
**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
FOR THE
LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY
(LAVWMA)**

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This Amended and Restated Joint Exercise of Powers Agreement is entered into this 10th day of September, 1997, by and between the CITIES OF LIVERMORE and PLEASANTON and the DUBLIN SAN RAMON SERVICES DISTRICT ("Member Agencies"), which Agencies do agree as follows:

Paragraph 1. Authority. This Joint Exercise of Powers Agreement ("Agreement" or "JPA") is entered into in accordance with and subject to the provisions of Government Code Section 6500, et seq.

Paragraph 2. Parties and Date. This Agreement was first entered into on the 18th day of June 1974, by and between the Cities of Pleasanton and Livermore and the Valley Community Services District. It was subsequently modified on May 31, 1977 (First Modification) and October 20, 1993 (Second Modification). In April and May 1997, the Cities of Pleasanton and Livermore and the Dublin San Ramon Services District, successor in interest to the Valley Community Services District, approved Principles of Agreement for a LAVWMA Expansion Project ("Principles"). This Amended and Restated Joint Exercise of Powers Agreement is intended to incorporate the Principles into the Joint Exercise of Powers Agreement, to amend and restate the existing Joint Exercise of Powers Agreement and to rescind the Second Modification.

Paragraph 3. Joint Powers Agency. The Livermore Amador Valley Water Management Agency ("LAVWMA" or "Agency") is a joint powers agency created pursuant to Sections 6500, et seq. of the Government Code, and is a public entity separate and distinct from the Member Agencies. LAVWMA came into being on June 18, 1974 and shall be terminated only as herein provided. LAVWMA owns, operates and maintains an export pipeline and related facilities for wastewater disposal.

Paragraph 4. Membership. The members of LAVWMA are the cities of Pleasanton and Livermore and the Dublin San Ramon Services District, which are hereafter referred to as "Member Agencies."

Paragraph 5. Purposes.

- 5.1 The purpose of this Agreement is to provide for the construction, operation, maintenance, repair and replacement of LAVWMA facilities for wastewater disposal to serve the general plans of Livermore and Pleasanton and the general plans of the planning agencies that DSRSD serves, all as further described herein.
- 5.2 The Agreement is further intended to serve as the legal and contractual basis for an export pumping and pipeline expansion project for wastewater disposal that will increase the total design capacity of the LAVWMA system and for indebtedness to be issued by LAVWMA

which will finance construction of the Project as defined in this Agreement. Without this Amended and Restated Joint Exercise of Powers Agreement and the mutual agreements and limitations contained herein, the parties would be unwilling and unable to undertake the proposed expansion project. This Amended and Restated Joint Exercise of Powers Agreement is therefore essential to LAVWMA's ability to carry out its public purposes and is intended to be a contract or obligation within the meaning of Government Code Section 53511 subject to validation pursuant to Code of Civil Procedure Section 860 et seq. The parties intend to and shall validate this Amended and Restated Joint Exercise of Powers Agreement pursuant to Code of Civil Procedure Section 860 et seq.

Paragraph 6. Method. The Member Agencies will accomplish the purposes set forth in paragraph 5 in the manner set forth in this Agreement.

Paragraph 7. Board of Directors.

- 7.1 **Designation of Board.** LAVWMA shall be administered by a Board of Directors (sometimes referred to as "Board") which shall be the governing body of LAVWMA and shall be selected as set forth in this section.
- 7.2 **Primary Directors.** Each Member Agency shall appoint two (2) primary directors. Each primary director shall be a member of the governing Board of said Member Agency. Primary directors shall each have authority to vote on matters coming before the Board and shall exercise all other powers contained herein or authorized by law.
- 7.3 **Alternate Directors.** Each Member Agency may appoint alternate directors. Each alternate is authorized to act in the absence of a regularly appointed primary director with the same powers as a primary director. Each alternate director shall also be a member of the governing Board of the Member Agency.
- 7.4 **Terms of Membership.** All primary and alternate directors serve until replaced by the appropriate appointing jurisdiction.
- 7.5 **Agency Officers.** The officers of LAVWMA shall consist of a chair and a vice-chair, selected from the Board membership by a majority vote of the directors present. The Board shall have the power to appoint such additional officers as it deems necessary. The chair and vice-chair shall hold office for a period of one year commencing July 1st of each and every fiscal year.

Paragraph 8. Board Meetings.

