

1 NORTH BAY WATER REUSE AUTHORITY

2 FOURTH AMENDED

3 MEMORANDUM OF UNDERSTANDING

4
5
6
7
8
9
10
11
12 Supersedes
13
14

15 Memorandum of Understanding

March 15, 2005

16 First Amended Memorandum of Understanding

September 24, 2008

17 Second Amended Memorandum of Understanding

November 3, 2010

18 Third Amended Memorandum of Understanding

March 25, 2013

19

Table of Contents

20		
21		
22	Recitals	4
23	Memorandum of Understanding	7
24	1. Definitions	7
25	Administrative Agency	7
26	Associate Member	7
27	Board of Directors	8
28	Construction Project	8
29	Joint Use Costs	8
30	Member Agency or Member Agencies	8
31	MOU	8
32	NBWRA	9
33	North Bay Region	9
34	Phase 1	9
35	Phase 1 Costs	9
36	Phase 1 EIR/EIS	9
37	Phase 2	10
38	Phase 2 Costs	10
39	Phase 2 EIR/EIS	10
40	Technical Advisory Committee	10
41	USBR	10
42	2. Purpose	10
43	3. Objectives	11
44	4. Establishment of NBWRA	11
45	5. NBWRA Membership	11
46	6. Governance	12
47	7. Board of Directors	12
48	Membership	12
49	Voting and Authorization Requirements	12
50	Quorum	13
51	Open Meetings	13
52	Adding Associate Members	13
53	8. Technical Advisory Committee	14
54	Purpose	14
55	Membership	14
56	Voting and Authorization Requirements	14
57	Quorum	15
58	9. Terms of Office	15
59	10. Alternates	15
60	11. Officers of the NBWRA	15
61	Chair	15
62	Vice-Chair	16
63	12. Administrative Agency	16

64	13. Staff and Consultants	17
65	14. Sharing of Costs and Resources for Phase 1 Title XVI Program	18
66	15. Distribution of Phase 1 Funds Received	21
67	16. Sharing of Costs and Resources for Phase 2 Title XVI Program	22
68	17. Distribution of Phase 2 Funds Received	24
69	18. Initiation of Membership	25
70	19. Termination of Membership	26
71	Effect of Termination	26
72	20. Procedures	27
73	21. Meetings	27
74	22. Reports to Member Agencies	27
75	23. Offices	27
76	24. Term	27
77	25. Disposition of Property and Surplus Funds	28
78	26. Minutes	28
79	27. Effective Date	28
80	28. Counterparts	29
81	Exhibit A	33
82	Exhibit B	34
83	Exhibit C	35
84	Exhibit D	36
85	Exhibit E	37
86		

87 **MEMORANDUM OF UNDERSTANDING**88 **ESTABLISHING THE**89 **NORTH BAY WATER REUSE AUTHORITY**

90 This Memorandum of Understanding (“MOU”) establishes the North Bay Water Reuse
91 Authority (“NBWRA”) for the purposes described herein. This MOU is made and entered into by
92 and between the parties that are signatories to this MOU. The MOU was first approved March 15,
93 2005. The first amendment to the MOU was approved September 24, 2008. The second
94 amendment to the MOU was approved November 3, 2010. The third amendment to the MOU was
95 approved March 25, 2013. This is the fourth amendment of the MOU that originally established
96 the NBWRA. This fourth amendment to the MOU supersedes all previous versions of the MOU.

97
98 **Recitals**

99 WHEREAS, each of the parties to this MOU is a local government entity functioning
100 within the North Bay Region, as depicted in **Exhibit A** attached hereto and incorporated by
101 reference; and

102 WHEREAS, the parties desire to enter into an MOU to explore the feasibility of
103 coordinating interagency efforts to expand the beneficial use of recycled water in the North Bay
104 Region thereby promoting the conservation of limited surface water and groundwater resources;
105 and

106 WHEREAS, the parties do not intend to create a separate public agency pursuant to
107 Government Code §6500 et seq. through this MOU and no provision of this MOU should be so
108 construed; and

109 WHEREAS, the parties hereto may later explore the feasibility of changing their
110 organizational structure by establishing a Joint Powers Authority in a separate agreement that
111 would advance the purpose and goals of the NBWRA, if construction projects are to be
112 undertaken jointly or if such changes are necessary in order to receive federal or state funds; and

113 WHEREAS, the parties hereto recognize the value of using common resources effectively;
114 and

115 WHEREAS, the parties hereto desire to be proactive on regulatory issues affecting the
116 North Bay Region that transcend the traditional political boundaries of the parties; and

117 WHEREAS, the parties hereto desire to inform communities and the public in the North
118 Bay Region about the importance of water conservation and the benefits of water reuse and water
119 use efficiency; and

120 WHEREAS, the parties hereto wish to coordinate their consideration and review of local,
121 state and federal policies and programs related to the expansion of existing recycled water
122 programs and the development of new recycled, storage, and environmental enhancement water
123 programs in the North Bay Region; and

124 WHEREAS, the parties hereto find that promoting the stewardship of water resources in
125 the North Bay Region is in the public interest and for the common benefit of all within the North
126 Bay Region; and

