

JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE SOUTH COUNTY REGIONAL  
WASTEWATER AUTHORITY

By and Between

THE CITY OF GILROY

AND

THE CITY OF MORGAN HILL

May 19, 1992

80980001/1

*Effective 6/1/92  
Filed w Secretary of  
File # 1229 State 6/11/92*

JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE SOUTH COUNTY REGIONAL  
WASTEWATER AUTHORITY

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS .....	2
ARTICLE II. CREATION OF AUTHORITY; PURPOSE AND POWERS ...	4
Section 2.1. Authority Created .....	4
Section 2.2. Purpose .....	4
Section 2.3. Powers .....	5
ARTICLE III. ORGANIZATION .....	7
Section 3.1. Governing Board .....	7
Section 3.2. Meetings of the Board .....	7
Section 3.3. Officers; Staff; Other Personnel .....	8
ARTICLE IV. ACCOUNTS AND REPORTS; BUDGETS AND PAYMENTS ..	10
Section 4.1. Accounts and Reports .....	10
Section 4.2. Budgets and Payments .....	11
ARTICLE V. BONDS AND OTHER FORMS OF FINANCING .....	14
ARTICLE VI. AUTHORITY PROJECTS .....	15
Section 6.1. Planning .....	15
Section 6.2. Project Committee .....	15
Section 6.3. Maintenance and Operation of Projects ...	15
ARTICLE VII. PROPERTY RIGHTS .....	16
ARTICLE VIII. TERMINATION AND DISPOSITION OF ASSETS .....	16
Section 8.1. Term .....	16
Section 8.2. Disposition of Assets and Termination of Agency .....	16
Section 8.3. Liabilities .....	16
ARTICLE IX. DISCHARGE REQUIREMENTS .....	17
Section 9.1. Wastewater Treatment Standards and Regulations .....	17
ARTICLE X. TERMINATION OF PRIOR AGREEMENT .....	17
Section 10.1 Termination of Agreement of 1979 .....	17
ARTICLE XI. MISCELLANEOUS .....	19
Section 11.1 Breach .....	19
Section 11.2 Resolution of Disputes .....	19
Section 11.3 Indemnification of Member Agencies .....	19



Section 11.4	Amendments .....	20
Section 11.5	Notice .....	20
Section 11.6	Severance Clause .....	20
Section 11.7	Section Headings .....	20

**JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE SOUTH COUNTY REGIONAL  
WASTEWATER AUTHORITY**

THIS AGREEMENT is made and entered into effective the First day of June, 1992, by and between the City of Morgan Hill, a municipal corporation duly organized and existing pursuant to the laws of the State of California (herein called "Morgan Hill"), and the City of Gilroy, a municipal corporation duly organized and existing pursuant to its charter and the laws of the State of California (herein called "Gilroy"); the two cities are herein together referred to as the "Member Agencies";

**WITNESSETH:**

WHEREAS, Pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Joint Exercise of Powers Act") two or more public agencies by agreement may, if authorized by their legislative or other governing bodies, jointly exercise any power common to such public agencies; and

WHEREAS, the Member Agencies are each empowered by law to purchase, lease, receive, hold and enjoy real and personal property and control and dispose of it for the common benefit, and to own, operate and maintain systems, plants, buildings, works and other facilities for the collection, treatment and disposal of sewage, waste and storm water, including wastewater treatment and disposal plants and works and facilities in connection therewith, and reclamation facilities; and

WHEREAS, the Member Agencies have previously entered into a joint powers agreement (the "Agreement of 1979") regarding the ownership, operation, maintenance and use of the existing sewage treatment plant, including reclamation facilities (the "Existing Treatment Plant") which each Member Agency is currently using for the treatment and disposal of its wastewater; and

WHEREAS, the Member Agencies have determined that the Existing Treatment Plant does not have sufficient capacity to serve their needs and that it is necessary to construct new wastewater facilities in order to do so; and

WHEREAS, upon completion of the new wastewater facilities, the Existing Treatment Plant will be abandoned except to the extent components thereof, if any, are incorporated into the new facilities; and

WHEREAS, upon the effective date of this Agreement the Member Agencies intend that the Agreement of 1979 be terminated and of no further force and effect, but the Member Agencies desire to carry forward certain of the provisions thereof as set forth herein; and