- 8.1 Regular Meetings. The Board shall determine the frequency of regular meetings and shall specify by resolution the date, hour and place at which regular meetings shall be held.
- 8.2 Special Meetings. Special meetings may be called by the chair, or in the chair's absence the vice-chair, pursuant to the provisions of Government Code Section 54956.
- 8.3 Notice. All meetings shall be noticed as required by Government Code Section 54950, et seq.
- 8.4 Minutes. The Board shall cause minutes of all meetings to be kept and distributed.
- 8.5 Quorum. Four directors shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.
- 8.6 Rules and Regulations. The Board may adopt such by-laws, rules and regulations as may be necessary for its operation and for the conduct of LAVWMA's business.
- 8.7 Vote or Assent of Members.
- 8.7.1 Except as provided in this paragraph and otherwise in this Agreement, a majority vote of the Board membership (i.e., four affirmative votes) shall be required to approve the business of LAVWMA, including construction, acquisition, operation, maintenance, repair, improvement and replacement of LAVWMA facilities; to implement the Project described in paragraph 15; and to construct additional facilities to provide PWWF capacity, pursuant to paragraphs 18.1 and 18.2.
- 8.7.2 A unanimous vote of the Board shall be required to increase the influent limit established in paragraph 13, to modify the Service Area limitations established in paragraph 14, to increase the hydraulic capacity of the pipeline pursuant to paragraph 18.3, or to take any other action for which this Agreement specifies that unanimous agreement of the Board is required.
- 8.7.3 In the event that paragraphs 13, 14, 15, 16, 17, 18, and 19 are severed from this Agreement as provided in paragraph 15.4.2, the approval of all Member Agencies and the unanimous approval of the LAVWMA Board shall be required to take actions concerning the subject matter of the severed paragraphs, including but not limited to amendment of this Agreement and approval of actions

related to expansion of the hydraulic capacity of LAVWMA facilities.

Paragraph 9. Powers of LAVWMA.

- 9.1 LAVWMA shall have the power to do the following, in its own name:
- 9.1.1 Construct, operate, maintain, repair and replace LAVWMA wastewater disposal facilities in accordance with the terms of this Agreement.
 - 9.1.2 To make and enter into contracts, including contracts with public or private entities, firms, corporations, partnerships, or persons for technical assistance or for purposes of carrying out the responsibilities of this Agreement.
 - 9.1.3 To employ and retain consultants, contractors, agents and employees and to establish compensation, salaries and other benefits for such persons as are necessary to implement this Agreement.
 - 9.1.4 To sue and be sued.
 - 9.1.5 To acquire, hold, and dispose of property, including the power to acquire property by eminent domain.
 - 9.1.6 To prepare and adopt a general budget for LAVWMA's functions.
 - 9.1.7 To receive, accept, and expend or disburse monies by contract or otherwise for purposes consistent with the provisions hereof, which monies may be provided by the United States Government, the State of California, or any subdivision thereof, or received from any other person, agency, or organization, whether public or private, for the purposes specified herein. LAVWMA shall maintain at all times a complete and accurate system of accounting for said monies.
 - 9.1.8 To receive, accept, and utilize the services of personnel offered by any of the Member Agencies, or their representatives or agents; receive, accept, and utilize property, real or personal from any of the Member Agencies, or their agents or representatives.
 - 9.1.9 To incur debts, liabilities and obligations in order to carry out the purposes of this Agreement including incurring administrative expenses. Such power includes the power to issue revenue bonds pursuant to Government Code Section 6540, et seq., Section 6584 et seq., and the Revenue Bond Law of 1941 (Government Code

Section 54300, et seq.), or any other then-available law, in order to carry out projects undertaken pursuant to this Agreement.

9.1.10 To insure itself and the Member Agencies from loss, liability, and claims arising out of or in any way connected with the performance of this Agreement.

9.1.11 To exercise any power common to the Member Agencies hereto and to advise the Member Agencies in the exercise of individual powers possessed by said Member Agencies, provided that said powers are exercised in furtherance of the purposes of this Agreement.

9.2 Manner of Exercise of Powers. As to those powers vested in LAVWMA pursuant to Section 6508 of the Government Code and this Agreement, unless otherwise specified by this Agreement or by rules and regulations adopted by the Board, such powers shall be exercised in the same manner and subject to the same restrictions as to those applicable to the City of Pleasanton pursuant to the statutes and laws of the State of California.

Paragraph 10. Officers and Employees.

10.1 Employees of Member Agencies. Any contractor, consultant, officer, employee or agent of LAVWMA may also be a contractor, consultant, officer, employee or agent of any of the Member Agencies. The appointment by LAVWMA of such a person shall evidence that the two positions are compatible. All of the privileges and immunities from liability and all pension, disability, worker's compensation and other benefits which apply to the activity of officers, agents, or employees of any of the Member Agencies when performing their respective functions shall 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. If any officer, agent or employee of a Member Agency performs services for LAVWMA, the manner of reimbursing the Member Agency for the services of said officer, agent or employee shall be determined by contract between LAVWMA and the Member Agency.

