

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT dated this 16 day of August, 1977, is made and entered into by and between the CITY OF PINOLE, a municipal corporation, hereinafter called "Pinole", the CITY OF HERCULES, a municipal corporation, hereinafter called "Hercules", and the RODEO SANITARY DISTRICT, a public district created pursuant to the laws of the State of California hereinafter called "Rodeo".

RECITALS:

Title 1, Division 7, Chapter 5, of the Government Code of the State of California (Sections 6500, et seq.) authorizes two or more public agencies by agreement to exercise any power common to the contracting parties.

Pinole, Hercules, and Rodeo possess in common the power to collect, treat, and dispose of wastewater.

Pinole owns and operates a plant for the treatment of wastewater collected from both Pinole and Hercules, said plant hereinafter referred to as the "Pinole Plant".

Rodeo owns and operates a plant for the treatment of wastewater, collected from Rodeo Sanitary District, hereinafter referred to as the "Rodeo Plant".

In order to comply with the requirements of the California Regional Water Quality Control Board, San Francisco Bay Region, with respect to discharge of treated wastewater from both the Pinole Plant and the Rodeo Plant into San Pablo Bay, the three

agencies propose to provide deepwater joint wastewater disposal facilities consisting of a deepwater outfall and associated on-shore facilities (hereinafter called "disposal facilities).

All parties desire to provide disposal facilities for present treated wastewater flows and for anticipated future flows of treated wastewater within each party's service area.

It appears in the best interests of the parties to provide one joint wastewater disposal system which will be used for the disposal of treated wastewater from both the Pinole Plant and the Rodeo Plant.

It is the desire and intent of the parties hereto, without in any way surrendering the sovereignty of their respective governmental authority, to enter into an agreement whereby treated wastewater disposal facilities will be constructed, maintained and operated by Rodeo for the mutual benefit of Pinole, Hercules and Rodeo. Payment for such construction, maintenance and operation shall be made as specified herein.

Pinole, Hercules and Rodeo desire to set forth in this Agreement the basis for the sizing of disposal facilities, flow allocations, the sharing of design, construction, operation, maintenance costs and other related matters.

To carry out the intentions of the parties, it will be necessary to construct, maintain and operate a treated wastewater transmission pipeline from the Pinole Plant to an agreed upon connection point with the deepwater outfall. Said pipeline and connection point are hereinafter referred to as the Pinole-Hercules Transmission System. Rodeo shall not be involved

in the construction, maintenance or operation of the Pinole-Hercules Transmission System except as specifically provided herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Recitals. The recitals hereinabove set forth are included herein and made a part of this Agreement.

2. Delivery of Treated Wastewater. Pinole shall deliver to Rodeo all wastewater treated at the Pinole Plant. However, in the event a wastewater reclamation system is implemented using treated wastewater from the Pinole Plant, Pinole may reduce the quantity of treated wastewater delivered to Rodeo by the amount of such wastewater reclaimed.

3. Disposal Facilities and Acceptance for Disposal. Rodeo shall construct, operate and maintain disposal facilities for the anticipated flow of treated wastewater delivered from the Pinole Plant and Rodeo Plant. Rodeo shall accept for deep-water disposal the treated wastewater as delivered by Pinole in accordance with the terms and conditions herein contained.

4. Wastewater Reclamation. In the event a wastewater reclamation system is implemented or authorized by Rodeo using the treated wastewater from both the Pinole Plant and the Rodeo Plant, Rodeo may reduce the quantity of treated wastewater discharged into the Bay by such wastewater reclaimed. In the event that such reclaimed wastewater is sold, the parties hereto shall share in the net proceeds of such sale in proportion to the amount of wastewater contributed by the respective agencies.

Net proceeds for purposes of this section is the amount remaining after payment for reclamation costs.

[ Before distribution of such net proceeds there shall be deducted therefrom any costs of maintenance and operation of the disposal facilities which have not been paid by the party to whom such distribution of net proceeds is to be made. ]

5. Federal and State Assistance. Rodeo shall file or cause to have filed the necessary applications for grants of Federal and State funds which are or may be available for construction of disposal facilities, and undertake all proceedings necessary to secure such funds for the benefit of all three parties hereto. Pinole and Hercules will in this regard cooperate fully with Rodeo by furnishing all information and material available to them that is required to obtain such Federal and State funds.