WHEREAS, the Member Agencies have determined that their present and future needs for the collection, treatment and disposal of sewage, waste and storm water, and for reclamation, can best be achieved through their cooperative action, and that a joint exercise of powers authority should be formed for the purpose of exercising such actions, including the financing of the acquisition and construction of the new wastewater facilities; and

WHEREAS, the Member Agencies are each authorized to contract with the other for the purposes set forth above; and

WHEREAS, it is intended hereby that the Authority herein created plan, develop and implement regional solutions to the wastewater treatment and management problems resulting from the generation of wastewater within the service areas of the Member Agencies in accordance with all applicable federal, state and regional water quality requirements, and consistent with the respective planning needs of each Member Agency.

NOW, THEREFORE, the Member Agencies, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

## ARTICLE I

### DEFINITIONS

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified:

#### **Agreement**

The term "Agreement" shall mean this Joint Exercise of Powers Agreement as the same now exists or as it may from time to time be amended pursuant to the provisions hereof.

#### **Agreement of 1979**

The term "Agreement of 1979" shall mean the agreement between the Member Agencies, dated April 18, 1979, entitled "1979 Joint Exercise of Powers Agreement between the City of Gilroy and the City of Morgan Hill Relating to Joint Wastewater Management Facilities" as supplemented and amended.

**Authority**

The term "Authority" shall mean the South County Regional Wastewater Authority created by this Agreement.

**Board**

The term "Board" or "Board of Directors" shall mean the governing body of the Authority.

**Existing Treatment Plant**

The term "Existing Treatment Plant" shall mean the existing wastewater treatment plant and disposal facilities, including reclamation facilities, known as the "Joint Gilroy/Morgan Hill Sewage Treatment Plant" owned, operated and maintained pursuant to the Agreement of 1979.

**Fiscal Year**

The term "Fiscal Year" shall mean July 1st to and including the following June 30th.

**Gilroy**

The term "Gilroy" shall mean the City of Gilroy, a municipal corporation duly organized and existing pursuant to its charter and the laws of the State of California.

**Joint Exercise of Powers Act**

The term "Joint Exercise of Powers Act" shall mean Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (being Sections 6500 et seq. thereof) as such Act now exists or as it may hereafter be amended.

**Member Agency, Member Agencies**

The term "Member Agency" shall mean either Gilroy or Morgan Hill. "Member Agencies" shall mean Gilroy and Morgan Hill.

**Morgan Hill**

The term "Morgan Hill" shall mean the City of Morgan Hill, a municipal corporation organized and existing pursuant to the laws of the State of California.

## Project

The term "Project" shall mean any systems, plants, buildings, works or other facilities or properties for the collection, treatment or disposal of sewage, waste or storm water, including reclamation facilities, together with parking, site development, landscaping, utilities, equipment, furnishings, improvements and all appurtenant and related facilities, together with land necessary therefor, acquired, constructed or financed by the Authority pursuant to this Agreement. "Project" shall also include any plans, studies or other development work in connection with acquisition and construction of any of the foregoing.

## ARTICLE II

### CREATION OF AUTHORITY; PURPOSE AND POWERS

**Section 2.1. Authority Created.** There is hereby created an agency and public entity to be known as the "South County Regional Wastewater Authority". The Authority is formed by this Agreement pursuant to the provisions of the Joint Exercise of Powers Act. As provided in the Joint Exercise of Powers Act, the Authority shall be a public entity separate from its Member Agencies. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the Member Agencies; provided, that any Member Agency may separately contract for, or assume responsibility for, specific debts, liabilities or obligations of the Authority.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or such amendment, as the case may be, to be prepared and filed with the Office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Joint Exercise of Powers Act.

**Section 2.2. Purpose.** The purpose of this Agreement is to provide for the joint exercise of powers common to the Member Agencies. The Member Agencies are each empowered by the laws of the State of California to exercise the powers specified in the recitals herein, including acquiring, constructing, maintaining and operating systems, plants, buildings, works and other facilities or properties for the collection, treatment or disposal of sewage, waste or storm water, including wastewater and disposal plants and works and facilities in connection therewith, and reclamation facilities, and to adopt and enforce uniform wastewater treatment standards and regulations. These common powers will be jointly exercised in the manner hereinafter set forth.

