

JOINT POWERS AGREEMENT  
CREATING AN AGENCY TO BE KNOWN AS THE  
BAY AREA DISCHARGERS ASSOCIATION

THIS AGREEMENT is entered into this 4th day of Jan., 1984, between the CENTRAL CONTRA COSTA SANITARY DISTRICT, a public corporation, hereinafter known as "CCCSD"; the EAST BAY DISCHARGERS AUTHORITY, a joint powers authority, hereinafter known as "EBDA"; the EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation, hereinafter known as "EBMUD"; the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, hereinafter known as "San Francisco"; and the CITY OF SAN JOSE, a municipal corporation, hereinafter known as "San Jose." Hereinafter, these five agencies will sometimes be referred to as the "original signatory agencies".

WITNESSETH:

WHEREAS, each of the foregoing public agencies is empowered to survey, study, and report concerning matters related to wastewater treatment and disposal and conduct other activities concerning such treatment and disposal; and specifically they are empowered to monitor discharges of treated wastewater to waters of the bay system and gather and interpret the data of such monitoring with primary emphasis on effects of treated wastewater discharges on waters on the bay system;

WHEREAS, each of the foregoing agencies is desirous of conducting some of these activities jointly; and

WHEREAS, each of the foregoing agencies is desirous hereby to exercise, jointly, selected powers common to all.

WHEREAS EBDA consists of the following jurisdictions: CITY OF HAYWARD, CITY OF SAN LEANDRO, ORO LOMA SANITARY DISTRICT, CASTRO VALLEY SANITARY DISTRICT, UNION SANITARY DISTRICT.

WHEREAS San Jose represents the following jurisdictions: CITY OF SANTA CLARA, a co-owner of the Water Pollution Control Plant, and the agencies tributary to that plant, CITY OF MILPITAS, SUNOL SANITARY DISTRICT, BURBANK SANITARY DISTRICT, COUNTY SANITATION DISTRICTS 2-3, COUNTY SANITATION DISTRICT 4, CUPERTINO SANITARY DISTRICT.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises, covenants, and conditions hereinafter contained, the parties agree as follows:

1. DEFINITIONS

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

Agreement: This joint powers agreement.

Annual Budget: See Section 9.

Annual Work Plan: See Section 8.

Associate Member: Any public agency, other than the original signatory agencies, with wastewater treatment or disposal responsibilities accepted for membership in this Association by the Executive Board.

Association: Bay Area Dischargers Association

Bay: San Francisco Bay System.

Executive Board: A board consisting of the General Manager or person of equivalent position from each of the original signatory agencies.

Fiscal Year: The period from July 1 to June 30.

Member Agency: Any of the original signatory agencies and any Associate Members.

Original Signatory Agencies: Central Contra Costa Sanitary District, East Bay Dischargers Authority, East Bay Municipal Utility District, City and County of San Francisco, and the City of San Jose.

Overhead: Activities or costs not directly associated with a program.

Participating Agency: A Member Agency receiving benefits and sharing in the costs of a program.

Program: Work that is directly related to the accomplishment of the purposes of the Association.

Programs of General Benefit: Programs that benefit all member agencies in the same general proportions assumed in the cost allocation formula.

Programs of Specific Benefit: Programs whose benefits are significantly greater for some member agencies than for others and whose costs are allocated to agencies in accordance with the programs' benefits.

San Francisco Bay System: San Francisco Bay, the Golden Gate, San Pablo Bay, Carquinez Strait, Suisun Bay, Grizzly Bay, Honker Bay, and other adjacent waters as may be determined from time to time by the Executive Board.

Simple Majority: More than half of the voting members of the Executive Board.

Total Discharge: The volume of wastewater discharged into the Bay, in gallons.

## 2. PURPOSE

The purpose of this Agreement is to create an agency as a public entity separate and apart from the parties to this Agreement to administer and exercise such Agreement, the purpose of which is as follows:

- o To collect data on the aquatic life and quality of waters of the San Francisco Bay system, with emphasis on pollution-related effects;
- o To coordinate the work of this Association with related work of other agencies or organizations;
- o To interpret data collected by this Association and by others in order to assess the effects of pollution and other factors on the Bay;
- o To manage this data to assure its continued usefulness;
- o To carry out other tasks in support of the collection, interpretation, and management of data;
- o To represent the interests of the member agencies;
- o To develop and disseminate information about the Bay;
- o To carry out other programs of mutual interest;

3. CREATION OF ASSOCIATION

Pursuant to Chapter 5, Division 7 of Title 1 (commencing with government Code Section 6500 et seq.,) there is hereby created an agency as a public entity, separate and apart from the signatories in this Agreement, to be known as the "Bay Area Dischargers Association", herein called "Association". Such agency shall administer and execute this Agreement.

