

**JOINT EXERCISE OF POWERS AGREEMENT BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO,
THE CITY OF BRISBANE, AND THE
GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT**

THIS AGREEMENT, is made and entered into this 31st day of July, 1995, by and between the CITY AND COUNTY OF SAN FRANCISCO (hereinafter referred to as "CITY"), the CITY OF BRISBANE (hereinafter referred to as "BRISBANE") and the GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT (hereinafter referred to as "DISTRICT") (BRISBANE and DISTRICT hereinafter collectively referred to as "BRISBANE/DISTRICT").

WITNESSETH:

WHEREAS, CITY is a municipal corporation chartered under the Constitution of the State of California and is governed pursuant to the provisions of its charter; and

WHEREAS, CITY's Director of Public Works (hereinafter referred to as "DIRECTOR") is duly authorized to act on behalf of CITY for purposes of this Agreement; and

WHEREAS, BRISBANE is a municipal corporation, duly organized and acting pursuant to the laws of the State of California; and

WHEREAS, DISTRICT is a public District duly organized and acting pursuant to the laws of the State of California; and

WHEREAS, Pursuant to San Mateo County Local Agency Formation Commission Resolution No. 791, dated June 21, 1989, and San Mateo County Board of Supervisors Resolution No. 53754, dated April 3, 1990, DISTRICT was established as subsidiary District of Brisbane; and

WHEREAS, The above-mentioned resolutions also empowered and authorized the Brisbane City Council to act as the ex-officio Board of Directors of DISTRICT; and

WHEREAS, BRISBANE and DISTRICT are each parties to existing separate agreements with CITY pursuant to which BRISBANE and DISTRICT are discharging wastewater into CITY's sewerage system for treatment and disposal; and

WHEREAS, BRISBANE and DISTRICT desire to continue discharging wastewater into CITY's sewerage system and CITY is willing to continue accepting such discharges for treatment and disposal, in accordance with the terms of this Agreement; and

WHEREAS, the Federal Water Pollution Control Act of 1972, as amended, and the Porter-Cologne Water Quality Act establish goals for the elimination of water pollution of navigable waters; and

WHEREAS, in accordance with the aforementioned statutes, CITY's treatment and discharge of wastewater into navigable waters must comply with the standards promulgated by the Environmental Protection Agency, the State Water Resources Control Board and the San Francisco Bay Regional Water Quality Control Board; and

WHEREAS, CITY and BRISBANE/DISTRICT desire to enter into an agreement that reflects and satisfies all Environmental Protection Agency, State Water Resources Control Board, and San Francisco Bay Regional Water Quality Control Board requirements.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Authority: This Agreement is entered into in accordance with the provisions of California Government Code Sections 6500 et. seq., regarding the establishment of joint powers agreements.
2. Prior Agreements: This Agreement supersedes all other agreements between CITY and BRISBANE and between CITY and DISTRICT pertaining to discharges from BRISBANE and between CITY and DISTRICT pertaining to discharges from BRISBANE and DISTRICT into CITY's sewerage system.
3. Term: Subject to the terms and conditions hereinafter set forth, CITY shall provide and sell to BRISBANE/DISTRICT, and BRISBANE/DISTRICT shall purchase and receive from CITY, wastewater disposal services for a term of thirty (30) years from and after the

date first mentioned above, unless sooner terminated pursuant to Section 17. Negotiations for the extension of this Agreement should be commenced not later than one year prior to the date of expiration.

4. Definition of Wastewater: As used herein, the term "wastewater" means all sewage and industrial waste, except storm water, discharged into any sewerage system by a discharger. BRISBANE and DISTRICT shall not discharge storm water into CITY's sewer system without approval of the DIRECTOR. CITY and BRISBANE/DISTRICT agree to negotiate in good faith the terms of any proposal to discharge storm water from BRISBANE/DISTRICT to CITY's sewer system.

