

JOINT EXERCISE OF POWERS AGREEMENT
OF THE WEST COUNTY AGENCY
BY AND AMONG WEST CONTRA COSTA SANITARY DISTRICT
AND THE CITY OF RICHMOND
AND THE RICHMOND MUNICIPAL SEWER DISTRICT

AMENDED AND RESTATED AS OF
June 15, 1984

AMENDED AS OF
APRIL 2, 1990

AMENDED AS OF
NOVEMBER 23, 1992

AMENDED AS OF
DECEMBER 21, 1993

AMENDED AS OF
AUGUST 6, 1996

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This AGREEMENT, first made as of the 15th day of February 1977 and amended as of March 23, 1977 and amended as of August 11, 1981 and amended, restated and dated for convenience as of June 15, 1984, by and among WEST CONTRA COSTA SANITARY DISTRICT, a public corporation and a sanitary district organized and existing pursuant to the provisions of California Health and Safety Code Sections 6400 et seq., in the State of California ("WCCSD"), the CITY OF RICHMOND, a municipal corporation and charter city duly organized and existing under a freeholder's charter in the State of California ("Richmond"), and the RICHMOND MUNICIPAL SEWER DISTRICT, a public corporation and a sewer district organized and existing pursuant to the provisions of California Health and Safety Code Sections 4600, et seq. in the State of California ("RMSD"); ~~each duly organized and existing in the~~ County of Contra Costa under the constitution and laws of the State of California,

W I T N E S S E T H:

WHEREAS, each of the Members hereto has power to plan, acquire, construct, maintain, manage, operate, and control facilities for the collection, transmission, treatment, and disposal of wastewater; and the Members propose by this agreement to exercise said powers jointly for the purpose of providing for the more efficient disposal of the wastewater produced in each Member's jurisdiction, to the economic, financial and general benefit of each Member; and each of the Members desire to plan, design and construct with the other Members joint wastewater facilities for the benefit of each and all of the Members;

WHEREAS, WCCSD, Richmond, and RMSD are each empowered by law to acquire, construct, maintain and operate real and personal property and control the same, and in connection therewith to acquire, construct, maintain and operate facilities for the disposal, treatment or conversion to energy and reusable materials of solid waste;

WHEREAS, WCCSD, Richmond, and RMSD are each empowered by law to acquire, construct, maintain and operate real and personal property and control the same, and in connection therewith to acquire, construct, maintain and operate facilities for the generation of electrical energy, resulting from the conversion to energy of solid waste, for

public and private uses and all rights, properties and improvements necessary therefor, including fuel and water facilities and resources;

WHEREAS, WCCSD, Richmond and RMSD are each desirous of conferring upon the West County Agency additional power with regards to the financing of its facilities for the benefit of each and all of the members.

NOW, THEREFORE, WCCSD, Richmond and RMSD, for and in consideration of the mutual agreements and covenants herein contained, do agree as follows:

SECTION 1. Definitions. Unless the context otherwise requires, the terms defined in this section and initially capitalized in the text shall for all purposes of the Agreement have the meanings herein specified.

Agency

1.1 "Agency" shall mean West County Agency of Contra Costa County, California, a joint exercise of powers agency previously created by the Members and continued in existence pursuant to this Agreement.

Agreement

1.2 "Agreement" shall mean this joint exercise of powers agreement as the same now exists and as it may from time to time be amended by all supplemental agreements entered into pursuant to the provisions hereof, which Agreement is an amendment of and a supplement to that certain

agreement by and among the Members, dated as of February 15, 1977, as amended, originally creating the Agency.

Board

1.3 "Board" shall mean the West County Agency Board, the governing body of the Agency.

Capital Costs

1.4 "Capital Costs" shall mean all costs related to construction of any facilities by or for the Agency, according to generally accepted accounting principles, including directly related studies, reports, design, engineering, inspection, and construction contract payments, and general and administration expenses incurred before completion of such facilities, excluding operating costs. Capital Costs credited to a Member shall include the allocable costs of such Member whether paid from local contributions or grants to such Member.

Fiscal Year

1.5 "Fiscal Year" shall mean the period commencing on July 1 to and including the following June 30.

Joint Facilities

1.6 "Joint Facilities" shall mean those facilities of the State Project for which construction cost was shared between WCCSD, Richmond and RMSD.

Law

1.7 "Law" shall mean Articles 1 and 2 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State

of California, and all laws amendatory thereof or supplemental thereto.

Management Agency

1.8 "Management Agency" shall mean that Member which has been designated by the Members to act for and on behalf of the Agency, as the agent or representative of the Agency, pursuant to and within the scope of authority provided in this Agreement and delegated by the Board.

Manager

1.9 "Manager" shall mean the person designated by the Board as its chief administrative officer to administer the affairs of the Agency and effect the policies of the Board.

Member

1.10 "Member" shall mean WCCSD or Richmond or RMSD.

Operating Costs

1.11 "Operating Costs" shall mean the costs of operation, maintenance, inspection, repairs, replacement, and administration necessary for ordinary use and operation of Joint Use Facilities. Such costs shall include expenses for utilities, insurance, tools, equipment, materials, supplies, wages, salaries, contract payments and other expenses necessary for the normal operation, maintenance, and administration of facilities.

