

DRAFT

JOINT EXERCISE OF POWERS AGREEMENT

BY AND AMONG THE

COUNTY OF SANTA CRUZ,

CITY OF WATSONVILLE,

COUNTY OF MONTEREY,

SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

AND

MONTEREY COUNTY WATER RESOURCES AGENCY

CREATING THE

**PAJARO REGIONAL FLOOD MANAGEMENT AGENCY
(PRFMA)**

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS	2
Section 1.01 Definitions	2
Section 1.02 Statutory References	2
ARTICLE II. GENERAL PROVISIONS	3
Section 2.01 Purpose	3
Section 2.02 Creation of Public Agency as Separate Legal Entity	3
Section 2.03 Effective Date	3
ARTICLE III. POWERS	3
Section 3.01 General Powers	3
Section 3.02 Power to Issue Bonds	3
Section 3.03 Specific Powers	3
Section 3.04 Restriction on Exercise of Powers	4
Section 3.05 Obligations of Agency	4
Section 3.06 Non-Liability for Obligations, Activities, or Operation of the Agency	5
Section 3.07 Indemnification of Parties	5
ARTICLE IV. ORGANIZATION AND GOVERNANCE	5
Section 4.01 Governing Body of the Agency	5
Section 4.02 Principal Office	6
Section 4.03 Board Meetings	6
Section 4.04 Quorum, Required Votes, and Approvals	6
Section 4.05 Minutes	6
Section 4.06 Rules, Bylaws, and Regulations	6
Section 4.07 Vote or Assent of Parties	6
Section 4.08 Officers	6
Section 4.09 Executive Director	7
Section 4.10 Privileges and Immunities	7
Section 4.11 Bonding	8
ARTICLE V. PLANNING AND PROJECTS	8
Section 5.01 Planning	8
Section 5.02 Projects	8
ARTICLE VI. BUDGETS AND PAYMENTS	9
Section 6.01 Budget	9
Section 6.02 Contributions for Operating Expenses	9
ARTICLE VII. ACCOUNTING AND AUDITS	9
Section 7.01 Accounts and Reports	9
Section 7.02 Audit	9
ARTICLE VIII. MAINTENANCE AND OPERATION OF INFRASTRUCTURE	9
Section 8.01 Project Commitments	10
ARTICLE IX. LIABILITY OF BOARD	10
Section 9.01 Liabilities	10
Section 9.02 Liability of Boardmembers	10
Section 9.03 Pension Liability	10
ARTICLE X. RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT	11
Section 10.01 Term	11
Section 10.02 Rescission or Termination	11

Section 10.03	Disposition of Assets	11
Section 10.04	Withdrawal.....	11
Section 10.05	Admission of New Parties	12
Section 10.06	Amendment	12
Section 10.07	Assignment; Binding on Successors	12
Section 10.08	Notice of Agreement or Amendment	12
Section 10.09	Notice.....	12
Section 10.10	Severability.....	12
Section 10.11	Successors	12
Section 10.12	Counterparts; Electronic Signatures	13
Section 10.13	Integration	13
Section 10.14	Execution; Warrantee	13

PAJARO REGIONAL FLOOD MANAGEMENT AGENCY

JOINT EXERCISE OF POWERS AGREEMENT

This Joint Exercise of Powers Agreement (“Agreement”) is made by and among:

- a. County of Santa Cruz, a political subdivision of the State of California organized and existing under the laws of the State of California;
- b. County of Santa Cruz Flood Control and Water Conservation District, created by resolutions of the Santa Cruz County Flood Control and Water Conservation District pursuant to Chapter 77 of the Water Code Appendix (West’s Annotated California Codes);
- c. County of Monterey, a political subdivision of the State of California organized and existing under the laws of the State of California;
- d. City of Watsonville, a municipal corporation (herein called “Watsonville”); and
- e. Monterey County Water Resources Agency, a special act agency of the State of California with duties and responsibilities set forth in Chapter 52 of the California Water Code Appendix.

