

JOINT POWERS AGREEMENT FOR THE OWNERSHIP, OPERATION AND MAINTENANCE OF WASTEWATER TREATMENT FACILITIES

THIS AGREEMENT, entered into this 25th day of October, 1982, by and between the CITY OF MORRO BAY, a municipal corporation (hereinafter called "MORRO BAY"), and the CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California (hereinafter called "CAYUCOS").

This Agreement is made with reference to the following agreed upon facts:

A. MORRO BAY, as successor to the Morro Bay Sanitary District, and CAYUCOS jointly own the existing wastewater treatment plant situated within the city limits of MORRO BAY, as well as the real property on which said plant is located, on the basis of 60% by MORRO BAY and 40% by CAYUCOS.

B. MORRO BAY and CAYUCOS are currently operating said plant under a Joint Construction and Operation Agreement dated June 16, 1953, as amended by letters on May 9, 1969, and June 26, 1973 (hereinafter collectively referred to as "1953 JPA").

C. There is now pending legal action commenced by CAYUCOS against MORRO BAY entitled "Cayucos Sanitary District, et al. v. City of Morro Bay," San Luis Obispo County Superior Court No. 55956, which action seeks resolution of disputes concerning the ownership and usage of its wastewater treatment plant and the real property upon which the plant and appurtenant facilities are located (hereinafter referred to as "plant site litigation"). CAYUCOS and MORRO BAY, by this Agreement, wish to resolve, compromise and settle all claims and disputes raised by said plant site litigation.

D. The parties by this Agreement intend and desire that the 1953 JPA be cancelled and that it be replaced by this Agreement, and agree that the changes, additions, and modifications as set forth in this Agreement are reasonable and necessary and are in the interest of both parties.

E. CAYUCOS and MORRO BAY have determined that it is to their mutual advantage to reconstruct and expand the existing wastewater treatment plant at an estimated cost of \$13,000,000, which includes construction of the expanded wastewater treatment plant, as well as administration, engineering, and design fees. It is also recognized that CAYUCOS and MORRO BAY have recently completed an ocean outfall project, the ownership, usage, operation

and maintenance of which CAYUCOS and MORRO BAY intend to be covered by this Agreement. The ocean outfall was designed, constructed and paid for on the basis of 40% ownership and capacity in said outfall by CAYUCOS, 60% by MORRO BAY. Likewise, the local share of Phases I and II of the design of the about to be reconstructed and expanded wastewater treatment plant was paid for by the parties on the basis of 40% CAYUCOS, 60% MORRO BAY, with the understanding that MORRO BAY would ultimately own and need 60% of the expanded plant, and CAYUCOS 40%. It now has been determined and agreed between the parties that the respective capacity needs in the expanded wastewater treatment plant and ocean outfall are 65% to MORRO BAY and 35% to CAYUCOS. The parties therefore, by this Agreement, wish to memorialize that, upon completion of the expanded and reconstructed wastewater treatment plant, MORRO BAY will own and hold capacity rights to 65% of such reconstructed plant (which will be deemed to include the entire plant, including any previously existing portions of the plant) and ocean outfall, and CAYUCOS 35%. This change in plant ownership will not affect the ownership of the treatment plant site property, or the common trunk line, all of which will remain in an ownership of 40% CAYUCOS, 60% MORRO BAY. Until completion of the expanded and reconstructed wastewater treatment plant, the ownership rights and capacities in the existing plant and ocean outfall will remain 40% in CAYUCOS, 60% in MORRO BAY. The parties further intend to provide herein for the reimbursement by MORRO BAY of excess money advanced by CAYUCOS for the design and construction of the ocean outfall and for the design of the new wastewater treatment plant.

F It is anticipated that up to 87½ % of the project cost will be supplied by federal and state grants and that a minimum of 12½ % of the project cost must be supplied by MORRO BAY and CAYUCOS. It is estimated that MORRO BAY and CAYUCOS will have to provide approximately \$1,625,000 as their share of the project cost. It is also estimated that approximately \$1,000,000 cash, in addition to the project cost, will be required on an interim basis to meet construction costs prior to receipt of federal and state grants. Regardless of these estimates, MORRO BAY and CAYUCOS will pay their respective share of the cost.

G. Federal and state grant programs set recommendations for conditions of use. Under the grant programs, all users are encouraged to pay on a pro-rata basis an annual amount equal to the annual depreciation on the total existing and new plant and annual operation costs. Depreciation schedules are established by federal and state guidelines and vary for machinery,

structures, pipelines, and other components of the system. It is estimated that the net useful life will be approximately thirty (30) years. The parties shall consider establishing a program for charging the annualized depreciation cost to the users and placing such funds in a capital outlay fund for eventual replacement of the facilities.