5. Definition of Sewage: As used herein, the term "sewage" means any discharges that are contributed solely by reasons of normal human hygienic functions, and the term "industrial waste" means any substances, other than sewage and storm water, that are discharged into any sewerage system, including but not limited to liquid, solid, gaseous, and radioactive substances resulting from any producing, manufacturing, processing, commercial or industrial operation of whatever nature.

6. Calculation and Payment of Charges: Rates charged by CITY for waste water treatment and disposal services provided to BRISBANE/DISTRICT on and after January 1, 1992, shall be calculated by CITY and paid by BRISBANE/DISTRICT in accordance with the requirements of this Agreement; CITY shall calculate charges for the quarterly periods beginning July 1, October 1, January 1 and April 1 of each year and bills shall be delivered to BRISBANE/DISTRICT as soon as reasonably possible after the close of each quarter. The proposed annual rates to be utilized by CITY for calculation of the quarterly charges, together with such supporting documentation as may be available, shall be furnished by CITY to BRISBANE/DISTRICT by September 15th each year. The quarterly charges shall be based upon the "quarterly volume" and the "unit charge", as hereinafter defined, and shall be determined as follow:

- a. Quarterly Volume: the volume of pumped wastewater discharged shall be metered each month by BRISBANE/DISTRICT and shall be subject to audit by the DIRECTOR. The "Quarterly Volume" shall be determined by adding the monthly volumes of metered pumped wastewater discharged for each of the three months of the quarter. The resulting quarterly volume shall be used to calculate quarterly charges. BRISBANE/DISTRICT shall furnish the "Quarterly Volume" to the DIRECTOR within fifteen (15) days after the end of the quarter.

The only means of discharge for BRISBANE/DISTRICT to CITY'S wastewater treatment facilities shall be through the pump station unless otherwise approved by the DIRECTOR.

- b. Unit Charge: "Unit Charge" is the charge that is made for each 100 cubic feet of Quarterly Volume. The Unit Charge applicable during a fiscal year starting July 1st, is based on the total net costs allocable to BRISBANE/DISTRICT, as detailed below, divided by the previous year's total influent at all CITY sewerage treatment plants.

The total net cost allocable to BRISBANE/DISTRICT consists of the City Clean Water Enterprise (hereinafter referred to as "ENTERPRISE") costs based on the CITY's annual appropriation ordinance (appropriations to the CITY Department of Public Works Fund Group/Fund 35/001 and the CITY Chief Administrative Officer's Fund Group/Fund 07/001, or their equivalents if renamed) less seventy-five percent (75%) of the Sewer Repair Cost, less an adjustment for interest and surplus.

The adjustment for interest and surplus shall consist of two parts: (1) Operation, Maintenance and Replacement (hereinafter referred to as "OM&R"), and (2) Debt Service.

- (1) The OM&R adjustment shall be the ratio of the cost allocable to BRISBANE/DISTRICT for OM&R to the full cost for Enterprise OM&R times the amount of interest and surplus used to offset OM&R cost in Table 1 of the Enterprise detailed rate calculation model.
- (2) The Debt Service adjustment shall be the amount of interest and surplus used to offset debt service in Table 1 of the Enterprise detailed rate calculation model.

An example of this method of calculation is included in Appendix A attached hereto and made a part hereof. Nothing contained in this Agreement shall release, discharge, or modify any legal obligation CITY may have to comply with any applicable federal, state or regional rules, regulations or guidelines pertaining to the establishment of fair and equitable rates.

- c. Quarterly Charges: The quarterly charges are calculated by multiplying the unit charge by the quarterly volume.

d. Payments: Payment in full by BRISBANE/DISTRICT shall be made within thirty (30) days following receipt of the quarterly bill from City. Late payments shall be subject to a ten percent (10%) late charge. Acceptance by CITY of any partial payment shall not constitute a waiver of CITY's right to levy late charges on the unpaid portion or to demand payment in full. Conversely, the payment of any quarterly bill by BRISBANE/DISTRICT shall not constitute a waiver of the right to contest the charges set forth therein or to request additional information concerning the calculation thereof.