The Agreement shall be effective on the date of execution by the last original signatory agency.

4. POWERS AND AUTHORITIES OF THE ASSOCIATION

The Association shall and is hereby authorized in its own name to do all things necessary and desirable (subject to the limitations of this Agreement) to carry out the purposes of this Agreement, including but not limited to the following:

- o To make and enter contracts;
- o To employ agents and employees;
- o To acquire, hold, or dispose of property;
- o To incur debts, liabilities, and obligations which shall not constitute the debts, liabilities, or obligations of any of the Member Agencies;
- o To apply for and accept grants;
- o To make plans and conduct studies;
- o To sue and be sued in its own name.

The Association is prohibited from issuing revenue bonds or otherwise incurring indebtedness as provided in Article 2, Chapter 2, Division 7, Title 1 (commencing with Section 6550 of the Government Code).

5. ORGANIZATION

A. Executive Board

Such Association shall have an Executive Board composed of five (5) members serving in their individual capacities as members of such Executive Board. The members of the Executive Board shall be the General Managers or persons of equivalent position of each of the five original signatory agencies.

Each member agency shall officially designate their member of the Executive Board. Each member agency shall also designate an alternate to serve in the absence of the member.

#### B. Associate Members

Other public agencies with wastewater treatment and disposal responsibilities can join the Association as Associate Members with the approval of the Executive Board. The Executive Board shall set the conditions and privileges of membership for Associate Members, and these conditions and privileges shall not be inconsistent with the terms of this agreement.

#### C. Procedures

The Executive Board may adopt bylaws, rules for conduct of meetings, and operating procedures. The administrative procedures and policies of a member agency may be adopted by the Association.

#### D. Meetings

The Executive Board shall meet at least twice in each calendar year and such other times as necessary to conduct the business of the Association. A majority of Executive Board Members shall constitute a quorum.

All meetings of the Association shall be held subject to the provisions of the Ralph M. Brown Act, being Sections 54950 et seq of the California Government Code, and other applicable laws of the State of California requiring notice of meetings of public bodies to be given.

### 6. REPORTS TO MEMBER AGENCIES

Each year the Association will report to the governing bodies of each of the member agencies. This report will describe the technical and financial activities of the Association during the preceding year.

### 7. OFFICERS

The Association shall have two officers: Chairman and Vice-Chairman. The Executive Board shall select the Chairman and Vice-Chairman from the members of the Executive Board. Each officer shall hold office for one year with the term of office coinciding with the fiscal year of the Association.

**A. Chairman**

The Chairman shall, subject to the direction of the Executive Board, supervise and control the affairs of the Association and the activities of the officers of the Executive Board, the staff, and consultants. The Chairman shall perform all duties incident to the office and such other duties as may be required to carry out this Agreement or which may be prescribed from time to time by the Executive Board.

**B. Vice-Chairman**

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

**8. TREASURER**

The Treasurer shall be the depository of and have custody of all money of the Association from whatever source. The Treasurer shall perform all duties required to be performed by an Auditor. The Treasurer of one of the Member Agencies, with consent of the Member Agency, shall be designated Treasurer of the Association by unanimous approval of the Executive Board. The Treasurer shall:

- o Receive and receipt for all money of the Association and place it in the treasury of the Association to the credit of the Association;
- o Be responsible for the safekeeping and disbursement of all Association money;
- o Pay, when due, from Association funds and upon the signature of the Chairman and counter-signature of the Treasurer, all sums payable by the Association;
- o Verify and report in writing to the Executive Board on the first day of each quarter of the Association's fiscal year the amount of receipts since the last report and the amount paid out since the last report in compliance with Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Sections 6500 et seq);

- o Invest all of the Association's funds, not currently required, in the manner provided by law and collect interest thereon for account of the Association;
- o Make or arrange for a contract with a certified public accountant to make an annual audit of the accounts and records of the Association. In each case the minimum requirements of the audit shall conform to generally accepted auditing standards. The report of the audit shall be filed as a public record with the Executive Board, each member signatory agency, and the county auditor of each county in which the agency is located, not later than six months following the end of the fiscal year under examination unless such filing date is extended by the Executive Board.