H. MORRO BAY and CAYUCOS are concerned with the development of a regional water quality management program consistent with federal and state policies.

I. This is intended to be a joint powers agreement setting forth the respective rights of MORRO BAY and CAYUCOS for purposes of the construction of the expanded wastewater treatment plant, as well as for the ownership, operation, and maintenance of said plant and appurtenant facilities. CAYUCOS is authorized by Health and Safety Code Section 6512, as well as Government Code Sections 6500 et seq., to enter into a joint powers agreement with any municipality to:

“...acquire, plan, construct, reconstruct, alter, enlarge, lay, renew, replace, maintain, and operate such...sewers, drains, septic tanks, sewerage collection, outfall, treatment works and other sanitary disposal systems...and water reclamation and distribution systems, as in the judgment of the board shall be necessary and proper. ...”

MORRO BAY is authorized as a general law city and pursuant to Government Code Sections 6500 et seq. to enter into this Agreement for the joint ownership, operation and maintenance of the wastewater treatment plant.

NOW, THEREFORE, in consideration of the premises and covenants, agreements and conditions stated herein, MORRO BAY and CAYUCOS agree as follows:

1. RECITALS: The foregoing recitals are true and correct.
2. OWNERSHIP OF LAND AND SETTLEMENT OF PLANT SITE

LITIGATION:

a. It is agreed that the parcels of real property shown as Parcels 2 and 4 on the plat attached hereto as Exhibit “A” and more particularly described in exhibit “B” have heretofore been jointly acquired by the parties to be used in connection with the operation of the wastewater treatment plant.

b. It is agreed that the parcel of real property shown as Parcel 1 on Exhibit “A,” and more particularly described in Exhibit “C” attached hereto (hereinafter referred to as the “Speedway Property”), was quitclaimed by the County of San Luis Obispo to the City of Morro Bay in 1977. CAYUCOS, in the plant site litigation, has claimed ownership of a 40%

interest in the Speedway Property. It is agreed by the parties that the Speedway Property is necessary for both the present and future operation of the wastewater treatment plant and ocean outfall. MORRO BAY hereby grants to CAYUCOS a 40% undivided fee title interest in the Speedway Property, as described in Exhibit "C."

c. It is agreed that the parcels of real property shown on Exhibit "A" as Parcels 5A and 5C and more particularly described in Exhibit "D" attached hereto are currently owned 100% by MORRO BAY, but it is further agreed that said parcels are necessary for immediate and future plant expansion purposes. MORRO BAY hereby grants to CAYUCOS a 40% undivided fee interest in that real property more particularly described in Exhibit "D."

d. It is agreed that the real property shown on exhibit "A" as Parcel 3, and more particularly described in Exhibit "E" attached hereto (hereinafter referred to as "maintenance yard parcel"), is currently owned by MORRO BAY as to a 60% undivided interest and by CAYUCOS as to a 40% undivided interest. Said property was originally jointly acquired for use for wastewater treatment plant purposes. However, substantial improvements to the maintenance yard parcel have been constructed by MORRO BAY for non-wastewater treatment plant purposes. Because of such investment, MORRO BAY now desires exclusive ownership of the maintenance yard parcel. In light of the property exchange provided by this Agreement, it is agreed that such property is no longer necessary for present or future wastewater treatment plant purposes. CAYUCOS hereby grants to MORRO BAY a 40% undivided interest in the maintenance yard parcel, as more particularly described in Exhibit "E," reserving therefrom a non-exclusive easement for road purposes, pipeline, utility, and any uses appurtenant to the operation and maintenance of the wastewater treatment plant, including incidental rights of access, and entry for repair, maintenance, or reconstruction, over the southerly 50' of the maintenance yard parcel as is more particularly described in Exhibit "E." Said easement shall be for the benefit of and appurtenant to the real property described in Exhibits "B," "C," and "D." MORRO BAY grants to CAYUCOS said easement and agrees not to place any encroachments, other than temporary parking of vehicles or temporary storage of materials which will be moved by MORRO BAY within eight (8) hours of notice by CAYUCOS, on, over, or under the easement hereby reserved, including, but not limited to, the erection of any structure, or storage of any materials. CAYUCOS further reserves from the real property described in Exhibit "E" an

easement for egress and ingress through the existing entrance to the maintenance yard over the now existing route into the plant site described in Exhibit "B," Parcel 2.

e. CAYUCOS hereby agrees to dismiss the action identified in Paragraph C, above, with prejudice and supply an endorsed copy of such dismissal to MORRO BAY within thirty (30) days of the date this Agreement is recorded and in such action, each party shall bear its own expenses.

f. CAYUCOS hereby fully releases and discharges MORRO BAY from any and all rights, claims, damages, losses, liability, actions, causes of action, and/or attorneys' fees of any kind or nature, past, present, or future, which CAYUCOS now has or may hereafter acquire against MORRO BAY arising out of or by reason of the facts set forth in the Complaint, as amended, (including, but not limited to, use of the MORRO BAY maintenance yard and accountings for past lease rentals) filed in the action identified in Paragraph C, above.

