

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	<hr/>

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

TABLE OF CONTENTS

Section 1.	Definitions.....	3
Section 2.	Authority and Purpose	5
Section 3.	Term.....	6
Section 4.	Creation of Authority	6
Section 5.	Powers.....	6
(a)	General Powers	6
(b)	Specific Powers.....	6
Section 6.	Boundaries	7
Section 7.	Organization.....	8
(a)	East Bay Dischargers Authority Commission	8
(b)	Members	8
(c)	Voting	8
(d)	Principal Office.....	9
(e)	Officers	9
(f)	General Manager.....	10
(g)	Treasurer and Auditor	10
(h)	Bonding Persons having Access to Property	11
(i)	Officers, Employees and Agents; Compatible Offices; Compensation.....	11
(j)	Rules of the Commission.....	11
Section 8.	Meetings; Budget and Contributions	12
(a)	Regular Meetings	12
(b)	Special Meetings.....	12
(c)	Notice And Conduct of Meetings	12
(d)	Quorum	12
(e)	Budget; Contributions; Delegation of Authority	12
Section 9.	Elections.....	13
Section 10.	Ownership of Authority Facilities; Responsibility for Failure of the Transport System	13
(a)	Ownership of Authority Facilities.	13
(b)	Transfer of Ownership of the Pump Stations.....	13
(c)	Responsibility for Failure of the Transport System.....	14

Section 11.	Capacity Rights	16
(a)	Capacity Rights; Volume	16
(b)	Temporary Capacity Exceedance	17
(c)	Temporary Capacity Exceedance at the Request of the Authority.	17
(d)	Increase of Maximum Flow Rate Capacity and Notice Procedures	18
(e)	No Reductions in Maximum Flow Rate Capacity During the Term.	19
Section 12.	Allocation of Operation and Maintenance Costs, Capital Costs, and Planning and Special Studies Costs.	19
(a)	Allocation of Operation and Maintenance Costs.	19
(b)	Allocation of Capital Costs.	19
(c)	Allocation of Planning and Special Studies Costs.	20
(d)	Capital Costs Allocated as Operation and Maintenance Costs.	20
(e)	Management of Capital Costs for the Union Effluent Pump Station.	21
(f)	Renewal and Replacement Fund.	21
(g)	Authority Cost Allocation Summary	21
Section 13.	Payment of Operation and Maintenance and Capital Costs	21
Section 14.	Records and Accounts	22
Section 15.	Income from Operations	22
Section 16.	Failure to Meet Discharge Requirements	22
(a)	Capacity Exceedance.	22
(b)	Effluent Violation.	23
(c)	Indemnification.	23
Section 17.	Future Projects	24
Section 18.	Contributions, Payments and Advances, Use of Personnel, Equipment or Property; Exchange of Services	24
Section 19.	Dispute Resolution	25
Section 20.	Termination; Expiration; Disposition of Assets	25
(a)	Termination during the Term.	26
(b)	Disposition of Assets and Obligations Upon Termination or Expiration of the Agreement.	26
(c)	Negotiations to Extend the Term of the Agreement	27
(d)	Disposition of Obligations Imposed After Termination or Expiration of the Agreement.	27
(e)	Survival of Obligations	27
(f)	Post-Termination Notices	27

Section 21.	Amendments	28
Section 22.	Authority Use of Agencies' Emergency Outfalls and Flow Equalization Storage	28
Section 23.	Brine Disposal and the Development and Use of Recycled Water	28
(a)	Development and Use of Recycled Water.	28
(b)	Disposal of Brine.	28
Section 24.	Notices	30
Section 25.	Successors: Assignment.....	30
Section 26.	Severability	30
Section 27.	Section Headings	30
Section 28.	Incorporation of Schedules	31
Section 29.	Governing Law	31
Section 30.	Jurisdiction.....	31
Section 31.	Joint Drafting	31
Section 32.	References to Laws	31
Section 33.	Counterparts.....	31
Section 34.	No Escalation of Dollar Amounts.....	32
Section 35.	Third Party Beneficiaries	32

LIST OF SCHEDULES

SCHEDULE A:	Authority Facilities
SCHEDULE B:	Allocation of Operation and Maintenance Costs
SCHEDULE C:	Distribution of Planning and Special Studies Costs
SCHEDULE D:	Maximum Flow Rate Capacity Exceedance Calculation
SCHEDULE E:	Weighted Voting
SCHEDULE F:	Maximum Flow Rate Capacity
SCHEDULE G:	Transport System Agency Segment Allocation
SCHEDULE H:	Maximum Flow Rate Capacity Normalized Out of 100 -- Excluding San Leandro
SCHEDULE I:	Authority Cost Allocation Summary

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: _____

(SEAL)
Attest:

Date: _____

Secretary

CITY OF HAYWARD
A Municipal Corporation

By: _____

(SEAL)
Attest:

Date: _____

City Clerk

CITY OF SAN LEANDRO
A Municipal Corporation

By: _____

(SEAL)
Attest:

Date: _____

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.