7. Notice of Rate Increase: CITY shall give BRISBANE/DISTRICT at least twenty-one (21) days prior written notice of any public hearing or other proceeding being conducted for the purpose of increasing the rates charged by CITY for wastewater treatment and disposal service furnished to BRISBANE/DISTRICT under this Agreement. The proposed annual rates to be utilized by City for calculation of the quarterly charges, together with such supporting documentation as may be available, shall be furnished by CITY to BRISBANE/DISTRICT by September 15th each year.

8. Construction of Facilities: BRISBANE/DISTRICT, at its sole expense, shall operate and maintain all facilities, including the receiving manhole, at Sunnydale Avenue and Bayshore Boulevard to connect to CITY's service, and required to furnish service hereunder. Title to all such facilities, except the manhole, shall be and remain in BRISBANE/DISTRICT, and BRISBANE/DISTRICT shall be responsible for all loss or damage to such facilities. The total manhole structure shall be CITY's property. If future changes in CITY'S system require a change in the existing point of entry for connection to CITY's service, or require additional pumping facilities for BRISBANE/DISTRICT's wastewater, BRISBANE/DISTRICT shall build any new facilities necessary for such new point of entry or additional pumping. CITY shall reimburse BRISBANE/DISTRICT for the reasonable actual costs of such construction, either in a lump sum or in installments as the work progresses, whichever method of payment may be requested by BRISBANE/DISTRICT, such payment to be made by CITY within sixty (60) days after receipt of each requisition showing the nature and cost of the work for which payment is being requested. CITY shall have the right to review and audit such work and the costs incurred in performing such work prior to payment. In the event BRISBANE/DISTRICT desires to alter or relocate the point of entry to CITY's system, pumping capacity, or other such facilities, the cost of such alteration or relocation shall be the sole responsibility of BRISBANE/DISTRICT. BRISBANE/DISTRICT at all times shall be responsible for maintaining the facilities subject to this Section, including, but not

limited to, manholes constructed in accordance with this Section and owned by CITY.

BRISBANE/DISTRICT shall indemnify, defend, and hold harmless CITY for all damages, claims, losses or liability, as a result of any negligent act or omission of BRISBANE/DISTRICT's agents or employees in the performance of their obligations under this Section of this Agreement.

9. Metering of Service: All service furnished by CITY shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, and calibrated by BRISBANE/DISTRICT at its expense, such metering equipment shall be accessible to personnel authorized by CITY for the purpose of reading measurements thereon. In the event any meter fails to register or registers incorrectly, the parties shall agree upon a period during which said meter failed to register or registered incorrectly, and the quantity of service delivered thereto during such period, and, upon agreement, an appropriate adjustment based thereon shall be made in CITY's statement. For the purpose of this preceding sentence, any meter which registers not more than five percent (5%) slow or fast shall be deemed correct.

10. Discharge Limits: It is anticipated that BRISBANE/DISTRICT's wastewater discharge shall gradually increase from the existing peak wet weather daily discharge of 1.5 million gallons per day to a maximum of a peak wet weather discharge of 6.7 million gallons per day and that BRISBANE/DISTRICT shall not discharge wastewater into the CITY's system in excess of 6.7 million gallons per day. The dry weather discharge rate of BRISBANE/DISTRICT at the commencement of this agreement is estimated at 0.2 million gallons per day or less. BRISBANE/DISTRICT's rate of delivery of wastewater into the CITY's system shall not exceed 4,700 gallons per minute. BRISBANE/DISTRICT may receive a temporary revocable permit to exceed the aforementioned 6.7 million gallons per day. Such request for approval, except for emergency circumstances, shall be made thirty (30) days prior to the actual date of excessive discharge. BRISBANE/DISTRICT shall indemnify, defend, and hold harmless CITY for any claims, injuries or damages of any type arising out of BRISBANE/DISTRICT's unauthorized discharge of sewage or waste in excess of the limits specified herein.

