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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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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.
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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.

21
22
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.
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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

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

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

24 It is hereby agreed that:

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

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

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

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

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

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

7
8 Section 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.
29
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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

Date: _____

(SEAL)
Attest:

Secretary

CITY OF HAYWARD
A Municipal Corporation

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

Date: _____

(SEAL)
Attest:

City Clerk

CITY OF SAN LEANDRO
A Municipal Corporation

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

Date: _____

(SEAL)
Attest:

City Clerk

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ORO LOMA SANITARY DISTRICT
A Public Corporation

By: _____
Board President
2655 Grant Avenue
San Lorenzo, Ca 94580

(SEAL)
Attest:

Date: _____

Secretary

CASTRO VALLEY SANITARY DISTRICT
A Public Corporation

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

(SEAL)
Attest:

Date: _____

Secretary

SCHEDULE A
DISTRIBUTION OF PROJECT COSTS

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

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

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

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

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

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

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

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

1 SCHEDULE B

2 DISTRIBUTION OF OPERATION AND MAINTENANCE COSTS

3 Effective July 1, 1986

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

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

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

- 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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