Project

1.12 "Project" shall mean either or both of the following: (1) a facility, or any interest therein, for the disposal, treatment, recycling, or conversion to energy and reusable materials of solid waste to be acquired, constructed, or operated by or on behalf of the Agency pursuant to the Agreement or (2) a facility or any interest therein, including but not limited to ownership interests or capacity rights for the generation of electrical energy for public or private uses and all rights, properties, and improvements necessary therefor, including fuel and water facilities and resources, to be acquired, constructed, or operated by or on behalf of the Agency pursuant to the Agreement.

Project Manager

1.13 "Project Manager" shall mean the engineer selected by the Management Agency for the coordination, design and construction of the State Project, under the direction of the Manager.

Report

1.14 "Report" shall mean the report required for a Clean Water Grant under the Clean Water Bond Law of 1970, Public Law 92-500 - Federal Water Pollution Control Act Amendments of 1972, and subsequent laws and regulations relating thereto. Such "Report" shall be the Final Project

Report to West County Agency, as modified and approved by the State Water Resources Control Board.

Revenue Bonds

1.15 "Revenue Bonds" shall mean revenue bonds, notes, or any other evidences of indebtedness of the Agency now or hereafter authorized to be issued pursuant to the Law or any other applicable law to finance any Project, Joint Facilities, Sole-use Facilities, or the State Project.

Sole Use Facilities

1.16 "Sole-use Facilities" shall mean the collection, treatment and disposal facilities, for Richmond, RMSD and WCCSD, not included in Joint Facilities or in a Project. These facilities may be included with the Joint Facilities for grant approval and contract administration as the approved State Project.

State Project

1.17 "State Project" shall mean the project authorized or approved by the State Water Resources Control Board (SWRCB) for construction of Joint and Sole-use Facilities.

SECTION 2. Purpose. The Agreement is made pursuant to California Government Code Sections 6500, et seq., and its purposes are to provide for the joint exercise of powers common to the Members and for the exercise of such additional powers as are conferred by the Law. The Members are each empowered by the laws of the State of California to

exercise the powers specified in the recitals herein, and in connection therewith to acquire, construct, maintain and operate Joint Facilities, Sole-use Facilities, Projects and the State Project, and these common powers shall be exercised for the benefit of any one or more of the Members or otherwise in the manner hereinafter set forth.

SECTION 3. Creation of the Agency. There has been created pursuant to California Government Code Sections 6500, et seq., and there is hereby continued in existence an agency and public entity to be known as the "West County Agency of Contra Costa County, California." As provided in the Law, the Agency shall be a public entity separate from each of the Members, and the debts, liabilities and obligations of the Agency shall not constitute debts, liabilities or obligations of any of the Members.

SECTION 4. Term. This amendment and restatement of the Agreement shall become effective as of the date hereof and shall continue in full force and effect until such time as all Revenue Bonds and the interest thereon shall have been paid in full or provision for such payment shall have been made, after which time this Agreement shall continue in full force and effect until terminated by mutual agreement.

SECTION 5. Powers; Restrictions Upon Exercise.

5.1 The Agency shall have power to acquire, construct, operate and maintain any Project, Joint Facilities, Sole-use Facilities and the State Project and to

enter into agreements with public or private entities, including power sales agreements, to provide security for the repayment of any Revenue Bonds issued to finance such Joint Facilities, Sole-use Facilities, Projects and the State Project, subject, however, to the conditions and restrictions contained in the Agreement. It shall also have the power to plan, study, and recommend proper wastewater management consistent with the wastewater program as outlined in the Report.

5.2 The Agency is authorized, in its own name, to do all acts necessary or convenient for the exercise of such powers for such purposes that each of its Members could do separately, and all other acts authorized by the Law, including but not limited to any or all of the following:

- (a) to make and enter into contracts;
- (b) to apply for and accept grants, advances, and contributions;
- (c) to employ or contract for the services of engineers, attorneys, planners, financial consultants, fiscal agents, and such other persons as it deems necessary;
- (d) to make plans and conduct studies;
- (e) to acquire, construct, manage, maintain, operate, and control any buildings, works, or improvements, including transfer stations in connection with the collection of solid waste;

(f) to acquire, hold or dispose of property;
(g) to sue and be sued in its own name;
(h) to incur debts, liabilities, or obligations (which do not constitute debts, liabilities or obligations of the Members or any of them), subject to limitations herein set forth;

(i) to establish rates, tolls, fees, rentals, or other charges in connection with the facilities and services provided by the Agency;

(j) to plan, construct, operate, or maintain a Member's Sole-use Facility when specifically requested by the Member, or when necessary to meet joint discharge requirements, subject to the provisions of Section 20 hereof;

(k) to employ agent and employees;

(l) to exercise the power of eminent domain for the acquisition of property for any Project of the Agency and the State Project;

(m) to issue Revenue Bonds from time to time in accordance with the provisions of the Law for the purpose of raising funds necessary to finance a Project or Joint Facilities;

(n) to proceed with the acquisition and construction of a Project when the Agency shall have completed arrangements for obtaining funds sufficient to pay all costs of the acquisition and construction of

such Project and sufficient to provide adequate replacement reserves for such Project and when all necessary permits for such acquisition and construction shall have been obtained;

(o) to enter into installment sales agreements or loan agreements in connection with the financing of any Project;

(p) to sell or lease any Project;

(q) to loan the proceeds of Revenue Bonds to any entity to finance any Project; and

(r) to issue grant anticipation notes pursuant to California Government Code Sections 53589 et seq. for the purpose of financing a Project or Joint Facilities.

