

**AMENDED  
JOINT EXERCISE OF POWERS  
AGREEMENT AMONG THE CITY OF OROVILLE,  
THE LAKE OROVILLE AREA PUBLIC UTILITY DISTRICT  
AND THE THERMALITO WATER AND SEWER DISTRICT**

THIS AGREEMENT made and entered into this 4th day of May 2010 by and between the CITY OF OROVILLE, ("OROVILLE"), a chartered city; the LAKE OROVILLE AREA PUBLIC UTILITY DISTRICT ("LOAPUD"), a public utility district; and the THERMALITO WATER AND SEWER DISTRICT ("THERMALITO"), an irrigation district; each of said parties organized and existing under and by virtue of the laws of the State of California.

**RECITALS**

This Agreement is made with reference to the following facts. OROVILLE, LOAPUD and THERMALITO each have the authority and power to acquire, construct, operate and maintain sewage collection, transportation, treatment, and disposal facilities for servicing of their respective areas. The said parties heretofore entered into an Agreement, dated June 18, 1971, providing for the joint exercise of their said powers in achieving a regional solution to their respective sewerage disposal needs. The said Agreement has been amended from time to time to change the name of the Joint Powers Agency, and to restructure its governing board and staff. State and Federal grants have been accepted by the Joint Powers Agency, and the regional sewerage project has been completed and placed into operation. The parties now desire to set forth their agreement for long-term operations in this amended Joint Exercise of Powers Agreement.

NOW THEREFORE, it is agreed among the parties hereto as follows:

1. **AMENDMENT OF AGREEMENT**: This Agreement amends the Joint Powers Agreements among the parties, dated June 18, 1971, as amended from time to time, however, nothing contained herein, or in the said prior agreements, is intended to change the identity of the contracting parties or their service areas, or the status of the Joint Powers Agency under State law or under any State or Federal Grant Contracts.

2. **DEFINITIONS**: Unless the context otherwise requires, the meaning of terms used in this Agreement shall be as follows:

a) "Agency" shall mean agency created by the Joint Powers Agreement, now known as the Sewerage Commission - Oroville Region.

b) "Alternate" member or commissioner shall mean the commissioner duly authorized to represent an entity and to vote on behalf of that entity in the absence of the "voting" commissioner.

c) "Board" shall mean the governing body of the agency, Sewerage Commission - Oroville Region.

d) "Commission" shall mean the Sewerage Commission - Oroville Region.

e) "Commissioner" shall mean duly designated member of the Board.

f) "Entity" or "Entities" shall mean LOAPUD, Oroville, or Thermalito, or a combination thereof.

g) "Governing Body" shall mean the Oroville City Council, or the Board of Directors of LOAPUD, or Thermalito, or the Board of the Sewerage Commission - Oroville Region, as applicable.

h) "Project" or "Regional Project" shall mean the planning, designing, engineering, construction, operation, maintenance, repair, and replacement of the SC-OR facilities, and all administrative and technical services and activities in connection therewith.

i) "Revenues" shall mean those sums received by reason of sewer user charges, infiltration charges, regional facility charges, industrial pretreatment fees and charges together with interest on invested funds and administrative charges, costs, fees, and assessments as established by the Commission from time to time.

j) "SC-OR Facilities" shall mean the physical properties acquired, constructed, operated, maintained, repaired, and replaced by the Sewerage Commission - Oroville Region in accordance with Paragraph 7 of this Agreement.

k) "Service Area(s)" shall mean those jurisdictional areas of the member entities which have been approved for annexation by LAFCo for the provision of sewer services by said member entity."

3. TERM: This Amended Agreement shall become effective as of the date hereof and shall continue in full force and effect until rescinded or terminated by unanimous agreement of the entities, or for a period of 20 years, whichever is earlier, unless extended by written agreement of all parties.

4. POWERS OF COMMISSION: The SEWERAGE COMMISSION - OROVILLE REGION shall have the power to acquire, construct, operate, maintain, repair, and replace Regional Sewerage Facilities, more particularly described in Paragraph 7 of this Agreement. The agency is hereby empowered and authorized, in its own name to make and enter into contracts; to employ agents and employees; to acquire, construct, manage, maintain and operate any building, works or improvements; to acquire by eminent domain or otherwise, and to hold or dispose of any property; to sue and be sued in its own name; to incur debts, liabilities and obligations; to issue various forms of bonds and financial instruments to the extent, and on the terms, provided by law. The Agency shall have the power to apply for, accept, receive and disburse grants, loans and other aids from any agency of the

of the United States of America or of the State of California. In accordance with Government Code Section 6509, the foregoing powers shall be subject to the restrictions upon the manner of exercising such powers, pertaining to Thermalito Water and Sewer District.