127 WHEREAS, the parties recognize that there are current and future regulatory requirements
128 which apply to water resources in the North Bay Region affecting one or more of said parties, and
129 that these multiple regulatory requirements may be better addressed on a regional basis, and in a

collaborative manner, and the parties wish to investigate more effective ways to share information and coordinate efforts to comply with said regulatory requirements; and

WHEREAS, the parties intend that participation in this MOU be entirely voluntary; and

WHEREAS, it is understood that the primary purpose of this MOU is to provide a governance structure, led by a Board of Directors consisting of members of the governing boards from the Member Agencies, for the successful completion of recycled water projects in the North Bay Region; and

WHEREAS, the parties previously applied for federal funds to assist them with implementing their projects; and

WHEREAS, the parties did receive funding, which is part of a program authorized for construction in PL 111-11 that was signed into law in March 2009. The program can receive appropriations through the United States Bureau of Reclamation's Title XVI program which can include funds from the American Recovery and Reinvestment Act of 2009 and the U.S. Department of Interior, Bureau of Reclamation's Title XVI Program, including the WaterSMART Grant Program; and

WHEREAS, Phase 1 includes receipt of the full \$25,000,000 federal authorization, and

WHEREAS, the parties completed a Feasibility Study for the addition of projects that are now part of Phase 2; and

WHEREAS, the parties have completed a Feasibility Study for Phase 2 and the projects for Phase 2 have an estimated value of \$75,600,000, which have the potential to receive \$18,900,000 in federal funding; and

WHEREAS, the projects that are part of Phase 1 and Phase 2 receive federal funding from the United States Bureau of Reclamation Title XVI Program and are eligible to receive funding from other federal and state programs; and

WHEREAS, the parties may desire to add other water management programs in addition to water recycling, storage, and environmental enhancement in the future, which may require additional modifications to this MOU; and

WHEREAS, the parties understand that reallocation of costs described herein, can be made with the approval of the parties as provided herein.

NOW, THEREFORE, the parties hereto do hereby enter into this Memorandum of Understanding, as follows:

Memorandum of Understanding

1. Definitions. As used in this MOU, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise. For convenience, these definitions are listed alphabetically.

(a) “Administrative Agency” shall mean that Member Agency authorized pursuant to Section 12 to enter into contracts and perform other administrative functions on behalf of the NBWRA.

(b) “Associate Member” shall mean a local and/or regional public agency regulated under the Clean Water Act, 33 U.S.C. § 1251 et seq., the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., and/or the state Safe Drinking Water Act, Health & Safety Code § 116275 et seq., that operates within or has jurisdiction over any area within the North Bay Region, or other organizations interested in the Purpose and Objectives of NBWRA. Associate

Members may not sponsor projects in Phase 1 or Phase 2 but may partner with Member

Agencies. Associate Members are entitled to appoint one non-voting representative to the

Board of Directors and to the Technical Advisory Committee.

(c) “Board of Directors” shall mean the governing body composed of members of the governing boards of the Member Agencies established pursuant to this MOU.

(d) “Construction Project” shall mean a project described in either the Phase 1 EIR/EIS or the Phase 2 EIR/EIS.

(e) “Joint Use Costs” shall mean those costs that are not easily differentiated between Phase 1 and Phase 2 since they benefit the entire program and not just a particular set of projects.

These costs may include but not be limited to program management and program

development costs; ; program technical support; outreach and community support; and

administrative agency management and oversight in support of the program.

(f) “Member Agency” or “Member Agencies” shall mean the local and/or regional public agencies regulated under the Clean Water Act, 33 U.S.C. § 1251 et seq., the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., and/or the state Safe Drinking Water Act, Health & Safety Code § 116275 et seq., that operate within or have jurisdiction over any area within the North Bay Region, and that are signatories to this MOU. Member Agencies are entitled to one voting member on the Board of Directors and Technical Advisory Committee as defined herein.

(g) “MOU” shall mean this fourth amended Memorandum of Understanding.

- 193 (h) “NBWRA” shall mean the unincorporated, cooperative group of public agencies
194 organized through this MOU and otherwise referred to as the North Bay Water Reuse
195 Authority.
- 196 (i) “North Bay Region” shall mean the four counties located in the North San Pablo Bay
197 watershed as identified in 43 U.S.C. 390h-34: Marin, Napa, Solano, and Sonoma. Said
198 area is depicted on the map attached hereto and incorporated herein as **Exhibit A**.
- 199 (j) “Phase 1” shall mean the projects described as Phase 1 of Alternative 1 of the Phase 1
200 EIR/EIS. It is understood that minor modifications to said projects may occur as actual
201 design and construction occurs and that the individual agencies are responsible for
202 possible modifications to the requirements of the Phase 1 EIR/EIS. Phase 1 participating
203 Member Agencies include: Las Gallinas Valley Sanitary District, Novato Sanitary
204 District, North Marin Water District, Sonoma Valley County Sanitation District, Sonoma
205 County Water Agency, Napa Sanitation District, and Napa County.
- 206 (k) “Phase 1 Costs” shall mean those costs associated with engineering, environmental
207 analysis, portions of program development, federal advocacy, as well as other costs
208 deemed necessary and approved by the Board, that are associated with the construction of
209 projects described in “Phase 1”, above.
- 210 (l) “Phase 1 EIR/EIS” shall mean the Environmental Impact Report/Environmental Impact
211 Statement, prepared by Environmental Science Associates, that was certified and or
212 approved by the Member Agencies during December 2009 and January 2010 and which
213 serves as the basis of the Phase 1 projects to be partially funded by USBR through the
214 Title XVI Program.