10.2 LAVWMA employees. None of the officers, agents, or employees appointed by LAVWMA shall be deemed, by reason of their employment by LAVWMA to be employed by any of the Member Agencies or, by reason of their employment by LAVWMA, to be subject to any of the requirements of such Member Agencies or to be acting as agents of the Member Agencies.

- 10.3 Insurance. LAVWMA shall provide sufficient insurance to its employees to protect LAVWMA and its employees from liability resulting from activities, advice and similar conduct associated with the employees' performance of duties on LAVWMA's behalf. LAVWMA may also provide such insurance to consultants who render services directly to the LAVWMA Board.
- 10.4 Treasurer and Auditor. The LAVWMA Board shall designate a treasurer and an auditor. LAVWMA shall cause an independent audit to be made annually by a certified public accountant.

Paragraph 11. Definitions. Unless the context otherwise requires, the meaning of terms used in this Agreement shall be as follows:

- 11.1 "Average Dry Weather Flow" or "ADWF" shall mean the average daily influent flow over the three consecutive months of lowest flows in any calendar year.
- 11.2 "Facility" or "facilities" means any building, works, or improvement for the collection, conveyance, and treatment of wastewater in the LAVWMA Service Area, constructed, owned, operated or maintained by LAVWMA or by another entity.
- 11.2.1 "Dual-use facility" is a facility used by two Member Agencies.
- 11.2.2 "Joint-use facility" is a facility used by all three Member Agencies.
- 11.2.3 "Sole-use facility" means a facility used by a single Member Agency.
- 11.3 "Influent" means the amount of wastewater flowing into all existing and future facilities providing wastewater treatment for the LAVWMA Service Area, exclusive of recirculated flows associated with a treatment plant.
- 11.4 "LAVWMA Service Area" means the area in which Livermore, Pleasanton and DSRSD provide wastewater treatment service as specified in Paragraph 14.
- 11.5 "Project" means the export pumping and pipeline expansion project for wastewater disposal that increases the total design capacity of the LAVWMA system to 41.2 mgd as described in more detail in paragraphs 15 and 16.
- 11.6 "Peak Wet Weather Flow" or "PWWF" shall mean the maximum instantaneous rate of flow.

Paragraph 12. Facilities Existing at the Time of Execution of This Agreement.

As of the date of this Agreement, LAVWMA owns and operates storage, pumping and pipeline facilities for the disposal of wastewater effluent. The wastewater treatment plants are owned by the City of Livermore and DSRSD. Effluent is conveyed through LAVWMA's 16 mile export pipeline (approximately 4 miles of force main and 12 miles of gravity interceptor) from LAVWMA's export pump station located in Pleasanton to the East Bay Dischargers Authority (EBDA) pipeline in San Leandro where it is ultimately discharged into San Francisco Bay. The export pipeline, pumping station, storage and other associated facilities are joint-use facilities, and have a capacity of 21-mgd PWWF with storage capacity of 18 million gallons. They are allocated as Livermore, 41.56 percent; Pleasanton 35.73 percent; and DSRSD, 22.71 percent. The effluent pump station at the DSRSD treatment plant and the force main which carries effluent .36 miles to the joint use facilities are dual-use facilities which are shared by Pleasanton at 61.14 percent and DSRSD at 38.86 percent. There is also a sole use facility which is an interceptor of approximately 6.37 miles carrying effluent from the Livermore treatment plant to the joint use facilities and is allocated to Livermore, 100 percent.

Paragraph 13. Influent Limits.

- 13.1 LAVWMA and its Member Agencies establish an influent limit of 31.8 mgd ADWF for raw wastewater influent to all existing and future wastewater treatment facilities providing wastewater treatment for the Service Area specified in paragraph 14. The influent limit shall be allocated as follows: Livermore 11.1 mgd; Pleasanton 10.3 mgd; and DSRSD 10.4 mgd. The influent limit shall remain in effect for all Member Agencies regardless of whether a Member Agency participates in the Project. A Member Agency will not issue connections if that Agency's influent limit has been reached. Two Member Agencies may transfer between them a portion of their influent allocation upon mutual agreement.
- 13.2 The influent limit will be in perpetuity unless modified by unanimous agreement of the Member Agencies.
- 13.3 The Member Agencies shall develop a uniform system for installing, operating and maintaining a system for influent metering at the wastewater treatment facilities that is approved unanimously by the LAVWMA Board, with metering to be installed no later than completion of the new pipeline.