5.3 Such powers shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon Richmond in the exercise of similar powers.

5.4 The proceeds of the West County Agency Revenue Bonds (West County Agency Resource Recovery Project) shall be used to finance the construction of a solid waste and resource recovery facility. The use of said proceeds and the construction of said facility are to be administered by the Agency.

SECTION 6. Termination of Powers. The Agency shall continue to exercise the powers herein conferred upon

it until the Members shall have mutually rescinded the Agreement, except that if any Revenue Bonds are issued and delivered then in no event shall the exercise of the powers herein granted be terminated until all Revenue Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made.

SECTION 7. Boundaries. The boundary of the Agency shall be the consolidated boundaries of the Members. In the event of withdrawal from this agreement by a Member, the boundary shall be revised to exclude the area under jurisdiction of said Member.

SECTION 8. Organization.

8.1 West County Agency Board. The Agency shall be governed by the West County Agency Board, which shall exercise all powers and authority on behalf of the Agency, subject to the following limitation:

(i) The Report, supplements thereto, the plans and specification for the State Project and the West County Agency Resource Recovery Project referred to in Section 5.4, the issuance of any Revenue Bonds and the loan of proceeds thereof, the award of any contract for the acquisition or construction of any Joint Facilities for said State Project or for the West County Agency Resource Recovery Project, the sale or lease of said Project, and all other business except that in (ii)

below, shall be subject to the approval of all directors of the Board.

(ii) All business affecting Sole-use Facilities shall require only the affirmative vote(s) of the affected Member or Members.

8.2 Directors.

(i) The Board shall consist of two directors, one from WCCSD and one from Richmond and RMSD. Upon execution of this Agreement, WCCSD, singly, and, Richmond and RMSD, jointly, shall appoint one person to act as its representative as a director of the Board and one person as an alternate director to serve in the case of absence or conflict of its director. Each director and alternate shall hold office from the first meeting of the Board after appointment by the Member until his/her successor is selected. Each director and alternate shall serve at the pleasure of the Member he/she represents and may be removed at any time, without cause, in the sole discretion of that member's governing body. Each director and alternate shall be an elective official of the governing body of the Member which he/she represents.

(ii) WCCSD shall be entitled to one vote through its designated director or alternate; Richmond and RMSD, jointly shall be entitled to one vote through their designated director or alternate.

(iii) Directors shall be entitled to receive compensation as provided by law for directors of a sanitary district under the Sanitary District Act of 1923.

8.3 Principal Office. The principal office of the Agency shall be established by the Board within the boundaries of the Agency. The Board may change said principal office upon giving at least fifteen days' notice to each Member, the Regional Water Quality Control Board and the State Water Resources Control Board.

8.4 Officers. The Agency shall have five officers: Chairman, Vice Chairman, Manager, Treasurer, and Controller. The directors shall select from the Board a Chairman and Vice Chairman who shall hold office for a period of one year, commencing July 1 of each and every Fiscal Year; provided, however, the first Chairman and Vice Chairman appointed shall hold office from the date of appointment to the following June 30; provided further, that in the event that a Member removes from the Board a director serving as an officer, the Board shall appoint a director from the Board to fill the vacant office for the remainder of that Fiscal Year.

8.5 Chairman. The Chairman shall preside at the meetings of the Board, call meetings to order, adjourn meetings, announce the business and the order it is to be acted upon, recognize persons entitled to the floor, put to vote all questions moved and seconded, announce results of votes, maintain the rules of order, execute documents and

official actions on behalf of the Board when duly approved, and carry out other duties set forth in the bylaws.

8.6 Vice Chairman. The Vice Chairman shall serve as Chairman in the absence of the regularly elected Chairman.

8.7 Manager. The Board shall employ or contract for the services of a Manager who shall be the chief administrative officer of the Agency. He shall coordinate the business and operations of the Agency, prepare, distribute, and maintain minutes of Board meetings and official actions of the Agency, reply to communications on behalf of the Agency, approve payment of amounts duly authorized by the Board, and carry out other duties that may be assigned to him by the Board. The Manager shall be responsible for filing notices in accordance with Sections 6503.5 and 53051 of the California Government Code. The Manager may be a staff person of one of the Members. The Manager or his designated representative shall attend the Board meetings, report on administrative business, and take direction from the board.

8.8 Treasurer. The Treasurer of Contra Costa County shall be Treasurer of the Agency, be the depository, and have custody of all the money of the Agency; except that the Treasurer of one of the Members, with said Member's consent, may be designated Treasurer of the Agency by approval of the Board.

The Treasurer so designated shall:

(i) Receive and receipt for all money of the Agency and place it in the treasury of the Treasurer to the credit of the Agency.

(ii) Be responsible upon an official bond for the safekeeping and disbursement of all Agency money.

(iii) Pay, when due, out of money of the Agency, all sums payable on outstanding bonds and coupons of the Agency.

(iv) Pay any other sums due from the Agency from Agency money, only upon warrants of the public officer performing the functions of Controller of the Agency.

(v) Verify and report in writing on the first day of July, October, January and April of each year to the Agency, and to each of the Members, the amount of money held for the Agency, the amount of receipts since the last report and the amount paid out since the last report.

(vi) Invest all of the Agency's funds not currently required in the manner provided by law and collect interest thereon for account of the Agency.

8.9 Controller. The Agency shall designate a Controller, which person shall be of the same public agency as the Treasurer. The Controller shall draw warrants to pay demands against the Agency when the demands have been duly approved by the Board or the Management Agency, as evidenced by the signatures of the Chairman of the Board or the

presiding officer of the Management Agency and the Manager or as otherwise authorized by resolution of the Board, filed with the Treasurer.