(m) “Phase 2” shall mean the projects defined in the Phase 2 EIR/EIS. It is understood that those projects may change through the completion of the Phase 2 EIR/EIS. Phase 2 participating Member Agencies include: Novato Sanitary District, Sonoma Valley County Sanitation District, Sonoma County Water Agency, Napa Sanitation District, Marin Municipal Water District, City of Petaluma and City of American Canyon.

(n) “Phase 2 Costs” shall mean those costs associated with efforts to conduct scoping studies, workshops, feasibility studies, engineering, environmental analysis, specific administrative costs, portions of program development, federal advocacy, as well as other costs deemed necessary and approved by the Board, that are associated with the design and construction of projects as described in “Phase 2”, above.

(o) “Phase 2 EIR/EIS” shall mean the Environmental Impact Report/Environmental Impact Statement, which will be prepared by Brown and Caldwell, and which will be considered for certification and approval by the Member Agencies by the end of 2018, and which shall serve as the basis of the Phase 2 projects to be partially funded by USBR through the Title XVI Program.

(p) “Technical Advisory Committee” shall mean the administrative body established at the discretion of the Board of Directors pursuant to this MOU.

(q) “USBR” shall mean the United States Bureau of Reclamation.

2. Purpose. The purpose of NBWRA is to provide recycled water for agricultural, urban, and environmental uses thereby reducing reliance on local and imported surface water and groundwater supplies and reducing the amount of treated effluent released to San Pablo Bay and its tributaries.

3. Objectives. NBWRA projects will promote the expanded beneficial use of recycled water in the North Bay Region to:

- (a) Offset urban and agricultural demands on surface water and groundwater supplies;
- (b) Enhance local and regional ecosystems;
- (c) Improve local and regional water supply reliability;
- (d) Maintain and protect public health and safety;
- (e) Promote sustainable practices;
- (f) Give top priority to local needs for recycled water, and
- (g) Implement recycled water facilities in an economically viable manner.

4. Establishment of the NBWRA. There is hereby established the North Bay Water Reuse Authority ("NBWRA"). The geographic boundaries of the NBWRA shall be the North Bay Region. (See **Exhibit A**). The NBWRA is an unincorporated association. By entering into this MOU, the parties do not intend to form a Joint Powers Authority pursuant to Government Code §6500 et seq.

5. NBWRA Membership. Any local and/or regional public agency regulated under the Clean Water Act, 33 U.S.C. § 1251 et seq., the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., and/or the state Safe Drinking Water Act, Health & Safety Code § 116275 et seq., that operates within or has jurisdiction over any area within the North Bay Region may be a Member Agency or Associate Member of the NBWRA. Each Member Agency must be a signatory to this MOU. The Board of Directors may assess annual dues of \$5,000 for membership in the NBWRA for Associate Members. Dues shall be used to offset Joint Use Costs for the Member Agencies.

6. Governance. NBWRA governance structure shall consist of a Board of Directors. The composition and responsibilities of the Board of Directors is detailed in Section 7.

7. Board of Directors

(a) Membership. The Board of Directors of the NBWRA shall consist of one voting representative from each Member Agency and may include one non-voting representative from each Associate Member. Such representative shall be a member of the governing board of the Member Agency or Associate Member. The Member Agency or Associate Member shall designate one representative and alternate(s) each of whom shall be members of the governing board of the Member Agency or Associate Member. In the event that a Member Agency's governing body representative and alternate(s) are unavailable for a particular meeting, the Member Agency's representative on the Technical Advisory Committee may serve as an alternate.

(b) Voting and Authorization Requirements. Each Member Agency representative on the Board of Directors shall have one vote. Except as set forth in subsections (i) and (iii) below and as otherwise specified herein, the affirmative vote of a majority of the voting members of the Board of Directors is required and is sufficient to approve any item.

(i) An affirmative vote representing two-thirds of all Member Agencies shall be required to adopt or modify the budget. The budget may not be increased by more than fifteen percent (15%) annually, without the unanimous approval of the members of the Board of Directors representing all Member Agencies.

(ii) Votes to approve the budget may not be unreasonably withheld.

- 281 (iii) Approval by the governing bodies of two-thirds of all Member Agencies shall be
282 required to modify this MOU.
- 283 (c) Quorum. Representatives or alternates from a majority of the Member Agencies shall
284 constitute a quorum for purposes of transacting business, except that less than a quorum
285 may vote to adjourn a meeting or to set a date for the next meeting.
- 286 (d) Open Meetings. The Board of Directors will comply with the Ralph M. Brown Act in
287 conducting its meetings.
- 288 (e) Adding Associate Members. Representatives of Associate Members may be added to the
289 Board of Directors without modifying this MOU by a majority vote of the Board of
290 Directors.

