to implement these requirements. Any costs not covered by such insurance or indemnity provisions will be borne by the Authority and will be allocated according to Schedule H.

Section 11. Capacity Rights

(a) Capacity Rights; Volume

Each Agency has acquired, subject to the terms and conditions of the Agreement, the capacity and right to discharge to the Authority Facilities at that Agency's Maximum Flow Rate Capacity. All effluent which is discharged to the Hayward Marsh by Union pursuant to the Hayward Marsh MOU, will not be counted toward Union's Maximum Flow Rate Capacity.

With the exception of Union Effluent Pump Station, all pump stations will be designed and maintained to manage the capacities set forth in Schedule F with any single pump out of service. Per the Hayward Marsh MOU, the Union Effluent Pump Station may be designed and maintained to manage Union's capacity set forth in Schedule F, plus the flow that Union is approved to discharge to the Hayward Marsh, with any single pump out of service.

(b) Temporary Capacity Exceedance

Should any Agency exceed its Maximum Flow Rate Capacity it will make best efforts to reduce its flows to within its allocated capacity. Capacity exceedance fees will be calculated as follows:

(1) First Exceedance:

No charge for an Agency that exceeds its Maximum Flow Rate Capacity, based on a 3-hour average, the first time in a Fiscal Year. An Agency's first exceedance will not exceed twenty-four hours, and after such 24 hour period, any continuing exceedance will be considered a second exceedance.

(2) Subsequent Exceedances:

Any Agency that exceeds its Maximum Flow Rate Capacity, based on a 3-hour average, for the second and each subsequent exceedance in a Fiscal Year, will be charged \$0.005/gallon of exceeded flow. The Authority will calculate an exceedance based on the formula set forth in Schedule D.

Notwithstanding the foregoing, any discharge by Union to the Hayward Marsh pursuant to the Hayward Marsh MOU, will be subtracted from Union's total flow for the purposes of determining whether Union has exceeded its Maximum Flow Rate Capacity. All capacity exceedance fees will be applied to, and reduce the total of, the fixed operating costs due from the non-exceeding Agencies' fixed operating costs for that or the following Fiscal Year.

Any costs related to an unpermitted discharge or other violation due to the exceedance of one or more Agencies will be allocated as set forth in Section 16(a).

(c) Temporary Capacity Exceedance at the Request of the Authority.

Notwithstanding the foregoing, the Authority may request that one or more Agencies temporarily exceed their Maximum Flow Rate Capacity in order to preserve the Agency(ies)' capacity in storage, in accordance with approved Policies and Procedures. Agencies complying with an Authority request to exceed their Maximum Flow Rate Capacity will not be charged capacity exceedance fees, nor will any such exceedance count as an Agency's first exceedance under Section 11(b) above. In no event will any Agency be required to comply with any Authority request to temporarily exceed its Maximum Flow Rate Capacity. Authority requests to

temporarily exceed an Agency's Maximum Flow Rate Capacity will not be a basis for permanently increasing an Agency's Maximum Flow Rate Capacity without following the process set forth in Section 11(d). Any Authority request to exceed an Agency's Maximum Flow Rate Capacity will not be to the detriment of, or harm, any Agency.

(d) Increase of Maximum Flow Rate Capacity and Notice Procedures

(1) Notice of Intent to Increase Maximum Flow Rate Capacity.

If an Agency desires to increase its Maximum Flow Rate Capacity, it must notify the Authority on or before January 1 in order for the increase to take effect on July 1 of the following Fiscal Year. An Agency may not increase its Maximum Flow Rate Capacity more than once in a Fiscal Year. In the event no Agency provides such notice in any given year, there will be no change in any Maximum Flow Rate Capacity.

(2) Opportunity for Agencies to Respond to a Notice of Intent to Increase Maximum Flow Rate Capacity.

Upon notification by the Authority that an Agency desires to increase its Maximum Flow Rate Capacity as set forth in subsection 11(d)(1), all other Agencies will have ninety (90) days to notify the Authority of an Agency's desire to increase its Maximum Flow Rate Capacity at the same time. Once the ninety (90) day period is complete, the Authority will notify all Agencies of the revised Maximum Flow Rate Capacity of each Agency.

(3) Allocation of Costs Associated with Modifications to Accommodate an Increase.

Any Agency seeking to increase its Maximum Flow Rate Capacity will bear the full cost and expense of any engineering and modifications to Facilities that may be required to accommodate such additional flows. If more than one Agency seeks to increase its Maximum Flow Rate Capacity, the Agencies increasing their Maximum Flow Rate Capacities will each bear (A) the full cost and expense of any engineering and modifications to Facilities that may be required to accommodate only that Agency's additional flows; and (B) the proportionate cost and expense of any engineering and modifications to Facilities that are required to accommodate more than one Agency's additional flows, based on the proportionate increase in Maximum Flow Rate Capacities. The General Manager, in consultation with the general managers and city

managers, or designee, from each of the Agencies, will make the preliminary determination of the need for any modifications. In the event an Agency(ies) disagrees with the General Manager's determination, the Authority will engage a professional engineer to evaluate the need for engineering and modifications. If the Agency(ies) seeking Maximum Flow Rate Capacity increase disagrees with the General Manager's determination, the cost of engaging a professional engineer will be borne solely by that Agency(ies). If a non-increasing Agency(ies) disagrees with the General Manager's determination, the cost of engaging a professional engineer will be divided equally between the Agency(ies) seeking the increase and the non-increasing Agency(ies) that disagrees with the General Manager's determination. Further disputes related to the need for modifications will be resolved pursuant to the dispute resolution procedures set forth in Section 19.