There shall be strict accountability of all Agency funds and report of all receipts and disbursements and compliance with Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Sections 6500, et seq.). The Controller shall either make or arrange for a contract with a certified public accountant to make an annual audit of the accounts and records of the Agency. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code and shall conform to generally accepted auditing standards. The records and accounts of the Agency shall be audited annually, and a report thereof shall be filed as a public record with the Agency, each Member and the Contra Costa County Auditor not later than six months following the end of the fiscal year under examination. Any costs of the audit shall be borne by the Agency.

8.10 Access to Property. The Treasurer and Manager are hereby designated as the persons who have charge of, handle and have access to the property of the Agency. Each such person shall file with the Agency an official bond in an amount to be fixed by the Board. Cost of said bond shall be paid by the Agency.

8.11 Officers, Employees and Agents. None of the officers, agents or employees directly employed by the Agency shall by reason thereof become officers, agents or employees of any Member.

The Agency may contract with any Member for any services. None of the persons whose services are supplied by a Member shall by reason thereof become an employee of the Agency.

The Agency may appoint or employ an officer, employee or agent of a Member as its officer, employee or agent.

8.12 Project Manager. The Project Manager shall be directly responsible to and take direction from the Manager, and shall render technical and management assistance to him. The Project Manager shall report regularly on his activities to the Manager, and as requested to the Management Agency and Agency, on the progress, execution, status and projections of the State Project. The Project Manager shall have prime design responsibility for the State Project, but may subcontract with engineers and other consultants, subject to the concurrence of the Management Agency, consistent with the rules and regulations of the State Water Resources Control Board and the special conditions for the State Project implementation set forth hereinafter. He shall serve at the pleasure of the Management Agency.

SECTION 9. Meetings of the Board.

9.1 Regular Meetings. The Board shall hold at least one regular meeting each year. The date upon which, and the hour and place at which, each such regular meeting shall be held be fixed by resolution of the Board.

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

9.3 Notice of Meetings. All meetings of the Board 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.

9.4 Minutes. The Manager shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each director and to each Member.

9.5 Quorum. Two of the directors of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.

9.6 Bylaws. The Board may adopt from time to time such bylaws, rules or regulations for the conduct of its affairs as may be required.

~~9.7 Budget. A general budget for a Joint~~
Operating Fund shall be adopted by the Board for the ensuing fiscal year prior to June 1 of each year. The budget shall

include sufficient detail to constitute an operating guideline, the necessary contributions to be made by each Member, and expenditures to be made for administration, maintenance and operating costs of the Joint Facilities. Any budget for authorized Sole-use Facilities or Projects shall be kept separately. Approval of the general budget shall constitute authority for the Manager to bill the Members for their contributions and expend funds for the purposes outlined in the approved budget, but within the availability of funds on hand as determined by the Controller.

A State Project budget for a Joint Project Construction Fund shall be adopted by the Board for the State Project prior to committing any construction funds and shall be amended annually or at each stage of the State Project as determined by the Board. Approval of the State Project budget shall constitute authority for the Manager to receive state or federal grant funds, bill Members for their contributions, and expend funds for construction after appropriate award of contract by the Board and other project funds for services and expenses directly related to said State Project construction.

Budgets governing the construction of Sole-use Facilities shall be adopted by the affected Member or Members and appropriate accounts shall be established and designated as Richmond, WCCSD or RMSD (or any combination thereof) Construction Fund. Disbursement of such funds by the Agency

shall be made only on written authorization of the finance officer of the affected Member(s). Receipts and disbursements for Sole-use Facilities construction may also, pursuant to applicable regulations, be made directly by the affected Member or Members, in which case such budgets shall not be part of the budget of the Agency.

SECTION 10. Elections. For the purpose of holding any election in the Agency, the Board may call and hold an election to submit propositions to the electors of the Agency in the same manner as the board of supervisors of a county may call and hold county elections, and the electors of the Agency shall have the right to petition for referendum on any ordinance enacted by the Board in the same manner and subject to the same rules as are set forth in Sections 3750 and 3754, inclusive, of the California Elections Code, except that all computations referred to in those sections and the officers of the county mentioned in those sections shall be construed to refer to comparable computations and officers of the Agency. For purposes of any such election or referendum petition, the electors residing within the boundaries of the Agency who would be qualified to vote for candidates for Governor at any general election shall be the electors of the Agency.

SECTION 11. Joint Operating Fund. A Joint Operating Fund shall be established, which shall be used to pay all administrative, operating, engineering and other

non-capital expenses incurred by the Agency in connection with the State Project. Each Member shall, within thirty days after approval by the Board, deposit into the Joint Operating Fund an amount obtained by applying to the sum approved the percentage applicable under Schedule B.

All moneys in the Joint Operating Fund shall be paid out by the Treasurer for the purposes for which said fund was created upon authorization by the Chairman of the Board or the presiding officer of the management agency and approval by the Controller and Manager of demands for payment, or as otherwise authorized by resolution of the Board, filed with the Treasurer.

SECTION 12. Manager; State Project Implementation. WCCSD is hereby designated as the Management Agency to administer the affairs of this Agency and the State Project, subject to the direction of the Board. The Board may select another Member or may abolish the Management Agency at any time, and assume the duties and responsibilities of the Management Agency.

