

**MEMORANDUM OF AGREEMENT
BAY AREA RECYCLED WATER COALITION (BARWC)
FEDERAL LEGISLATIVE EFFORTS**

This agreement is made and executed this ___ day of _____, 2008, by and between the City of Mountain View, a Charter City and Municipal Corporation; City of Palo Alto, a Charter City; City of Redwood City, a Charter City; and the City of San Jose, a Municipal Corporation, an administering agency for the San Jose/Santa Clara Water Pollution Control Plant, a joint powers agency formed pursuant to California Government Code section 6500, et seq.; the Delta Diablo Sanitation District (“DDSD”), a County Sanitation District formed pursuant to California Health and Safety Code Section 4700 et seq.; North Coast County Water District, formed under the County Water District Act, California Water Code Section 30000, et. seq.; Santa Clara Valley Water District, a Special District created by an act of the California Legislature, “PARTICIPATING AGENCIES,” and the Bay Area Clean Water Agencies, a joint powers agency formed pursuant to California Government Code section 6500 et seq.

RECITALS

1. WHEREAS, Title XVI of the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 (also known as Public Law 102-575) authorized a feasibility study of the potential for development of demonstration and permanent facilities to reclaim water in the San Francisco Bay Area, bringing Bay Area agencies together to study opportunities to use recycled treated wastewater for beneficial uses; and authorized the planning, design and construction for the San Jose Water Reclamation and Reuse Program; and
2. WHEREAS, the Bay Area Recycled Water Master Plan, completed in 1999, identified opportunities to use 125,000 acre-feet per year (AF/yr) by 2010, and 240,000 AF/yr by 2025; and
3. WHEREAS, Bay Area agencies have invested nearly \$300 million of local funds in water recycling projects, and many more projects are ready to be built; and
4. WHEREAS, federal funding is essential to support these highly leveraged, locally managed, projects to help ensure the security of water supplies for years to come; and
5. WHEREAS, Public Law 102-575 also provides a program for Federal participation (through cost sharing) in specific water reuse projects up to certain amounts specified in the Act; and
6. WHEREAS, PARTICIPATING AGENCIES have identified 8 projects for which they wish to seek near-term federal funding; and

7. WHEREAS, PARTICIPATING AGENCIES anticipate identifying future projects for which they may wish to secure federal funding; and
8. WHEREAS, federal funding monies will not be available for any authorized project until such funds have been specifically appropriated by Congress; and
9. WHEREAS, Public Law 102-575 requires that projects complete a feasibility determination process administered through the United States Bureau of Reclamation and that specific authority for funding be legislatively granted; and
10. WHEREAS, PARTICIPATING AGENCIES have collaborated in efforts to promote legislation authorizing federal funding for Bay area recycled water projects; and
11. WHEREAS, the United States House of Representatives on July 23, 2007, passed HR 1526 amending the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 and authorizing the Bay Area Regional Water Recycling Program and a companion bill was introduced in the Senate on May 24, 2007; and
12. WHEREAS, Senate Bill 2739, the Consolidated Natural Resources Act of 2008, containing the HR 1526 language, was introduced on March 10, 2008 and passed by the full Senate on April 10, 2008; and
13. WHEREAS, PARTICIPATING AGENCIES desire to continue efforts to obtain necessary legislation authorizing federal funding for Bay Area recycled water projects; and
14. WHEREAS, PARTICIPATING AGENCIES desire to collaborate in efforts to promote legislation to appropriate federal funding for authorized projects and for other Bay Area projects that may be authorized in the future.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

I. DEFINITIONS

1. PARTIES: All Participating Agencies and the Bay Area Clean Water Agencies.
2. PARTICIPATING AGENCIES: Agencies that have recycled water projects authorized through Title XVI of the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 (also known as Public Law 102-575) or that intend to actively seek congressional authorization and appropriation under the terms of this Agreement, for projects covered under Title XVI, and are party to this agreement.