In the event BRISBANE/DISTRICT assumes responsibility for providing sanitary sewer service for the area presently served by the Bayshore Sanitary District, or any portion thereof, the discharge limit hereunder shall not increase beyond 6.7 million gallons per day.

BRISBANE/DISTRICT shall promptly notify CITY of any plans which would cause BRISBANE/DISTRICT's discharge to increase by 200,000 gallons per day or more.

11. Interruption of Service: CITY shall use reasonable diligence to provide regular and uninterrupted service at the service location, but shall not be liable for damages, breach of

contract or otherwise to BRISBANE or DISTRICT for failure, suspension, diminution or other variations of service occasioned by or in consequence of any causes beyond the control of CITY, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophes or strikes.

12. Monitoring and Inspection: The DIRECTOR shall be responsible for the monitoring and inspection of facilities related to industrial waste discharges owned by BRISBANE and DISTRICT and their respective customers. Upon showing proper credentials, the DIRECTOR or his or her designated representative, when necessary for the performance of his or her duties, shall have the right as provided by law to enter the premises of BRISBANE or DISTRICT or any private discharger when there is reasonable ground for believing that illegal sewage and industrial waste discharges have occurred or are reasonably expected to occur, or in making the routine inspection he or she deems necessary. At the request of the DIRECTOR, BRISBANE or DISTRICT shall seek an inspection warrant in the event a discharger refuses to permit an inspection. The procedures provided by the general laws of the State of California shall govern the issuance, execution and enforcement of an inspection warrant in the event the discharger refuses to permit an inspection by the DIRECTOR or his or her designated representative. Upon written demand by the DIRECTOR, BRISBANE and DISTRICT shall promulgate, enact, or amend their respective regulations and ordinances in whatever manner is reasonably necessary to enable the DIRECTOR to accomplish the monitoring and inspection tasks necessary to facilitate discharger compliance with enforcement standards.

13. Enforcement: CITY is authorized to enforce within BRISBANE and DISTRICT the standards contained in CITY's ordinances and regulations and federal and state industrial waste discharge laws and regulations, and any amendments thereto, pertaining to sewage and industrial waste discharges into its sewerage system, to the same extent as CITY is enforcing such laws and regulations within its own jurisdiction. Upon written demand by the DIRECTOR, BRISBANE and DISTRICT shall promulgate, enact or amend their respective regulations and ordinances in whatever manner is reasonably necessary to effectuate CITY's capability to enforce the sewage and industrial waste discharge standards contained in CITY's regulations and ordinances, as required by City, state and federal law. BRISBANE and DISTRICT shall exercise their respective legislative and regulatory powers in such a manner as to enable CITY to fully comply with all rules, regulations, and statutes imposed upon CITY by state and federal law, the Environmental Protection Agency, the State Water Resources Control Board, the Regional Water Quality Control Board, and any other regulatory agencies. CITY shall at all times have the right to

seek injunctive relief in a court of competent jurisdiction and pursue other actions authorized by law to enforce its sewage and industrial waste discharge standards and the terms of this Agreement, to the same extent as CITY is enforcing such standards within its own jurisdiction.

14. Maps of Facilities and List of Dischargers: BRISBANE and DISTRICT represent that they have provided to CITY all maps in their possession of existing sanitary sewer facilities located within BRISBANE and DISTRICT's boundaries, and maps of BRISBANE/DISTRICT's connections to CITY's facilities. BRISBANE/DISTRICT shall annually update said maps as may be necessary to reflect any changes to existing facilities shown thereon or installation of new sanitary sewer facilities that may have occurred during the preceding year. The updated maps shall be transmitted to the DIRECTOR by July 1st of every year.