The manager of WCCSD is hereby designated as the Manager of the Agency, subject to the direction of the Board and within the delegation of duties, subject to the direction of the Management Agency. The Board may appoint another person as Manager at will.

Upon execution hereof, the Management Agency shall select the Project Manager who shall serve under the

direction of the Manager, with full primary design and coordination responsibility for the State Project, and right of selection of subcontractor engineers and consultants, subject to concurrence of the Management Agency, consistent with the rules and regulations applied by the State Water Resources Control Board.

The Management Agency may select the design engineer for Sole-use Facilities who is recommended by the affected Member or Members, and with regard to these facilities the Project Manager shall not have design responsibility but shall be responsible for the coordination thereof with the project. When the Management Agency, for a Sole-use Facility, agrees to the consultant so selected or recommended by a Member, such Member shall indemnify and hold harmless the Agency and Management Agency from all costs and expenses incident thereto including legal, and shall assume all risks and responsibility for design, financing, construction, ownership and operation of their respective such facilities, and shall own and retain the apportionable by-products resulting therefrom. All design and construction contracts and plans and specifications for Sole-use Facilities shall be subject to approval of the Management Agency for scope, scheduling and interfacing with design and construction of Joint Facilities, and provisions for cooperation and reporting to the Project Manager.

All Members have, by previous agreement, agreed to proceed with pre-design services and preliminary design services for the State Project. Only by approval by the Board of the full design (Step II) may the Agency proceed with or assign to a Member the preparation of plans and specifications for said project. Only by the approval by the Board of said plans and specifications may the Agency call for construction bids for any portion of said project. Upon approval by the Board of the plans and specifications for the State Project, each Member agrees to take the necessary steps to obtain funds to bear its share of the cost of the project. Upon certification from each Member of the availability of its share of the cost of the State Project or the Agency's approval of a Member's request to issue Revenue Bonds for that Member's share of costs, the Agency may award construction contracts and proceed with the construction of the State Project. Funds required by the Agency for the project shall be payable by the Members on demand and shall be paid by each Member within thirty (30) days of billing. The Agency's billing shall certify that the funds received pursuant to the billing will be needed for disbursement within a period of not exceeding six (6) months from date of billing.

All or any portions of the project may be acquired or constructed by the Agency directly or by contract with a Member.

SECTION 13. Ownership of Joint Facilities. Each Member shall own an undivided portion of the Joint Facilities used by it equal to the percentage of the capital cost of the Joint Facilities paid for by it as provided in Schedule A; provided, however, that in the event Revenue Bonds are issued by the Agency to pay any cost of the Joint Facilities to serve any Member, then such Member shall not own such undivided portion of the Joint Facilities until the retirement in full of any such Revenue Bonds.

SECTION 14. Capacity Rights. Preliminary maximum capacity rights in the Joint Facilities for each Member are summarized as follows:

	<u>Outfall Pipeline</u>	<u>Sludge Handling</u>
WCCSD	19.35 m.g.d.	16.50 m.g.d.
Richmond & RMSD	<u>74.40 m.g.d.</u>	<u>--</u>
Total	93.75 m.g.d.	16.50 m.g.d.

Upon completion of infiltration/inflow and wet weather flow analyses and alternatives required as a condition of state and federal grants, the size of all Joint Facilities shall be modified to reflect actual capacity requirements. In the event the modified capacity requirements result in a change in Capital Costs for any portion of the State Project, the distribution of Capital Costs determined in accordance with Schedule A shall be modified based on the estimated incremental increase or decrease in cost.

The capacity of Joint Facilities for a Member shall be approved by the Member through its director.

Should any Member exceed its flow allocations as finally modified, upon notification by the Agency it shall take measures to reduce its flows within the allocated capacity. If the Member is unable to make necessary reduction in its flow, it may:

(a) Purchase capacity from any other Member which has surplus or unused capacity, or

(b) At its expense, provide for modifications to pumping and/or conveyance facilities or accommodate additional flows, or

(c) Make arrangements with any other Member or Members to utilize their capacity allocation for short-term flows.

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

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

SECTION 15. Distribution of Capital Costs for the State Project.

(a) Capital Costs for the State Project shall be allocated to each Member in accordance with Schedule A attached hereto and made a part hereof. Each Member may be

required to advance its share of all capital outlay costs for the State Project to the Agency and the moneys so paid to the Agency shall be paid out by it in payment of project costs. If any Member is unable to contribute its share of Capital Costs in cash for the Joint Facilities, the Agency, if requested by that Member, may cause Revenue Bonds to be issued with revenue to be provided by lease of facilities to the Member requesting such issuance. Funds received from the Members and grant funds received from state and federal governments shall be deposited in a Joint Project Construction Fund and applied to the State Project costs. Funds remaining after final EPA audit of the State Project shall be returned to the Members in proportion to their contributions, except for proceeds from Revenue Bond sales which shall be transferred to the appropriate bond fund.

(b) Notwithstanding the provisions of paragraph (a) above, funds received by the Agency as grants from the United States of America or the State of California, or agencies thereof, may be applied to the payment of principal of and interest on any grant anticipation notes issued by the Agency, and the Agency, in any resolution or other instrument authorizing or securing an issue of such notes, may pledge such grants to the payment of such issue of notes.

SECTION 16. Distribution of Operating Costs.

Operating costs for the State Project shall be allocated to

each Member as set forth in Schedule B, attached hereto and hereby made a part of this Agreement.