Paragraph 14. Service Area.

- 14.1 Service to Incorporated Areas. Livermore, Pleasanton and DSRSD may provide wastewater service, including collection, conveyance, treatment

and disposal of raw wastewater, from only those areas which now or in the future are incorporated within the city limits of Livermore, Pleasanton, and Dublin respectively. DSRSD may provide such service to the area within the city limits of San Ramon that DSRSD serves as of the date of this Agreement and any area within the specific plan for Westside San Ramon dated November 1989 that is subsequently incorporated into the City of San Ramon, and Livermore may continue to provide such service to the Ruby Hill subdivision in the City of Pleasanton.

14.2 Service to Unincorporated Areas. In addition to providing service to the incorporated areas described in paragraph 14.1, Member Agencies may also provide service as follows:

14.2.1 Member Agencies may continue to provide wastewater treatment and disposal service to the unincorporated areas which they currently serve.

14.2.2 Livermore may provide wastewater treatment and disposal service (i) to approved uses in the unincorporated Agricultural Enhancement/Rural Management Zone (Zone B) which may be established within the planning area for the North Livermore General Plan Amendment adopted by the Livermore City Council on October 11, 1993, and (ii) to the Veteran's Administration hospital property for governmental uses.

14.2.3 DSRSD may provide wastewater treatment and disposal service to Camp Parks for governmental uses.

14.2.4 In the interest of protecting public health and safety, a Member Agency may also provide wastewater treatment and disposal service to unincorporated properties adjoining a city. If the cumulative amount of proposed service in any one contiguous unincorporated geographic area exceeds ten (10) residential connections or the equivalent, service in excess of ten connections will require unanimous approval of the LAVWMA Board.

14.2.5 Except as otherwise provided in this paragraph, no Member Agency shall serve any other area, including any unincorporated area of Alameda County which is south of Interstate 580 or in the planning area for the North Livermore General Plan Amendment adopted by the Livermore City Council on October 11, 1993, without the unanimous vote of the LAVWMA Board.

- 14.3 The Member Agencies will, individually and collectively, actively resist any other governmental agency requiring a Member Agency to provide wastewater or disposal service to any unincorporated areas other than the areas described herein.

Paragraph 15. Pipeline Project.

- 15.1 Project Description. Upon execution of this Agreement, the Member Agencies shall initiate the Project, which includes an export pumping and pipeline expansion that increases the total design capacity of the LAVWMA system to 41.2 mgd PWWF. The Project shall consist of an expansion component and a repair component. The expansion component includes a new pipeline which is intended to have a design capacity of 21 mgd PWWF, an expanded export pumping station and, at the appropriate time, a Livermore funded pump station and possible improvements to the LAVWMA sole use interceptor. Construction of the new pipeline shall be followed immediately by the repair component consisting of the relining of the existing pipeline which is intended to have a design capacity of 20.2 mgd PWWF.
- 15.2 PWWF Capacity. The total PWWF design capacity of the Project is 41.2 mgd. If all Member Agencies participate in the Project, the PWWF capacity shall be allocated as follows: Livermore 12.4 mgd; Pleasanton 14.4 mgd; and DSRSD 14.4 mgd; and the expansion increment of the Project shall be: Livermore 3.672 mgd; Pleasanton 6.897 mgd; and DSRSD 9.631 mgd. Any Member Agency that does not participate in the Project retains its right to utilize its existing PWWF capacity in the LAVWMA pipeline(s) and related facilities which is: Livermore 8.728 mgd; Pleasanton 7.503 mgd; and DSRSD 4.769 mgd. Two Member Agencies may transfer between them a portion of their PWWF allocation upon mutual agreement.
- 15.3 Project Approvals. LAVWMA is committed to validating this Agreement and to implementing the Project at the earliest date feasible, consistent with compliance with applicable engineering, financial, environmental and other regulatory requirements. LAVWMA will prepare the studies, reports, findings and other documents necessary for action on the Project ("Project approvals"), including environmental review, a financing plan, and a resolution and findings authorizing implementation of the Project.
- 15.4 Validation Action.
- 15.4.1 Promptly following adoption of this Agreement, LAVWMA shall initiate a validation action to establish the legal validity of

this Agreement. LAVWMA shall not award a construction contract to expand the design capacity of the LAVWMA system to 41.2 mgd until there is a final judgment upholding the validity of this Agreement or other resolution unanimously approved by the LAVWMA Board.