These parties are referenced herein as Member Agencies or, individually, as a Member Agency.

WHEREAS, agencies formed under the Joint Exercise of Powers Act, Government Code sections 6500 et seq. (the “JPA Law”) may finance, construct, and operate public capital improvements and provide services to serve territory within the jurisdictions of the agencies which form the joint powers entity.

WHEREAS, the Member Agencies are authorized to acquire, construct, improve, operate, and maintain infrastructure to control, manage, and conserve waters for the protection of life and property.

WHEREAS, a need exists for coordinated planning to control waters within, or flowing into, the boundaries of the Member Agencies for the protection of private and public property.

WHEREAS, a need exists to develop a regional water control plan for coordinated and regional efforts to finance, provide, and maintain infrastructure to promote flood protection in the areas described herein.

WHEREAS, a joint powers agency is appropriate to provide local assurances to, and participate in cost sharing for, flood control work with the State of California and the United States Army Corps of Engineers.

WHEREAS, such a regional water control plan can best be achieved through the cooperative action of the Parties by creating a joint powers agency.

WHEREAS, the Member agencies wish to form a joint powers agency to manage the risk of flooding of lands in Santa Cruz and Monterey Counties, and for other purposes authorized under the JPA Law and this Agreement.

AGREEMENT

Now, therefore, in consideration of the above premises and of the mutual promises contained herein, the Parties do hereby agree as follows:

Article I. DEFINITIONS

Section 1.01 Definitions

- “Agreement” means this Joint Exercise of Powers Agreement, as amended from time to time.
- “Agency” means the Pajaro Regional Flood Management Agency established by this Agreement or the territory it serves, as the context may require. The territory the Agency serves is the portion of the Pajaro River watershed within the jurisdiction of the Member Agencies.
- “Board” or “Board of Directors” means the governing Board of the Agency.
- “Budget” means an approved budget appropriating funding for the expenses of the Agency.
- “Director” or “Directors” means one or more members of the Board.
- “Fiscal Year” means the period from July 1 in any calendar year to and including June 30 in the succeeding calendar year unless the Board should adopt another fiscal year by resolution.
- “Infrastructure” means watercourses, drainage channels, conduits, ditches, canals, water storage facilities, pumping plants, levees, buildings and structures or other capital facilities for the management and disposal of waters within the Agency, or outside and running into the Agency, to persons or property or to conserve any waters for beneficial use within the Agency. “Infrastructure” shall also include easements and rights-of-way for any purpose of the Agency.
- “JPA Law” means the Joint Exercise of Powers Act, Government Code section 6500 et seq. as it now exists or may hereafter be amended.
- “Member Agencies” means the parties to this Agreement identified above or which become party, accepting the rights and obligations of a Member Agency pursuant to an amendment to this Agreement.
- “Project Commitments” means written agreements between or among the Agency, the State of California, the federal government or other public agencies to: (i) operate and maintain Infrastructure, (ii) indemnify one another, one or more Member Agencies, or other public entities for liabilities arising out of such operation and maintenance or the failure of such operation and maintenance; and/or (iii) indemnify one another, one or more Member Agencies, or other public or private entities for design or construction of Infrastructure designed or constructed by the Agency.

Section 1.02 Statutory References

Any reference in this agreement to a statute shall mean that statute as it now exists or may hereafter be amended.

Article II. GENERAL PROVISIONS

Section 2.01 Purpose

The purpose of the Agency is to exercise the common powers of the Member Agencies addressed by this Agreement to reduce flood risk to lives and property. Each Member Agency has common authority to study, plan for, develop, finance, acquire, design, construct, maintain, repair, replace, rehabilitate, manage, operate and control Infrastructure to protect lives and property independently or in cooperation with the United States, the State of California, or other entities. The Agency may exercise any of those powers independently or in cooperation with the United States, the State of California, or any other entity. The Agency may serve as the non-federal sponsor and make Project Commitments with respect to Infrastructure.