(e) No Reductions in Maximum Flow Rate Capacity During the Term.

No Agency may reduce its Maximum Flow Rate Capacity during the Term. Once an Agency has taken action set forth in subsection 11(d) to increase its Maximum Flow Rate Capacity, it may not thereafter reduce its revised Maximum Flow Rate Capacity during the Term.

Section 12. Allocation of Operation and Maintenance Costs, Capital Costs, and Planning and Special Studies Costs.

(a) Allocation of Operation and Maintenance Costs.

Operation and Maintenance Costs will be allocated to each Agency as set forth in Schedule B.

Meters will be used to measure the discharge of effluent from the treatment facilities of Union, Hayward, the combined facilities of Oro Loma and Castro Valley, and San Leandro for the purposes of determining flow under Schedule B and for other purposes, including but not limited to, regulatory reporting.

(b) Allocation of Capital Costs.

(1) Capital Costs related to the pump stations which exceed a total cost of \$10,000 per project, plus allocated general administrative expenses attributable to such Capital

Cost activities, will be allocated based on Maximum Flow Rate Capacity as set forth in Schedule H, which excludes San Leandro.

(2) Capital Costs related to the Transport System which exceed a total cost of \$35,000 per project, plus allocated general administrative expenses attributable to those Capital Cost activities, will be allocated: (i) based on Maximum Flow Rate Capacity as set forth in Schedule H, which excludes San Leandro, until a total of three hundred and twenty-five thousand dollars (\$325,000) has been expended for projects not approved as of July 1, 2020, and thereafter (ii) based on each Agency's use of the segment of pipeline as set forth in Schedule G; provided, however, that any unexpended portion of the \$325,000 limit will be adjusted annually to reflect any increase in the cost of construction of similar projects as established by the Engineering News-Record 20-City Building Cost Index using July 1, 2020 as the baseline. Notwithstanding the above, costs associated with Failures will be allocated as set forth in Section 10.

(3) Capital Costs related to the Bay Outfall, the Operations Center, and the Marina Dechlorination Facility which exceed a total cost of \$10,000 per project, plus allocated general administrative expenses attributable to such Capital Cost activities will be allocated based on Maximum Flow Rate Capacity for all Agencies, as set forth in the Fixed Operation and Maintenance Costs allocation in Schedule B.

(c) Allocation of Planning and Special Studies Costs.

Planning and Special Studies Costs will be allocated to each Agency as set forth in Schedule C.

(d) Capital Costs Allocated as Operation and Maintenance Costs.

Except as otherwise provided herein, Capital Costs for Facilities other than Union Effluent Pump Station that total less than \$10,000 per project (for non-Transport System projects) or less than \$35,000 (for Transport System projects) will be allocated in the same fashion as Operation and Maintenance Costs under Section 12(a) of this Agreement. The Authority may not divide work into small projects for the purpose of allocating project costs as Operation and Maintenance Costs, rather than as Capital Costs.

(e) Management of Capital Costs for the Union Effluent Pump Station.

In fiscal years from 2020/21 through 2029/30, the Authority will pay Union a total of Four Million, Two-Hundred Thousand dollars (\$4,200,000), divided in ten equal and annual installments, as a credit toward their annual budget contribution for Operation and Maintenance Costs, for all Capital Costs associated with the Union Effluent Pump Station during the Term of the Agreement. These Capital Costs will be allocated based on Maximum Flow Rate Capacity, excluding San Leandro, as set forth in Schedule H. Union will undertake control and responsibility of all Capital Costs for the Union Effluent Pump Station, in consultation with the Authority. Any Capital Costs for the Union Effluent Pump Station in excess of the amount set forth above will be borne by Union.

(f) Renewal and Replacement Fund.

The Authority has established a Renewal and Replacement Fund to provide funding for the Capital Costs of rehabilitation and replacement of Authority Facilities. Each Agency will fund the Renewal and Replacement Fund in such amounts as may be determined by the Commission, taking into account the foregoing Capital Cost allocations.

(g) Authority Cost Allocation Summary

For convenience of reference, Schedule I includes a summary of the above listed costs and the respective allocation and schedule.