**Section 2.3. Powers.** The Authority, in its own name, or for the benefit of the Member Agencies, shall have the power to acquire by purchase, lease, contribution, eminent domain or otherwise, real or personal property, and to plan for, develop, contract for, own, acquire, construct, finance, operate and maintain any systems, plants, buildings, works and other facilities for the collection, treatment and disposal of sewage, waste and storm water, including sewage treatment and disposal plants and works and facilities in connection therewith, and reclamation facilities.

The Authority is authorized in its own name to do all acts necessary or convenient to the exercise of said powers for said purposes, including but not limited to any or all of the following:

- (i) To exercise jointly the common powers of its Member Agencies in studying, planning and implementing ways and means to provide for the collection, treatment and disposal of sewage, wastewater and storm water, and for reclaimed water.
- (ii) To make and enter contracts.
- (iii) To contract for the services of engineers, attorneys, planners, financial consultants or other agents, and separate and apart therefrom, to employ such other persons, as it deems necessary.
- (iv) To acquire, construct, manage, maintain and operate any buildings, works, or improvements.
- (v) To acquire, hold and dispose of property.
- (vi) To incur debts, liabilities, or obligations subject to limitations herein set forth.
- (vii) To sue and be sued in its own name.
- (viii) To apply for an appropriate grant or grants and/or loan or loans under any federal, state or local programs for assistance in developing any of its Projects.
- (ix) To establish rates, tolls, fees, rentals, or other charges in connection with the facilities and services provided by the Authority subject to the limitations set forth in Section 4.2(c) hereof.

- (x) To plan for, construct, operate, or maintain a Member Agency's sole-use facilities when specifically requested by that Member Agency, or when necessary to meet joint discharge requirements.
- (xi) To adopt regulations establishing uniform wastewater treatment standards and regulations throughout the jurisdictions of the Member Agencies in order to enable the Authority to comply with its NPDES permit and any applicable federal and state regulations; when authorized by a Member Agency, implement, and enforce through civil or criminal means, such standards and regulations on behalf of the authorizing Member Agency; and, on its own behalf, implement, and enforce through civil or criminal means, such standards and regulations.
- (xii) To issue revenue bonds in accordance with the following laws:
  - (a) Article 2, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6540.
  - (b) Chapter 6, Title 5, Division 2 of the California Government Code, commencing with Section 54300.
  - (c) Chapter 5, Part 3, Division 5 of the California Health and Safety Code, commencing with Section 4950.
- (xiii) To use other financing acts, including, but not limited to, the Mello-Roos Community Facilities District Act of 1982, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915.
- (xiv) To exercise any of the powers set forth in Section 6588 of Article 4 (Marks-Roos Local Bond Pooling Act of 1985) of the Joint Exercise of Powers Act.

Such powers shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon a general law city in the exercise of its powers.

Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Joint Exercise of Powers Act, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2.2.

## ARTICLE III

### ORGANIZATION

**Section 3.1. Governing Board.** The Authority shall be administered by a Board of Directors, which shall consist of five persons, each serving in his or her individual capacity as a Director of the Authority. Three Directors shall be council members of the City Council of Gilroy, and two Directors shall be council members of the City Council of Morgan Hill. Such Directors shall be appointed within thirty (30) days after execution of this Agreement by their respective City Councils. The City Council of each Member Agency shall also appoint alternate Directors whose names shall be on file with the Secretary of the Authority and who may assume all rights and duties of an absent Director representing the appointing Member Agency.

Each Director shall serve on the Board at the pleasure of the City Council by whom such Director was appointed and may be removed at any time, with or without cause, at the sole discretion of such City Council. In any case, the term of office as Director shall terminate if and when such Director ceases to be a member of such City Council.

The Directors may receive compensation for serving as such as established by the Board, and shall be entitled to reimbursement for expenses incurred in the conduct of the business of the Authority if the Board determines that such expenses shall be reimbursed.

### **Section 3.2. Meetings of the Board.**

(a) **Regular Meetings.** The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The date upon which, and the hour and place at which, each such regular meeting shall be held shall be fixed by resolution of the Board.