At the points (or at an agreed upstream location) at which effluent from the collection system or sewage treatment facilities of one or more Members connect to the Joint Facilities, meters shall be installed to measure the discharge of sewage effluent (or sludge) from each such facility into the Joint Facilities. By the tenth day of each month, each Member shall report to the Manager its previous month's total metered effluent flow contribution to the Joint Facilities.

In any year in which portions of the Joint Facilities are in operation but not all Members have connected to the Joint Facilities, general and administrative costs shall be charged to each Member (including those not connected to the Joint Facilities) in accordance with Schedule A. Routine maintenance and operation costs of the Joint Facilities shall be allocated in accordance with Schedule B only to those Members connected to the Joint Facilities.

SECTION 17. Payment of Operating Costs. Not later than September 1 of each year, following the first year of service to a Member, the Agency shall notify each Member of its allocated share of the estimated operating costs for the prior fiscal year. Each Member hereby agrees to include in each annual budget approved by the governing body of such

Member amounts estimated to be sufficient to pay all such charges and to pay to the Agency within thirty (30) days of receipt of a statement of the Member's allocated share of the actual operating costs for the billing period as determined by the Board. The Agency is hereby authorized to take any or all legal actions necessary and permitted by law to enforce the collection of such charges or any other compliance with this Agreement, including, but not limited to, actions or proceedings in mandamus to require each Member to include the amounts estimated to be necessary in each such estimated annual budget, or to collect such charges from the taxpayers, landowners or users of any of the facilities of the State Project.

SECTION 18. Records and Accounts. The Agency shall cause to be kept accurate and correct books of account, showing in detail the costs and expenses of any construction and the maintenance, operation and administration of the Joint Facilities and all financial transactions of the Members relating to the Joint Facilities, which books of account shall correctly show any receipts and also any costs, expenses or charges to be paid by all or any of the Members hereunder, and also records of the sewage flow from each of the Members, together with the strength of effluent delivered ~~from each of the Members.~~ Said books of account shall be open to inspection at all times by any representative of any

of the Members, or by any accountant or other person authorized by any Member to inspect said books of account.

In addition, if required by the resolution authorizing the issuance of Revenue Bonds, the Agency shall maintain appropriate books, records, accounts and files relating to each project as required by said resolution which shall be open to the inspection of holders of Revenue Bonds to the extent and in the manner provided in said resolution.

SECTION 19. Income from Operation. Any treated wastewater for reuse or other substance arising out of and apportionable to the operation of the State Project shall be the property of the Agency and may be sold by the Agency for the best obtainable prices. The income of any such sale shall be credited to the Members in proportion to the Capital Costs of facilities of Members devoted to the production of such by-products against the maintenance and operation costs charged to such Members.

It is recognized that by-products will also arise out of and be apportionable to Sole-use Facilities, and the proportion allocable thereto shall be the property of the Members owning such Sole-use Facilities. It is also recognized that water reclamation and by-products may result from operations at the WCCSD plant, excluding Richmond, in which Richmond would not share; and that Richmond/WCCSD joint sludge operation may result in by-products.

SECTION 20. Failure to Meet Discharge

Requirements. The Agency shall cause the combined effluent of all dischargers as well as the receiving water of the combined discharge to be monitored to determine whether or not federal and/or state discharge requirements are being met. In addition, the Agency shall cause the effluent of each discharger to be monitored. If the combined effluent of all dischargers at the point of ultimate discharge into the receiving water fails to meet discharge requirements, the Member or Members responsible for the violation shall be solely responsible for any fines levied or criminal sanctions imposed. In this regard, the Member or Members responsible for the violations shall hold harmless the Agency and the other non-violating Members from all liability and/or damages incurred by said Agency and/or Members as a direct and proximate result of said violation, including, but not limited to, legal, engineering and administrative expense and direct or indirect damages incurred by the Agency or the Member as a result of a cease and desist order or court injunction from any state or federal agency restricting construction within the jurisdictional limits of said Agency or Member. In the event two or more Members are responsible for failure of the combined effluent to meet discharge requirements as above provided, the Members responsible for the violation shall be jointly and severally responsible to the Agency and to the other non-violating Members. Upon

notification of such violation, the Member or Members shall take prompt, corrective action as necessary to meet said discharge requirements.

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

(a) Have undertaken at the cost and expense of the violating Member or Members the construction of such additional treatment facilities as are necessary to meet said discharge requirements.

(b) Impose a prohibition of additional connections to the collection system of the Member or Members in violation.

Nothing in this section shall preclude one or more Members from providing additional levels of treatment to insure meeting waste discharge requirements in the combined effluent. In the event that one or more Members are obligated to provide additional levels of treatment to meet waste discharge requirements for the combined effluent, all Members requiring the additional levels of treatment shall participate in the costs of such treatment based on their relative contribution of waste characteristics to be treated and the costs of providing such treatment.

SECTION 21. Future Wastewater Projects. It is understood that it may be in the interest of some or all of the Members of the Agency to acquire and construct additional wastewater management facilities. This Agreement is subject to modification for such purpose if all Members desire to do so.

SECTION 22. Contributions; Payments and Advances; Use of Personnel, Equipment or Property; Exchange of Services. It is hereby agreed that:

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

(b) Payments of public funds of a Member may be made to defray the cost of such purpose.

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

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

(e) The Members may exchange services without payment of any consideration other than such services; or a Member may agree to provide all or any portion of such services to another Member.

(f) ~~The Board may provide for the repayment or~~ return to a Member of all or any part of any contributions, payments or advances made by that Member.