8. Technical Advisory Committee

(a) Purpose. The Board of Directors may create a Technical Advisory Committee as needed for the month-to-month management of budget, schedule, and scopes of work for the NBWRA. Typical duties of a Technical Advisory Committee include recommending contracting for a program manager; working through technical details of work scopes and products; authorizing the administrative agency to enter into, modify, or accept work under any contract that is consistent with the budget approved by the Board of Directors, and reviewing and recommending courses of action to the Board of Directors for their consideration. The Board of Directors may create or dissolve the Technical Advisory Committee at any time for any purpose, and may adopt a set of rules governing the Technical Advisory Committee as it determines necessary to achieve the purpose and objectives stated herein.

(b) Membership. The Technical Advisory Committee shall consist of one representative, not from the governing body, from each Member Agency. Such representative shall be the general manager or a designated staff member of the Member Agency. In the event that the general manager or staff member is unavailable for a meeting, he or she may designate an alternate. Associate Members may appoint a non-voting representative to the Technical Advisory Committee.

(c) Voting and Authorization Requirements: Each Member Agency representative on the Technical Advisory Committee shall have one vote. An affirmative vote of a majority of all voting members of the Technical Advisory Committee is required and sufficient to approve any item.

(d) Quorum. Representatives or alternates from a majority of the Member Agencies shall constitute a quorum for purposes of transacting business, except that less than a quorum may vote to adjourn a meeting or to set a date for the next meeting.

9. Terms of Office. Each representative on the Board of Directors shall serve for as long as he or she is a member of the governing board of his or her Member Agency and is designated by the Member Agency to act as its representative. If at any time a vacancy occurs on the Board of Directors, a replacement shall be appointed by the Member Agency to fill the unexpired term of the previous representative within ninety (90) days of the date that such position becomes vacant.

10. Alternates. Alternate representatives to the Board of Directors or its Technical Advisory Committee shall be empowered to cast votes in the absence of the regular representative or, in the event of a conflict of interest preventing the regular representative from voting, to vote because of such a conflict of interest.

11. Officers of the NBWRA. The Board of Directors of the NBWRA shall elect a Chair, a Vice-Chair and such other officers annually on the first meeting of the calendar year. The Chair and Vice-Chair shall be selected from among the Member Agency representatives. The Board of Directors may choose to adopt a policy that requires the rotation of the Chair, by Member Agency, on an annual basis. The duties of the Chair and Vice-Chair are as follows:

(a) Chair. The Chair shall direct the preparation of agendas, call meetings of the Board of Directors to order and conduct other activities as deemed appropriate by the Board of Directors. Any member of the Board of Directors may place an item on the NBWRA agenda.

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

12. Administrative Agency. The Member Agencies hereby designate the Sonoma County Water Agency to act as the Administrative Agency for the purpose of carrying out the provisions of this MOU. The authority delegated herein to the Administrative Agency shall be subject to the restrictions upon the manner of exercising power applicable to the Administrative Agency, including but not limited to the purchasing ordinances and purchasing procedures of the Administrative Agency. Within these limits, the Board of Directors may direct the Administrative Agency's actions with respect to this MOU. The Administrative Agency, for the benefit of the NBWRA Members, shall:

(a) Award, execute in its own name, and administer such contracts on behalf of the NBWRA, as may be authorized as set forth in Sections 7 and 8.

(b) Through its controller and treasurer, act as the financial officer or functional equivalent and be the depositor and have custody of all money of the NBWRA from whatever source. The Administrative Agency shall draw warrants to pay demands for expenditures authorized by the Board of Directors or by its authorized representative pursuant to any delegation of authority authorized by the Board of Directors. The Administrative Agency will strictly account for all NBWRA funds, and will hold the funds in trust in a segregated account.

(c) Provide budget analyses, warrant lists and other financial documents as required by the Board of Directors. The Administrative Agency's financial activities with regards to the NBWRA shall be subject to an outside audit at any time at the request of the Board of Directors. As a matter of course, the Administrative Agency will provide a separate annual audit of NBWRA funds to the Board of Directors.

(d) Determine charges to be made against the NBWRA for the Administrative Agency's services. Payment of these charges shall be subject to the approval of the Board of Directors.

(e) Prepare the reports identified in Section 20 if the Board of Directors has not designated another party or person to complete that task.

(f) Enter into contracts with values up to \$15,000 without the approval of the Board of Directors or the Technical Advisory Committee, if consistent with the budget approved by the Board of Directors.

The Administrative Agency may resign its position as Administrative Agency upon 120 days written notice to all Member Agencies, and shall, before the effective date of its resignation, transfer all funds held on behalf of the NBWRA to any designated successor Administrative Agency. The Board of Directors may designate a successor Administrative Agency by majority vote. Should no other party be designated to act as Administrative Agency by the effective date of the resignation, the MOU shall terminate and the Administrative Agency shall distribute all property held on behalf of the NBWRA pursuant to Section 23.