Section 2.02 Creation of Public Agency as Separate Legal Entity

There is hereby created a public authority known as the “Pajaro Regional Flood Management Agency.” It is the intent of the Parties that the Agency shall be a legal entity separate from the Parties pursuant to Government Code section 6507. Its liabilities shall be its own as provided in Article XI of this Agreement.

Section 2.03 Effective Date

This amended Agreement shall be effective on the date it is signed by the last Member Agency to do so.

Article III. POWERS

Section 3.01 General Powers

The Agency may exercise the powers granted to it under the JPA Law, including but not limited to the powers of each of the Member Agencies as may be necessary to the accomplishment of the purposes of this Agreement.

Section 3.02 Power to Issue Bonds

The Agency shall have all the powers provided in the JPA Law, including the power to issue bonds.

Section 3.03 Specific Powers

The Agency is hereby authorized, in its own name, to do all acts necessary or convenient to the accomplishment of the purposes of this Agreement, including but not limited to:

- a. To study, plan, and implement ways and means to provide a reasonable program and plan of operation for the control of waters within or flowing into the boundaries of the Agency;
- b. To participate in financing or re-financing any Infrastructure, in accordance with any terms and conditions imposed by the JPA Law;
- c. To make and enter into contracts necessary to the accomplishment of the purposes of this Agreement;
- d. To contract for the services of engineers, attorneys, planners, financial consultants, and other contractors and consultants as needed;
- e. To employ such persons as it deems necessary;

- f. To enter into agreements with the United States of America, the State of California, or any other public or private person to provide a portion or all of the local contribution which may be required for Infrastructure constructed by the State or Federal governments or one or more Member Agencies;
- g. To acquire, construct, manage, control, maintain, improve, repair, replace, and/or operate any Infrastructure; provided, however, that the Agency shall not do so as to Infrastructure within the boundaries of a Member Agency without its prior written agreement;
- h. To acquire by eminent domain or otherwise, and to hold and dispose of, any interest in real or personal property necessary to the accomplishment of the purposes of this Agreement;
- i. To receive gifts, contributions, and donations of property, funds, services, and other forms of financial or other assistance from any persons, firms, corporations, or governmental entities;
- j. To sue and be sued in its own name;
- k. To adopt rules, regulations, policies, bylaws, and procedures governing the operation of the Agency;
- l. To incur debts, liabilities, or obligations;
- m. To levy and collect assessments and/or special taxes and to participate in other financing districts;
- n. To establish, revise, and collect fees as a condition of development of land or otherwise;
- o. To apply for, accept, and receive state, federal, or local licenses, permits, grants, loans, and other aid from any agency of the United States of America, or of the State of California, or from any other public or private entity necessary for the accomplishment of the purposes of this Agreement;
- p. To perform all acts necessary or proper to carry out fully the purpose of this Agreement and not inconsistent with the JPA Law;
- q. To invest money not required for the immediate necessities of the Agency pursuant to Government Code sections 6505.5 and 53601;
- r. To refinance indebtedness incurred by one of more Member Agencies in connection with any of the purposes of this Agreement;
- s. To apply for letters of credit or other form of financial guarantees to secure the repayment of bonds and enter into agreements in connection therewith;
- t. To carry out and enforce this Agreement; and
- u. To exercise all other powers not specified here but common to the Member Agencies and authorized by Government Code section 6508.

Section 3.04 Restriction on Exercise of Powers

The powers of the Agency shall be exercised in the manner provided in the JPA Law, and, except for those powers set forth in the JPA Law, shall be subject (in accordance with Section 6509 of the JPA Law) to the restrictions upon the manner of exercising such powers that are imposed upon the County of Santa Cruz in the exercise of similar powers.

Section 3.05 Obligations of Agency

The debts, liabilities and obligations of the Agency shall not be the debts, liabilities and obligations of any Member Agency or any other Public Agency.