15.4.2 Notwithstanding the provisions of paragraph 32, in the event that a final non-appealable judgment in the validation action determines that any provision of paragraphs 13, 14, 15, 16, 17, 18, or 19 of this Agreement is invalid and if the Member Agencies do not agree to revisions to the Agreement in response to the judgment, all of the provisions of paragraphs 13, 14, 15, 16, 17, 18, and 19 shall be severed from the Agreement upon notice from a Member Agency to the other Member Agencies, which notice shall be given prior to award of any construction contract to expand the design capacity of the LAVWMA system. In such event, LAVWMA shall retain the authority to maintain its other facilities and to reline and repair the pipeline existing at the time of execution of this Agreement.

15.5 Voter Approval. Pleasanton and Livermore will submit the question of each city's participation in the Project to their respective voters as specified in paragraph 19 of this Agreement.

15.6 Project Capacity. It is LAVWMA's intention that the Project will be designed in a manner such that the Member Agencies' respective capacities in the replacement and expansion pipelines will be needed by each Member to serve the cities' general plans and/or the general plans for the planning agencies that DSRSD serves, that such capacity will be allocated and set aside exclusively for the use of each Member Agency except to the extent that the agencies may transfer capacity by agreement as specified in this Agreement.

15.7 Capacity Rights in EBDA.

15.7.1 Capacity Rights Existing At the Time of Execution of This Agreement. The Member Agencies have existing capacity rights in the EBDA system which are firm capacity rights of 19.72 mgd PWWF and 1.28 mgd of interruptible capacity. The firm capacity rights are always available for use by LAVWMA and are allocated as follows: Livermore, 8.229 mgd; Pleasanton, 7.106 mgd; and DSRSD, 4.385 mgd. The interruptible capacity will be interrupted when the combined EBDA member agency Peak Wet Weather Flow reaches 169.4 mgd. The existing interruptible flow is allocated: Livermore, .499 mgd; Pleasanton, .397 mgd; and DSRSD, .384 mgd.

15.7.2 Expanded EBDA Capacity Rights. The Project includes existing and expanded use of the EBDA system. The Member Agencies will use their best efforts to negotiate an expansion of 20.2 mgd of PWWF in the EBDA system. It is understood that the expanded capacity in the EBDA system will be interruptible capacity and will be allocated as follows: Livermore, 3.673 mgd, Pleasanton, 6.897 mgd, and DSRSD 9.630 mgd. A Member Agency that does not participate in the Project retains its right to utilize its existing capacity in the EBDA system.

15.7.3 Transfer of Capacity Rights. Two Member Agencies may transfer between them a portion of their EBDA capacity upon mutual agreement.

Paragraph 16. Cost Sharing for Project.

16.1 Cost sharing among Member Agencies for the design, engineering, and construction costs of the repair component shall be allocated in proportion to each Agency's joint use capacity rights in the existing pipeline, which are: Livermore 41.56%, Pleasanton 35.73%, and DSRSD 22.71%. This paragraph applies regardless of the Member Agency's participation in the Project.

16.2 All three Member Agencies shall share the costs incurred for and prior to Project approval for the expansion component of the Project even if the ballot measure fails in one or both cities. Such costs include, but are not limited to, planning, environmental, legal, and preliminary engineering costs. These costs shall be allocated and paid among all three Member Agencies in the following proportion: Livermore 18.18%; Pleasanton 34.14%; and DSRSD 47.68%. Livermore and Pleasanton shall not have any further obligation to pay for the expansion component unless and until the Project is approved by the voters of the respective city.

16.3 Following Project approval, Member Agencies shall pay for the expansion component of the Project, including but not limited to legal, engineering, construction, and all capital buy-in fees paid to the East Bay Dischargers Authority ("EBDA"), in proportion to each Agency's participation. If all three Agencies participate, each Agency's share shall be: Livermore 18.18%; Pleasanton 34.14%; and DSRSD 47.68%.

16.4 Any mitigation payments related to impacts of growth shall be allocated as follows, if all three Agencies participate: Livermore 21.97%; Pleasanton 25.90%; and DSRSD 52.13%.

- 16.5 In addition to the cost sharing allocations set forth in this paragraph, each Member Agency shall continue to pay its share of LAVWMA's annual operating budget as set forth in paragraph 23.
- 16.6 Project cost sharing in any future facilities, as provided in paragraph 18, shall be allocated in proportion to each Member Agency's capacity in the additional facilities.

Paragraph 17. Coordinated Operation. The Member Agencies will operate all treatment and disposal facilities in the LAVWMA Service Area, including storage ponds and reverse osmosis facilities, in a coordinated manner to minimize the risk of a LAVWMA overflow.

Paragraph 18. Future Facilities.