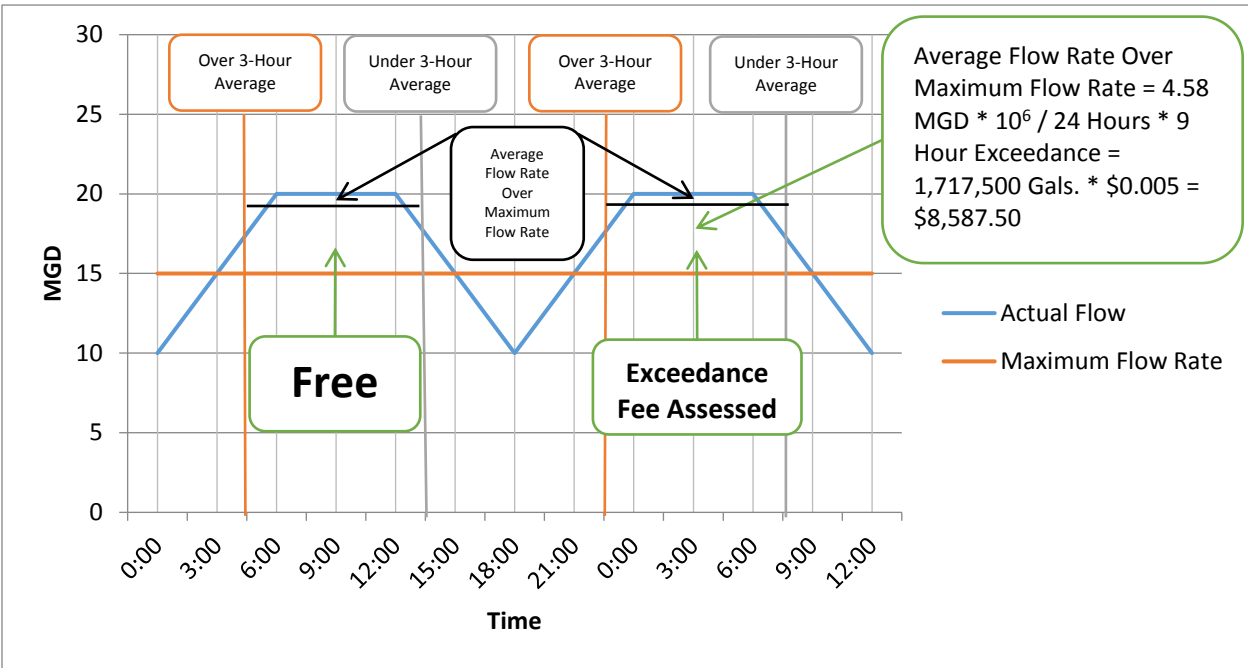
SCHEDULE D
MAXIMUM FLOW RATE CAPACITY EXCEEDANCE CALCULATION

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

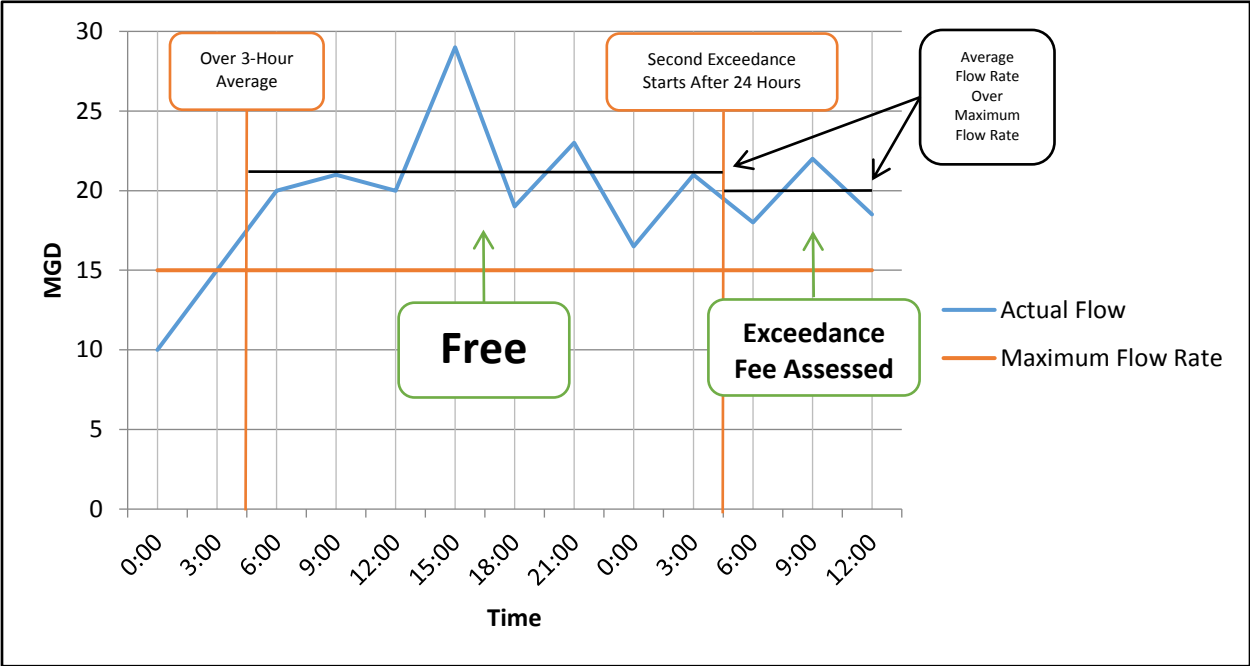
Fee = (Average actual flow rate for the period of exceedance in MGD - Maximum Flow Rate Capacity in MGD) * 10^6 gal ÷ 24 hrs * hrs of exceedance * \$0.005/gallon

