

1 NORTH BAY WATER REUSE AUTHORITY

2 FOURTH AMENDED

3 MEMORANDUM OF UNDERSTANDING

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Supersedes

Memorandum of Understanding	March 15, 2005
First Amended Memorandum of Understanding	September 24, 2008
Second Amended Memorandum of Understanding	November 3, 2010
Third Amended Memorandum of Understanding	March 25, 2013

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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

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

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

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

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

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

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

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

148 WHEREAS, the parties have completed a Feasibility Study for Phase 2 and the projects  
149 for Phase 2 have an estimated value of \$75,600,000, which have the potential to receive  
150 \$18,900,000 in federal funding; and

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

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

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

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

161 **Memorandum of Understanding**

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

165 (a) “Administrative Agency” shall mean that Member Agency authorized pursuant to Section  
166 12 to enter into contracts and perform other administrative functions on behalf of the  
167 NBWRA.

168 (b) “Associate Member” shall mean a local and/or regional public agency regulated under the  
169 Clean Water Act, 33 U.S.C. § 1251 et seq., the federal Safe Drinking Water Act, 42 U.S.C.  
170 § 300f et seq., and/or the state Safe Drinking Water Act, Health & Safety Code § 116275 et  
171 seq., that operates within or has jurisdiction over any area within the North Bay Region, or  
172 other organizations interested in the Purpose and Objectives of NBWRA. Associate

- 173 Members may not sponsor projects in Phase 1 or Phase 2 but may partner with Member  
174 Agencies. Associate Members are entitled to appoint one non-voting representative to the  
175 Board of Directors and to the Technical Advisory Committee.
- 176 (c) “Board of Directors” shall mean the governing body composed of members of the  
177 governing boards of the Member Agencies established pursuant to this MOU.
- 178 (d) “Construction Project” shall mean a project described in either the Phase 1 EIR/EIS or the  
179 Phase 2 EIR/EIS.
- 180 (e) “Joint Use Costs” shall mean those costs that are not easily differentiated between Phase  
181 1 and Phase 2 since they benefit the entire program and not just a particular set of projects.  
182 These costs may include but not be limited to program management and program  
183 development costs; ; program technical support; outreach and community support; and  
184 administrative agency management and oversight in support of the program.
- 185 (f) “Member Agency” or “Member Agencies” shall mean the local and/or regional public  
186 agencies regulated under the Clean Water Act, 33 U.S.C. § 1251 et seq., the federal Safe  
187 Drinking Water Act, 42 U.S.C. § 300f et seq., and/or the state Safe Drinking Water Act,  
188 Health & Safety Code § 116275 et seq., that operate within or have jurisdiction over any  
189 area within the North Bay Region, and that are signatories to this MOU. Member  
190 Agencies are entitled to one voting member on the Board of Directors and Technical  
191 Advisory Committee as defined herein.
- 192 (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.

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

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

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

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

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

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

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

239 (a) Offset urban and agricultural demands on surface water and groundwater supplies;

240 (b) Enhance local and regional ecosystems;

241 (c) Improve local and regional water supply reliability;

242 (d) Maintain and protect public health and safety;

243 (e) Promote sustainable practices;

244 (f) Give top priority to local needs for recycled water, and

245 (g) Implement recycled water facilities in an economically viable manner.

246

247 **4. Establishment of the NBWRA.** There is hereby established the North Bay Water Reuse

248 Authority ("NBWRA"). The geographic boundaries of the NBWRA shall be the North Bay

249 Region. (See **Exhibit A**). The NBWRA is an unincorporated association. By entering into this

250 MOU, the parties do not intend to form a Joint Powers Authority pursuant to Government

251 Code §6500 et seq.

252 **5. NBWRA Membership.** Any local and/or regional public agency regulated under the Clean

253 Water Act, 33 U.S.C. § 1251 et seq., the federal Safe Drinking Water Act, 42 U.S.C. § 300f et

254 seq., and/or the state Safe Drinking Water Act, Health & Safety Code § 116275 et seq., that

255 operates within or has jurisdiction over any area within the North Bay Region may be a

256 Member Agency or Associate Member of the NBWRA. Each Member Agency must be a

257 signatory to this MOU. The Board of Directors may assess annual dues of \$5,000 for

258 membership in the NBWRA for Associate Members. Dues shall be used to offset Joint Use

259 Costs for the Member Agencies.

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

262 **7. Board of Directors**

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

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

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

280 (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.