- 18.1 When an individual Member Agency reaches 75% of its PWWF allocated capacity set forth in paragraph 15.2 and at the overflow frequency established by the Regional Water Quality Control Board ("RWQCB"), the Member Agencies agree to cooperate in identifying and implementing or allowing implementation of additional facilities, such as storage, stream discharge or chain of lakes discharge, to provide additional PWWF capacity.
- 18.2 The Member Agencies also recognize that, over time, the likelihood of interruption by EBDA is expected to increase and will require future planning and additional facilities as described herein for an alternate means of PWWF disposal during interruption by EBDA.
- 18.3 If proposed facilities include additional export pipeline capacity, unanimous approval of the LAVWMA Board is required including, where a Member Agency so provides, an affirmative vote of its voters.

Paragraph 19. City Participation in Project.

- 19.1 After the LAVWMA Board approves the Project, the cities of Pleasanton and Livermore will take question of participation in the Project to their respective voters at the earliest possible date. It is anticipated that such a vote will occur no later than November 1998. If an election cannot be held by that date because the LAVWMA Board is unable to take action on the Project in sufficient time to allow the cities to place the matter on the ballot, the matter will be placed on the ballot no later than the next established election date following approval of the Project. Except as provided in paragraph 19.2, no Member Agency shall proceed with the Project until after the cities have had an opportunity to take the question of participation in the Project to their voters.

- 19.2 Once the LAVWMA Board has approved the Project in accordance with Paragraph 15.3 and the cities have had sufficient time to place the question of participation in the Project on the ballot at the next established election date, if one or both cities fail to do so, DSRSD alone or DSRSD and any city that receives approval of the voters may proceed with the Project, subject to the limitations in paragraph 15.4.
- 19.3 If the ballot measure fails in one or both cities, then DSRSD alone or DSRSD and any city that receives approval of the voters may proceed with the Project, subject to paragraph 15.4.
- 19.4 In the event that the initial ballot measure fails in either city, that city may place a subsequent measure or measures on the ballot until November 2005. If the subsequent measure passes, that city may buy capacity the participating Member Agencies have constructed up to that city's share of PWWF capacity as set forth in paragraph 15, by agreeing to pay an appropriate share of the Project cost, including any actual interest costs for the capacity.
- 19.5 If a Member Agency does not participate in the Project, it will not be entitled to utilize its allocated portion of the expansion increment of the Project (as set forth in paragraph 15.2) nor will the non-participating Member be liable for costs of construction, replacement or operation of the expansion component of the Project, but each non-participating Member Agency retains its right to utilize its existing PWWF capacity in the existing LAVWMA pipeline and pumping facilities, which is Livermore, 8.728 mgd; Pleasanton, 7.503 mgd; and DSRSD 4.769 mgd. The non-participating Member retains its share of other LAVWMA facilities as set forth in paragraph 12, remains subject to the other limitations of this Agreement including the influent limit as set forth in paragraph 13 and the Service Area limitations of paragraph 14, and is responsible for paying its fair share of the repair component. The non-participating Member's portion of the expansion increment of the Project (as set forth in Paragraph 15.2) shall be reallocated pursuant to paragraph 19.6.
- 19.6 If two of the three Member Agencies proceed with the expansion component of the Project, they shall allocate cost and PWWF capacity as to the expansion component as they agree, but the participating Member Agencies' influent limits as set forth in paragraph 13.1 shall remain unchanged. If the participating Member Agencies are unable to agree, they shall allocate cost and PWWF capacity in the expansion component in proportion to the two agencies' participation in the expansion component of the Project.

Paragraph 20. Interim Project. LAVWMA shall have the authority to investigate the possibility of proceeding on an early schedule of planning and/or construction to insure the protection of public health and, if appropriate, with DSRSD providing early phase financing.

Paragraph 21. Enforcement. In addition to any other rights and remedies that may accrue to the parties in this Agreement, each Member Agency may enforce compliance with the influent limit set forth in paragraph 13, the Service Area limitations in paragraph 14, and the restrictions on PWWF capacity in paragraph 15.

Paragraph 22. Technical Advisory Committee. A Technical Advisory Committee is hereby established to advise both directors of the Board and LAVWMA staff. This committee shall be composed of a designated representative from each Member Agency.

Paragraph 23. Accounting for Funds and Expenditures. This Agreement requires strict accountability of all funds and report of all receipts and disbursements as follows:

23.1 Each and every expenditure of monies shall be authorized or approved by the Board or by a person designated by the Board to authorize expenditures. The treasurer shall draw warrants to pay authorized expenditures.