BRISBANE/DISTRICT shall also provide to CITY a list of the addresses and types of occupancy of all non-residential dischargers under BRISBANE/DISTRICT's jurisdiction and shall transmit an annual update of the complete list to the DIRECTOR by July 1st of every year. In addition thereto, BRISBANE/DISTRICT shall provide to the DIRECTOR a monthly supplement to the annual discharger list showing the addresses and types of occupancy of all new non-residential dischargers to whom business licenses were issued by BRISBANE during the preceding month; provided, however, that if any such license is issued to an EPA Categorical Discharger, as defined by federal law, notification shall be given to CITY as required by Section 15 of this Agreement.

15. Compliance with Law; Notice of Categorical Dischargers: CITY and BRISBANE/DISTRICT agree to comply with all applicable federal and state statutes and regulations and future amendments thereto. BRISBANE/DISTRICT shall provide to CITY notification of the name and address of any EPA Categorical Discharger, as defined by federal law, within ten (10) days after BRISBANE/DISTRICT has received notice of such discharger utilizing or intending to utilize their sewage facilities, to enable the DIRECTOR to comply with the EPA and Regional Water Quality Control Board standards.

16. Revenue Program: BRISBANE/DISTRICT shall prepare the Revenue Program required by the Environmental Protection Agency and the State of California of all agencies benefiting from state and federal grants and/or state revolving fund loans. The Revenue Program shall comply with the applicable federal and state laws and regulations, including State Water Resources Control Board Revenue Program Guidelines. The initial Revenue Program shall be furnished by BRISBANE/DISTRICT to CITY within thirty (30) days after the date of execution of this Agreement. Thereafter, a current copy of the BRISBANE/DISTRICT Revenue Program

shall be delivered to CITY within sixty (60) days after CITY has furnished to BRISBANE/DISTRICT the proposed annual rates to be utilized by CITY for calculation of the quarterly charges, together with the supporting documentation, in accordance with Section 7 of this Agreement. BRISBANE/DISTRICT shall reimburse CITY for any and all expenses, damages or losses incurred by CITY because of BRISBANE/DISTRICT's failure, through no fault of CITY, to submit a Revenue Program approvable by the Environmental Protection Agency or State Water Resources Control Board.

17. Termination by BRISBANE/DISTRICT: If at any time during the term of this Agreement, BRISBANE/DISTRICT determines that it is in its best interest to construct and maintain its own sewage treatment plant or in any other way dispose of its sewage and industrial waste, BRISBANE/DISTRICT may terminate this agreement without incurring any liability hereunder (except for the cost of sewage and industrial waste actually discharged into CITY service) upon giving CITY written notice, at least ninety (90) days in advance of its intention to terminate this Agreement. However, BRISBANE/DISTRICT shall reimburse CITY for BRISBANE/DISTRICT's share of the unamortized costs for facilities that were installed or increased in size for the expressed purpose of accommodating BRISBANE/DISTRICT's wastewater discharges and the quality thereof. The costs shall be pro-rated over a 15-year replacement period.

18. Assignment: BRISBANE/DISTRICT shall not assign or transfer its rights, obligations or duties provided by this Agreement without the approval of CITY and written amendment of this Agreement.

19. Notices: Unless any party advises to the contrary, all notices and communications shall be in writing and shall be addressed as follows:

If to CITY: Director of Public Works
City and County of San Francisco
875 Stevenson Street, Room 410
San Francisco, CA 94103-0934

If to BRISBANE/DISTRICT: Director of Finance
City of Brisbane
50 Park Lane
Brisbane, CA 94005

20. Conflict with State or Federal Laws: In the event any term of this Agreement conflict with any applicable state or federal law or regulation, the requirements of the applicable state or federal law or regulation shall be followed.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF
SAN FRANCISCO

By: [Signature]

Attest: [Signature]
Clerk, Board of Supervisors

Approved:

[Signature]
Chief Administrative Officer

Approved: [Signature]
Director of Public Works

APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By: [Signature]
Deputy City Attorney