Section 3.06 Non-Liability for Obligations, Activities, or Operation of the Agency

No Member Agency, Director, officer, agent, consultant, or employee of the Agency shall be individually or personally liable for the payment of the principal or premium or interest on any obligation of the Agency; but nothing herein contained shall relieve any such Member Agency, Director, officer, agent, or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligation of the Agency.

Section 3.07 Indemnification of Parties

The Agency shall, to the fullest extent allowable under applicable law, indemnify and hold harmless each of the Member Agencies for and against any claim, action, liability, penalty, or other imposition whatsoever upon such Member Agency by reason of (a) the activities of the Agency or (b) such Member Agency's status as party to this Agreement.

Article IV. ORGANIZATION AND GOVERNANCE

Section 4.01 Governing Body of the Agency

- a. The Agency shall be governed by a Board of Directors comprising five persons selected by the Member Agencies as set forth in this section below. All voting power of the Agency shall reside in the Board.
- b. The Board shall comprise the following:
 - i. One Boardmember selected by the Santa Cruz County Board of Supervisors from among its members, who shall be the representative for Supervisorial District Two or Four;
 - ii. One Boardmember selected by the Santa Cruz County Flood Control and Water Conservation District – Zone No. 7 Board of Directors from among its members, who shall be the representative for either Supervisorial District Two or Four;
 - iii. One Boardmember selected by the Watsonville City Council;
 - iv. One Boardmember selected by the Monterey County Water Resources Agency Board of Supervisors from among its members; and
 - v. One Boardmember who shall be the Monterey County Supervisor for Supervisorial District Two.
- c. References to supervisorial districts in this section mean those districts as presently numbered and such successor districts as include the territory of the respective County within the Agency.
- d. Each appointing authority shall also appoint an Alternate from among the appointing authority's members. The Alternates shall serve in the absence of recusal of the Member for whom they are the Alternate but shall not otherwise sit with or deliberate with the Board.
- e. Except for Supervisors appointed by virtue of service as Monterey County Supervisor representing District Two, Boardmembers and Alternates serve at the pleasure of their appointing authorities and shall hold office until a successor takes the oath of office as an officer of the Agency.
- f. Each appointing authority shall promptly appoint a successor to a Boardmember or Alternate who ceases, for any reason, to be a Boardmember or Alternate or qualified to serve on the Board under the standards of subsection b above.
- g. The Agency may compensate Boardmembers and/or Alternates for service to the Agency as the Board may determine. A Board member or Alternate may be reimbursed for expenses he or she

reasonably incurs in the conduct of the Agency's business pursuant to a written policy of the Agency.

Section 4.02 Principal Office

The Board shall designate the Agency's principal office at a place convenient to the work of the Agency within or without the Agency. The Secretary shall note any change in that designation in the minutes of a Board meeting and notify each Member Agency of that change in writing.

Section 4.03 Board Meetings

The Board shall meet at the Agency's principal office or at such other place as it may be designated. The Board shall establish the time and place of its regular meetings by resolution furnished to each Member Agency. Regular, adjourned, and special meetings shall be called and held as specified in the Ralph M. Brown Act, Government Code section 54950 et seq.

Section 4.04 Quorum, Required Votes, and Approvals

Three-fifths of Boardmembers then in office shall constitute a quorum for the transaction of business. Except as this Agreement of applicable law otherwise requires, the vote of a majority of a quorum is sufficient to carry an action. Boardmembers may not cast proxy or absentee votes. Each Boardmember shall have an equal vote.

Section 4.05 Minutes

The Secretary shall keep minutes of Board meetings, and provide them to each Boardmember, Alternate, and Member Agency or, alternatively, maintain them on the Agency's website.

Section 4.06 Rules, Bylaws, and Regulations

The Agency may adopt and amend from time to time such rules, bylaws, and regulations for the conduct of its affairs as may be necessary or advisable and as are consistent with this Agreement and applicable law.