CAYUCOS further releases and discharges MORRO BAY from any liability for damages for any alleged encroachments by MORRO BAY into the capacity in the existing wastewater treatment plant which may have occurred prior to the effective date of this Agreement. Any capacity encroachments by either party occurring after the date of this Agreement shall be subject to the remedies provided in Paragraph 8. This release shall not be construed, however, to extend to any right created by this Agreement. This release shall extend to unknown, as well as known claims, notwithstanding Section 1542 of the California Civil Code which provides:

"A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. USE OF WASTEWATER TREATMENT PLANT SITE PROPERTY: For purposes of this Agreement, the "wastewater treatment plant site" includes the real property described in Exhibits "B," "C," and "D," as well as the easement reserved from and granted over the property described in Exhibit "E." (Parcels 1, 2, 4, 5A, 5C, and the easement of Parcel 3, as shown on Exhibit "A.") It is agreed that the wastewater treatment plant site will be used exclusively for operation of the wastewater treatment plant and neither CAYUCOS nor MORRO BAY shall make any other use of said property, or any portion thereof, or authorize the use thereof by any third party, without the prior written Agreement of MORRO BAY and CAYUCOS. In the event that such a written agreement is entered into, it will provide that the

party utilizing any portion of the wastewater treatment plant site (including improvements) for any non-plant related purposes shall pay the non-using party to this Agreement the non-using party's pro-rata share (40% or 60%) of the fair market rental value for such use. Likewise, any lease or other authorization to use any portion of the wastewater treatment plant site (including improvements), or any amendments to existing use permits or leases, granted to any third party shall be in writing executed and approved by both CAYUCOS and MORRO BAY and shall require the payment of the fair market rental value of the property utilized. Rental value shall be allocated on the basis of 40% to CAYUCOS and 60% to MORRO BAY. It is recognized that there currently exist leases of portions of the wastewater treatment plant site known as the "Morro Dunes lease site" (MORRO BAY Use Permits Nos. 115 and 120 and that portion of lease site No. 201 located within the wastewater treatment plant site), and that such uses are terminable on less than thirty (30) days notice. CAYUCOS shall receive a 40% pro-rata share of said lease payments. Likewise, it is recognized that there exists a long term lease of the "Morro Bay materials lease site" (Parcel 4 on Exhibit "A") and that MORRO BAY shall receive a 60% share of lease payments and CAYUCOS shall receive a 40% share of lease payments. Should any of the lease or use permit properties be necessary for wastewater treatment plant or related purposes in the future, MORRO BAY and CAYUCOS shall terminate such uses consistent with the terms of the permits or leases. MORRO BAY covenants and warrants that there are no other leases, use permits or any other non-treatment plant uses on the wastewater treatment plant site other than those enumerated in this paragraph. MORRO BAY shall provide detailed accountings each quarter specifying all rental income received for any use on the wastewater treatment plant site, as well as the basis for calculating the amount of rent due.

4. COLLECTION LINES: With the exception of the common trunk line and ocean outfall provided for in Paragraph 5, each of the parties shall assume the full responsibility for the construction, repair, replacement, operation, and maintenance of any trunk lines and sewer collection lines within their respective boundaries, and if necessary, will cause to be acquired, by purchase or condemnation, rights-of-way for such trunk lines and collection facilities. The cost of construction of such facilities and acquisition of rights-of-way shall be the sole obligation of the party within whose boundary the same are located and such facilities and rights-of-way shall be the property of such party. With the exception of the common trunk line and ocean outfall,

each party agrees to adequately maintain the collection and trunk lines within their respective boundaries.

5. COMMON TRUNK LINE AND OCEAN OUTFALL: It is understood and agreed that a common trunk line has been constructed by the parties within the boundaries of MORRO BAY and is owned on a 60% MORRO BAY – 40% CAYUCOS basis. It is agreed that both at the present time, and after the reconstructed plant is completed, MORRO BAY has, and will have, a 60% capacity right, CAYUCOS a 40% capacity right in the common trunk line. Said common trunk line runs from the northerly boundary line of MORRO BAY to the wastewater treatment plant jointly owned and operated by the parties. In addition, it is understood and agreed that a common ocean outfall line has been constructed by the parties within the boundaries of MORRO BAY and into the Pacific Ocean and is currently owned on a 60% MORRO BAY – 40% CAYUCOS basis. However, it is further agreed that, upon completion of the reconstructed and expanded wastewater treatment plant, MORRO BAY will own 65% capacity in said ocean outfall, CAYUCOS 35%. Said common trunk line and common ocean outfall shall be jointly operated and maintained as an expense of operation of the overall wastewater treatment plant and the cost thereof apportioned between the parties in the same manner based on usage calculated by flow.