(b) **Special Meetings.** Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(c) **Legal Notice.** All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)).

(d) Minutes. The Secretary of the Authority 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 Agency.

(e) Bylaws, Rules and Regulations. The Board may adopt bylaws, rules and regulations for the conduct of its affairs.

(f) Conflict of Interest Code. The Board by resolution shall adopt a Conflict of Interest Code as required by law.

(g) Quorum. A majority of the Directors shall constitute a quorum for the transaction of business, provided there is at least one Director from each Member Agency, except that less than a quorum may adjourn from time to time.

(h) Powers and Limitations Thereon. All power and authority of the Authority shall be exercised by the Board, subject, however, to the reserved rights of the Member Agencies as herein set forth. Each Director shall be entitled to one vote and, unless otherwise provided herein, a vote of the majority of those present and qualified to vote, provided such majority is comprised of at least one Director from each Member Agency, may adopt any motion, resolution or order and take any other action they deem appropriate to carry forward the objectives of the Authority.

(i) Consent or Approval of Member Agency. The consent or approval of a Member Agency in any matter requiring such consent or approval hereunder shall be evidenced by a certified copy of the resolution or other action of the City Council of such Member Agency filed with the Authority.

### **Section 3.3. Officers; Staff; Other Personnel.**

(a) The Authority shall have three officers: Chairperson, Vice-Chairperson, and Secretary. The Board shall elect a Chairperson of the Authority and a Vice-Chairperson of the Authority from among its Directors and shall appoint a Secretary of the Authority who may, but need not, be a Director.

(b) The City Treasurer of Gilroy is hereby initially designated as Treasurer of the Authority as required by Section 6505.5 of the Joint Exercise of Powers Act. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in the Joint Exercise of Powers Act.

(c) The Finance Director of Gilroy is hereby initially designated as Controller of the Authority as required by Section 6505.5 of the Joint Exercise of Powers Act and shall draw all warrants and pay demands against the Authority approved by the Board, and as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Exercise of Powers Act.

(d) In lieu of the designation of a Treasurer and Controller as provided in Subsection 3.3(b) and (c) hereof, the Authority may, at any time, appoint one of its officers or employees to either or both of such positions in accordance with Section 6505.6 of the Joint Exercise of Powers Act. In such event, the Board shall determine whether an official bond is necessary, and, if so, the amount thereof. The offices of Treasurer and Controller may be held by separate officers or employees or combined and held by one officer or employee. Any officer or employee appointed as Treasurer and/or Controller pursuant hereto shall comply with the duties and responsibilities of such office or offices as set forth in Section 6505.6 of the Joint Exercise of Powers Act. The officer or employee appointed as Treasurer and/or Controller pursuant hereto shall cause an independent audit to be made by a certified public accountant or public accountant annually in accordance with Section 6505 of the Joint Exercise of Powers Act.

(e) The Treasurer and Controller of the Authority are designated as the public officers or persons who have charge of, handle, or have access to, any property of the Authority, and each such officer need not file an official bond with the Authority, if such officer already is bonded by a Member Agency in a sufficient amount as determined by the Board.

(f) The Treasurer and Controller are hereby authorized and directed to prepare or cause to be prepared:

(i) a special audit as required pursuant to Section 6505 of the Government Code of the State of California every year during the term of this Agreement as hereinafter provided; and

(ii) a report as required pursuant to Section 6505.5 in writing on the first day of July, October, January, and April of each year to the Board and to each Member Agency, which report shall describe the amount of money held by the Treasurer and Controller for the Authority, the amount of receipts since the last such report, and the amount paid out since the last such report.

(g) The Board shall employ or contract for the services of personnel to serve the staff needs of the Authority, including a Manager who shall be responsible for the general execution of Authority policy as set by the Board. A staff member may, but does not have to be, a staff member of a Member Agency. The Board shall initially contract with Gilroy to provide all personnel and staff for the Authority.

(h) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

(i) All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of officers (including City Council-members), agents, or employees of either Member Agency 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 duties under this Agreement.

None of the officers, agents, or employees appointed by the Board shall be deemed by the Member Agencies or by reason of their appointment and/or employment by the Authority to be subject to any of the requirements of the Member Agencies.