23.2 Before LAVWMA may expend any monies or incur any financial obligation it shall adopt a budget showing proposed expenditures for the fiscal period and the proposed means of financing such expenditures. The fiscal year shall be the period from July 1 of each year to and including the following June 30. The budget shall be adopted on or before June 30 of each year for the ensuing fiscal year.

23.3 LAVWMA Budget.

23.3.1 Each Member Agency shall provide its share of LAVWMA's annual operating budget including debt service and replacement, fixed operating costs, and variable costs, with cash advances made quarterly on July 5, October 5, January 5 and April 5.

23.3.1.1 Debt service and replacement reserve accrual allocations shall be based on each Member Agency's capacity rights in sole-use, dual-use, and joint-use facilities.

23.3.1.2 Operating and maintenance costs are ongoing expenditures for repair, replacement and other costs incurred upon completion of construction of facilities so that the

facility can continue to perform the function for which it was designed.

- 23.3.1.3 Fixed operating costs are a function of the facilities constructed and allocations shall be based on each Member Agency's joint-use PWWF capacity rights and include all operation and maintenance costs except for variable costs.
- 23.3.1.4 Variable operating costs are a function of actual flows discharged to LAVWMA and include costs of chemicals and power. Variable costs shall be allocated to each Member Agency based on estimated flows.
- 23.3.2 At the end of each fiscal year and after approval of an audit, cash advances based on estimates of the preceding year shall be reconciled with actual costs and actual flows. Surpluses shall be reimbursed to the Member Agencies by LAVWMA and deficits shall cause an additional cash advance to LAVWMA by the Member Agency[ies]. In the event of incomplete or inaccurate records by a Member Agency, the total effluent flow shall be determined by a majority of the Technical Advisory Committee.
- 23.4 The treasurer shall present periodically to LAVWMA a financial report accounting for all monies received and disbursed for the fiscal year.
- 23.5 The treasurer shall be the depository and custodian of all Agency funds. The auditor shall perform the functions and duties set forth in Sections 6505 and 6505.5 of the Government Code. Any interest earned by Agency funds (directed by the Board to be deposited in an interest bearing account or securities) shall belong to LAVWMA.
- 23.6 The treasurer is designated as property custodian of LAVWMA.
- 23.7 Every officer or employee of LAVWMA authorized to receive, account for, or to expend any funds shall each file a bond in an amount to be determined by the Board. This requirement may be met by one or more blanket bonds or by insurance provided in accordance with paragraph 10.3. The cost of said bond or insurance shall be paid by LAVWMA.
- 23.8 Accounting Procedures. Full books and accounts shall be maintained for LAVWMA in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities under Section 26909 of the Government Code. In particular, LAVWMA's auditor and treasurer shall comply strictly with the requirements of the statute governing joint powers agencies, Government Code Sections 6500 et seq.

23.9 Audit. The records and accounts of LAVWMA shall be audited annually by an independent certified public accountant and copies of such other reports shall be filed with the County Auditor and each Member Agency within twelve (12) months of the end of the fiscal year under examination.

Paragraph 24. Liability.

24.1 The tort liability of LAVWMA, all members of the Board, and all officers and employees of said Agency, shall be controlled by the provisions of Division 3.6 of Title I of the Government of the State of California. The provisions of said Division relating to the indemnification of public employees and the defense of actions against them arising out of any act or omission occurring within the scope of their employment shall apply to all of said officers and employees.

24.2 Any and all debts, liabilities and obligations incurred by or imposed upon LAVWMA shall be the debts, liabilities, and obligations solely of LAVWMA and no capital or administrative debt, liability or obligation shall thereby be imposed upon any Member Agency.

Paragraph 25. Discharge Hold Harmless. Any Member Agency having facilities for treatment and discharge of sewage shall cause its effluent to meet applicable Federal and/or State discharge requirements and shall cause said effluent to be monitored to determine whether or not said Federal and/or State discharge requirements are being met for said discharge and the combined effluent to be transported through the LAVWMA pipeline. If the effluent of any Member Agency or Agencies fails to meet discharge requirements, that Agency or Agencies shall be solely responsible for any fines, civil liabilities, or criminal charges levied or imposed.

Paragraph 26. Amendments. This Agreement may be amended at any time by the written agreement of all the parties hereto.