13. Staff and Consultants. Subject to the approval and procedural provisions of Sections 7 and 12, the Administrative Agency may employ or contract for any staff or consultants as may be

reasonably necessary to carry out the purposes of this MOU. Such persons may include legal counsel, administrative executives and other types of specialists. If an employee from any Member Agency performs staff or consulting work for the NBWRA, the governing body of that Member Agency may determine the charges to be made against the NBWRA for the services of that employee. Payment of these charges by the Administrative Agency on behalf of the NBWRA shall be subject to the approval of the Board of Directors, which approval shall not be unreasonably withheld.

14. Sharing of Costs and Resources for Phase 1 Title XVI Program.

(a) The Board of Directors shall assess each Member Agency for costs associated with paying the Administrative Agency, staff or consultants and the funding of approved Phase 1 projects, under agreements approved by the Board of Directors, the Technical Advisory Committee pursuant to Section 8, or the Administrative Agency as provided in Section 12, or as authorized by the budget adopted by the Board of Directors as set forth in Section 7. Further, legal liabilities may arise out of actions of the Member Agencies (including the Administrative Agency) taken pursuant to this MOU. The activities of the NBWRA are part of a regional program that provides benefit to all agencies. Therefore, as described more particularly below, all Member Agencies that participate in Phase 1 construction projects shall pay a portion of ongoing Phase 1 costs equally and the remaining Phase 1 costs shall be based on approved project costs for Phase 1 of Alternative 1, as described in the certified Phase 1 EIR/EIS or as amended pursuant to Sections 14(d) and 16. The costs and liabilities will be allocated among each of the Phase 1 Member Agencies as follows:

(i) one quarter (25%) of costs and liabilities shall be allocated equally among each of the Phase 1 Member Agencies; and

(ii) three quarters (75%) of costs and liabilities shall be allocated among Phase 1 Member Agencies in proportion to the benefit to each Member Agency of participating in the NBWRA, in the form of federal funding that is described in applications for federal funding that have been submitted to the USBR as of April 15, 2010 or as modified pursuant to Sections 14 (d) and 16 herein. The Sonoma County Water Agency shall pay its pro-rata share of the quarter of costs allocated under subsection (i) above, but shall not pay any costs allocated under subsection (ii), as it does not have any individual projects to be funded.

(b) The parties hereto agree that the criteria set forth in subsection (b)(ii) produce the allocations listed in **Exhibit B**, attached hereto, and incorporated by reference. The parties agree that **Exhibit B** may be modified pursuant to Sections 14 (d) and 16.

(c) Member Agencies were afforded the opportunity to receive reimbursement for previously allocated Phase 1 Costs and liabilities that were not based on benefits received during the period from the end of Fiscal Year 2010-2011 back to Fiscal Year 2005-2006 (the "Reimbursement Period"). Reimbursements were equal to (i) the actual costs paid by a Member Agency during the Reimbursement Period minus (ii) the amount of costs that were allocated to that Member Agency during the Reimbursement Period if the percentages defined in **Exhibit B** had been in effect. The determination of costs and reimbursements subject to this subsection (c) was approved by a majority of the Board of Directors on May 21, 2012. The second determination of costs and reimbursements for the

period covering Fiscal Year 2005-2006 through Fiscal Year 2016-2017 subject to this subsection (c) was approved by a majority of the Board of Directors on March 27, 2017. It is anticipated that a final determination of costs and reimbursements subject to this subsection (d) will be considered at full completion of Phase 1 and after USBR has made all payments for Phase 1 projects. That period will include Fiscal Year 2005-2006 to the last fiscal year including costs for Phase 1.

(d) Two or more Member Agencies can agree to reallocate project costs for Phase 1 among themselves, as long as the combined total for those agencies before and after reallocation are the same as the combined total for those agencies in the project schedule, subject to the approval of the Board of Directors. Such approval shall not be unreasonably withheld.

(e) (i) In the case of non-contractual liabilities arising out of the Phase 1 activities of the parties under this MOU, the Phase 1 Member Agencies specifically repudiate the division of liability outlined in Government Code sections 895.2 *et seq.* and instead agree to share liability based on the relative fault of the parties.

(ii) Notwithstanding the foregoing paragraph, each Phase 1 Member Agency agrees that it is solely responsible for, and agrees to indemnify, hold harmless, and defend the other Member Agencies from and against, any claims, liabilities, or losses relating to or arising out of the design, construction, inspection, operation, or maintenance of its separate project. Each Phase 1 Member Agency agrees that nothing in this MOU shall create, impose, or give rise to any liability, obligation, or duty of the Member Agency to the other Member Agencies or to any third party with respect to the manner in which the Member Agency designs, constructs, inspects, operates, or maintains its separate project.

(f) A separate agreement between the Administrative Agency and the Member Agencies has been developed based on the requirements of the American Recovery and Reinvestment Act and Title XVI.

(i) All Phase 1 and Phase 2 Member Agencies shall pay an equal share of Joint Use Costs as defined herein.

(ii) If a Member Agency that chooses to opt out of any NBWRA program tasks then later decides to participate, it will be subject to a buy-in fee approved by the Board of Directors. Said fee may include applicable costs plus interest from the inception of that program until such time that they decide to participate. Costs shall be based on the approved annual budget. Interest shall be based on the annual change in the Consumer Price Index - All Urban Consumers for San Francisco-Oakland-San Jose as determined by the Bureau of Labor Statistics, United States Department of Labor.