#### ARTICLE IV

##### ACCOUNTS AND REPORTS, BUDGETS AND PAYMENTS

###### Section 4.1. Accounts and Reports.

(a) There shall be a strict accountability of all Authority funds and report of all receipts and disbursements in compliance with the Joint Exercise of Powers Act. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by the Member Agencies and their representatives. The Authority shall give an unaudited written report of all financial activities for each Fiscal Year to each Member Agency within 150 days after the close of each Fiscal Year.

(b) So long as required by Section 6505 of the Joint Exercise of Powers Act, the Controller of the Authority shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for

special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each of the Member Agencies, and, if required by Section 6505 of the Joint Exercise of Powers Act, with the County Auditor/Controller of the County of Santa Clara. Each such report shall be filed within 12 months of the end of the Fiscal Year or Fiscal Years under examination.

**Section 4.2. Budgets and Payments.**

(a) Budget. Within sixty (60) days after the first meeting of the Board, a budget shall be prepared for the balance of that Fiscal Year. Thereafter, at or prior to each May meeting of the Board, a proposed budget shall be prepared for the ensuing Fiscal Year.

The initial budget and each succeeding budget shall include, for the Fiscal Year for which it is prepared, the following:

- (i) the administrative expenses of the Authority;
- (ii) the expenses of maintaining the facilities to be maintained by the Authority;
- (iii) the expenses of operating the facilities to be operated by the Authority;
- (iv) an estimate of income from operations, if any, and its allocation to the Member Agencies in accordance with the formula or formulas set forth in the budget;
- (v) the allocation of the administrative, maintenance and operation expenses to the Member Agencies in accordance with the formula or formulas set forth in the budget;
- (vi) the estimated costs of any proposed Project or Projects to be undertaken during that Fiscal Year;
- (vii) the allocation of such Project(s) costs to the Member Agencies in accordance with the formula or formulas set forth in the budget; and
- (viii) the allocation of debt service obligations on any bonds or other forms of indebtedness, or obligations under any lease or other installment purchase agreement, to the Member Agencies;

The allocation of the revenues and expenses in the initial budget shall be shared based on the following formula: Gilroy 58%; Morgan Hill 42%. After the initial budget, the revenues and expenses shall be allocated based on a formula or formulas to be determined by the Board.

After the Board preliminarily approves of a general budget, it shall be submitted immediately to the City Councils of the Member Agencies for review and approval. Final approval of a general budget shall be made by the Member Agencies by July 1st following preparation of each budget. A copy of the budget shall be filed with each Member Agency.

If there is a conflict between the Member Agencies regarding a proposed budget, until a budget is approved, the Authority shall operate under the proposed budget and allocation formula for all administration, operations, maintenance and approved Projects until resolution of the conflict. Following resolution of the conflict, adjustments by way of credits or additional charges shall be made to the Member Agencies as appropriate.

Each Member Agency agrees to include in its annual budget amounts estimated to be sufficient to pay all such charges.

(b) Expenditures for the Approved Budget. All transfers within an approved budget shall be made on the authorization of the Board. No expenditures in excess of the total budgeted in such budget shall be made without the approval of the Member Agencies.

(c) Rates and Charges. Initially the Board will allocate to and bill the Member Agencies for budget items allocable to the Member Agencies; each Member Agency will then incorporate its share of such items into its system of rates and charges for sewer service and facilities in the manner it deems appropriate.

However, the Board may determine with respect to any capacity rights in any facilities reserved in the name of and for the benefit of the Authority pursuant to Article VII hereof, or services provided by the Authority in conjunction therewith, to establish its own system of rates, tolls, fees, rentals, or other charges in connection therewith and collect such charges directly from the users and/or beneficiaries thereof.

In addition, the Board, with the consent of a Member Agency, may determine, with respect to capacity rights held in the name of and benefit of that Member Agency pursuant to

Article VII hereof, or services provided by the Authority in connection therewith, to establish a system of rates, tolls, fees, rentals or other charges in connection therewith and collect such charges directly from the users and/or beneficiaries thereof.