Section 4.07 Vote or Assent of Parties

Any agreement, vote, assent, or approval of a Member Agency required by this Agreement or applicable law shall be filed with the Secretary and be evidenced by a resolution or approved meeting minutes of the governing board of the Member Agency.

Section 4.08 Officers

Unless the Board determines otherwise by resolution, the Agency officers designated in this section shall hold office for one year commencing with the first Board meeting of each calendar year provided, however, that the first Chairperson, Vice Chairperson, and Secretary appointed shall hold office from the date of their appointment to the second January 1st thereafter to avoid initial terms of less than a year. The Board shall also have the power to appoint such additional officers as it deems necessary and appropriate. The Treasurer and Auditor hereby designated may be changed only by the consent of all Board members then in office and shall not be members of the Board.

- a. Chairperson and Vice-Chairperson. The Board shall select from among its members a Chairperson and a Vice-Chairperson who shall cease to serve in that role upon ending service on the Board or upon election of a new Chairperson/Vice-Chairperson, whichever occurs first.
- b. Secretary. The Board shall appoint a Secretary who may also be a Director; the Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Agency. The Secretary shall have charge of, handle, and have access to all other records of the Agency.
- c. Treasurer. The Santa Cruz County Treasurer shall be the Treasurer of the Agency and shall be the depository and shall have custody of all money of the Agency, from whatever source, and shall have the duties and obligations of the Treasurer as set forth in Sections 6505 and 6505.5 of the JPA Law. The Treasurer shall be responsible for providing quarterly reports and verifying the balance of such reports as maintained by the records of the Auditor.
- d. Auditor. The Santa Cruz County Auditor-Controller shall be the Auditor of the Agency and shall have the duties and obligations of the Auditor as set forth in sections 6505 and 6505.6 of the JPA Law, including the audit obligation stated in section 8.02 of this Agreement.
- e. General Counsel. The Board shall appoint an attorney licensed to practice in California who shall serve at the pleasure of the Board. The Board may, but need not, appoint the County Counsel of either Santa Cruz or Monterey Counties to serve in this role. General Counsel shall work cooperatively with the Executive Director, but shall report to the Board.

Section 4.09 Executive Director

Until the Board otherwise directs, the Executive Director shall be an employee of the Santa Cruz County Flood Control and Water Conservation District – Zone 7 (“Zone 7”) designated by Zone 7. Should Zone 7 decline to continue to provide an employee to serve in that role, the Board shall promptly appoint another to serve as Executive Director. The Executive Director shall be appointed by, and serve at the pleasure of, the Board. The Executive Director shall be responsible to the Board for the proper and efficient administration of the Agency as is or hereafter may be placed in his or her charge pursuant to this Agreement, or of any Board ordinance, resolution, or order. In addition to other powers and duties herein provided, the Executive Director is authorized:

- a. Under policy direction of the Board, to plan, organize, and direct all activities of the Agency;
- b. To appoint and to remove all Agency employees, all of whom shall serve at the pleasure of the Executive Director, except as is otherwise provided by law or by this Agreement including, but not limited to, section 4.08 above;
- c. To authorize expenditures authorized by an approved Budget;
- d. To make recommendations to, and requests of, the Board concerning all of the matters and things which are to be performed, done, or carried out by the Agency; and
- e. To call meetings of the Board.

Section 4.10 Privileges and Immunities

As provided in Government Code section 6513, all the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers’ compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their

respective functions shall apply to the officers, agents, and/or employees of the Agency to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents, or employees under this Agreement.

None of the officers, agents, or employees of the Agency shall be deemed, solely by reason of their employment by the Agency, to be employed by any Member Agency or, by reason of their employment by the Agency, to be subject to any of the requirements of any Member Agency.

Section 4.11 Bonding

Any person who has charge of any funds or securities of the Agency shall be bonded in amounts fixed by Board resolution.