SECTION 23. Arbitration. All controversies arising out of the interpretation or application of this Agreement or the refusal of any Member to perform the whole or any part thereof may with the mutual consent of the parties (which may be Agency/Member(s) or Member(s)/Member) to said controversy be settled by arbitration in accordance with the provisions of this section. Upon receipt of a written agreement to arbitrate from the parties involved in said controversy, the controversy shall be submitted to a Board of Arbitrators, one of which shall be appointed by each side to said controversy within fifteen (15) days of the written agreement to submit said matter to arbitration. None of the arbitrators shall be a resident of or a taxpayer in or own property in or have a place of business in or be an officer or employee of any of the parties to the controversy. The arbitrators so selected shall in the event of a controversy between two parties select a third arbitrator within fifteen (15) days of the initial selection of the first two arbitrators by the two parties to the controversy. If the arbitrators are unable to select a third arbitrator, either party on five (5) days' notice may cease said arbitration proceedings and revert to legal action or other appropriate remedy to resolve said controversy. Once said Board of Arbitrators has been selected, the decision of said Board of Arbitrators shall be binding upon the parties to said controversy. The Board of Arbitrators shall hold at

least one hearing and at least ten days before said hearing shall give each party to said controversy written notice thereof. The arbitration shall be restricted to matters relative to those stated in the agreement to arbitrate. Each party to said arbitration will be given an opportunity to be heard and to present evidence. Upon conclusion of the hearing or hearings, the Board of Arbitrators shall state its findings of fact and conclusions of law and decision in writing and shall sign the same and deliver one signed copy thereof to each party to said controversy. Such award shall be final and binding upon each party to such controversy. A majority finding shall govern if the arbitrators' determination is not unanimous. Each participant shall pay his own expenses, including the expenses of the arbitrator which it nominates. The administrative costs of the arbitration proceedings and the cost of the neutral arbitrator shall be shared equally by all of the parties to said controversy who have submitted said matter to said arbitration.

SECTION 24. Withdrawal from Authority:

Disposition of Assets. This Agreement shall continue in full force and effect until such time as all Revenue Bonds issued by the Agency and the interest thereon shall have been paid in full or provision for such payment shall have been made, after which time this Agreement shall continue in full force and effect until terminated by mutual agreement. Upon

termination of this Agreement, the assets of the Agency shall be divided among the then parties to this Agreement in accordance with agreements at time of acquisition, or in absence of agreement, in proportion to contributions.

A Member may not withdraw from the Agency unless such Member has arrived at an agreement with the Agency or another Member, whereby the Agency or other Member acquires all of the rights in this Agreement and in said Agency of said Member desiring to terminate and likewise assumes all liability including bonded indebtedness of said Member desiring to terminate this Agreement.

Each party to this Agreement waives its right to seek a judicial partition of any interest it may have in the Agency and/or in any assets of the Agency, including real property, improvements to real property and personal property.

SECTION 25. Flow Limitations. It is possible that the Environmental Protection Agency and/or the State Water Resources Control Board may impose an interim flow limitation on the entire jurisdiction of the Agency. The apportionment of such limitation among the Members, which shall be applicable for the first ten years of this Agreement or until the Air Quality Maintenance Plan is completed, whichever first occurs, shall be decided by the Board. Thereafter, the capacity rights set forth in Section 14 shall limit each Member's flow, unless the A.Q.M.P. imposes a lesser flow upon each Member. Should the A.Q.M.P. impose a

lesser flow on the entire jurisdiction of the Agency, the apportionment of such limitation among the Members shall be decided by the Board.

SECTION 26. Amendments. This Agreement may be amended only by an agreement approved and executed by all of the Members.

SECTION 27. Filing with the Secretary of State. The Manager shall file with the Secretary of State notices in accordance with California Government Code Sections 6503.5 and 53051.

SECTION 28. Notices. All notices which any Member or the Agency may wish to give in connection with this Agreement shall be in writing and shall be served by personal delivery during usual business hours at the principal office of the Member or Agency, to an officer or person apparently in charge of said office, or by depositing same in the United States mail, postage prepaid, and addressed to the Member or Agency at its principal office, or to such other address as the Agency or Member may designate from time to time by written notice given as in this paragraph provided. Service of notice pursuant to this paragraph shall be deemed complete on the day of service by personal delivery or deposit in the mail.

SECTION 29. Successors: Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. In the event of

the consolidation of some, but less than all, of the Members, this Agreement shall be binding upon and shall inure to the benefit of the remaining Members. No Member shall assign its rights hereunder except to a duly formed public entity organized and existing under the laws of the State of California.

SECTION 30. Severability. Should any part, term or provision of this Agreement be decided by a final judgment of a court to be illegal, or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

SECTION 31. West Contra Costa County Wastewater Management Agency. Upon execution hereof, West County Agency shall be the successor agency to the West Contra Costa County Wastewater Management Agency in all matters affecting the Members of the Agency. The West County Agency shall apply for and accordingly distribute to its Members, state and EPA Clean Water Grant funds which Members appropriately request or have requested payment for in accordance with EPA Construction Grant C061154 01 0, as amended. It is understood that the Members will furnish their appropriate local funds for their share as previously agreed to the Agency for all Step I work.

The West County Agency shall accept and assume the liabilities and be entitled to all claims and credits

attributable to the following Members only in the West Contra Costa County Wastewater Management Agency: City of Richmond and/or Richmond Municipal Sewer District; and WCCSD.