3. AUTHORIZED PROJECT: A project that has been enacted into federal law.

II. MEMBERSHIP ELIGIBILITY

Any public agency in the nine-county Bay Area that is developing a recycled water project and has an interest in securing federal participation through Title XVI can become a PARTICIPATING AGENCY upon approval of such membership by a majority of the Parties and execution of the Membership Addendum attached hereto as Attachment 1. Any Addendum must be approved on or before September 30 in order to be effective for the forthcoming calendar year.

III. PARTICIPATION AND ROLES IN FEDERAL LEGISLATIVE EFFORTS

1. The PARTIES hereby agree that Bay Area Clean Water Agencies (BACWA), will be the legal authority to represent PARTICIPATING AGENCIES in pursuit of the Title XVI grants under the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 (Public Law 102-575), and will act as the regional entity on behalf of PARTICIPATING AGENCIES.
2. The PARTIES agree that BACWA will be listed as the entity submitting the authorization and appropriation requests to members of Congress and that BACWA support of PARTICIPATING AGENCY legislative efforts may include review of and signature on letters of support drafted by PARTICIPATING AGENCIES, and attending hearings and/or meetings with congressional representatives and their staff. BACWA will bill the PARTICIPATING AGENCIES for the costs it incurs for these activities ("BACWA Administrative Costs") and the PARTICIPATING AGENCIES agree to be individually liable for such BACWA's Administrative Costs as provided in section VI, below. Any documents BACWA requests from a PARTICIPATING AGENCY to support its legislative role will be prepared by the respective PARTICIPATING AGENCY at its own expense.

1. 3. The PARTIES agree that all appropriations requests pursuant to this AGREEMENT shall include language directing USBR to enter into grant agreements with the PARTICIPATING AGENCIES for reimbursement of all eligible costs of the projects designated in the Appropriations Request List developed by the PARTICIPATING AGENCIES pursuant to Section V of this AGREEMENT, in accordance with the pro rata distribution formula set forth in Section VII below. Any agreement required by USBR shall be subject to PARTICIPATING AGENCY accepting the terms thereof.
4. PARTICIPATING AGENCIES agree to provide for their own projects all necessary in kind services including providing background information, project or program descriptions, planning, environmental review, federal feasibility documentation and determination, design, construction and coordination, project or program status reports, meeting attendance, review of documents, Board or Council resolutions (if needed), and any other staff support required to support federal advocacy efforts. BACWA shall have no responsibility for provision of any of these services.
5. PARTICIPATING AGENCIES agree that all recycled water projects for which federal participation is sought through Title XVI that meets the terms of this AGREEMENT shall enjoy the same Bay Area wide legislative priority for funding and authorization regardless of project size or congressional district in which the project is located.
6. Each PARTICIPATING AGENCY is committed to securing or assisting in securing the support of its House of Representatives member(s) to actively advocate on behalf of the Bay Area Recycled Water Coalition approach. Each PARTICIPATING AGENCY will request its House of Representative member(s) to place the Bay Area regional recycled water Title XVI requests as a very high priority in order to support and reward the regional approach, even if the list of projects for any given year does not have a project in his/her district.
7. No later than September 30 of each calendar year, PARTICIPATING AGENCIES will select among themselves one Agency to provide federal advocacy outside consulting service for the forthcoming calendar year, including consultant contract management, facilitation and management of meetings and accounting. All PARTICIPATING AGENCIES shall be considered third party beneficiaries of the outside consultant contract and shall be entitled to receive all copies of consultant's correspondence and reports. The outside consultant shall provide all required lobbying disclosure documentation for each of the PARTICIPATING AGENCIES. Each PARTICIPATING AGENCY agrees to be individually liable for its pro rata share of such consultant costs ("PARTICIPATING AGENCY OUTSIDE COSTS") as provided in Section VI, below.

IV. DETERMINATION OF PROJECTS FOR AUTHORIZATION REQUESTS

No later than September 30 of each calendar year, PARTICIPATING AGENCIES will determine which projects will be included in the authorization requests for the following calendar year and will create a list of those projects. The list will include any recycled water project located within the nine-county Bay Area where the public agency project sponsor is a PARTICIPATING AGENCY.