Section 4.12 Conflicts of Interest

- a. POLITICAL REFORM ACT. Board members are “public officials” within the meaning of the Political Reform Act of 1974, as amended, and its regulations, for purposes of financial disclosure, conflict of interest, and other requirements of such Act and regulations, subject to a contrary opinion or written advice of the California Fair Political Practices Commission. The Agency shall adopt a conflicts of interest code in compliance with the Political Reform Act.
- b. LEVINE ACT. Board members are “officials” within the meaning of Government Code Section 84308 et seq., commonly known as the “Levine Act,” and subject to its restrictions on the acceptance, solicitation, or direction of contributions.

Article V. PLANNING AND PROJECTS

Section 5.01 Planning

The Agency shall undertake and/or participate in such studies and planning as necessary to reduce flood damage within the Agency, as part of a larger integrated water resources program or otherwise. Such studies and planning may include, but need not be limited to, proposals for the construction of an upstream storage or detention dam, the rehabilitation or elevation or construction of levees, and assumption and/or maintenance of Infrastructure constructed or owned by one or more Member Agencies. Such studies and planning shall identify financing methods for such proposals and may allocate capital as well as maintenance and operating costs among the Member Agencies.

Section 5.02 Projects

The Agency shall develop, design, acquire, and construct Infrastructure and necessary funding (including local cost shares of federal projects), to reduce flooding within the Agency, potentially as part of a larger integrated water resources program or otherwise. The Agency may construct, rehabilitate, or fund all or part of projects independently or in cooperation with the United States, the State of California, or another public entity or entities.

Article VI. BUDGETS AND PAYMENTS

Section 6.01 Budget

Within 90 days after the first meeting of the Board, and before the start of each subsequent fiscal year, the Board shall adopt a Budget for the ensuing Fiscal Year which it may amend from time to time. Approval of a Budget or Budget requires a unanimous vote of Directors (or Alternates voting in the absence or recusal of a Director) then in office.

Section 6.02 Contributions for Operating Expenses

- a. Upon its formation, the Agency is not expected to have any assets to allocate to Infrastructure. The Agency will nevertheless undertake planning and administrative work before adoption of an initial Budget and securing funding. The Member Agencies agree to fund this work in the shares established through a separate agreement.
- b. The Agency shall allocate overhead costs consistently with financing methods for proposals approved by the Board pursuant to section 5.01 of this Agreement. The Agency shall allow Member Agencies a reasonable opportunity to review and comment on any proposed allocation or reallocation of overhead.
- c. In accordance with Section 6512.1 of the JPA Law, the Board may direct repayment or return to the Member Agencies of all or part of any contributions made by the Member Agencies upon such terms as may be consistent with the JPA Law and other applicable law. The Agency shall hold title to all it acquires during the term of this Agreement, including but not limited to Infrastructure.

Article VII. ACCOUNTING AND AUDITS

Section 7.01 Accounts and Reports

The Agency shall maintain books and accounts consistently with standards adopted by the Controller of the State of California for special districts.

Section 7.02 Audit

The Auditor shall cause to be conducted an audit compliant with generally accepted audit standards of the records and the accounts of the Agency and file such audit reports with the State Controller and each Member Agency within six months of the end of each fiscal year or by such other deadline as is imposed by law or a grant or loan agreement.

Article VIII. MAINTENANCE AND OPERATION OF INFRASTRUCTURE

The Board shall determine before acquiring or constructing any Infrastructure whether or not the Agency will maintain and/or operate it. If the Agency is to maintain and/or operate particular Infrastructure, it shall do so efficiently, economically, and in a manner not detrimental to the Member Agencies. If the Board determines that one or more Member Agencies will maintain and/or operate particular Infrastructure, that Member Agency or those Member Agencies shall accept that responsibility in writing before the Agency agrees to or does acquire or construct that Infrastructure.