The governing body of the same Member Agency as the Treasurer shall determine charges to be made against the Association for the services of the Treasurer. Payment of these charges shall be subject to the approval of the Executive Board.

#### 9. ANNUAL WORK PLAN

Each year, prior to July 1, the Association shall prepare an annual work plan describing the work to be done by the Association in the ensuing fiscal year. The work plan shall segregate all work of the Association into two categories, overhead and programs. Work falling into the category of programs will be further segregated into two sub-categories: programs of general benefit to all Member Agencies and programs of specific benefit to one or more Member Agencies. For each program, the work plan will set forth information including the following:

- o The purpose of the program;
- o The method by which the program will be carried out;
- o The products to be produced by the program;
- o The schedule for carrying out the program;
- o The responsibility for carrying out the program;
- o The budget for the program.

The work plan will be prepared in three parts. Part A shall consist of the information on overhead. Part B shall consist of the information on programs of general benefit to all Member Agencies. Part C shall contain the information on programs of specific benefit to one or more Member Agencies.

#### 10. ANNUAL BUDGET

Concurrent with the preparation of the annual work plan the Association will prepare an annual budget based on the work plan. The budget shall include, but not be limited to, the following parts:

- o Part A of the budget shall set forth the cost of overhead and the allocation of overhead cost among Member Agencies;
- o Part B of the budget shall set forth the cost of programs of general benefit and the allocation of costs of such programs among Member Agencies;
- o Part C of the budget shall set forth the cost of programs of specific benefit to one or more agencies and the allocation of such costs among participating agencies.

#### 11. VOTING

The Association shall be governed by the Executive Board which shall exercise all powers and authority on behalf of the Association, subject to the following limitations:

- o The affirmative vote of all five members of the Executive Board shall be required for approval of Parts A and B of the annual work plan and the annual budget and any amendments to Parts A and B of the annual work plan and annual budget.
- o The affirmative vote of a simple majority of the members of the Executive Board and the affirmative vote of all members of the Executive Board participating in a program of specific benefit shall be required for approval of Part C of the annual work plan and budget and any amendments to that Part;
- o A simple majority vote of members of the Executive Board shall be required for approval of all business not otherwise described herein.

A simple majority of members of the Executive Board shall constitute a quorum.



## 12. ALLOCATION OF COSTS

Costs for work described in Parts A and B of the annual work plan shall be allocated to each of the Original Signatory Agencies as follows:

- o One half of these costs shall be allocated equally among each of the Original Signatory Agencies;
- o One half shall be allocated among the Original Signatory Agencies in proportion to each agency's total discharge to the San Francisco Bay System during the preceeding fiscal year.

The allocation of costs to Associate Members for work described in Parts A and B of the annual work plan shall be determined by the Executive Board on a case-by-case basis.

Costs for work described in Part C of the annual work plan shall be allocated among those agencies participating in the programs in direct proportion to the benefits received by each agency in a manner established by the Executive Board at the time each program of specific benefit is approved or revised.

## 13. PAYMENT OF ANNUAL COSTS

Not later than March 1st of each year, following the first year of service to an Agency, the Association shall notify each Agency of its allocated share of the estimated 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 Association within thirty days of receipt of a statement of the Agency's allocated share of the actual costs for the billing period as determined by the Executive Board.

## 14. JOINT REVOLVING FUND

A Joint Revolving Fund shall be established, which shall be used to pay all administrative, operating, engineering, and other noncapital expenses incurred by the Association. Each Agency shall, within thirty days of execution of this Agreement, deposit into the Joint Revolving Fund the sum of \$10,000 to cover initial formation costs, including preparation of the initial budget and work plan. The deposit shall be credited against the annual cost allocated to the member agency.

All monies in the joint revolving fund shall be paid out by the Treasurer for obligations authorized and approved by the Executive Board.

15. STAFF AND CONSULTANTS

The Association may employ or contract for any staff or consultants as may be reasonably necessary to carry out the purposes of this Agreement, including, but not limited to an Executive Director, consultants, and experts in various technical aspects of the Association's programs. The Association may elect to use the staff technical or administrative services of a member agency and shall pay the charges jointly agreed upon between the Agency furnishing the services and the Executive Board.