6. OPERATION, REPAIR AND MAINTENANCE:

a. Joint Responsibility by MORRO BAY and CAYUCOS; Joint Meetings.

Operation, repair and maintenance of the wastewater treatment plant and connected facilities jointly owned by the parties shall be accomplished jointly pursuant to the provisions of this paragraph. Such responsibility shall be carried out jointly through the City Council of MORRO BAY and the Board of Directors of CAYUCOS. For this purpose, the Board of Directors of CAYUCOS and the City Council of MORRO BAY shall regularly schedule joint meetings of their respective bodies at least quarterly to discuss and decide policy direction for the operation, repair and maintenance of the wastewater treatment plant and connected facilities. Either governing body may call a special joint meeting of the governing bodies of CAYUCOS and MORRO BAY on two (2) days written notice. Each meeting shall require a quorum of each governing body to conduct business. An agenda shall be prepared and distributed in advance of each meeting to each governing body member. The agenda shall include any policy questions or any issues concerning the operation, repair and maintenance of the jointly owned facilities raised

either by CAYUCOS or MORRO BAY. The agenda package shall also include a staff report from the plant manager and/or his superior to adequately apprise the governing body members of any pertinent information concerning the facilities. Action at any such joint meeting shall be as follows: Affirmative action will be considered to be taken on any motion if it receives a majority vote of both the quorum of the CAYUCOS Board and a quorum of the MORRO BAY Council. If there is not a majority of a quorum of both entities voting in favor of any particular motion, action will be taken by a majority of the total votes cast, with at least six (6) affirmative votes required. Reference to a quorum means a five (5) member board as to CAYUCOS and a five (5) member board as to MORRO BAY. If the parties cannot agree according to the procedures specified above and if an impasse exists, the parties, by separate majority votes of a quorum of each governing body, shall agree to an engineer or other mutually agreeable individual who will present his report and have the right to vote on the disputed issue at the next joint meeting. The person selected shall not be an employee or consultant of either entity. This paragraph and these procedures relate to policy consideration such as, but not limited to, annual budgets, personnel matters, property uses and leases, flow of information, purchase and maintenance of equipment, etc. These procedures do not apply to impasses as to whether this Joint Powers Agreement should be amended. Such impasses must be resolved by separate majority vote of each governing body as provided in Paragraph 11. These procedures also do not apply to interpretation of this Agreement or to enforcement of this Agreement, which matters shall be resolved pursuant to the provisions of Paragraph 22.

b. Continuation of Routine Day to Day Operation and Maintenance by MORRO BAY. It is recognized that the routine day to day operation and maintenance of the wastewater treatment plant and jointly owned connected facilities is currently conducted by MORRO BAY employees. It is agreed that such routine day to day operation and maintenance will continue to be performed by MORRO BAY employees unless and until there is a policy decision made pursuant to the procedures provided hereinabove to provide for operation and maintenance in a different manner. In performing such routine day to day operation and maintenance, it is agreed that no unbudgeted expenditure in excess of \$10,000 will occur without the prior consent of both MORRO BAY and CAYUCOS. It is further agreed that MORRO BAY will not fill any job vacancy for a position which primarily involves work on the wastewater treatment plant facilities without written approval of a designated member from CAYUCOS and