15. Distribution of Phase 1 Funds Received.

(a) Distribution of funds received from USBR for Phase 1 projects shall be based on the Phase 1 project schedule as described in applications for federal funding submitted to USBR as of December 10, 2015 or as modified pursuant to Sections 14 (d) and 18, herein. Those percentages are based on the \$25,000,000 federal funding authorization for projects totaling \$100,000,000 and are detailed in **Exhibit C**, attached hereto, and incorporated by reference. The parties agree that **Exhibit C** may be modified pursuant to Sections 14 (d) and 16. Should State funding become available to the NBWRA, its distribution shall also be as described in this Section. It is acknowledged that the Member Agencies may receive State funding from programs on an individual basis, and (i) this Section shall not apply to

such individual State funding and (ii) the allocations set forth in this Section shall not be affected by the receipt of any State funding.

16. Sharing of Costs and Resources for Phase 2 Title XVI Program.

(a) The Board of Directors shall assess each Member Agency for costs associated with paying the Administrative Agency, staff or consultants and the funding of approved Phase 2 projects, under agreements approved by the Board of Directors, the Technical Advisory Committee pursuant to Section 8, or the Administrative Agency as provided in Section 12, or as authorized by the budget adopted by the Board of Directors as set forth in Section 7. Further, legal liabilities may arise out of actions of the Member Agencies (including the Administrative Agency) taken pursuant to this MOU. The activities of the NBWRA are part of a regional program that provides benefit to all agencies. Therefore, as described more particularly below, all Member Agencies that participate in Phase 2 construction projects shall pay Phase 2 costs as described herein, or as amended pursuant to Sections 16(c) and 18. The costs and liabilities will be allocated among each of the Phase 2 Member Agencies as follows:

- (i) Feasibility Study Engineering Costs are allocated based on each agency's percentage of Phase 2 projects studied at the feasibility level, which is calculated by dividing the number of each agency's Phase 2 projects studied at the feasibility level by the total number of Phase 2 projects studied at the feasibility level; and

(ii) Environmental (EIR/EIS) and Financial Capability Analysis costs are allocated based on each agency's percentage of the total project costs in the Final Phase 2 EIR/EIS , which is calculated by dividing the total costs of each agency's projects included in the Final Phase 2 EIR/EIS by the total cost of all projects included in the Final Phase 2 EIR/EIS; and

(iii) Joint Use costs are shared equally by all Phase 1 and Phase 2 Member Agencies.

(b) The parties hereto agree that the criteria set forth in subsection (a)(i), (a)(ii), and (a)(iii) produce the allocations listed in **Exhibit D**, attached hereto, and incorporated by reference. The parties agree that **Exhibit D** may be modified pursuant to Sections 16 (c) and 18.

(c) Two or more Member Agencies can agree to reallocate project costs for Phase 2 among themselves, as long as the combined total for those agencies before and after reallocation are the same as the combined total for those agencies in the project schedule, subject to the approval of the Board of Directors. Such approval shall not be unreasonably withheld. If this occurs, Phase 2 Member Agencies agree to reallocate shared costs as described herein, based on the benefits received.

(d) (i) In the case of non-contractual liabilities arising out of the Phase 2 activities of the parties under this MOU, the Member Agencies specifically repudiate the division of liability outlined in Government Code sections 895.2 *et seq.* and instead agree to share liability based on the relative fault of the parties.

(ii) Notwithstanding the foregoing paragraph, each Phase 2 Member Agency agrees that it is solely responsible for, and agrees to indemnify and defend the other Member Agencies from and against, any claims, liabilities, or losses relating to or arising out of the design, construction, inspection, operation, or maintenance of its separate project.

Each Phase 2 Member Agency agrees that nothing in this MOU shall create, impose, or give rise to any liability, obligation, or duty of the Member Agency to the other Member Agencies or to any third party with respect to the manner in which the Member Agency designs, constructs, inspects, operates, or maintains its separate project.

(e) For those agencies choosing to participate in Phase 2 as defined herein, they shall share in all Phase 2 Costs as defined herein.

(i) If a Member Agency that chooses to opt out of Phase 2 tasks later decides to participate, it will be subject to a buy-in fee approved by the Board of Directors. Said fee may include applicable costs plus interest from the inception of Phase 2 tasks until such time that they decide to participate. Costs shall be based on the approved annual budget. Interest shall be based on the annual change in the Consumer Price Index - All Urban Consumers for San Francisco-Oakland-San Jose as determined by the Bureau of Labor Statistics, United States Department of Labor.

17. Distribution of Phase 2 Funds Received.

(a) Distribution of funds received from USBR for Phase 2 projects shall be based on the Phase 2 project schedule as described in applications for federal funding submitted to USBR or as modified pursuant to Sections 16 (c) and 18, herein. Those percentages are applied to the \$18,900,000 federal funding authorization for projects totaling \$75,600,000 and are

detailed in **Exhibit E**, attached hereto, and incorporated by reference. The parties agree that **Exhibit E** may be modified pursuant to Sections 16 (c) and 18. Should State funding become available to the NBWRA, its distribution shall also be as described in this Section. It is acknowledged that the Member Agencies may receive State funding from programs on an individual basis, and (i) this Section shall not apply to such individual State funding and (ii) the allocations set forth in this Section shall not be affected by the receipt of any State funding.