V. DETERMINATION OF PROJECTS FOR APPROPRIATION REQUESTS

1. No later than September 30 of each calendar year, PARTICIPATING AGENCIES shall review the status of all AUTHORIZED PROJECTS to determine those projects that will meet both the following criteria: (1) Project has completed or is in the process of completing the Title XVI Feasibility Determination process administered by the United States Bureau of Reclamation; and (2) the funded phase of the project will be completed no later than the end of the federal fiscal year of the appropriation request (i.e. 2009 appropriation requests must be for work that will be completed by September 30, 2009); and project otherwise meets all eligibility requirements for funding under Public Law 102-575 as amended. Projects meeting these criteria will be eligible for inclusion in the list of projects for which a federal funding allocation will be sought.
2. No later than September 30 of each calendar year, PARTICIPATING AGENCIES will determine the final list of projects; the associated project cost for which a federal funding allocation will be sought through the Congressional budget process for the subsequent federal fiscal year; and the percentage share each agency would receive of the total requested appropriation. This list shall be the "Appropriation Request List.
3. Projects contemplated for federal fiscal year (FY) 2009 and FY 2010 appropriation requests are listed in Attachment 2. No later than September 30 of each year, beginning September 30, 2008, the PARTICIPATING AGENCIES will modify Attachment 2 as necessary to select projects meeting that the above criteria for future year appropriations requests beginning with the calendar years 2009 and 2010 appropriation requests.

VI. COST SHARING

1. Annually commencing in 2009, PARTICIPATING AGENCIES will pay their pro rata share per project of the cost to carry out PARTICIPATING AGENCY efforts to secure federal funding through Title XVI; this shall consist of the reimbursement of BACWA Administrative and Outside Agency Costs as defined in Section III above. The pro rata cost share attributable to a project for a given year will be determined by dividing the total cost

for PARTICIPATING AGENCY efforts by the total number of projects for which authorization and/or appropriation will be sought in the subsequent calendar year. A PARTICIPATING AGENCY that is unable or unwilling to pay federal advocacy costs may request that its pro rata share per project be used for other consultant or administrative costs and, if the PARTICIPATING AGENCY has a lobbyist on retainer in Washington D.C., may direct its Washington D.C. lobbyist to assist in the federal advocacy program; notwithstanding however, that each PARTICIPATING AGENCY shall pay its full pro rata share of the total cost as calculated above.

2. No later than September 30 of each calendar year, the PARTIES will determine the total cost for PARTICIPATING AGENCY efforts for the next calendar year and the pro rata cost share attributable to each project. No later than November 30 of each calendar year, each PARTICIPATING AGENCY will obtain the necessary Board/City Council approval for funding of the next year's costs for its respective project(s).
3. For calendar year 2008, the PARTICIPATING AGENCIES have entered into a separate agreement for payment of their pro rata share per project of federal advocacy costs.

VII. DISTRIBUTION OF FEDERAL FUNDING

2. PARTICIPATING AGENCIES designate BACWA to serve as the legal entity to request amendments to the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 for the authorized projects, subject to BACWA and the affected PARTICIPATING AGENCIES accepting any agreement required by USBR therefore, failing in which the affected Parties obligations under this Agreement shall terminate.
3. When a federal appropriation is made, in accordance with the Final Appropriation List, BACWA shall inform the United States Bureau of Reclamation (USBR) of the percentage share that each PARTICIPATING AGENCY should receive for its project(s) from the appropriation pursuant to an individual project agreement(s) between the PARTICIPATING AGENCY and USBR. Should the total amount of the federal appropriation be less than the total amount sought for all authorized projects in any given year, each PARTICIPATING AGENCY will receive its percentage share of the lower appropriation, and BACWA shall inform USBR of the percentage shares.
4. BACWA shall have no responsibility and no liability for any PARTICIPATING AGENCY'S performance of its obligations pursuant to its individual project agreement with the United States Bureau of Reclamation. Each PARTICIPATING AGENCY that receives a federal appropriation agrees to hold harmless BACWA from any and all claims, causes of action or

liabilities arising from or connected to (1) the PARTICIPATING AGENCY'S acceptance and use of the federal appropriation and/or (2) the project for which the appropriation was received.