(d) Payment of Amounts Due. Amounts required to be paid by any Member Agency shall be due and payable thirty (30) days after receipt of billing therefor from the Board. After completion of the purpose for which funds were provided to the Authority by a Member Agency, any surplus moneys shall be returned in cash or by way of a credit to that Member Agency in proportion to the funds so provided.

The Authority may determine to bill in advance of expenditures, based upon the approved budget; in such case an accounting shall be maintained with necessary debits or credits provided as appropriate.

Amounts shall be due and payable and be delinquent thirty (30) days after a bill is rendered, and thereafter, shall incur a delinquency penalty and/or an interest charge until paid. The delinquency charge and/or interest rate charge shall be set by written policy of the Board.

The Authority is hereby authorized to take any or all legal actions necessary and permitted by law to enforce the collection of charges approved in the budget or any other compliance with the Agreement, including, but not limited to, actions or proceedings in mandamus to require each Member Agency to collect the charges approved in the budget from the taxpayers, landowners, or users of any of the facilities of the Authority.

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

(i) contributions from a Member Agency's treasury may be made for the purpose set forth in this Agreement;

(ii) payments of public funds of a Member Agency may be made to defray the cost of such purpose;

(iii) a Member Agency may make advances of public funds to the Authority;

(iv) personnel, equipment or property of a Member Agency may be used in lieu of other contributions or advances, however, the Member Agencies must agree in

advance upon the value to be assigned the personnel, equipment, property or services, with respect to any said contributions or advances;

(v) the Member Agencies may exchange services without payment of any consideration other than such services.

(f) Reimbursement of Funds. Grant funds received by the Authority from any federal, state or local agency to pay for budgeted expenditures already paid by the Member Agencies shall be proportionally returned in cash or by way of a credit to the Member Agencies to reimburse them for the funds so advanced to the Authority for the construction of the Project for which grant money has been received.

## ARTICLE V

### BOND AND OTHER FORMS OF FINANCING

The Authority shall have the power to issue bonds for the purpose of raising funds necessary to accomplish its purposes under this Agreement and to enter into appropriate agreements or leases to secure the bonds, including an agreement or agreements with any Member Agency wherein said Member Agency agrees to pay to the Authority all or portions of revenues received by the Member Agency from a Project, the Existing Treatment Plant, and/or its wastewater collection system, except as such revenues may be required to pay maintenance and operation expenses of such Project, the Existing Treatment Plant and/or its wastewater collection system, or are otherwise encumbered, pledged or legally unavailable, but in order to do so, the Authority shall first obtain the consent of the Member Agencies.

The Authority shall also have the power to issue any other forms of indebtedness in accordance with the provisions of the Joint Exercise of Powers Act or other State law for such purposes, but in order to do so, the Authority shall first obtain the consent of the Member Agencies.

## ARTICLE VI

### AUTHORITY PROJECTS

**Section 6.1. Planning Policy.** In keeping with the purpose of this Agreement, the Member Agencies hereby authorize and direct the Board to undertake such studies and planning relative to the combined service areas of the Member Agencies as may be necessary, to provide for the joint collection,

transmission, treatment and disposal of sewage and/or the reclamation of wastewater. The specific objectives of the studies shall be to develop regional solutions to the wastewater treatment and management problems which will be in accordance with all applicable federal, state and regional water quality control requirements, consistent with the respective planning needs of each Member Agency. It is understood that this Agreement shall not affect the rights or powers of either Member Agency to independently plan for and/or construct wastewater or reclamation facilities.

The studies may include proposals for construction of joint collection systems, trunk and interceptor lines, treatment plants, disposal systems and reclamation facilities. The studies may also include proposals to be used in conjunction with facilities not within the Authority's jurisdiction. Any studies may consider all phases of planning, design, construction, maintenance and operation of facilities proposed by the Authority, and allocation to the Member Agencies of capital, maintenance and operating costs.

**Section 6.2. Project Committee.** If it is determined to undertake a proposed Project for only one Member Agency, the Directors of that Member Agency shall constitute a subcommittee of the Board for that Project, and be referred to as the "Project Committee". All actions by a Project Committee shall be deemed actions of the Authority and shall be taken in the name of the Authority, however, only that Member Agency desiring to undertake the Project shall have rights and obligations in the Project.