Section 13. Payment of Operation and Maintenance and Capital Costs

Not later than March 1st of each year, the Authority will provide each Agency with an estimate of its allocated share of the projected Operation and Maintenance Costs and Capital Costs for the forthcoming Fiscal Year. Each Agency hereby agrees to include in each annual budget approved by the governing body of such Agency amounts estimated to be sufficient to pay all such charges and to pay to the Authority within thirty days of receipt of a statement of the Agency's allocated share of the actual Operation and Maintenance Costs and Capital Costs for the billing period. The billing period will be determined by the Commission. The Authority is hereby authorized to take any or all legal actions necessary and permitted by law to enforce the collection of such charges or any other compliance with this Agreement, including, but not limited to, actions or proceedings in mandamus to require each Agency to include the amounts

estimated to be necessary in each such estimated annual budget, or to collect such charges from the taxpayers, landowners, or users of any of the Facilities.

Section 14. Records and Accounts

The Authority will cause to be kept accurate and correct books of account, showing in detail the costs and expenses of any construction and the maintenance, operation and administration of the Facilities and all financial transactions of the Agencies relating to the Facilities, which books of account will correctly show any receipts and also any costs, expenses, or charges to be paid by all or any of the Agencies hereunder, and also records of the effluent flow from each of the Agencies. Time records and books of account will be open to inspection at all times by any representative of any of the Agencies, or by any accountant or other person authorized by any Agency to inspect said books of account.

Section 15. Income from Operations

Income arising out of the operation of the Facilities, including the sale of recycled water, will be retained as part of the fund balance in the fund in which it is earned. Any interest earned on the fund balance will also be retained in the fund. The fund balance may be used as an operating reserve or, upon approval of the Commission, to fund additional study, design or construction, or upon approval by the Commission may be refunded to the Agencies on the basis of the Fixed Operation and Maintenance Costs allocation in accordance with Schedule B.

Income from the lease of capacity rights, sale of services or assets, or connection fees will be deposited in the Renewal and Replacement Fund.

Section 16. Failure to Meet Discharge Requirements

(a) Capacity Exceedance.

If the Authority experiences an unpermitted discharge or other violation due to high flows caused by one or more Agencies' exceedance of the Maximum Flow Rate Capacity as detailed in Section 11(b), any fines or other sanctions or costs imposed on the Authority will be allocated to the exceeding Agency(ies) based on an instantaneous (defined as a 5-minute) exceedance. The General Manager will be responsible for determining which Agency(ies)

caused the unpermitted discharge or violation and the General Manager's determination is subject to appeal to the Commission in accordance with applicable Policies and Procedures.

(b) Effluent Violation.

The Authority will cause the combined effluent of all Agencies, as well as the receiving water of the combined discharge, to be monitored to determine whether or not federal and/or state discharge requirements are being met. In addition, the Authority will cause the effluent of each Agency to be monitored. If the combined effluent of all Agencies at the point of ultimate discharge into the receiving water fails to meet discharge requirements, the Agency or Agencies responsible for the violations will be solely responsible for any fines levied or criminal sanctions imposed. Upon notification of such violation, the Agency or Agencies must take prompt, corrective action as necessary to meet said discharge requirements.

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

- (1) Undertake the operation of existing facilities or construction and operation of additional treatment facilities as necessary to meet said discharge requirements at the cost and expense of the violating Agency(ies).
- (2) Impose a prohibition on additional connections to the collection system of the Agency(ies) in violation.

In the event that one or more Agencies are obligated to provide additional levels of treatment to meet waste discharge requirements for the combined effluent, all Agencies requiring the additional levels of treatment will participate in the costs of such treatment based on their proportionate contribution of waste characteristics to be treated and the costs of providing such treatment. Nothing in this Section will preclude one or more Agencies from providing additional levels of treatment to ensure compliance with waste discharge requirements for the combined effluent.

(c) Indemnification.

To the extent permitted by law, the Agency(ies) that fail to meet discharge requirements will indemnify, keep and save harmless the Authority and the other non-violating Agencies and

their respective directors, officers, agents, and employees against any and all liability, demands, loss, damage, settlement expenses, suits, claims, or actions (including, without limitation, attorney fees, expert witness fees, investigation costs, all legal costs and fees) arising from the violation. In the event two or more Agencies are responsible for a violation as above provided, the Agencies responsible for the violation will be jointly and severally responsible to the Authority and to the other non-violating Agencies. The Agency(ies) responsible for the violation further agrees to defend any and all such suits, claims, or actions, with counsel acceptable to the Authority in its reasonable discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached against the Authority or the other non-violating Agencies, or any of the individuals enumerated above in any such action, the responsible Agency(ies), will at its expense, satisfy and discharge the same. This indemnification will survive the termination or expiration of this Agreement.

Section 17. Future Projects

It is understood that it may be in the interest of the Agencies for the Authority to acquire and construct additional Authority Facilities. This Agreement is subject to modification in the event all Agencies desire to do so.

Section 18. Contributions, Payments and Advances, Use of Personnel, Equipment or Property; Exchange of Services

It is hereby agreed that:

- (a) Contributions from an Agency's treasury may be made for the purpose set forth in this Agreement.
- (b) Payments of public funds of an Agency may be made to defray the cost of such purpose.
- (c) Each of the Agencies may make advances of public funds, to be repaid as set forth in this Agreement.
- (d) Subject to approval of the General Manager, personnel, equipment, or property may be used in lieu of other contributions or advances.