SECTION 32. Section Headings. All section headings contained herein are for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 33. Issuance of Revenue Bonds. Notwithstanding any other provision contained in this Agreement, before any Revenue Bonds are issued by the Agency, the governmental body of each member must, by resolution, approve of the issuance of said Revenue Bonds.

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

WEST CONTRA COSTA COUNTY
SANITARY DISTRICT

June 21, 1984

By Richard R. Wooten
President

Attest:

Warren M. Munchie
Secretary

CITY OF RICHMOND

June 18, 1984

By Thomas J. Brown
Mayor

Attest:

Harlan J. Heydon
City Clerk

RICHMOND MUNICIPAL SEWER DISTRICT

June 18, 1984

By Thomas J. Brown

Attest:

Harlan J. Heydon

SCHEDULE A

METHODOLOGY FOR DISTRIBUTION OF CAPITAL COSTS

The distribution of capital costs are defined in terms of the following project element costs:

Joint Use Facilities

- A = Total cost of Tara Hills pump station modifications and all transmission facilities necessary to convey wastes to the SPSP treatment plant from the Tara Hills pump station.
- B = Total cost of plant additions at SPSP treatment facility not designated as sole use facilities.
- C = Total cost of effluent pump station at SPSP treatment facility and transmission line from the SPSP treatment facility pump station to the outfall pump station in Richmond.
- D = Total cost of outfall pump station in Richmond.
- E = Total cost of outfall line from the outfall pump station to the discharge point in the bay.

Sole Use Facilities

- F = Total cost of all pumping and transmission facilities necessary to convey Hercules' wastes to Tara Hills pump station.
- G = Total cost of the flow equalization basin and appurtenant structures at the SPSP treatment facility site.
- H = Total cost of Richmond collection system improvements and treatment plant modifications.
- I = Total cost of sludge pumping and transmission facilities from Richmond to SPSP treatment facility.
- J = Total cost of sludge handling facilities at SPSP treatment plant site.

Distribution of capital costs for the project shall be made in accordance with the methodology set forth below, except that member shares of sub-schedule A1 and sub-schedule A2 will be adjusted to reflect actual member grant eligibility credits when established.

Sub-schedule A1

Distribution of capital costs of elements A, B, C, D, E, G, H, I, and J without participation by Hercules:

<u>Project Element</u>	<u>Percent of Element Cost</u>	
	<u>Richmond</u>	<u>SPSD</u>
A	-0-	100.00
B	-0-	100.00
C	-0-	100.00
D	83.68	16.32
E	80.42	19.58
G	-0-	100.00
H	100.00	-0-
I	100.00	-0-
J	89.10	10.90

Member credits for distribution of state and federal assistance to offset capital costs shall be in direct ratio of member grant eligibilities for flows as determined by Board, the State of California Water Resources Control Board, and the U.S. Environmental Protection Agency.

Sub-schedule A2

Distribution of capital costs of A, B, C, D, E, F, G, H, I, and J with participation by Hercules:

Y = Total costs of A, B, C, D, E, F, G, H, I, and J with Hercules' participation.

Z = Total costs of A, B, C, D, E, G, H, I, and J developed under sub-schedule A1 above.

Hercules share of costs = Y minus Z

SPSD and Richmond costs will be exactly those as developed under sub-schedule A1 above, and some of the elements under sub-schedule A2 will have increased costs with participation of Hercules.

Member credits for distribution of state and federal assistance to offset capital costs shall be in direct ratio of member grant eligibilities for flows as determined by the Board, the State of California Water Resources Control Board, and the U.S. Environmental Protection Agency.

Joint Use Facilities

Distribution of total annual operating costs shall be made on the basis of each member's proportionate share of the total of all flow contributed to the joint facility element (as defined in Schedule A) in accordance with the following equation:

$$A_a = \frac{Q_a}{Q_t} \times A_t$$

Where:

A_a = Member's total annual share of operating costs.

Q_a = Member's total annual contribution of effluent to the joint facility element.

Q_t = Total of all contributions of effluent to the joint facility element.

A_t = Total costs of all joint facility element annual operating costs to the Agency.

Sole Use Facilities

All annual operating costs for project elements F, G, H, and I (as defined in Schedule A) shall be the sole responsibility of the following:

<u>Project Element</u>	<u>Responsible Member</u>
F	Hercules
G	SPSD
H	Richmond
I	Richmond

For project element J (as defined in Schedule A) annual operating costs shall be distributed as follows:

$$A_a = \frac{S_a}{S_t} \times A_t$$

Where:

A_a = Each member's total share of operating costs.

S_a = Each member's total annual contribution of sludge to the Project element facilities.

S_t = Total of all contributions of sludge to the project element facilities.

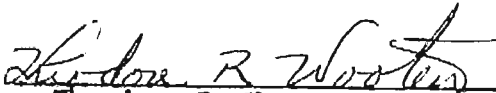
A_t = Total of all annual operating costs for the project element facilities.

NOTE: Operating costs for joint facility element B (as defined in Schedule A) will be adjusted to reflect strength and character of wastewater as determined by Revenue Program Guidelines.

STATEMENT OF OFFICER

I, Theodore R. Wooten, am President of West Contra Costa Sanitary District. Under penalties of perjury, I declare that I have examined this letter. I have personal knowledge of the facts, and to the best of my knowledge and belief the facts represented in support of the requested rulings are true, correct and complete.

DATED: June 21, 1984


Theodore R. Wooten
President