a designated member from MORRO BAY, provided minimum required staff levels shall be maintained. Emergency unbudgeted expenditures for repairs in excess of \$10,000 may be made by approval of one designated member from CAYUCOS and one from MORRO BAY. Operation and maintenance expenses of MORRO BAY's employees whose jobs are primarily devoted to operation and maintenance of the wastewater treatment plant shall include a pro-rata share of direct and indirect employer costs attributable to the proportion of time spent by such employees on wastewater treatment plant related activities. The term "indirect employer costs" includes that portion of the employees' time attributable to the operation and maintenance of the treatment plant, outfall, common trunk line and related facilities of his workers' compensation, disability benefits, retirement benefits and health benefits. Indirect employee costs also recoverable include staff time indirectly related to, but reasonably necessary for the joint operation, reconstruction, repair and maintenance of the wastewater treatment plant. Such indirect staff time will be billed at MORRO BAY's actual hourly wage cost times the factor of 1.5. The term "actual hourly wage costs" excludes "indirect employer costs" as above defined. The "actual hourly wage cost" for salaried employees shall be the employee's monthly salary, exclusive of indirect employer costs, divided by one hundred seventy (170) hours, assuming a forty (40) hour normal work week. This formula shall change should there be a future modified work week. Operation and maintenance expense includes a pro-rata share of the reasonable rental value of MORRO BAY owned equipment utilized for operation and maintenance of the wastewater treatment plant. CAYUCOS' share of MORRO BAY employee expense shall be apportioned based on usage as part of operation and maintenance costs calculated pursuant to Paragraphs 6c and 6d. MORRO BAY shall make its orders for payment of unbudgeted operation and maintenance expenses for consideration and approval at the joint meeting of the CAYUCOS Board and MORRO BAY Council, along with adequate evidence thereof. Upon approval by the CAYUCOS Board, payment shall be no later than thirty (30) days after such meeting.

c. Apportionment of Cost of Operation and Maintenance Costs. Operation and maintenance costs shall be allocated between CAYUCOS and MORRO BAY based upon each participant's actual usage based upon flow as calculated pursuant to Paragraph 6d. Operation and maintenance expenses include the costs of labor, power, chemicals, supplies, laboratory control and monitoring, general administration, billing and incidental items incurred during normal operation. Also included are those expenditures termed ordinary repairs necessary

to keep the facilities in proper operating condition, replacements and other administrative costs, such as overhead, insurance, and accounting, which are directly related to the operation and maintenance of the wastewater treatment plant. Replacement is defined as expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the wastewater treatment plant to maintain the capacity and performance for which such plant was designed and constructed. The term “operation and maintenance’ includes “replacement.”

d. Determination of Actual Usage. On or before January 31 of each year, CAYUCOS and MORRO BAY at their joint meeting shall determine by examination of operations performed to that date the proportion of sewage attributable to each party and the result thereof will be the proportion which each party agrees to pay in making payment of the operation and maintenance costs for the following year from January 1 through December 31. Notwithstanding the foregoing, at the end of each year, the cost shall be allocated and readjusted on the basis of the use that has actually occurred in the immediately preceding year. Further, CAYUCOS and MORRO BAY at any joint meeting may update the allocation of costs at any reasonable time within each year based on the records of actual use during the year. The plant operator shall each month furnish MORRO BAY and CAYUCOS with a flow analysis of effluent flowing through the plant in the previous month, which record shall be used to determine the parties’ usage and percentage of costs liability under this paragraph. CAYUCOS and MORRO BAY at a joint meeting shall make orders for payment of the operation and maintenance expenses and thereafter CAYUCOS shall pay its respective share thereof. Payments therefor shall be made not later than thirty (30) days following the date of presentation of such statement.

e. Accounting System. A separate account for revenues and expenses of wastewater treatment and disposal shall be established within six (6) months. The uniform system of accounts prescribed under Title 2, Division 2, Chapter 2, Sections 1101.1 through 1103.4 of the California Administrative Code shall be used, or an accounting system that will provide essentially the same level of detail as the uniform system. This system will include an audit conducted at least annually by an independent certified public accountant selected by both CAYUCOS and MORRO BAY of the operation and maintenance of the jointly owned wastewater treatment facilities and the jointly controlled property uses. Each party shall have the

right to review the financial, engineering and other records relating to the operation of the plant of the other party. Such records shall be made available on request.

7. FLOW METERS: It is understood and agreed that two (2) measuring devices, at least one of which shall be fixed and adequately measure total flow into the wastewater treatment plant, shall be installed within the wastewater treatment plant and that an additional pair of meters is located at the southerly boundary line of CAYUCOS. The flow meters shall be calibrated at least annually by a mutually agreeable outside consultant. The meters shall be maintained and repaired as operational expenses of the wastewater treatment plant and common outfall line and paid in the same manner thereof. The plant operator shall furnish CAYUCOS and MORRO BAY with a monthly flow analysis showing the flow through such meters. Each party shall have the right at any reasonable time to have access to, and to test, any such flow meters.