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6. Pinole-Hercules Transmission System. ~~Pinole and Hercules shall construct, operate, maintain and jointly own the Pinole-Hercules Transmission System from the Pinole Plant to a connection point with the disposal facilities.~~ [ Appropriate plans and diagrams of said connection point are attached hereto as ~~Exhibit A~~ and included herein by this reference. Rodeo hereby consents to Pinole and Hercules constructing, operating and maintaining said Pinole-Hercules Transmission System within the boundaries of Rodeo. The cost of acquisition, if any, of property needed for the Pinole-Hercules Transmission System shall be borne by Pinole and Hercules as follows: ]

Pinole's share of said cost shall be:

$$\frac{\text{Pinole's design peak hourly wet weather flow in said transmission system}}{\text{Total design peak hourly wet weather flow in said transmission system}}$$

and Hercules share of said cost shall be:

$$\frac{\text{Hercules' design peak hourly wet weather flow in said transmission system}}{\text{Total design peak hourly wet weather flow in said transmission system}}$$

The design and construction costs of the Pinole-Hercules Transmission System shall be borne by Pinole and Hercules in the following manner:

A = Total cost for design (or construction) of Transmission System

Pinole's share of the design (or construction) cost shall be:

$$A \times \frac{\text{Pinole's design peak hourly wet weather flow in said transmission system}}{\text{Total design peak hourly wet weather flow in said transmission system}}$$

and Hercules' share of said cost shall be:

$$A \times \frac{\text{Hercules' design peak hourly wet weather flow in said transmission system}}{\text{Total design peak hourly wet weather flow in said transmission system}}$$

Costs of operation and maintenance of the Pinole-Hercules Transmission System shall be borne by Pinole and Hercules as follows:

Pinole:

$$\frac{\text{Pinole's actual annual flow in said transmission system}}{\text{Total actual annual flow in said transmission system}}$$

Hercules:

Hercules' actual annual flow in said transmission  
system  

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Total actual annual flow in said transmission  
system

The sharing of costs between Pinole and Hercules as described in this paragraph is absolute without regard to the source of funds used to pay such costs. Pinole is authorized to file the necessary applications for grants of Federal and State funds which are or may be available for construction of the Pinole-Hercules Transmission System, and undertake all proceedings necessary to secure such funds for the benefit of Pinole and Hercules. If such grants supply greater funds to Pinole than is calculated to be the Pinole share from the above formula for design and construction costs, Pinole shall pay to Hercules any portion of such grants which exceed the Pinole share.

Fifty (50%) percent of Hercules' share of estimated costs of design shall be paid by Hercules to Pinole within sixty (60) days after execution of this Agreement, and the remaining fifty (50%) percent of such estimated costs shall be paid by Hercules to Pinole upon approval of project plans and specifications by the staff of the State Water Resources Control Board. Reconciliation of estimated design costs with actual design costs shall be made by Pinole within sixty (60) days following Pinole's receipt of final Step 2 grant payment. Additional payment to Pinole or reimbursement by Pinole, as the case may be, shall be made within said sixty (60) day period.

Hercules shall contribute its full share of the estimated construction costs to Pinole prior to commencement of construction work. Reconciliation of estimated local construction costs with

actual local construction costs shall be made by Pinole within sixty (60) days following Pinole's receipt of final Step 3 grant payment. Any additional payment to Pinole or reimbursement by Pinole, as the case may be, shall be made within said sixty (60) day period.

Upon completion of construction, Pinole shall bill Hercules for its share of the cash flow interest expense. Hercules shall make such payment within thirty (30) days.

Once the transmission system is placed into operation Pinole shall begin accounting for flows and costs associated with the system. Pinole shall bill Hercules within sixty (60) days after the end of each fiscal year and shall use actual costs incurred and actual flows contributed during the course of the year. Hercules shall make its payment to Pinole within thirty (30) days after receipt of the bill from Pinole. ....

7. Wastewater Flow Measurement. Pinole shall install, operate and maintain flow measuring and recording devices for continuous measurement and recording the total treated wastewater flow delivered to the disposal facilities. The cost for installation, operation and maintenance of such devices shall be shared by Pinole and Hercules based upon the respective pro-rata flow attributed to Pinole and Hercules respectively. There is in existence a separate measuring and recording device to measure and record Hercules' flow of wastewater to the Pinole Plant.

8. Pro-Ration of Local Capital Costs. Local capital costs

are those design and construction costs not paid by Federal and State grant assistance. Costs for design include actual engineering design and work associated with design which directly relates to the preparation of construction plans and specifications, the bidding of contractors on the work, the acquisition of required permits and authorizations to proceed with construction, preparation of operation and maintenance manuals, revenue program requirements, and wastewater discharge studies. Costs for construction shall include contractor costs, construction supervision costs, and legal and administrative expenses.

Local capital costs shall be shared on the basis of each agency's allocated peak hourly wet weather flow (see Exhibit B) and a factor to take into account the potentially different Federal and State grant eligibility associated with each party.

The local capital costs for design and construction will be shared as follows: Subscripts "P", "H", and "R" refer to Pinole, Hercules, and Rodeo, respectively.

