

Exhibit 2

AMENDMENT TO JOINT EXERCISE OF POWERS
AGREEMENT FOR CONTROL OF WET WEATHER
OVERFLOWS AND BYPASSES

This Amendment to Agreement is made and entered into by and between the following owners and operators of community sewer systems: City of Oakland, City of Piedmont, City of Emeryville, City of Alameda, City of Berkeley, City of Albany and the Stege Sanitary District (all hereinafter referred to as "Communities") and the East Bay Municipal Utility District (hereinafter referred to as "District".)

WHEREAS, Communities and District entered a Joint Powers Agreement (JPA) dated February 13, 1979 for the conduct of a Study for the Control of Wet Weather Overflows and Bypasses in Community Sewer Systems and in the District interceptor system, said Study to include an infiltration/inflow analysis of community sewer systems and a Sewer System Evaluation Study for each community; a copy of said Agreement is attached hereto as Exhibit "A"; and

WHEREAS, the District has served as administrative lead agency for the conduct of said Study and applied for and received federal and state grant funds for the Study; and the goal of the Study was to develop a separate element for each Community and to use the results of the Study with the District's Wet Weather Facilities Plan in order to seek the most cost effective way to eliminate untreated wet weather overflows from community sewer systems and District interceptor treatment systems to the benefit of residents and taxpayers common to communities and District; and

WHEREAS, each community signatory to the JPA, agreed to assume responsibility for implementation and funding study recommendations for its community sewer system to eliminate wet weather overflows; and

WHEREAS, in September 1984 revised NPDES permits were issued to communities and District requiring control of wet weather overflows; and each community and the District were required to submit a Compliance Plan by October 1, 1985; and

WHEREAS, the Draft I/I Study and SSES Report for each community was completed and filed with each community in April 1985; and each community has reviewed and commented on the element of the Study applying to its community service area; and

WHEREAS, each Community has adopted and filed with RWQCB a Compliance Plan accepting major recommendations setting

forth a schedule for implementation of said recommendation over a 20 year period; and the District has approved and filed a Compliance Plan based upon the recommendations of the May 1985 Wet Weather Facilities Plan Update; and

WHEREAS, said JPA will continue in effect until the Final Study Report is completed (estimated for April 1986) and the parties wish to amend the Joint Powers Agreement to provide for the District to continue as Lead Agency on behalf of Communities during the 5 year initial phase of implementation of the Study recommendations, as reflected in Compliance Plans, and specifically to apply for grant assistance and perform mutually agreed joint efforts to carry out wet weather implementation programs described herein; and

WHEREAS, Communities and the District recognize the common advantages and cost benefits to each agency and its residents and taxpayers of continued joint efforts for the initial implementation and that a joint exercise of powers will facilitate coordination of community and District wet weather projects will assure a regional solution of the most cost effective control of wet weather overflows.

NOW, THEREFORE, the Parties agree to amend the 1979 Joint Exercise of Powers Agreement as follows:

Section 1. "Purpose" is amended to add the following:

The purpose of this Amendment to Agreement is to establish the method by which the Joint Implementation Program described in Section 2 hereof will be carried on; to establish controls and direction for the Implementation Program; to provide for programs of general and special benefit; to coordinate the development of separate written agreements required for programs of special benefit; to provide for the proportionate community share of available grant amounts; to provide for proper allocation of that portion of the cost of the programs that are not financed by grant funds; to coordinate the work of Communities and District in the implementation of wet weather projects; to provide for joint representation of the wet weather program interests of signatory agencies; and to carry out other joint wet weather programs or projects of mutual interest and benefit when found necessary or desirable to implement the respective I/I Study recommendations and Compliance Plans for Communities and District.

Section 2. "Proposed Study" is amended to add the following:

Proposed Joint Implementation Program.

Upon the execution of this Amendment to Agreement District shall develop on an annual basis, for approval of the Technical Advisory Board (TAB), an Implementation Program which shall include programs, studies and projects of general and special benefit for the initial five years of community sewer system wet weather projects and programs recommended in the I/I Study and adopted in the respective communities Compliance Plans;

The Implementation Program as approved by the TAB in an Annual Budget and Work Plan, as provided herein, shall include a priority list of construction projects for each community (including joint community facilities).