VIII. DISPUTES

The PARTIES agree to follow this dispute resolution procedure:

1. Informal Conferral. If a dispute related to the interpretation, enforcement, or compliance with the terms and provisions of this Agreement arises, the affected agencies will first attempt to resolve it through informal discussions, which will include the persons identified as Agency Contacts in Section IX below for the affected agencies. If such a dispute cannot be resolved in this matter within fifteen (15) business days, the affected agencies will endeavor to settle the dispute through negotiation.
2. Negotiation. Not more than fifteen (15) business days after the conclusion of the informal conferral, the aggrieved agency shall serve on the other affected agencies (a) written notice of the nature and basis of the dispute, including any amount of money claimed, the provisions of the Agreement at issue, and the facts in support of its position; and (b) a copy of all supporting documents. Within ten (10) business days after service of the notice, the responding agencies shall serve on the aggrieved agency (a) a written response setting out their position, including the provisions of the Agreement relied on and the facts in support thereof; and (b) a copy of all supporting documents. Within ten (10) business days after service of the response, the affected agencies shall meet to negotiate resolution of the dispute. Each agency's negotiator shall be its general manager or city manager, executive director, or their designee.
3. After negotiation, any affected agency may pursue any available legal remedy. The written notice of the dispute and the written response and all documents produced, but not the subsequent discussion, shall be admissible in any subsequent proceeding.
4. Pending resolution of the dispute, each PARTY must fulfill its payment obligations and other responsibilities under this Agreement.

IX. AGENCY CONTACTS

For each participating agency, a contact person is identified below. All communications regarding activities covered by this Agreement will be made to those contact persons. All notices pertaining to this Agreement will be in writing and may be delivered by deposit in the U.S. mail, postage prepaid, addressed in the case of each agency to the contact person listed below:

City of Mountain View
Gregg Hosfeldt, Assistant Public Works Director
500 Castro Street/ P.O. Box 7540
Mountain View, CA 94039-7540

Delta Diablo Sanitation District
Caroline Quinn, District Engineer
2500 Pittsburg-Antioch Highway
Antioch, CA 94509-1373

City of Palo Alto
Daisy Stark, Contract Manager
250 Hamilton Avenue
Palo Alto, CA 94301

North Coast County Water District
Cari Lemke, Assistant General
Manager
2400 Francisco Blvd./P.O. Box 1039
Pacifica, CA 94044

City of Redwood City
Roanne Ross, Whitley Burchett & Associates
1777 Oakland Blvd. Suite 200
Walnut Creek, CA 94596

Santa Clara Valley Water District
Pam John, Senior Civil Engineer
5750 Almaden Expressway
San Jose, CA 95118

City of San Jose, South Bay Water Recycling
Eric Rosenblum, Division Manager
c/o City of San Jose Municipal Water System
3025 Tuers Road
San Jose CA 95121

Bay Area Clean Water Agencies
Michele Pla, Executive Director
6114 LaSalle Ave, #456
Oakland, CA 94611-2802

X. AMENDMENTS

This Agreement may be amended by a written document executed by all of the PARTIES hereto.

XI. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the PARTIES. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

XII. TERMINATION

This Agreement may be terminated immediately at any time by written mutual consent of all PARTIES. Upon provision of written notice of termination to all other PARTIES no later than October 31, a PARTICIPATING AGENCY may terminate its participation in this Agreement effective December 31 of the current calendar year.

XIII. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement.