291 **8. Technical Advisory Committee**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

377 **13. Staff and Consultants.** Subject to the approval and procedural provisions of Sections 7 and  
378 12, the Administrative Agency may employ or contract for any staff or consultants as may be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

456 **15. Distribution of Phase 1 Funds Received.**

457 (a) Distribution of funds received from USBR for Phase 1 projects shall be based on the Phase  
458 1 project schedule as described in applications for federal funding submitted to USBR as of  
459 December 10, 2015 or as modified pursuant to Sections 14 (d) and 18, herein. Those  
460 percentages are based on the \$25,000,000 federal funding authorization for projects  
461 totaling \$100,000,000 and are detailed in **Exhibit C**, attached hereto, and incorporated by  
462 reference. The parties agree that **Exhibit C** may be modified pursuant to Sections 14 (d)  
463 and 16. Should State funding become available to the NBWRA, its distribution shall also  
464 be as described in this Section. It is acknowledged that the Member Agencies may receive  
465 State funding from programs on an individual basis, and (i) this Section shall not apply to

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

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

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

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

488 (ii) Environmental (EIR/EIS) and Financial Capability Analysis costs  
489 are allocated based on each agency's percentage of the total project  
490 costs in the Final Phase 2 EIR/EIS , which is calculated by dividing  
491 the total costs of each agency's projects included in the Final Phase  
492 2 EIR/EIS by the total cost of all projects included in the Final Phase  
493 2 EIR/EIS; and

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

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

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

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

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

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

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

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

527 **17. Distribution of Phase 2 Funds Received.**

528 (a) Distribution of funds received from USBR for Phase 2 projects shall be based on the Phase  
529 2 project schedule as described in applications for federal funding submitted to USBR or as  
530 modified pursuant to Sections 16 (c) and 18, herein. Those percentages are applied to the  
531 \$18,900,000 federal funding authorization for projects totaling \$75,600,000 and are

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

539 (b) Cost allocations as described in **Exhibits D** and **E** may be revised upon the addition of  
540 additional Member Agencies, subject to the approval of a majority of the existing Member  
541 Agencies at that time. By virtue of becoming a signatory agency to this MOU pursuant to this  
542 Section 17, a new Member Agency is subject to all provisions of this MOU, including Section  
543 18 below.

544  
545 **18. Initiation of Membership.** If an eligible agency as defined in Section 5 requests to join the  
546 NBWRA as a new Member Agency, the Board of Directors shall establish a membership  
547 initiation fee to such agency as a condition of joining the NBWRA. For the purposes of this  
548 revision of the MOU, the new Member Agencies shall include Marin Municipal Water District,  
549 City of Petaluma, and City of American Canyon. The purpose of the initiation fee is to allow  
550 the Phase 1 Member Agencies to recover a portion of their investment costs in obtaining  
551 federal authorization for construction projects. The initiation fee for each new member agency  
552 shall be equal to 0.6% of the new Member Agency project costs as determined upon  
553 completion of the Phase 2 Scoping Study. The initiation fee shall be paid in a manner approved

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

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

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

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

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

576 Member Agency from any obligation for charges, costs or liabilities incurred or arising from  
577 acts or omissions before the date of termination. The terminating Member Agency's  
578 responsibility for such charges, costs or liabilities shall be determined in a manner consistent  
579 with the allocations set forth in Sections 14 and 16. Likewise, termination shall not preclude  
580 the Member Agency from any benefits that fully accrue before the date of termination.  
581 However, a resigned or terminated agency has no right to receive a portion of surplus  
582 funds at the termination of the NBWRA.

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

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

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

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

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

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

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

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

616 **27. Effective Date.** This revision to the MOU shall become effective when two-thirds of the  
617 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.

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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: \_\_\_\_\_

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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: \_\_\_\_\_

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

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**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: \_\_\_\_\_

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# Exhibit A



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**Exhibit B**

**Percentages for Ongoing Phase 1 NBWRA Costs**

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

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Notes:

- 6491. 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.
- 6512. The above schedule only includes costs and percentages related to Phase 1.

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**Exhibit C**

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

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

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Notes:

- 6601. 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.
- 6622. The above schedule only includes costs and percentages related to Phase 1.

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**Exhibit D**

**Percentages for Ongoing Phase 2 NBWRA Costs**

<b>Agency</b>	<b>% Phase 2 Support (yrs 1-2 / yr 3)</b>	<b>% Phase 2 Feasibility Study (yrs 1-2 / yr 3)</b>	<b>% Joint Use Costs (yrs 1-2 / yr 3)</b>	<b>% of Total Cost</b>
<b>Novato Sanitary District</b>	20.00 / 14.29	20.69 / 13.04	12.50 / 10.00	15.13
<b>Sonoma Valley County Sanitation District</b>	20.00 / 14.29	13.80 / 8.95	12.50 / 10.00	13.62
<b>Sonoma County Water Agency</b>	20.00 / 14.29	12.08 / 10.61	12.50 / 10.00	11.27
<b>Napa Sanitation District</b>	20.00 / 14.29	25.85 / 14.33	12.50 / 10.00	19.48
<b>Marin Municipal Water District</b>	0.00 / 14.29	1.72 / 10.15	0.00 / 10.00	5.22
<b>City of Petaluma</b>	20/00 / 14.29	20.69 / 29.00	12.50 / 10.00	20.18
<b>City of American Canyon</b>	0.00 / 14.29	5.16 / 13.92	0.00 / 10.00	7.60

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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.
3. Totals for % Phase 2 Administrative Costs and % Total Cost are less than 100% since joint use costs are shared by Phase 1 Member Agencies.

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**Exhibit E**

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

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

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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.