A = Total local cost for design or construction of disposal facilities

B = Agency's appropriate flow allocation (see Exhibit B)

C = Agency's Federal and State grant eligibility for purposes of this paragraph shall be:

$$\frac{\text{Agency's Federal and State grant eligible flow}}{\text{Agency's flow allocation from Exhibit B}}$$

(Note: Value for "C" cannot be greater than 1.00)

E = Fraction of Federal and State grant on eligible facilities



F = Agency's eligibility factor shall be:  $1 - C \times E$

$$\text{Pinole cost} = A \times \left( \frac{(B_P \times F_P)}{(B_P \times F_P) + (B_H \times F_H) + (B_R \times F_R)} \right)$$

$$\text{Hercules cost} = A \times \left( \frac{(B_H \times F_H)}{(B_P \times F_P) + (B_H \times F_H) + (B_R \times F_R)} \right)$$

$$\text{Rodeo cost} = A \times \left( \frac{(B_D \times F_D)}{(B_P \times F_P) + (B_H \times F_H) + (B_R \times F_R)} \right)$$

Fifty percent of estimated local costs of design for Pinole and Hercules shall be paid by Pinole and Hercules to Rodeo within 60 days after execution of this Agreement, and the remaining 50 percent of such estimated costs shall be paid by Pinole and Hercules to Rodeo upon approval of project plans and specifications by the staff of the State Water Resources Control Board. Reconciliation of estimated costs with actual costs shall be made by Rodeo within 60 days following Rodeo's receipt of final Step 2 grant payment. Additional payment to Rodeo or reimbursement by Rodeo, as the case may be, shall be made within said sixty (60) day period.

Pinole and Hercules shall contribute their full share of the estimated construction cost of the disposal facilities to District prior to commencement of construction work. Reconciliation of estimated local construction costs with actual local construction costs shall be made by Rodeo within 60 days following Rodeo's receipt of final Step 3 grant payment. Additional payment to Rodeo or reimbursement by Rodeo, as the case may be, shall be made within said sixty (60) day period.

9. Pro-Ration of Operation and Maintenance Costs. The parties hereto agree that operation and maintenance costs will

be shared on the basis of volumes of treated wastewater delivered to the disposal facilities.

*DOES RODEO HAVE NUMBERS?*

$H$  = total operation and maintenance costs of the disposal facilities during the fiscal year.

*Pinole numbers?*

$I$  = fraction of flow from Pinole and Hercules:

*Flow MTR IN P-H INF. LINES?*

$$\frac{\text{Total flow delivered by Pinole during fiscal year (Pinole numbers or ours)?}}{\text{Total flow through disposal facilities during fiscal year (Rodeo)?}}$$

} ?

$J$  = amount charged to Pinole for each fiscal year:

$$J = H \times I$$

$K$  = fraction of flow from Hercules:

$$\frac{\text{Total flow delivered by Hercules to Pinole Plant during fiscal year}}{\text{Total flow through Pinole Plant during fiscal year}}$$

$L$  = amount charged to Hercules for each fiscal year

$$L = J \times K$$

The net amount to be paid by Pinole is  $J - L$ .

Once Pinole begins delivering treated wastewater to the disposal facilities, Rodeo shall begin accounting for flows and costs associated with said facilities. Rodeo shall annually estimate the costs of operation and maintenance of the disposal facilities and shall bill Pinole at the beginning of each fiscal year for a share of such costs based upon estimated flows from the Pinole Plant. Upon receipt of such bill, Pinole shall bill Hercules for its estimated share of such costs, and Pinole and Hercules shall pay to Rodeo their respective shares of such estimated costs within thirty (30) days after receipt of such bills. Reconciliation of estimated operation and maintenance costs with actual operation and maintenance costs shall

be made by Rodeo within thirty (30) days following the end of each fiscal year and additional payment to Rodeo or reimbursement by Rodeo, as the case may be, shall be made within said thirty (30) day period.

10. Reclamation Planning. Pinole is hereby authorized to act on behalf of all parties hereto as the coordinating agency for wastewater reclamation planning if such planning entails the use of wastewater from both the Pinole Plant and the Rodeo Plant. If the costs incurred by Pinole in such coordination efforts become substantial, the parties hereto will come to an equitable agreement on the sharing of these costs.

\* — 11. Records and Accounts. Rodeo shall keep true and complete records and accounts of all costs of disposal facilities' operation and maintenance and costs of replacement of worn out and obsolete facilities and shall be strictly accountable for all funds and report of all receipts and disbursements. Pinole and Hercules shall have access during reasonable hours to such records and accounts and shall have the right to audit them. Such records and accounts shall be kept in such manner and detail as mutually agreed upon by the parties. Pinole and Rodeo shall keep records on flows and such records shall be available to all parties during reasonable hours. All parties shall have mutual access to flow recorders to determine their respective accuracy.