- (e) The Agencies may exchange services without payment of any consideration other than such services; or an Agency may agree to provide all or any portion of such services to another Agency.
- (f) The Commission may provide for the repayment or return to an Agency of all or any part of any contributions, payments, or advances made by that Agency.

Section 19. Dispute Resolution

In the event of any dispute, the parties will promptly meet and confer, first at a staff level and then elevated to a meeting of Commissioners, in a good faith attempt to resolve the dispute. In connection with such negotiations, the party asserting the dispute must provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally. In the alternative, a party may choose to resolve questions or disputes arising under this Agreement through arbitration or judicial determination.

Section 20. Termination; Expiration; Disposition of Assets

The Agencies agree to the following procedures for the disposition of the Authority's assets and obligations. Unless terminated sooner pursuant to this Section 20, this Agreement will expire at the end of the current Term. In the event of such expiration or earlier termination, the Agencies will dispose of the Authority's assets and obligations as set out below and authorized by law. In the alternative, at the end of the Term, the Agencies may choose to waive this provision and select a different method for disposition of assets and obligations, provided such agreement is in writing and adopted in accordance with the Amendments procedures in Section 21. No Agency may withdraw from the Authority prior to the end of the Term.

(a) Termination during the Term.

The Agencies may terminate the Agreement prior to the end of the Term by agreement of all the Agencies in writing, such agreement being authorized by the governing body of each of the Agencies.

(b) Disposition of Assets and Obligations Upon Termination or Expiration of the Agreement.

(i) Disposition of Certain Authority Facilities

As set forth in Section 10(b), certain Authority Facilities (pump stations), will transition ownership at the end of the Term, or any earlier termination.

(ii) Disposition of Remaining Authority Facilities

In the event that all Agencies do not reach an agreement to extend the term of the Agreement or to renew, revise, replace or terminate the Agreement pursuant to subsection (c) below, the Authority will dispose of the remaining Authority Facilities not already disposed of pursuant to subsection (b)(i) and Section 10(b). The cost of such disposal will be borne by the Authority prior to the disposition of all remaining assets as set forth in subsection (b)(iii).

(iii) Disposition of All Remaining Assets

After the discharge of all enforceable liabilities, the remaining Authority assets will be liquidated and will be divided among the then parties to this Agreement based on each Agency's Maximum Flow Rate Capacity as of July 1, 2020.

(iv) Disposition of Retirement Obligations

In terminating this Agreement, the Agencies agree to apportion the Authority's retirement obligations among all Agencies based on each Agency's Maximum Flow Rate Capacity as of July 1, 2020. All Agencies will comply with all legal requirements related to the Authority's pension liabilities and obligations as specified in the Act and the Public Employees Retirement Law (California Government Code Section 20000 *et seq.*).

(c) Negotiations to Extend the Term of the Agreement

Five years before the end of the Term, the Agencies will enter into good faith negotiations to determine whether it is appropriate to renew, extend, revise, replace or terminate the Agreement. Such negotiations may include matters such as the process by which Agencies may leave the Authority prior to and following any renewal, extension, revision or replacement of the Agreement and the related disposition of assets and obligations, the ownership of Facilities, and whether Agencies will be permitted to reduce their Maximum Flow Rate Capacities. In the event all Agencies are unable to reach agreement prior to the end of the Term, the Agreement will terminate.

(d) Disposition of Obligations Imposed After Termination or Expiration of the Agreement.

The Agencies acknowledge that it is possible obligations arising out of or related to the Agreement may remain following termination of, or be imposed on the Authority after termination of, the Agreement, for which events giving rise to such obligations arose during the Term of the Agreement. Such obligations may include the decommissioning or disposal of Facilities, if ordered by a regulatory agency or other entity. In the event such post-termination or post-expiration obligations remain or are imposed, the costs related to such obligations will be apportioned to all Agencies based on each Agency's Maximum Flow Rate Capacity as of July 1, 2020.

(e) Survival of Obligations

The Agencies' obligation to fund post-termination or post-expiration obligations referenced in subsections (b)(iv) and (d), above, will survive termination or expiration of this Agreement.

(f) Post-Termination Notices

Upon termination of this Agreement, the Authority will designate a contact name and address for any post-termination or post-expiration notices.

Section 21. Amendments

This Agreement may be amended only by an agreement approved and executed in writing by the governing bodies of all of the Agencies. In the event another governmental entity adopts a law or regulation, which materially impacts the manner in which the Authority functions, it is anticipated that amendment or termination of this Agreement will be required.

Section 22. Authority Use of Agencies' Emergency Outfalls and Flow Equalization Storage

During the Term, all Agencies will continue to permit the Authority to utilize Agency owned and operated outfalls for emergency relief as detailed in approved Policies and Procedures. In no event will Union be required to comply with any Authority request to temporarily utilize its outfall. Further, the Authority may request that one or more Agencies utilize Agency owned and operated flow equalization storage facilities in order to manage wet weather flows or facilitate maintenance activities, in accordance with approved Policies and Procedures. In no event will any Agency be required to comply with any Authority request to temporarily utilize its flow equalization storage.