16. OFFICES

For the purposes of forming the Association and for initial operation, the principal office of the Association shall be at EBMUD. The Association is hereby granted full power and authority to change said principal office from one location to another. Fifteen days prior to such change, the Chairman shall notify the Secretary of State and each member agency in writing of the change.

17. TERMINATION OF AGREEMENT

This Agreement shall be terminated upon the resignation of any one of the original signatory agencies.

18. DISPOSITION OF PROPERTY AND SURPLUS FUNDS

At the termination of this Agreement, any and all property, funds, assets, and interests therein of the Association shall become the property of and be distributed to the Member Agencies. Money collected from Member Agencies and held in reserve by the Association for payment of costs of programs shall be allocated among Member Agencies in proportion to each agency's contributions to such reserves. All other property, funds, assets, and interests shall be distributed to Member Agencies in proportion to each agency's contributions to the Association for costs set forth in Part A of the annual budgets.

19. REPORTS AND PUBLICATIONS

All reports and publications must be approved by the Executive Board before being released for public distribution.

20. SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties.

21. INDEMNIFICATION LIABILITY AND INSURANCE

Third party liability insurance naming each Member Agency as an additional insured party, shall be carried during the entire term of this Agreement; the premiums shall be paid by the Association.

Each Member Agency agrees to indemnify and hold harmless every other Member Agency to this Agreement and their officers, agents, and employees free from any cost or liability imposed upon any other Member Agency, officers, agents, or employees arising out of any acts or omissions of its own officers, agents, or employees.

22. ARTICLE HEADINGS

Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter set forth.

ATTEST CENTRAL CONTRA COSTA SANITARY DISTRICT

By Joyce E. McMillan By W. J. [Signature]  
Dated: Oct 20, 1983 Dated: Oct 20, 1983

ATTEST EAST BAY DISCHARGERS AUTHORITY

By [Signature] By [Signature]  
Manager  
Dated: Oct 13, 1983 Dated: Sept 30, 1983  
By [Signature]  
Chairman of the Commission  
Dated: Oct 5, 1983

ATTEST EAST BAY MUNICIPAL UTILITY DISTRICT

By [Signature] By [Signature]  
PAUL G. E. MALCOM SECRETARY JEROME B. GILBERT GENERAL MANAGER  
Dated: 9/26/83 Dated: September 23, 1983

ATTEST CITY AND COUNTY OF SAN FRANCISCO

By [Signature] By [Signature]  
Mayor of San Francisco  
Dated: \_\_\_\_\_ Dated: 11/4/84

ATTEST CITY OF SAN JOSE

By \_\_\_\_\_ By [Signature]  
HELEN E. JACKSON  
City Clerk  
Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

AMENDMENT TO  
JOINT POWERS AGREEMENT

THIS AMENDMENT TO JOINT POWERS AGREEMENT CREATING AN AGENCY TO BE KNOWN AS THE BAY AREA DISCHARGERS ASSOCIATION (the "Joint Powers Agreement") is entered into this \_\_\_\_ day of February, 2001, between the CENTRAL CONTRA COSTA SANITARY DISTRICT, a public corporation; the EAST BAY DISCHARGERS AUTHORITY, a joint powers authority; the EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation; the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation; and the CITY OF SAN JOSE, a municipal corporation (the "Original Signatory Agencies").

WHEREAS the Original Signatory Agencies acting by and through their designated members of the Executive Board, desire to amend the Joint Powers Agreement in the manner herein set forth to change the name of such association to Bay Area Clean Water Agencies effective as of March 1, 2001.

NOW, THEREFORE, the Joint Powers Agreement is amended, effective as of March 1, 2001, as follows:

1. The definition of the term "Association" in Section 1 is amended to read as follows: "Association: Bay Area Clean Water Agencies."
2. Section 3 is amended to delete the name, "Bay Area Dischargers Association," and insert in place thereof the name, "Bay Area Clean Water Agencies."

All other terms of the Joint Powers Agreement remain the same.

IN WITNESS WHEREOF, the Original Signatory Agencies have executed this Agreement on the dates hereafter set forth.

CENTRAL CONTRA COSTA SANITARY DISTRICT

By J. Kelly  
Dated: 2-22-01

EAST BAY DISCHARGERS AUTHORITY

By Chad V. Wen  
Dated: 2/22/01