**Section 6.3. Maintenance and Operation of Projects.** The Board shall determine, prior to the acquisition or construction of any facilities, whether or not the Authority shall maintain and/or operate the facilities. If the Authority is to maintain and/or operate the facilities, it shall do so in an efficient and economical manner and in a manner not detrimental to either Member Agency. It is the intent of the Member Agencies that any facilities may be maintained and operated in the name of the Authority. As an alternative, the Board may determine that one Member Agency should maintain and/or operate certain facilities. In such case, it shall obtain the consent of such Member Agency to do so and enter into an appropriate agreement therefor.

## ARTICLE VII

### PROPERTY RIGHTS

All facilities constructed or acquired by the Authority shall be held in the name of the Authority for the benefit of the Member Agencies in accordance with the terms of this Agreement. The Board shall allocate all such capacity rights to the Member Agencies except for any portion or portions thereof which the Board determines shall be reserved in the name of and for the benefit of the Authority. It is the intent of the foregoing provision that the Authority not, unless expressly determined by the Board, acquire any capacity rights in any facilities, except for the benefit of the Member Agencies. Capacity rights may not be reallocated, sold, leased or assigned to one Member Agency from the other without express written agreement between the Member Agencies.

## ARTICLE VIII

### TERMINATION AND DISPOSITION OF ASSETS

**Section 8.1. Term.** The Authority shall continue in full force and effect so long as any facilities constructed hereunder are owned, maintained, or operated by the Authority, or until terminated by a written agreement of the Member Agencies; provided, however, in no event shall this Agreement be terminated while any bonds or other indebtedness of the Authority remains outstanding.

**Section 8.2. Distribution of Assets and Termination of Authority.** To the extent that any funds (or property in lieu of funds) received from any Member Agency are used for the acquisition or construction of Project facilities, the same shall be allocated annually on the books of the Authority to the credit of said contributing Member Agency. Upon termination of the Authority herein created, any facilities owned by the Authority, and any funds in possession of the Authority at such time shall be distributed in kind or sold, and the proceeds thereof distributed to the Member Agencies as their interests appear on the books of the Authority.

**Section 8.3. Liabilities.** The debts, liabilities and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the Member Agencies; provided, however, that a Member Agency may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the Agency.

**ARTICLE IX****DISCHARGE REQUIREMENTS**

Section 9.1. Wastewater Treatment Standards and Regulations. Each Member Agency agrees to adopt wastewater treatment standards and regulations consistent with wastewater treatment standards and regulations adopted by the Authority.

Such standards and regulations shall include provisions related to industrial waste in which there shall be established criteria for, and restrictions on, the nature and quality of industrial waste discharged either directly or indirectly into the Authority's facilities.

The industrial waste standards and regulations shall authorize the issuance of industrial waste discharge permits thereunder and provide that such permits will be issued by the Authority, shall authorize field inspectors or other employees or agents of the Authority to act as enforcement agents of the Member Agency with the power to inspect and issue notices for violations of the standards and regulations, and shall confer upon, and empower the Authority to seek civil injunctive relief or criminal prosecution, or both, for noncompliance with, or violation of, such standards and regulations by any discharger.

Nothing in this Section shall preclude either Member Agency or the Authority from providing additional levels of treatment to insure meeting waste discharge requirements in the combined effluent. In the event that one or both Member Agencies are obligated to provide additional levels of treatment to meet waste discharge requirements for the combined effluent, the Member Agency requiring the additional levels of treatment shall participate in the costs of such treatment based on its relative contribution of waste characteristics to be treated and the costs of providing such treatment.

**ARTICLE X****TERMINATION OF PRIOR AGREEMENT**

Section 10.1. Termination of Agreement of 1979. Upon the effective date of this Agreement, the Agreement of 1979 shall terminate and be of no further force and effect, provided, however:

1. Following completion of the annual audit for the funds and accounts of the City of Gilroy related to the operation of the Existing Treatment Plant for Fiscal Year 1991-92, there shall be a final accounting by the Member

Agencies of the funds and accounts maintained under the Agreement of 1979 and appropriate debits and credits made to the Member Agencies as a result thereof.