(b) Cost allocations as described in **Exhibits D** and **E** may be revised upon the addition of additional Member Agencies, subject to the approval of a majority of the existing Member Agencies at that time. By virtue of becoming a signatory agency to this MOU pursuant to this Section 17, a new Member Agency is subject to all provisions of this MOU, including Section 18 below.

18. Initiation of Membership. If an eligible agency as defined in Section 5 requests to join the NBWRA as a new Member Agency, the Board of Directors shall establish a membership initiation fee to such agency as a condition of joining the NBWRA. For the purposes of this revision of the MOU, the new Member Agencies shall include Marin Municipal Water District, City of Petaluma, and City of American Canyon. The purpose of the initiation fee is to allow the Phase 1 Member Agencies to recover a portion of their investment costs in obtaining federal authorization for construction projects. The initiation fee for each new member agency shall be equal to 0.6% of the new Member Agency project costs as determined upon completion of the Phase 2 Scoping Study. The initiation fee shall be paid in a manner approved

by the Board of Directors. The collected initiation fees shall be distributed to the Phase 1 participating agencies according to the percentages specified in **Exhibit B**.

By virtue of becoming a signatory agency to this MOU pursuant to this Section 18, a new Member Agency is subject to all provisions of this MOU, including Section 19 below. Once the Board of Directors has approved an agency as a new Member Agency, appointed representatives of that agency are entitled to vote at all Board and TAC meetings.

19. Termination of Membership. Member Agencies that participate in Phase 1 and have received federal monies for Phase 1 construction projects may not terminate their membership in the NBWRA before the completion of all Phase 1 construction projects or before the termination of this MOU as defined herein, whichever comes first. At this point, a Phase 1 Member Agency may change its membership to Associate Member. Member Agencies that participate in Phase 2 and have received federal monies for Phase 2 construction projects may not terminate their membership in the NBWRA before the completion of all Phase 2 construction projects or before the termination of this MOU as defined herein, whichever comes first. At this point, a Phase 2 Member Agency may change its membership to Associate Member. Phase 2 participants may voluntarily withdraw from the NBWRA prior to the receipt of federal monies for Phase 2 construction projects.

(a) Notwithstanding the above a Member Agency may petition the Board in writing for withdrawal from the NBWRA and may withdraw with the approval of two-thirds of the members of the Board of Directors representing Member Agencies.

(b) Effect of Termination. All rights of a Member Agency under this MOU shall cease on the termination of such Member Agency's membership. Termination shall not relieve the

Member Agency from any obligation for charges, costs or liabilities incurred or arising from acts or omissions before the date of termination. The terminating Member Agency's responsibility for such charges, costs or liabilities shall be determined in a manner consistent with the allocations set forth in Sections 14 and 16. Likewise, termination shall not preclude the Member Agency from any benefits that fully accrue before the date of termination.

However, a resigned or terminated agency has no right to receive a portion of surplus funds at the termination of the NBWRA.

20. Procedures. The Board of Directors may adopt bylaws, rules of conduct for meetings and operating procedures for the NBWRA. To facilitate such efforts, the NBWRA may adopt the administrative procedures and policies of a Member Agency.

21. Meetings. The Board of Directors and the Technical Advisory Committee shall provide for meetings, as necessary.

22. Reports to Member Agencies. Each year the NBWRA shall submit a written report to the governing body of each of the Member Agencies. This report shall describe the financial activities of the NBWRA during the preceding year.

23. Offices. For the purposes of forming the NBWRA and for initial operation, the principal office of the NBWRA shall be located at the Administrative Agency. The Board of Directors may change said principal office from one location to another after providing thirty (30) days notice of such a change. The Chair shall notify each Member Agency in writing of the change.

24. Term. This MOU shall terminate five years from its effective date, unless extended by some or all of the parties. This MOU shall also be terminated if the Administrative Agency has

resigned pursuant to Section 12 and no other Member Agency has been designated to act as the Administrative Agency prior to the effective date of the resignation.

25. Disposition of Property and Surplus Funds. At the termination of this MOU, any and all property, funds, assets, and interests therein held by the Administrative Agency on behalf of the NBWRA shall become the property of and be distributed to the then-Member Agencies. Money collected from Member Agencies and held in reserve by the Administrative Agency for payment of the costs of programs shall be allocated among Member Agencies in proportion to each Member Agency's contributions to such reserves. All other property, funds, assets, and interests shall be distributed by the Administrative Agency to Member Agencies in proportion to each Member Agency's contributions to the NBWRA for dues and allocated costs. However, liabilities of the NBWRA in excess of those assets held by the Administrative Agency on behalf of the NBWRA at the time of termination shall be assessed against the Member Agencies and said Member Agencies shall be responsible for such liabilities. The allocation of responsibility for the payment of such liabilities shall be determined in a manner consistent with the provisions of Section 14.