Section 23. Brine Disposal and the Development and Use of Recycled Water

(a) Development and Use of Recycled Water.

The Authority and the Agencies support the development and use of recycled water. The volume of flow that an Agency recycles that does not utilize any Authority Facilities will not be included in the effluent flow reported by the Agency for the purposes of calculating O&M Variable Costs. To the extent that recycled water is conveyed or pumped using Authority Facilities, it will be included in the Agency's reported effluent flow. Water recycling by the Authority and by any Agency will be conducted in accordance with the Authority's Water Recycling Policy, as it may be updated from time to time.

(b) Disposal of Brine.

The Authority and the Agencies acknowledge that use of the Authority's Bay Outfall may provide an environmentally beneficial and cost-effective method of disposing of brine. The Agencies desire that both volume and pollutant loading capacity in the Facilities be available for disposal of brine generated from an Agency's production of recycled water.

(1) Non-Agency Generated Brine

Any project or activity that results in utilization of the Facilities to dispose of brine generated outside the Authority's boundaries or from source water not already treated by an Agency will be conducted in accordance with the Authority's Brine Policy, as it may be updated from time to time, and any other relevant Policies and Procedures. The Brine Policy will include a provision that the Commission unanimously approve any agreement that results in utilization of the Facilities for disposal of such brine, including any agreement to which the Authority may not be a party. Such approval will not be unreasonably withheld. The purpose of such approval is, among other things, to ensure that acceptance of brine from non-Agency sources does not limit an Agency's right to a share of capacity, both volume and pollutant loading, in the Authority Facilities to develop recycled water projects and dispose of brine. Such agreements may also provide for the Authority to receive appropriate revenue from disposal of brine, assurances that the discharge will not lead to effluent violations, and appropriate indemnification against liability resulting from such disposal.

(2) Agency-generated Brine that is not Treated Through an Agency's Full Secondary Treatment Process

Utilization of the Facilities to discharge brine that is generated by an Agency that is not treated through an Agency's full secondary treatment process will be conducted in accordance with the Authority's Brine Policy, as it may be updated from time to time, and any other relevant Policies and Procedures. The Brine Policy will provide a framework that encourages development of recycled water while addressing the possible impacts of Agency brine discharges on other Agencies, the Facilities, and the Authority's regulatory compliance. The requirement for Commission approval in subsection 23(b)(1) does not apply to brine generated by an Agency.

(3) Agency-generated Brine Treated through an Agency's Full Secondary Treatment Process

Brine generated by an Agency that is treated through an Agency's full secondary treatment process will not be subject to approval by the Authority. The requirement for Commission approval in subsection 23(b)(1) does not apply to wastewater treated by an Agency.

Section 24. Notices

Except for the notices required by Sections 10(c)(2) and 10(c)(4), any notices which any Agency or the Authority may give to another Agency or the Authority in connection with this Agreement will be given in writing and will be sent by (i) personal delivery, (ii) United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, and addressed to the Agency at its address given below or to the Authority at its principal office, as the case may be, or to such other address as any Agency or the Authority may designate from time to time by written notice given as provided in this paragraph. Service of notice pursuant to this paragraph will be deemed complete on the day of actual delivery.

Section 25. Successors: Assignment

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

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

Section 26. Severability

Should any part, term, or provision of this Agreement be decided by a final judgment of a court to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions will not be affected thereby.

Section 27. Section Headings

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

Section 28. Incorporation of Schedules

Schedules A through I, referred to herein, are incorporated in and made part of this Agreement.

Section 29. Governing Law

This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of California, without giving effect to conflict of law provisions.

Section 30. Jurisdiction

Any lawsuits between the parties arising out of this Agreement will be brought and concluded in the State of California, which will have exclusive jurisdiction over such lawsuits. With respect the venue, the parties agree that this Agreement is made in and will be performed in Alameda County, unless otherwise agreed to by the parties to the dispute or pursuant to California Code of Civil Procedure Section 394.

Section 31. Joint Drafting

All Agencies participated in the drafting of this Agreement and the Agreement will not be construed against any Agency as the drafter.

Section 32. References to Laws

All references in this Agreement to laws and regulations will be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies will be understood to include agencies that succeed to or assume the functions they are currently performing.

Section 33. Counterparts

Execution of this Agreement may be accomplished by execution of separate counterparts by each signatory. The separate executed counterparts, taken together, shall constitute a single agreement.

Section 34. No Escalation of Dollar Amounts

The Agencies agree that all dollar figures in the Agreement are fixed for the term of the Agreement, unless specifically designated as being subject to adjustment for inflation.

Section 35. Third Party Beneficiaries

This Agreement will not create any right or interest in any non-party or in any member of the public as a third party beneficiary.