8. PERPETUAL RIGHT OF USE:

a. Ownership and Capacity Rights. MORRO BAY and CAYUCOS each shall have the perpetual right to use all of the facilities presently constituting the wastewater treatment plant and common outfall line in the percentages and proportions of ownership as hereinafter set forth. MORRO BAY shall, on completion of such expanded and reconstructed plant, own and hold capacity rights to 65% of the ocean outfall and reconstructed and expanded wastewater treatment plant; CAYUCOS shall own and hold capacity rights to 35% of the same. Should it be ordered by a court of competent jurisdiction, or by the conditions of the grant as imposed on MORRO BAY and CAYUCOS, that CAYUCOS has a legal obligation to take a 40% interest, the ownership and capacity rights would be apportioned at such time as 40% CAYUCOS and 60% MORRO BAY. In such event, CAYUCOS would be obligated to return to MORRO BAY any recoupment previously paid pursuant to Paragraph 23 along with 12% per annum interest from the date CAYUCOS received such recoupment. Until completion of the reconstructed and expanded plant, the ownership and capacity rights of the existing wastewater treatment plant and ocean outfall shall remain 40% CAYUCOS, 60% MORRO BAY. In addition, should there ever be an increase in the rated capacity of either the existing wastewater treatment plant and outfall or the reconstructed plant due to the granting of a waiver of secondary discharge requirements, the ownership of and capacity rights in such additional rated capacity attributable to the secondary discharge waiver shall be apportioned on the basis of 40% to CAYUCOS and 60% to MORRO BAY.

b. Capacity Definitions. Neither of the parties shall in any way grant, encumber, limit, or restrict its interest or ownership in any part of the joint facilities, or seek to partition the same or have any part thereof set apart for any purpose other than the disposal of sewage and sewage effluent, without the prior written consent of the other party. Neither of the parties shall in any way encroach upon the capacity rights of the other without the prior written consent of the other party. It is agreed that the present plant capacity is 1.7 million gallons/day average dry weather flow (mgd) and outfall capacity is 2.4 mgd, which capacity is owned respectively at 0.68 mgd and 0.96 mgd for CAYUCOS and 1.02 mgd and 1.44 mgd for MORRO BAY. An encroachment will exist in the existing plant and outfall line or in the existing common trunk line if CAYUCOS or MORRO BAY exceeds its respective capacity in the plant, common trunk line, or outfall line capacity. It is further agreed that the capacity in the expanded plant will be that shown in Exhibit "F," attached hereto, with waste loading parameters related to flow, strength and waste flow, quantities to peak seasonal dry weather flow (PSDF). As a policy matter to be decided jointly by CAYUCOS and MORRO BAY, the capacities fixed in this subparagraph may be adjusted on the basis of changed circumstances, such as the granting of a waiver of secondary discharge requirements. An encroachment shall exist if any of these parameters is exceeded by MORRO BAY or CAYUCOS as to each respective party's percentage capacity rights. In the event of an encroachment, the responsible party will immediately disallow any new or increased flow sources to connect to or add flow to its respective collection system until all its respective waste loadings are below its share of the capacity. Within fifteen (15) days of identification of an encroachment, the encroaching party shall submit a written plan to the other party showing how it intends to rectify the encroachment. Should one party infringe upon the other party's capacity, even if the total plant capacity is not being approached, it is hereby agreed that the encroached upon party will be irretrievably harmed and would be entitled to injunctive relief to restrain any such encroachment. The specific remedies provided herein are not exclusive and any encroached upon party is also entitled to any other remedy available in law or in equity.

9. BY-PRODUCTS OF TREATMENT: Any fertilizer, water, or other substance resulting from the operation of any of the joint facilities shall be deemed to be the property of the parties hereto and apportioned on a 60-40 basis. The sale proceeds therefrom will be apportioned accordingly. Any modification of the wastewater treatment plant which is necessitated by the

desire of either MORRO BAY or CAYUCOS to install sewage effluent reclamation facilities or to produce any other by-product of treatment shall be constructed only after written agreement of MORRO BAY and CAYUCOS. Any such agreement shall provide for reasonable compensation to the non-participating party for use of effluent used in such a reclamation system beyond the participating party's owned share of effluent. The participating party shall also pay 100% of any additional costs of design, construction, operation or maintenance attributable to such reclamation facilities. Either CAYUCOS or MORRO BAY shall have the right, for its own use, to use its proportionate share of effluent, fertilizer, water, methane gas, or other substance resulting from its use without payment to the other party. Such usage limitations are to be based on actual flow.

10. SERVICE OUTSIDE PARTY'S BOUNDARY: Either party may serve property outside its corporate boundaries with sewage service provided that any effluent therefrom shall meet all applicable quality standards and shall meet all of the terms and conditions of this Agreement. Such service shall be charged against the party's capacity in the treatment plant. The party authorizing such use outside of its corporate boundary shall ensure that all proper permits, amendments and authorizations have been obtained and shall be responsible for violation of the terms of this Agreement by an outside user. A violation by an outside user shall constitute a breach of this Agreement by the authorizing party. Any revenues obtained from the authorization of use outside an entity's corporate boundaries shall be the property of such entity.