Paragraph 27. Withdrawal of Member Agencies. The withdrawal of a Member Agency from LAVWMA shall only be effective upon payment in full or defeasance of any revenue bonds or other obligations, such as installment sale agreements or Certificates of Participation (hereinafter referred to as "Bonds") of LAVWMA. Upon full payment of principal, interest and premium (or provision therefor through defeasance of LAVWMA's Bonds) any Member Agency may withdraw from this Agreement provided written notice of such intention to withdraw has been transmitted to other Member Agencies at least five (5) years in advance of the actual date of withdrawal. The notice of withdrawal shall be in resolution form and approved by a four-fifths (4/5ths) vote of the entire governing Board of the withdrawing member. A Member Agency's notice of withdrawal may be given at any time prior to the final pay-

ment or defeasance of LAVWMA's Bonds, and the five year withdrawal period shall commence to run on date of receipt. A withdrawing Member shall continue to be obligated for its pro rata share of debts, obligations and liabilities and operations and maintenance costs incurred by LAVWMA after the notice of withdrawal has been received. A withdrawing Member shall continue to be responsible for its share of the general budget during the five-year withdrawal period.

Paragraph 28. Reinstatement. A party, subsequent to its filing of its notice of withdrawal or its actual withdrawal from LAVWMA, may seek reinstatement as a member of LAVWMA. Application for reinstatement shall be made in writing to LAVWMA and the members. A party shall be reinstated upon affirmative action by the Board and the then existing members of LAVWMA. The Board may require a party seeking reinstatement to meet any terms and conditions which the Board deems appropriate to insure quality of treatment and participation.

Paragraph 29. Term and Termination. This Agreement shall continue in force until rescinded or terminated at the end of any fiscal year by consent of all the Members. Upon termination, every Member Agency shall be entitled to receive such property and surplus money of LAVWMA as may lawfully be distributed in proportion to the contribution made by the respective Member Agencies.

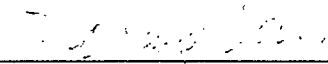
Paragraph 30. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors or assigns of the Member Agencies. No Member Agency may assign any right or obligation herein without the written consent of each of the other Member Agencies.

Paragraph 31. Repeal of Prior Documents. The documents entitled "Joint Exercise of Powers Agreement" entered into on the 18th day of June 1974, the Modifications to LAVWMA Joint Exercise of Powers Agreement entered into on May 31, 1977, and the "Second Modification to LAVWMA Joint Exercise of Powers Agreement" entered into on October 20, 1993, are hereby repealed and replaced by this Agreement. The repeal of these prior agreements does not affect any existing contract or obligation of LAVWMA with any third party.

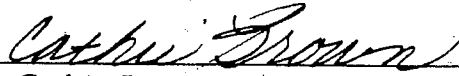
Paragraph 32. Severability. Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, or provisions shall not be affected thereby. Except in the circumstances set forth in paragraph 15.4.2, if any provision of this Agreement is held invalid or otherwise becomes unenforceable for any reason, the Member Agencies shall use their best efforts to revise this Agreement to the maximum extent legally feasible in order to cure the invalidity. In such event, LAVWMA

shall retain the authority to maintain its other facilities and to reline and repair the pipeline existing at the time of execution of this Agreement. The Member Agencies shall operate all existing LAVWMA facilities in a coordinated manner in order to carry out the goals and purposes of this Agreement.

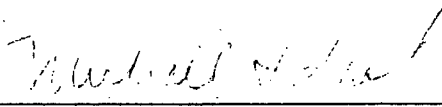
Approved as to Form:
CITY OF LIVERMORE

By: 
Thomas R. Curry, City Attorney

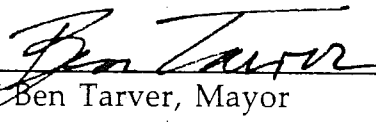
CITY OF LIVERMORE

By: 
Cathie Brown, Mayor

Approved as to Form:
CITY OF PLEASANTON

By: 
Michael H. Roush, City Attorney

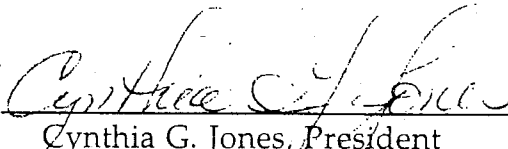
CITY OF PLEASANTON

By: 
Ben Tarver, Mayor

Approved as to Form:
DUBLIN SAN RAMON SERVICES DISTRICT

By: 
David E. Schricker, General Counsel

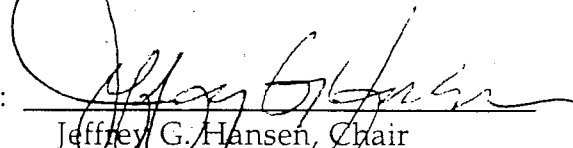
DUBLIN SAN RAMON SERVICES DISTRICT

By: 
Cynthia G. Jones, President

Approved as to Form:
LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY

By: 
Natalie E. West, General Counsel

LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY

By: 
Jeffrey G. Hansen, Chair