12. State and Federal Requirements. The State of California and the Federal Government may, through conditions on grants, waste discharge regulations, or plans, impose requirements relating to construction, operation and maintenance, source control, inflow/infiltration, cost sharing, methods of collecting costs, industrial waste ordinances, and other aspects of wastewater management. All parties hereto agree to cooperate with and participate in the implementation of all such requirements.

13. Withdrawal from Agreement. The execution of this agreement is predicated upon the assumption that Federal and State

grants will be available to the parties on a reasonable basis. In the event that such grants are not available or that they are allotted on an unequal percentage basis to the respective parties, any party may withdraw from this Agreement upon giving thirty (30) days written notice to the other parties provided that if said notice is not given within thirty (30) days of the parties being advised of the amount of such grants, this paragraph shall be of no further effect.

14. Agency Consolidation. In case of the consolidation of any of the parties hereto with any other municipality or public entity, this Agreement shall be binding and inure to the benefit of such consolidated municipality or public entity to the extent that the disposal facilities are used by such consolidated municipality or public entity, and any such action shall not otherwise affect this Agreement. Such consolidation shall not increase the capacity allocation or rights of any party.

15. Regulatory Agency Restrictions. If any limitations on the amount of treated wastewater discharged through the disposal facilities are applied to Rodeo by any regulatory agency, the parties hereto will jointly determine the allocation of available capacity to each party to this Agreement. If any limitations on the amount of treated wastewater discharged through the transmission system are applied to Pinole by any regulatory agency, Pinole and Hercules will jointly determine the allocation of available capacity to Pinole and

Hercules. The parties will attempt to consider the intent of the regulatory action in determining the allocations. The parties will also consider the flows being contributed to the disposal facilities and the transmission system by each party at that time and the flow that each party has planned to use in the disposal facilities and transmission system. If any water quality standards are not met, Pinole, Hercules and Rodeo will issue through evaluation of each treatment plant performance, and each party will determine the cause of the receiving water quality standards not being met. If any party has contributed to any one party hereto, determine a course of action to determine a course of action to meet the water quality standards.

Did Pinole purchase extra Capacity from Hercules?  
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16. Capacity Allocation

each is guaranteed a flow capacity allocation up to the peak hourly flows shown in Exhibit B. If any party exceeds this amount, that party shall submit a report within thirty (30) days to the other parties hereto describing in detail measures to be implemented to reduce flows to the allocated amounts. The parties hereto may mutually agree on a capacity modification in the disposal facilities for the benefit of one or more parties; and should any agency exceed its designated capacity as shown on Exhibit B herein it may purchase any available unused capacity from any party hereto at a mutually agreed upon price.

17. Mutual Hold Harmless. No party to this Agreement nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done by any other party to this Agreement under or in connection with any work, authority, or jurisdiction delegated to said other party under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, each party to this Agreement shall fully indemnify and hold each other party to this Agreement harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by said indemnifying party under or in connection with any work, authority, or jurisdiction delegated to said party under this Agreement.

18. Length of Agreement and Periodic Review. This Agreement shall continue in effect for a period of twenty-five (25) years from the date of execution hereof and will renew itself automatically every twenty-five (25) years on the same terms unless one of the parties gives five (5) years notice to the others prior to the expiration of any twenty-five (25) year term of intention to terminate. However, the parties recognize that the elements of this Agreement may be affected by circumstances beyond their control and that final projections for an indefinite period are difficult to make. Accordingly, the parties will, at the request of any one party, review this Agreement and if it causes an unreasonable hard-

~~ship on any of the parties, appropriate adjustments will be considered.~~

19. Amendment of Agreement. It is expressly understood and agreed by and between the parties hereto that this Agreement may from time to time and by mutual agreement be altered, amended, and supplemented by and with the consent of the legislative or governing bodies of the parties hereto.

20. Disposition of Assets. Upon termination of this Agreement, any property acquired as the result of the joint exercise of powers and any surplus money on hand shall be returned to the respective parties in proportion to the construction cost contributions actually made by them.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF PINOLE

By Ames

Mayor

CITY OF HERCULES

By Ronald Kusinino

Mayor

RODEO SANITARY DISTRICT

By Mel Marcos

President

EXHIBIT B

Peak hourly wet weather flows used in the design of the disposal facilities:

<u>Agency</u>	<u>Design Flow (mgd)</u>
Pinole	5.82 - 8.4 43.27
Hercules	4.43 - 4.43 32.94
Rodeo	3.20 - 3.20 23.79

13.45

76.21%

Peak hourly wet weather flows used in the design of the transmission system:

<u>Agency</u>	<u>Design Flow (mgd)</u>
Pinole	5.82
Hercules	4.43