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

SIGNATURE BLOCKS ON FOLLOWING PAGES

UNION SANITARY DISTRICT
A Public Corporation

By: _____

Date: _____

(SEAL)
Attest:

Secretary

CITY OF HAYWARD
A Municipal Corporation

By: _____

Date: _____

(SEAL)
Attest:

City Clerk

CITY OF SAN LEANDRO
A Municipal Corporation

By: _____

Date: _____

(SEAL)
Attest:

City Clerk

ORO LOMA SANITARY DISTRICT
A Public Corporation

By: _____

(SEAL)
Attest:

Date: _____

Secretary

CASTRO VALLEY SANITARY DISTRICT
A Public Corporation

By: _____

(SEAL)
Attest:

Date: _____

Secretary

SCHEDULE A
AUTHORITY FACILITIES

A. Upon its formation in 1974, the Authority was responsible for overseeing construction of the “Phase I Project,” which was funded by a Clean Water Grant. The Phase I Project included construction of facilities to be owned by the Authority, as well as facilities to be owned by the Agencies. As such, the original Joint Powers Agreement defined Joint and Sole Use Facilities to delineate those Joint facilities to be owned and operated by the Authority and Sole Use Facilities to be owned and operated by the Agencies. In this Amended and Restated Agreement, those facilities owned and operated by the Agencies are deemed no longer relevant to the Agreement, and therefore those Sole Use Facilities have been removed from this Schedule. Those facilities owned and operated by the Authority have been renamed Authority Facilities or Facilities and are enumerated below.

B. Authority Facilities or Facilities are:

1. Control System
2. Operations Center
3. Bay Outfall
4. Marina Dechlorination Facility (MDF)
5. Oro Loma Dechlorination Facility
6. Oro Loma Effluent Pump Station (OLEPS)
7. Marina to Oro Loma Force Main
8. Oro Loma to Hayward Force Main
9. Hayward Effluent Pump Station (HEPS)
10. Hayward to Union Force Main
11. Union Effluent Pump Station (UEPS)
12. Skywest Irrigation Project
14. Other such additional facilities as determined by the Commission to be Authority Facilities

SCHEDULE B

ALLOCATION OF OPERATION AND MAINTENANCE COSTS

Operation and Maintenance Costs for Authority Facilities will be divided into, and allocated based on, the following categories:

1. Fixed Costs include all Operation and Maintenance Costs not defined below as "Variable Costs." The total Fixed Costs, less any amounts received by the Authority to offset Fixed Costs, will be apportioned to the Agencies based on their current Maximum Flow Rate Capacity (as shown in Schedule F) normalized out of 100 as follows:

San Leandro	13.74%
Oro Loma	19.44%
Castro Valley	10.30%
Hayward	14.72%
Union	42.10%

In the event one or more Agencies adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be adjusted to reflect the same.

Notwithstanding the foregoing, San Leandro will not share in any fixed Operation and Maintenance Costs for the Oro Loma Effluent Pump Station, Hayward Effluent Pump Station, or Union Effluent Pump Station, nor will it share in Operation and Maintenance Costs for the Transport System.

2. Variable Costs will be deemed to be costs of energy used for pumping, chemical costs used in operation of the Facilities, and maintenance, and repair charges incurred in the operation and maintenance of the system. Variable Costs will be allocated to the Agencies based on total effluent flow for a one year period as set forth in Policies and Procedures. Union's total effluent flow for the purposes of the calculation of Variable Costs will include any flow discharged to the Hayward Marsh pursuant to the Hayward Marsh MOU.

The volume of flow that an Agency recycles that does not utilize any Authority Facilities will not be included in the effluent flow reported by the Agency for the purposes of calculating Variable Costs. To the extent that recycled water is conveyed or pumped using Authority Facilities, it will be included in the Agency's reported effluent flow for the purposes of calculating Variable Costs.

Notwithstanding the foregoing, San Leandro will not share in any variable Operation and Maintenance Costs for the Oro Loma Effluent Pump Station, Hayward Effluent Pump Station, or Union Effluent Pump Station, nor will it share in Operation and Maintenance Costs for the Transport System.

SCHEDULE C
DISTRIBUTION OF PLANNING
AND SPECIAL STUDIES COSTS

Distribution of Planning and Special Studies Costs for the Facilities will be in proportion of Average Dry Weather Design Flows as set forth in the Final Supplement to the Project Report dated August, 1976, and will be as follows:

San Leandro	13%
Oro Loma	18%
Castro Valley	6%
Hayward	30%
Union	33%

Planning and Special Studies Costs for other than Authority Facilities and at the request of and solely benefiting one or more Agencies will 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.

Other Costs Charged to the Authority: The Authority incurs additional costs related to the operation of the Facilities (e.g. NPDES fees, Regional Monitoring Program fees, watershed permit fees). These costs will be allocated among the Agencies as set forth in Policies and Procedures.