A wet weather project which is determined by the TAB to be a joint community facility serving two or more communities, shall be considered a program of special benefit and will only be included in the Implementation Program if the affected communities enter a written agreement which shall include, but not be limited to, the allocation of costs, ownership, use and scheduling of the project.

The design and construction of projects by the District on behalf of a community shall be considered programs of special benefit.

Upon approval of the first Annual Budget and Work Plan of the Implementation Program, District will apply on behalf of communities for state and federal grant or loan funds for the design and construction of projects (including joint community facilities) in the Implementation Program.

The Implementation Program may include such functions as:

- o Development of sewer and lateral testing and rehabilitation methods.
- o Conduct of sewer flow monitoring
- o Conduct of revenue and financial studies
- o Conduct of joint public information programs

- o Coordination of the planning, design and construction of joint community facilities and joint community - district facilities.
- o Coordination of community and district wet weather projects.
- o Coordination of legislative efforts as necessary for joint community benefit.
- o Procurement of necessary equipment for joint community use
- o Development of uniform sewer and lateral construction specifications standards and practices.
- o Other joint wet weather programs of mutual interest and benefit to District and Communities for regional control of wet weather overflows and bypasses.

Section 3. "Lead Agency: Its Authority, Responsibility and Duties" is amended to add the following:

District is hereby designated the "Lead Agency" to accomplish the purposes of this Amendment to Agreement, and as such shall administer the Implementation Program, subject to the limitations herein set forth. In the capacity as lead agency, it shall:

a) Make application to SWRCB and EPA and execute agreements for grants or loans for the design and construction of approved community wet weather projects (including approved joint District community facilities) designated in the approved Annual Budget and Work Plan.

b) The District may award contracts for design and construction in its name on behalf of communities if approved by TAB, and if the affected community or communities and the District Board of Directors agree. If any community elects to award design contracts or construction contracts in its own name, the District shall administer the grant funds and shall provide for reimbursement of grant eligible community contract costs.

c) The annual work plan shall include a schedule of dates for community design and construction projects. A failure by any community to meet the schedule may result in a

reallocation of grant funds by the District to another community project in accordance with procedures established by TAB and incorporated in the approved Annual Budget and Work Plan.

d) The District shall award in its name, on behalf of Communities, contracts for joint wet weather programs (other than design and construction) designated in the approved Annual Budget and Work Plan.

Section 4. "Cost Estimate and Proportionate Community Share" is amended to add the following:

a) Grant Funded Costs.

Each Annual Budget and Work Plan will include a designation of wet weather projects, together with estimate of design and construction costs, for each community, selected by each community from its approved Compliance Plan. The proposed grant assisted projects for each community will be set forth in the Annual Budget and Work Plan in accordance with the Proportionate Community Share formula.

The distribution of grant funds will be made to each community in accordance with SWRCB and EPA guidelines. Each community shall assume the local share of eligible grant funded costs and all ineligible costs of design and construction and related program work in the community.

b) Proportionate Community Share.

Proportionate Community Share shall be determined in each Annual Budget and Work Plan and based on an averaging of the following factors: (1) number of sewer connections to the community sewer system as of October 1, 1985, (2) population of the community based on 1980 census data,, and (3) total estimated construction costs, based upon recommended programs in the Final Report for each community.

c) Non Grant Funded Costs.

Each community shall be obligated to pay its proportionate share, determined in accordance with the formula, of non-grant funded costs of all projects and programs ,as set forth in the approved Annual Budget and Work Plan.

d) Annual Budget and Work Plan

The five year Implementation Program shall be developed and implemented on a year to year basis, as reflected in Annual Budgets and Work Plans. The Annual Budget and Work

Plan shall be divided into separate elements consisting of Part A - General Benefit (joint wet weather programs for general benefit to communities and district, including administrative expenses and a wet weather project priority listing and scheduling), and Part B - Special Benefit (wet weather programs whose benefits are significantly greater for one or more communities than for others, including joint community facilities and projects to be designed and constructed by District on behalf of a community). Approval of Part A of the Annual Budget and Work Plan shall require a unanimous vote of the TAB. Approval of Part B of the Annual Budget and Work Plan shall require the affirmative vote of a simple majority (five members) of the TAB, including the affirmative vote of all members participating in a program of special benefit. A separate agreement will be required to implement Part B - Special Benefit projects involving either joint community facilities or District design and construction projects.

e) Implementation Revolving Fund.