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:

Agency Votes = Agency Maximum Flow Rate Capacity ÷ 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

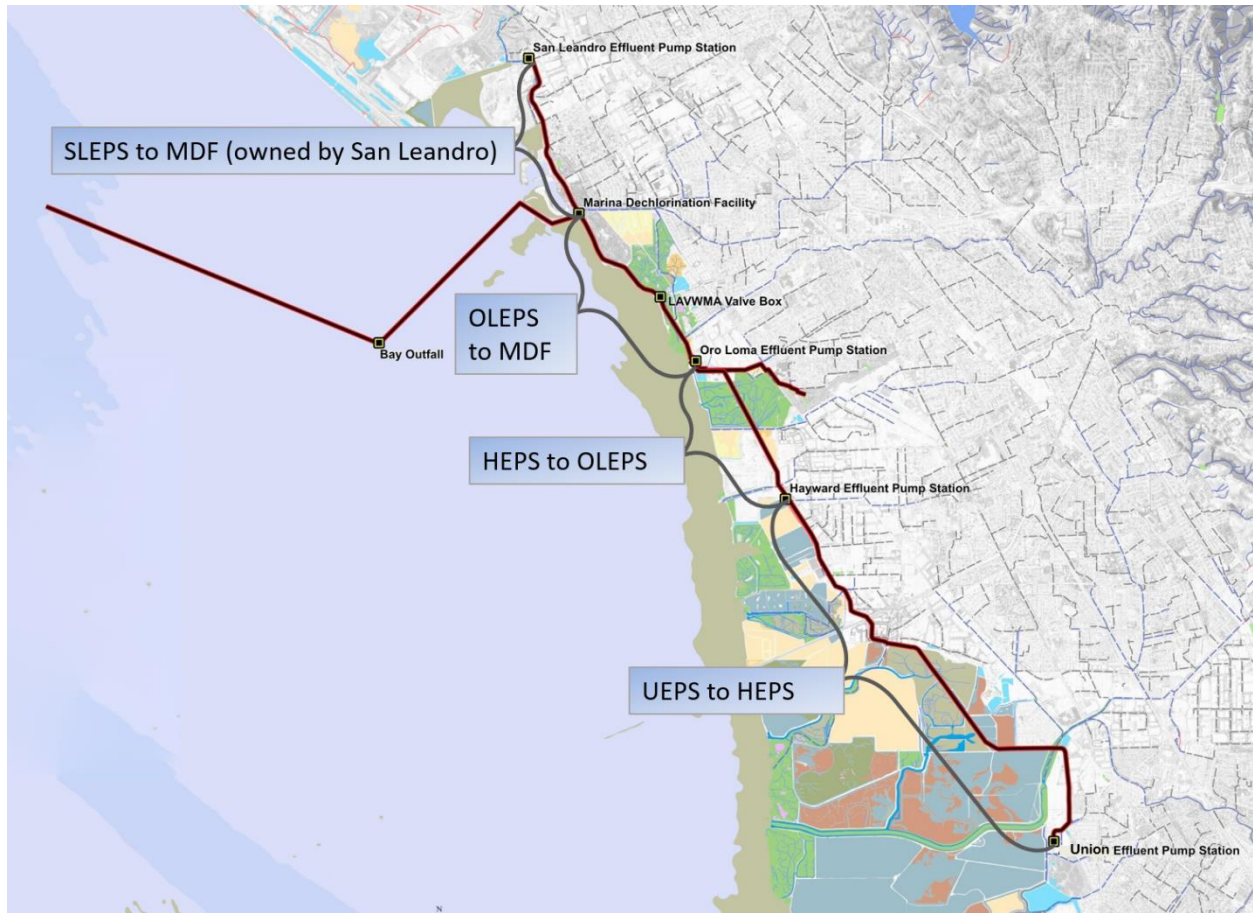
SCHEDULE G
TRANSPORT SYSTEM AGENCY SEGMENT ALLOCATION

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.