Section 8.01 Project Commitments

This Agreement may not be rescinded or terminated, the Agency dissolved, and no Member Agency may withdraw from the Agency while the Agency has outstanding Project Commitments unless another public agency has provided such reasonable written assurances to perform those Project Commitments as the State, the Federal government, or other contracting parties as to those Project Commitments may request.

The Agency may assume Project Commitments of a Member Agency by resolution of the Board and in no other fashion.

Article IX. LIABILITY OF BOARD

Section 9.01 Liabilities

Except as provided in Section 9.03, the debts, liabilities, and obligations of the Agency shall be the debts, liabilities, or obligations of the Agency alone and not of the Member Agencies as provided in Government Code section 6508.1. Any financial dealings between the Agency and one or more Member Agencies shall be by written contract.

Section 9.02 Liability of Boardmembers; Defense & Indemnity

Except as otherwise provided in this Agreement, the funds of the Agency may be used to defend, indemnify, and hold harmless the Agency and any Director, officer, or employee for their actions taken within the course and scope of their work for the Agency. The Agency may self-insure, participate in pooled self-insurance, or purchase insurance to provide such coverage. The Agency shall defend and indemnify its officers and employees if and as required by Government Code sections 825 and 995.

Section 9.03 Pension Liability

- a. The Agency may contract with the California Public Employees Retirement System (PERS) or any other public entity to provide pension benefits to its employees with such consent and assurances of the Member Agencies as may then be required by applicable law.
- b. Each Member Agency's conditional share of pension liability, defined in paragraph (c) below, shall be provided by a written agreement made when the benefits are contracted for and, in the absence of such an agreement, the Agency may not contract for such pension services. Such agreement shall conditionally allocate 100 percent of the Agency's pension liabilities among the Member Agencies, leaving no portion of that liability unassigned.
- c. A Member's conditional share of pension liability means liability due under Government Code section 6508.2 to fund payments to CalPERS or another public entity with which the Agency contracts to provide pension benefits to the Agency's employees ("Pension Provider") which liability the Agency does not pay because this Agreement is terminated, the Agency becomes insolvent, or the Agency's agreement with the Pension Provider is terminated.

Article X. RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT

Section 10.01 Term

The Agency shall continue until this Agreement is rescinded or terminated as herein provided and as provided in section 8.01 of this Agreement.

Section 10.02 Rescission or Termination

A Member Agency may withdraw from this Agreement pursuant to section 10.04. The Agency shall wind up its affairs and dissolve upon withdrawal by the second-to-last Member Agency to do so. The Agency may wind up its affairs and dissolve, and the Agency terminated, by unanimous written consent of the Member Agencies. Any such dissolution shall be consistent with section 8.01. This Agreement shall terminate with dissolution of the Agency except as respects insurance and indemnities which the Board may identify to survive that dissolution.

Section 10.03 Disposition of Assets

Upon termination of this Agreement, the Agency's remaining assets shall be returned to the Member Agencies then participating in the Agency in proportion to their contributions to the Agency's funding. The Board shall first offer any Infrastructure and other illiquid assets of the Agency to the Member Agencies for good and adequate consideration. If no such sale is consummated, the Board shall offer such illiquid assets to any public or private entity for good and adequate consideration. The net proceeds from any sale or the illiquid assets if no sale occurs shall be distributed as provided in the first sentence of this section.

Section 10.04 Withdrawal

- a. Subject to section 10.02 of this Agreement, no Member Agency may withdraw from the Agency without the unanimous consent of the other Member Agencies after: (1) the withdrawing Member Agency provides written notice to the other Member Agencies of intent to withdraw, and (2) the withdrawing Member Agency honors any unmet obligations under this Agreement. Any withdrawal shall be effective on the last day of the fiscal year in which the withdrawal is agreed unless all Member Agencies agree otherwise in writing.
- b. If a withdrawing Member Agency has any rights in any Infrastructure or responsibility for obligations of the Agency, except by a written agreement of all Member Agencies, the withdrawing Member Agency may not sell, lease, or transfer those rights or be relieved of those obligations, except an obligation to pay its share of operation and maintenance costs of Infrastructure.
- c. The Agency shall not refund or repay a withdrawing Member Agency's initial commitment of funds to the Agency absent unanimous agreement of the initial Member Agencies. The Agency may refund or repay any subsequent contribution in accordance with any written terms and conditions upon which the contribution was made.