11. AMENDMENT OR WAIVER: The terms and provisions of this Agreement may be altered, amended, or varied only with the written consent and agreement of both parties hereto. Amendments to this Agreement shall become effective only when approved by the respective governing bodies of MORRO BAY and CAYUCOS and when in fact executed by two (2) authorized members of each of the governing bodies. A waiver of any term or condition shall not establish any continuing right to such waiver.

12. NEW FACILITIES: MORRO BAY and CAYUCOS are about to commence construction in the next several months of substantial reconstruction and expansion of the wastewater treatment plant covered by this Agreement. Subject to the conditions contained in this paragraph, MORRO BAY shall act as agent and fiduciary on behalf of CAYUCOS with respect to said project. In connection with the construction of new facilities, the method for screening, as well as hiring or firing of all consultants and contractors, shall be approved by

CAYUCOS prior to MORRO BAY taking any action on behalf of CAYUCOS. CAYUCOS and MORRO BAY approve the plans and specifications and terms of grants and permits established as of the date of this Agreement. MORRO BAY shall keep CAYUCOS constantly informed of the activities and progress relative to such project, including immediate transmittal of copies of all documents and correspondence pertaining thereto. The powers of MORRO BAY as agent and fiduciary of CAYUCOS shall include the following powers:

- a. Accept the grant offer for this project dated October 5, 1982;
- b. Apply for and otherwise pursue any and all state and federal grants and loans available for such project, subject to prior approval by CAYUCOS of the terms and conditions of any such grant or loan;
- c. Prepare plans, specifications, construction contracts, bid documents, and other materials pertaining to such facilities subject to prior review and approval by CAYUCOS of any modifications made after the date of this Agreement;
- d. Negotiate for the acquisition of easements, rights-of-way and other interests in property necessary for such project;
- e. Apply for and secure any federal, state and local permit, licenses and other approvals necessary for the construction and operation of such facilities, subject to prior review and approval by CAYUCOS of all terms and conditions of any such permit, license or approval;
- f. The construction management firm of Brown and Caldwell/Heery shall be retained for construction management.

13. TERMS OF PARTICIPATION: MORRO BAY and CAYUCOS hereby agree to go forward with the plant reconstruction and further agree to joint ownership of the reconstructed wastewater treatment plant and the recently completed ocean outfall on a basis of 65% MORRO BAY, 35% CAYUCOS, such ratios will take effect upon completion of the reconstruction project. In the event a new expanded plant is not constructed, the ownership and capacity rights of the existing plant and outfall shall remain 40% CAYUCOS and 60% MORRO BAY. If the agreed upon allocation of 65%/35% is not legally permitted by grant terms, as provided in Paragraph 8a, the ownership and capacity rights in the plant and ocean outfall shall remain at 40% CAYUCOS and 60% MORRO BAY. Each participant will contribute its proportionate share of the cost of such new facilities and will supply its proportionate share of the necessary capital advances during construction on the 65%-35% basis. Each party agrees to supply the

required funds as needed and not later than fifteen (15) days after written request that the funds are in fact needed at that point.

14. FUTURE MODIFICATIONS, REPLACEMENTS AND ENLARGEMENTS:

No relocation, reconstruction, alteration to, addition to, or replacement of any portions of the wastewater treatment plant shall occur without the prior written approval by MORRO BAY and CAYUCOS. Unless otherwise agreed to by the parties, the cost of such an agreed to reconstructed plant will be allocated based upon the capacity rights agreed to at the time of reconstruction.

15. CAPITAL RECOVERY: CAYUCOS and MORRO BAY shall consider establishment of a capital outlay fund for eventual replacement of the reconstructed wastewater treatment plant. If required by law to have such a fund, each party agrees to establish and maintain such a fund.

16. QUALITY CRITERIA: Sewage to be delivered to the wastewater treatment plant and effluent from the plant must meet the quality criteria established by the California Regional Water Quality Control Board and other state and federal regulatory agencies having jurisdiction over operation of the plant. In order to meet these requirements, both MORRO BAY and CAYUCOS shall, by ordinance, impose regulations on the quality of waste to be discharged to the sanitary sewer collection system. In addition, the ordinances shall limit or prohibit the discharge into the sewer system of oil and grease and other constituents normally associated with industrial waste, which may be harmful to the treatment process and/or prohibited by state regulations. In addition, each agency shall carry out a maintenance and repair program to substantially reduce or eliminate the infiltration of seawater and storm waters into the respective sewage collection systems.