EXECUTED AND APPROVED ON BEHALF OF EACH AGENCY AS SIGNIFIED BY THE SIGNATURES BELOW:

PARTIES:

Bay Area Clean Water Agencies:

Michele Pla, Executive Director

Counsel

City of Mountain View:

Kevin Duggan, City Manager

Counsel

City of Palo Alto:

Frank Benest, City Manager

Counsel

City of Redwood City:

Peter Ingram, Interim City Manager

Counsel

City of San Jose:

Debra Figone, City Manager

Counsel

Delta Diablo Sanitation District (DDSD):

Gary Darling, General Manager

Counsel

North Coast County Water District (NCCWD):

Kevin O'Connell, General Manager

Counsel

Santa Clara Valley Water District:

Olga Martin-Steele, Chief Operating Officer

Counsel

Attachment 1- Membership Addendum

Attachment 2 - Appropriation Request

ATTACHMENT 1
MEMBERSHIP ADDENDUM

This Addendum to the Memorandum of Agreement for the Bay Area Recycled Water Coalition (BARWC) Federal Legislative Efforts (the "Agreement") is made on (date) _____, by the (name of agency) _____, (the "Agency") a (state legal capacity, i.e. a municipal corporation) _____ for the purpose of becoming a PARTICIPATING AGENCY as that term is defined in the Agreement. The Agreement is incorporated by reference in and made a part of this Addendum.

The Agency acknowledges that it has received a copy of the Agreement and after thorough review of the Agreement desires to become a Participating Agency under the Agreement. The Agreement contemplates the inclusion of Participating Agencies by a process of voluntary execution of this Addendum and a majority vote of the Participating Agencies to approve inclusion of the signatory as a Participating Agency.

The governing body of the Agency certifies that the Agency has a recycled water project authorized through Title XVI of the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 or intends to actively seek congressional authorization and appropriation, for projects covered under Title XVI.

In consideration for the mutual promises set forth in the Agreement, the governing body of the Agency hereby agrees to accept and perform all duties, responsibilities and obligations required of a Participating Agency as set forth in the Agreement. Further, the governing body authorizes its _____ or his/her designee to sign all documents necessary to implement the Agreement.

The contact person and notice address for the Agency are:

Date _____

(Name of Agency)

By: _____

Chairperson

The Agreement and the Addendum are approved as to form:

By: _____, Attorney for PARTICIPATING AGENCY

ATTACHMENT 2

MEMORANDUM OF AGREEMENT
 BAY AREA RECYCLED WATER COALITION (BARWC)
 APPROPRIATION REQUEST

ELIGIBLE PROJECT	PARTICIPATING AGENCIES	REQUESTED APPROPRIATION	
		FY 09	FY 2010
Palo Alto/Mountain View/Moffett Area Water Reuse Project	Palo Alto & Mountain View	\$5,000,000	
Pittsburg Recycled Water Project	DDSD	\$1,750,000	
Antioch Recycled Water Project	DDSD	\$2,250,000	
North Coast County Recycled Water Project (aka Pacific)	NCCWD	\$2,500,000	
Redwood City Recycled Water Project	Redwood City	\$1,100,000	
South Santa Clara County Recycled Water Project	SCVWD		\$7,000,000
South Bay Advanced Recycled Water Treatment Facility	SCVWD		\$8,250,000
San Jose Area Water Reclamation and Reuse Project	San Jose	\$8,000,000	
	TOTAL	\$20,600,000	\$15,250,000

APPROPRIATION REQUEST
 PERCENT SHARES for FY 2009

ELIGIBLE PROJECT	PARTICIPATING AGENCIES	REQUESTED APPROPRIATION	
		FY 09	Percent Share

Palo Alto/Mountain View/Moffett Area Water Reuse Project	Palo Alto & Mountain View	\$5,000,000	24.27 %
Pittsburg Recycled Water Project	DDSD	\$1,750,000	8.5%
Antioch Recycled Water Project	DDSD	\$2,250,000	10.92%
North Coast County Recycled Water Project (aka Pacifica)	NCCWD	\$2,500,000	12.14%
Redwood City Recycled Water Project	Redwood City	\$1,100,000	5.34%
San Jose Area Water Reclamation and Reuse Project	San Jose	\$8,000,000	38.83%
	TOTAL	\$20,600,000	100%