Section 10.05 Admission of New Parties

Additional public entities may become Member Agencies upon such terms and conditions as the Board may provide with the unanimous consent of all Member Agencies, evidenced by a written addendum to this Agreement signed by all of Member Agencies, including the new Member Agency.

Section 10.06 Amendment

This Agreement may be amended only by the unanimous agreement of the Member Agencies.

Section 10.07 Assignment; Binding on Successors

Except as otherwise provided in this Agreement, the rights and duties of the Member Agencies may not be assigned or delegated without the written consent of all other Member Agencies. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void and confer no rights on any third party. Any approved assignment or delegation shall be consistent with the terms of any then extant Project Commitments or other obligations of the Agency.

Section 10.08 Notice of Agreement or Amendment

- a. Within 30 days of the effective date of this Agreement or any amendment to it and pursuant to the JPA Law, the Agency shall give notice to the Secretary of State. The Agency shall give any other notice required by applicable law upon the approval, termination, or any amendment of this Agreement.
- b. Within 10 days after the effective date of this Agreement, the Agency shall cause a statement of the information, required by California Government Code Section 53051, to be filed with the office of the California Secretary of State and with the County Clerk.

Section 10.09 Notice

Any notice or instrument required to be given or delivered by depositing the same in any United States mail, registered or certified, postage prepaid, addressed to the Member Agency or the Agency, shall be deemed to have been received by addressee 72 hours after such deposit. Notice may be given by such other means as the Agency or a Member Agency specifies in writing.

Section 10.10 Severability

Should a court of competent jurisdiction decide any part, term, or provision of this Agreement conflicts with law or is otherwise unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected and, to that end, the Member Agencies declare the parts, terms, and provisions of this Agreement to be severable.

Section 10.11 Successors

This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Member Agencies.

Section 10.12 Counterparts; Electronic Signatures

This Agreement may be executed in counterparts, all of which together shall constitute a single agreement, and each of which shall be an original for all purposes. Signatures may be given by emailed pdf or other equivalent means with the same force as original wet signatures.

Section 10.13 Integration

This Agreement represents the full and entire Agreement among the Members with respect to the matters covered herein.

Section 10.14 Execution; Warrantee

The legislative bodies of the Member Agencies have each authorized execution of this Agreement, as evidenced by the respective signatures attested below. The persons signing below warrant for the benefit of the Member Agencies for which they do not sign that they have actual authority to bind their respective principals to this Agreement.

IN WITNESS WHEREOF, the Member Agencies have caused this Agreement to be executed on the day indicated below.

COUNTY OF SANTA CRUZ

COUNTY OF MONTEREY

By: _____
CHAIRPERSON

By: _____
CHAIRPERSON

Date: _____

Date: _____

ATTEST:

ATTEST:

CLERK OF THE BOARD

CLERK OF THE BOARD

APPROVED AS TO FORM:

APPROVED AS TO FORM:

COUNTY COUNSEL

COUNTY COUNSEL

CITY OF WATSONVILLE

By: _____
MAYOR

Date: _____

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

By: _____
CHAIRPERSON

Date: _____

ATTEST:

CLERK OF THE BOARD

APPROVED AS TO FORM:

DISTRICT COUNSEL

MONTEREY COUNTY WATER RESOURCES
AGENCY

By: _____
CHAIRPERSON

Date: _____

ATTEST:

CLERK OF THE BOARD

APPROVED AS TO FORM:

AGENCY COUNSEL