26. Minutes. A secretary or clerk shall be appointed by the Board of Directors. The secretary or clerk shall cause to be kept minutes of all meetings of the Board of Directors and the Technical Advisory Committee, and shall cause a copy of the minutes to be forwarded to each Member Agency.

27. Effective Date. This revision to the MOU shall become effective when two-thirds of the Member Agencies have authorized its execution.

618 **28. Counterparts.** This revision to the MOU may be executed in counterpart and each of these
619 executed counterparts shall have the same force and effect as an original instrument and as if
620 all of the parties to the aggregate counterparts had signed the same instrument.

621

622

623 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

Sonoma County Water Agency

Napa Sanitation District

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Sonoma Valley County Sanitation
District**

Novato Sanitary District

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

Las Gallinas Valley Sanitary District

North Marin Water District

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

County of Napa

By: _____

Print Name: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

Marin Municipal Water District

City of Petaluma

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

City of American Canyon

By: _____

Print Name: _____

Title: _____

Date: _____

640

Exhibit A



641

Exhibit B**Percentages for Ongoing Phase 1 NBWRA Costs**

Agency	25% Split Equally	Federal Authorization, Phase 1	Percentage of Remaining 75%	Total of Percentages
Las Gallinas Valley Sanitary District	3.57%	\$2,225,876	6.68%	10.25%
Novato Sanitary District	3.57%	\$1,898,888	5.70%	9.27%
North Marin Water District	3.57%	5,933,499	17.80%	21.37%
Sonoma Valley County Sanitation District	3.57%	\$4,583,250	13.75%	17.32%
Sonoma County Water Agency	3.57%	\$0.00	0.00%	3.57%
Napa Sanitation District	3.57%	\$10,358,487	31.08%	34.65%
Napa County	3.57%	\$0.00	0.00%	3.57%
TOTALS	25.00%	\$25,000,000	75.00%	100.00%

Notes:

Percentages may be revised pursuant to the provisions of this MOU or revisions to the projects in Phase 1, subject to the approval of the parties.

The above schedule only includes costs and percentages related to Phase 1.

Exhibit C**Percentages for Distribution of Phase 1 Federal Funds Received**

Agency	Federal Authorization, Phase 1	Percentage
Las Gallinas Valley Sanitary District	\$2,225,876	8.90%
Novato Sanitary District	\$1,898,888	7.60%
North Marin Water District	\$5,933,499	23.73%
Sonoma Valley County Sanitation District	\$4,583,250	18.33%
Sonoma County Water Agency	\$0.00	0.00%
Napa Sanitation District	\$10,358,487	41.33%
Napa County	\$0.00	0.00%
TOTALS	\$25,000,000	100.00%

Notes:

Percentages may be revised pursuant to the provisions of this MOU based on revisions to the projects in Phase 1, , subject to the approval of the parties.

The above schedule only includes costs and percentages related to Phase 1.

Exhibit D**Percentages for Ongoing Phase 2 NBWRA Costs**

Agency	% Phase 2 Support (yrs 1-2 / yr 3)	% Phase 2 Feasibility Study (yrs 1-2 / yr 3)	% Joint Use Costs (yrs 1-2 / yr 3)	% of Total Cost
Novato Sanitary District	20.00 / 14.29	20.69 / 13.04	12.50 / 10.00	15.13
Sonoma Valley County Sanitation District	20.00 / 14.29	13.80 / 8.95	12.50 / 10.00	13.62
Sonoma County Water Agency	20.00 / 14.29	12.08 / 10.61	12.50 / 10.00	11.27
Napa Sanitation District	20.00 / 14.29	25.85 / 14.33	12.50 / 10.00	19.48
Marin Municipal Water District	0.00 / 14.29	1.72 / 10.15	0.00 / 10.00	5.22
City of Petaluma	20.00 / 14.29	20.69 / 29.00	12.50 / 10.00	20.18
City of American Canyon	0.00 / 14.29	5.16 / 13.92	0.00 / 10.00	7.60

Notes:

- Percentages may be revised pursuant to the provisions of this MOU based on adding additional signatory members, revisions to the projects in Phase 2, or continuation beyond Phase 2, subject to the approval of the parties.
- The above schedule only includes costs and percentages related to Phase 2.
- Totals for % Phase 2 Administrative Costs and % Total Cost are less than 100% since joint use costs are shared by Phase 1 Member Agencies.

Exhibit E**Percentages for Distribution of Phase 2 Federal Funds
Received**

Agency	Federal Authorization, Phase 2	Percentage
Novato Sanitary District	\$6,300,000	8.33
Sonoma Valley County Sanitation District	\$3,600,000	4.76
Sonoma County Water Agency	\$7,600,000	10.05
Napa Sanitation District	\$5,100,000	6.75
Marin Municipal Water District	\$7,800,000	10.32
City of Petaluma	\$33,200,000	43.92
City of American Canyon	\$12,000,000	15.87
TOTALS	\$75,600,000	100.00%

Notes:

1. Percentages may be revised pursuant to the provisions of this MOU based on adding additional signatory members, revisions to the projects in Phase 2, or continuation beyond Phase 2, subject to the approval of the parties.
2. The above schedule only includes costs and percentages related to Phase 2.