SCHEDULE D

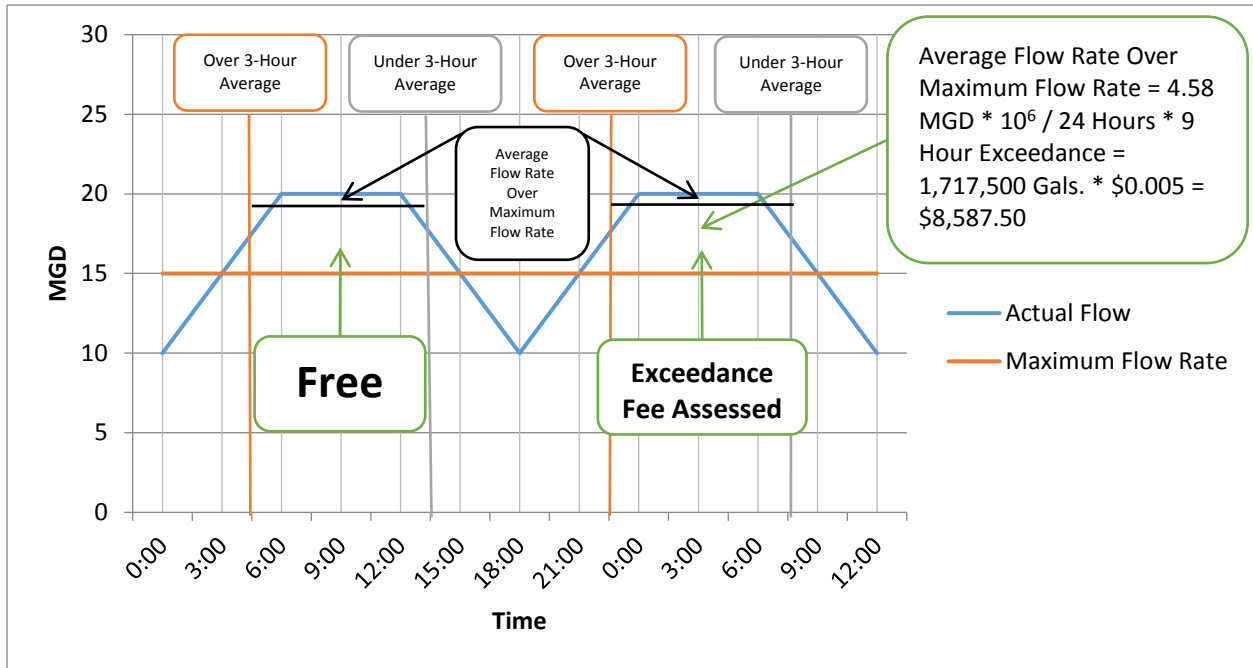
MAXIMUM FLOW RATE CAPACITY EXCEEDANCE CALCULATION

Fees associated with temporary exceedance of an agency's Maximum Flow Rate Capacity will be assessed according to the following formula:

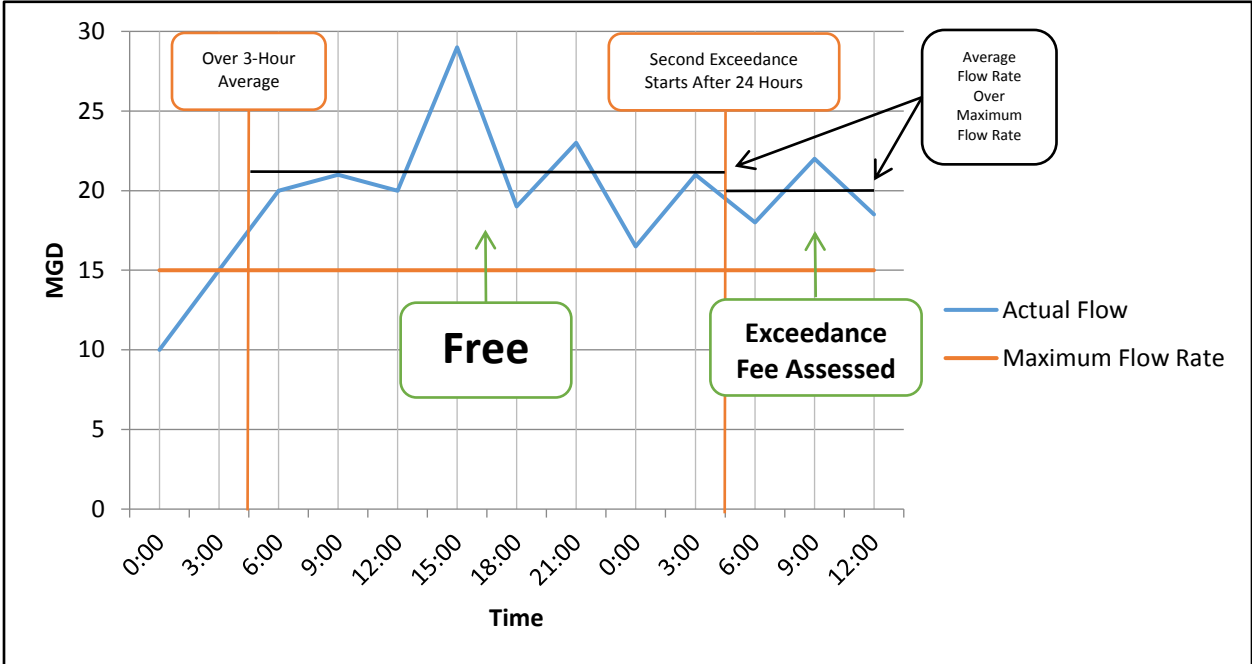
Fee = (Average actual flow rate for the period of exceedance in MGD - Maximum Flow Rate Capacity in MGD) * 10^6 gal ÷ 24 hrs * hrs of exceedance * \$0.005/gallon