CITY OF BRISBANE

By: [Signature]

Attest: [Signature]
City Clerk

GUADALUPE VALLEY MUNICIPAL
IMPROVEMENT DISTRICT

By: [Signature]
Chair

Attest: [Signature]
Clerk

APPROVED AS TO FORM:

By: [Signature]
City Attorney

APPENDIX A

18-Apr-95

SPL94SS		SAN FRANCISCO CLEAN WATER ENTERPRISE SSC REV PROJECTION FROM CITY OF BRISBANE				
B	C	D	O	P	Q	R
CLEAN WATER ENTERPRISE BUDGET		1994-95 CWE COSTS(AAO)		COST ALLOCABLE TO BRISBANE		
DPW COSTS, DEPT. 90:						
2101	Clean Water Operations		2,430,993		2,430,993	ANNUAL APPROPRIATION ORDINANCE (AAO)
2102	S.E. Community Facility		484,078		484,078	ANNUAL APPROPRIATION ORDINANCE (AAO)
	Less: SECF Rental Rev.		(387,681)		(387,681)	RATE MODEL (TABLE-1)
2133	WPC Wastewater Treatment		56,783,308		56,783,308	ANNUAL APPROPRIATION ORDINANCE (AAO)
2143	SSR Sewer Repair		9,032,375		2,258,094	ANNUAL APPROPRIATION ORDINANCE (AAO)
2135	Pretreatment & User Charge		6,010,986		6,010,986	ANNUAL APPROPRIATION ORDINANCE (AAO)
	Sub-Totals		74,354,059		67,579,778	
	Repair & Replacement, (1/3)		2,585,667		2,585,667	ANNUAL APPROPRIATION ORDINANCE (AAO) AND RATE MODEL (TABLE-1)
	Totals O, M & R Costs:		76,939,726		70,165,444	
	Brisbane share to total Budget:				91.195%	
	Offset for Interest		(11,037,374)		(10,065,571)	RATE MODEL (TABLE-1)
	Offset for Surplus		(5,921,924)		(5,400,519)	RATE MODEL (TABLE-1)
	Adjusted Total O, M & R Costs:		59,980,428		54,699,355	
Debt Service/Capitalized Cost:						
	State Loans		15,161,383		15,161,383	ANNUAL APPROPRIATION ORDINANCE (AAO)
	Revenue Bonds		39,889,278		39,889,278	ANNUAL APPROPRIATION ORDINANCE (AAO)
	Capitalized portion of R/R (2/3)		55,171,333		5,171,333	AAO AND RATE MODEL (TABLE-1)
	CAO, DEPT 70 GO Bonds		4,663,450		4,663,450	ANNUAL APPROPRIATION ORDINANCE (AAO)
	Sub-Totals		64,885,444		64,885,444	
	Offset for Surplus		(2,250,000)		(2,250,000)	RATE MODEL (TABLE-1)
	Total Debt Serv /Cap Cost		62,635,444		62,635,444	
	GRAND TOTAL ANNUAL NET COST		122,615,872		117,334,799	
FLOWS SHARES			<----- 1993-94 ----->		FLOW UNITS	
			MGD		(ANNUAL)	
San Francisco "raw" flows						
	Southeast (influent)		67.00		32,693,850	1993-94 SEWPCP INFLUENT
	North Shore (influent)		1.96		966,176	1993-94 NPWPCP FLOW
	Richmond-Sunset/Oceanside (effluent), adjusted for raw (times 1.072)=influent	19.2	20.56		10,043,551	1993-94 RSWPCP/OCEANSIDE EFFLUENT
	San Francisco Total		89.56		43,703,578	
					--- 1994-95 ---	
	UNIT RATE (COST)				2.6848	
	ANNUAL FLOWS OF BRISBANE				56,008	
	REVENUE USING UNIT RATE X ANNUA				150,370	(Half-year, July-Decr. 1994)