In order to provide funds to cover costs under this Amendment to Agreement, for District administrative costs, and to facilitate the administration of this Agreement, an implementation revolving fund shall be established as provided herein. This fund shall be accounted for separately and independently from the JPA revolving fund established for the Step One East Bay I/I Study.

Within 30 days of the effective date of this Amendment to Agreement, Communities agree to deposit with District a total initial sum of \$50,000, (calculated in accordance with the Proportionate Community Share formula) to establish said Implementation Revolving Fund, to be paid by each community as follows:

Alameda	\$ 4,700.00
Albany	1,550.00
Berkeley	8,800.00
Emeryville	750.00
Oakland	29,250.00
Piedmont	1,450.00
Stege	3,500.00

Said initial sum shall be credited towards the pro rata share which each community shall ultimately be required

to deposit in Implementation Revolving Fund upon approval of the first Annual Budget and Work Plan. The District shall notify each community of its Proportionate Community share which shall be promptly deposited with the District. No reimbursement shall be made to any community until its share is deposited with District.

Section 5. "Technical Advisory Board" is amended to read as follows:

A Technical Advisory Board is hereby established which shall direct the continuation of the I/I Study and the Implementation Program, and to establish the overall policies for their accomplishment within the limitations of this Agreement. The Board shall be comprised of one representative designated by each party to this Agreement including the District. The Board may also include one non-voting representative from RWQCB, SWRCB and EPA. An alternate representative shall also be designated by each party.

The Board shall establish its own procedures consistent with the terms of this Agreement. Its Chairman and Vice Chairman shall be chosen by the Board from representatives of communities. The Board will meet at the call of the Chairman or at intervals as determined by the Board. A majority of the Board (five members) shall constitute a quorum. A simple majority of the Board (five members) is required for all business other than the approval of the Annual Budget and Work Plan which requires approval in accordance with Section 4(d).

Section 6. "Study Management" is amended to add the following:

Implementation Program

The Implementation Program shall be conducted under the supervision of the Manager of the District's Wastewater Department who shall have overall responsibility for the conduct of the Program, subject to the direction of the Technical Advisory Board. He will be responsible for staff support to conduct the Program and will be responsible for all phases of the Program.

Section 7. "Term" is amended to add the following:

The term of this Amendment to Agreement will be five years from the effective date hereof, or until such time as the work to be accomplished under the State and Federal grants

to the lead agency has been accomplished to the announced satisfaction of the SWRCB and EPA, whichever occurs later.

Funds, including any interest earned on deposits, remaining in the Revolving Fund on the completion of the Implementation Program after payment of all Program obligations, shall be distributed to the Communities in accordance with their respective balances.

Section 8. It is understood and agreed that the provisions of the 1979 Joint Exercise of Powers Agreement shall remain in full force and effect, including the "Revolving Fund" provisions, through completion of the Final I/I Study Report, and thereafter as applicable to the Wet Weather Project Implementation Program.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment to Agreement by their duly authorized officers and representatives as of the day and year hereinafter set forth. This Agreement may be executed in counterpart and shall be effective on the date of execution by the last party hereto.

Attest: CITY OF ALAMEDA
By Anne B. Diamant By Nicole B. Felsch
MAYOR OF ALAMEDA
Dated: DEC 30 1985 Dated: DEC 30 1985

Attest: CITY OF ALBANY
By Jacqueline L. Bullock By Thompson
Dated: 1-2-86 Dated: 1-2-86

Attest: CITY OF BERKELEY
By E. J. Bruckell By Daniel Boggan
Dated: 1-9-86 Dated: 1-9-86

Attest: CITY OF EMERYVILLE
By _____ By Tanner
Dated: _____ Dated: 1-2-86

Attest:

CITY OF OAKLAND

By _____

By John A. Jones

Dated: _____

Dated: 1-3-86

Attest:

CITY OF PIEDMONT

By W.A. Berger

By Ted Normant

Dated: 1-14-86

Dated: January 14, 1986

Attest:

STEGE SANITARY DISTRICT

By Arthur E. Scheraga

By Regina C. Regard

Dated: 1-10-86

Dated: 1-10-86

Attest:

EAST BAY MUNICIPAL UTILITY DISTRICT

By Paula E. Malcom

By Jerome B. Gilbert

Paula E. Malcom, Secretary
Dated: January 17, 1986

Jerome B. Gilbert, General Manager
Dated: January 17, 1986

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