2. Any assets that the Board determines are not usable in conjunction with the new facilities shall be disposed of by the Member Agencies, with appropriate credit being given to the Member Agencies, or, in the event any such asset is retained by one Member Agency, payment made or credit given to the other Member Agency for its interests therein under the Agreement of 1979.

3. Interceptor Sewers. The Member Agencies have, under the Agreement of 1979, constructed certain interceptor sewers, the capacity of which has been, and shall continue to be, allocated as follows:

a. Monterey Highway to Farrell Avenue. The capacity allocated to the Member Agencies in the various reaches of this interceptor is as set forth in Exhibit "A" hereto.

b. Farrell Avenue to Existing Treatment Plant. The capacity allocated to the Member Agencies is on a 50:50 basis.

4. Boundary Agreement. The Member Agencies have established an inter-city boundary line as shown on Exhibit "B" hereto. Neither City shall extend its city limits beyond the inter-city boundary line without the consent of the other. Each City agrees to give such consent whenever necessary to prevent the boundary line of any area to be annexed to either City or the city limit lines of either City from bisecting any parcel of real property owned by a single owner.

The Member Agencies agree that, if either City shall by annexation proceedings of any kind extend its city limits beyond the inter-city boundary line without the consent of the other City, then no part of the area to which such annexation proceedings relate shall be served by the joint facilities to be constructed pursuant hereto.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1. Breach. If default shall be made by a Member Agency in any covenant contained in this Agreement, such default shall not excuse either Member Agency from fulfilling

its obligations under this Agreement and both Member Agencies shall continue to be liable for the performance of all conditions herein contained. The Member Agencies hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the Member Agencies hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the Member Agencies hereunder. Each of the remedies given to the Authority hereunder or by any law now or hereafter enacted is cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

**Section 11.2. Resolution of Disputes.** Subject to the following provisions, any controversy or claim arising out of or relating to this Agreement, its interpretation or breach, shall be settled through a dispute resolution process ("process"):

The process shall be initiated whenever all Directors from either Member Agency give written notice to the Directors of the other Member Agency of the intention to arbitrate. The notice shall set forth the nature of the dispute to be resolved, the amount involved, if any, and the remedy sought.

Arbitration shall be commenced upon the filing of said notice by either Member Agency with the American Arbitration Association. Thereafter, the process shall be conducted in compliance with the rules of the American Arbitration Association in effect at the time of the filing of the notice, except that the dispute shall be heard and determined by one arbitrator.

Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Costs of the process shall be borne by the Member Agency against which the ruling is made.

**Section 11.3. Indemnification of Member Agencies.** The Authority shall, at Authority's sole cost and expense, indemnify, defend and save harmless the Member Agencies, their Councilmembers, officers, employees and agents, from all costs, expenses (including, without limitation, attorneys' fees and costs of suit), claims, actions, proceedings, obligations, liabilities, or damages to persons or property or otherwise arising out of or in any way connected with the intentional or negligent act or omission or breach of duty or obligation of

the Authority, its officers, employees, agents, Directors, contractors, subcontractors, or any officer, agent or employee thereof.

**Section 11.4. Amendments.** This agreement may be amended only by agreement signed by the Member Agencies.

**Section 11.5. Notice.** Any notice or instrument required to be given or delivered may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, California 95037  
Attention: City Manager

City of Gilroy  
7351 Rosanna Street  
Gilroy, California 95020-2409  
Attention: City Administrator

**Section 11.6. Severance Clause.** If any section, subsection, sentence, clause or phrase of this Agreement, or the application thereof to either of the Member Agencies or any other person or circumstances, is for any reason held invalid, the validity of the remainder of the Agreement, or the application of such provision to the other Member Agency, or to any other persons or circumstances, shall not be affected thereby. Each of the Member Agencies hereby declares that it would have entered into this Agreement, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, or the application thereof, to any Member Agency of any other person or circumstances be held invalid.

**Section 11.7. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals by their respective officers thereunto, duly authorized the day and year first above written.

CITY OF GILROY

CITY OF MORGAN HILL

By

Donald F. Gage  
Mayor

By

Kevin Kennedy  
Mayor

Attest

Barbara E. Steinitz  
City Clerk

Attest

Betty J. Buck  
City Clerk

(SEAL)

(SEAL)