Fees will be assessed when a 3-hour rolling average exceeds the Maximum Flow Rate Capacity. No fees will be assessed for the first exceedance in a given Fiscal Year. The first exceedance will end when an Agency's 3-hour average first drops back below its Maximum Flow Rate Capacity. If the Agency's 3-hour average stays above its Maximum Flow Rate Capacity, the first exceedance will end after 24 hours. The start of a new 24-hour period will be considered the start of a new exceedance. Notwithstanding the foregoing, any discharge by Union to the Hayward Marsh pursuant to the Hayward Marsh MOU, will be subtracted from Union's flow for the purposes of assessing a capacity exceedance fee.

EXAMPLE 1



EXAMPLE 2



SCHEDULE E
WEIGHTED VOTING

<u>Agency</u>	<u>Votes</u>
Union	42.10
Oro Loma	19.14
Castro Valley	10.30
Hayward	14.72
<u>San Leandro</u>	<u>13.74</u>
Total =	100

In the event one or more Agencies adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be recalculated based on the following formula:

$$\text{Agency Votes} = \text{Agency Maximum Flow Rate Capacity} \div \text{Total Maximum Flow Rate Capacity}$$

After such recalculation, a revised Schedule E will be automatically incorporated in this Agreement.

SCHEDULE F
MAXIMUM FLOW RATE CAPACITY

San Leandro	14.0 million gallons per day
Oro Loma/Castro Valley	30.0 million gallons per day*
Hayward	15.0 million gallons per day
Union	42.9 million gallons per day**

*For the purposes of individual Agency cost and vote allocations, 65% of this capacity is allocated to Oro Loma and 35% is allocated to Castro Valley.

**Any effluent discharged to the Hayward Marsh by Union pursuant to the Hayward Marsh MOU, will be subtracted from Union’s total flow when determining whether Union has exceeded its Maximum Flow Rate Capacity.

In the event one or more Agencies adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be adjusted to reflect the same.

For purposes of maintaining a historical record, prior capacities are noted below. This historical record will be updated as the above table is updated.

Maximum Flow Rate Capacity for the Period February 15, 1974 – June 30, 2020:

San Leandro	22.3 million gallons per day
Oro Loma/Castro Valley	69.2 million gallons per day
Hayward	35.0 million gallons per day
Union	42.9 million gallons per day

SCHEDULE G
TRANSPORT SYSTEM AGENCY SEGMENT ALLOCATION

Segment	Agency	Allocation
OLEPS to MDF	Union	49%
	Hayward	17%
	Oro Loma	23%
	Castro Valley	11%
HEPS to OLEPS	Union	74%
	Hayward	26%
UEPS to HEPS	Union	100%

In the event an Agency adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be recalculated based on the following formula:

Agency Segment Allocation = Agency Maximum Flow Rate Capacity ÷ Total Maximum Flow Rate Capacity for that segment

The following Transport System diagram is provided for reference in delineating the segments outlined in the above table:



SCHEDULE H

MAXIMUM FLOW RATE CAPACITY NORMALIZED OUT OF 100 -- EXCLUDING SAN LEANDRO

Union	48.8%
Oro Loma	22.2%
Castro Valley	11.9%
Hayward	17.1%

In the event an Agency adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be recalculated based on the following formula:

Agency Allocation = Agency Maximum Flow Rate Capacity ÷ (Total Maximum Flow Rate Capacity – San Leandro Maximum Flow Rate Capacity).

SCHEDULE I
AUTHORITY COST ALLOCATION SUMMARY

Budget Element	Cost Allocation Basis	Associated Schedule
O&M Variable Cost (energy, chemicals, labor)	Total annual flow	Schedule B
O&M Fixed Cost (other O&M)	Maximum Flow Rate Capacity	Schedule B (Note table is the same as Schedule E)
Capital Cost: Transport System (projects > \$35,000*)		
- First \$325,000** cumulative	Maximum Flow Rate Capacity, excluding San Leandro	Schedule H
- Once \$325,000** has been exceeded	Segment Use	Schedule G
Capital Cost: Pump Stations (projects >\$10,000*)	Maximum Flow Rate Capacity, excluding San Leandro	Schedule H
Capital Cost: Bay Outfall, Operations Center, and MDF (projects >\$10,000*)	Maximum Flow Rate Capacity	Schedule B
Special Studies	Average Dry Weather Design Flows per 1976 Project Report or other as determined on a case by case basis	Schedule C

* Projects under listed threshold will be allocated as O&M costs.

**As escalated pursuant to the Engineering News-Record 20-City Building Cost Index.