17. QUALITY VIOLATIONS: In the event that MORRO BAY or CAYUCOS continues to deliver or discharge wastewater in violation of federal government or State of California quality criteria twenty-four (24) hours after receipt of notice in writing to correct or remedy said violation, the violating party shall pay all direct and indirect costs of such violation. In addition thereto, the violating party shall pay to the other party the cost, as reasonably determined and certified, of repairing any damage to the interceptor facilities and the existing and any expanded wastewater treatment plant facilities, caused by the delivery of wastewater in violation of said quality criteria. The violating party shall bear all liability arising by reason of

violation of said quality criteria, shall indemnify the other party, and shall bear fines imposed by federal and state agencies arising by reason of and directly related to quality violations. Further, in the event of failure to meet quality criteria, the violating party shall bear all additional operation and maintenance costs and all direct and indirect costs to the other party associated with the quality violation, including all staff time, attorney fees, etc., required to correct the violation.

18. NECESSARY STEPS: Subject to the conditions stated in Paragraph 12, CAYUCOS and MORRO BAY agree to take all necessary steps and sign all necessary papers to permit any previously agreed upon reconstruction of the existing wastewater treatment plant. CAYUCOS and MORRO BAY agree to comply with all laws, the terms and conditions of applicable laws, the terms and conditions of applicable accepted grants and accepted permits and where necessary by virtue of such laws, accepted grants or accepted permits, agree to adopt regulations and ordinances to comply with such applicable laws, grants or permits.

19. ACTS OF GOD: Neither party hereto shall be liable for failure to comply with any term or condition of this Agreement by reason of flood, fire, earthquake, or act of God; provided, that due diligence is exercised to repair or replace facilities damaged and to perform hereunder following such occurrence. MORRO BAY and CAYUCOS shall each pay its proportional share of the net cost of such replacement, based on the capacity held by each at such time, in excess of applicable casualty insurance proceeds, if any. MORRO BAY and CAYUCOS shall jointly determine what level of casualty and other insurance is appropriate.

20. UNPAID AMOUNTS: Unpaid amounts under this Agreement shall bear interest at the rate of ten percent (10%) per annum or prime plus two percent (2%), whichever is greater.

21. ATTORNEY FEES: In the event of failure to comply with the terms of this Agreement, or in the event a dispute arises regarding the terms of this Agreement, the prevailing party shall be entitled to recover their costs, including reasonable attorney fees, pursuant to court order or arbitration order.

22. RESOLUTION OF JPA DISPUTES: The paragraph applies solely to the procedure for interpretation and enforcement of this Agreement and not to the procedure for Agreement modification or policy determination. The procedure for Agreement modification is provided for in Paragraph 11 and the procedure for policy determination is provided for in Paragraph 6a of this Agreement. The following priorities shall be followed in resolving

controversies involving the construction or application of any of the terms, covenants or conditions of this Agreement. The controversy shall first be presented to a joint meeting of CAYUCOS and MORRO BAY for resolution. For this purpose, either party may, in writing, demand a joint meeting of the City Council of MORRO BAY and the Governing Board of CAYUCOS to be held within fifteen (15) days of such demand and such controversy shall be resolved at such joint meeting by an affirmative separate vote of a majority of a quorum of each governing body. Should the controversy not be resolved as a result of such joint meeting, any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement, shall, on written request of one party served on the other, be submitted to arbitration and such arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure. However, this requirement for arbitration does not apply where a controversy has not been resolved at a joint meeting of the governing bodies of CAYUCOS and MORRO BAY and a party seeks a temporary restraining order or injunctive relief from a court of competent jurisdiction to prevent irreparable harm.

23. RECOUPMENT BY CAYUCOS FOR EXCESS MONEY ADVANCED TO MORRO BAY: In consideration of the Agreement herein by CAYUCOS to reduce its ownership in the ocean outfall and expanded wastewater treatment plant from 40% to 35%, MORRO BAY hereby agrees to pay CAYUCOS \$120,000. Interest at the rate of twelve percent (12%) per annum will be paid on the principal amount owed until paid by MORRO BAY as a credit to CAYUCOS on the next payments due from CAYUCOS on the wastewater treatment plant reconstruction project. Hereinafter payments for design and construction of the ocean outfall and expanded wastewater treatment plant shall be allocated on 65%/35% basis.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement the day and year first above written.

CITY OF MORRO BAY

By _____
EUGENE SHELTON, Mayor

ATTEST:

Paul Baxter, City Clerk

APPROVED AS TO FORM:

Michael T. Le Sage
City Attorney

CAYUCOS SANITARY DISTRICT

By _____
TERRY SCHUBERT, President

ATTEST:

Ethel Girard, Secretary

APPROVED AS TO FORM:

Roger C. Lyon, Jr.
Attorney for Cayucos Sanitary District