5. GOVERNING BODY: The business of the agency shall be conducted by a Board of six commissioners. Two such commissioners shall be designated from time to time in writing by the governing body of each member entity, from among its own members. The commissioners so chosen shall be designated as either "voting" or "alternate" and shall continue to so serve until their successors are named.

a) Meetings: The commissioners shall meet regularly, at least once a month at a time and place to be set by resolution, and from time to time at the call of any commissioner, upon 24 hours prior notice personally or by mail to all other commissioners. No such notice need be given to any commissioner who is present at the meeting for which notice is required or who consents in writing to the meeting being held. The compensation and reimbursable expenses of the commissioners shall be set from time to time by Resolution of the Board.

b) Quorum: A quorum for the conduct of Commission business shall consist of three commissioners, voting or alternate, provided that there must be at least one such commissioner present from each member entity in order to constitute a quorum.

c) Voting: All commissioners, "voting" or "alternate", shall be entitled to be heard on all matters of business coming before the Board. Each member entity shall be entitled to one vote on matters subject to voting, the said vote to be cast by the designated "voting" commissioner of such entity, or in his absence, by the designated "alternate" commissioner. Except as otherwise provided herein, the concurring vote of two commissioners, so voting, shall be required for any action of the Commission.

d) Chairman; Vice-Chairman: The commissioners shall select, from among their members, a Chairman, who shall be the presiding officer at all Board meetings; and a Vice-Chairman, who shall so serve in the absence of the Chairman. The term of office of the Chairman and Vice-Chairman shall be one year. Elections shall be held in June of each year.

6. FINANCIAL PROVISIONS:

a) General Financial Provisions:

1) Fiscal Year: The Agency's fiscal year shall be from July 1 to the following June 30.

2) Depositary: Fiscal Control: Pursuant to Government Code Section 6505.6, the Commission shall appoint one of its officers or employees to serve as Treasurer and/or Fiscal Officer of the Commission. Said offices may be held by separate officers or employees, or combined and held by one officer or employee. A unanimous vote shall be required for such appointments. The person or persons so appointed shall perform all of the functions required by Government Code Sections 6505, 6505.5 and 6505.6. Annually, such officers or employees shall contract with a certified public accountant to make an audit of the accounts and records of the Commission. Said contract shall be subject to the prior approval of the commissioners.

3) Property: Bonds: The Board shall from time to time designate the officers and persons, in addition to those specified in paragraph 6 (a) 2 above, who shall have charge of, handle or have access to any property of the Agency. Each such officer and person shall file a bond in an amount designated by the commissioners.

4) Budget: Financial Reports: Upon the execution of this Agreement and thereafter at least 30 days prior to commencement of each fiscal year, the Commission shall adopt a budget for the forthcoming fiscal year. The Commission shall render monthly to each entity, a detailed, itemized, written financial report showing expenditures, and the proper apportionment to each entity of the receipt and expenses during the previous month and the remaining balance on hand.

5) Contribution and Payments: Contributions from the treasuries of the member entities shall be made to the Sewerage Commission – Oroville Region for the purposes, and on the terms set forth in this Agreement, and in Amendments hereto.

b) Ownership of Facilities: It is understood and agreed that all SC-OR facilities, as defined in Paragraph 7 shall be owned, and title held, by the Sewerage Commission - Oroville Region, without specific or individual allocation of ownership interests or capacities to the respective member entities. Each entity shall be entitled to add connections and originate additional flows within its own service area in accordance with the policies, rules and regulations of SC-OR.”

c) Payment of Costs and Expenses: The Commission shall pay all capital costs of the SC-OR facilities, including the acquisition costs of land and facilities, construction costs, engineering and technical services, legal and administrative services, and bond service. The Commission shall also pay all operational, maintenance, repair and replacement expenses of the SC-OR facilities and all deposits required for the Capital Restricted Funds Accounts and depreciation reserves as established by Resolution.

d) Grant and Bond Revenues; Cash Flows: It is understood and agreed that the Commission may make application for, collect and disburse, all funds which the Commission is eligible to receive by reason of State and Federal grants, loan and aid programs relating to the services provided by the Sewerage Commission - Oroville Region for the direct benefit of the area serviced by SC-OR. A unanimous vote by the Board will be required for any action requiring the Sewerage Commission-Oroville Region to incur debt for any such program.

e) Operational Revenues and Expenditures: It is understood and agreed that the revenues of the project shall be derived from the following primary sources:

(1) Sewer User Charges: Each member entity shall pay to the Commission, quarterly a sewer user charge, which shall be based upon the number of dwelling units, or dwelling unit equivalents, connected to the regional system and the SC-OR facilities within the respective service areas. The details of such charges shall be established from time to time by Resolution unanimously adopted by the Board. Nothing contained herein shall limit the right of any member entity to levy a tax or assessment, or to charge and collect a local sewer service charge, standby charge or surcharge for the use or availability of services within its respective service area.

(2) Added Infiltration Charge: The resolution or resolutions, of the Commission, establishing the monthly sewer user charges, shall also establish a formula for determining the extent of excess flows or infiltration, originating in the respective service areas of the member entities, and shall establish a reasonable charge to be paid by such entities for the processing of such excess flows or infiltration.

(3) Regional Facility Charge: In addition to the sewer user charges and infiltration charges set forth above, each member entity shall pay to the Commission a regional facility charge, based on any increase in the use of the regional facility by such entity during the preceding quarter. The Board shall establish by resolution unanimously adopted during the September Commission meeting of each year, a rational formula for determining the amount and collection of the Regional Facility Charge, having due regard for existing units in each service area, and costs and benefits attributable to increased use units.

Nothing contained herein shall affect the right of a member to establish and collect connection charges or any other fees or charges for new connections to its retained local sewerage system within its respective service area.

(4) Administrative Charges: As per SC-OR resolutions, and in accordance with requirements of SC-OR's Industrial Pretreatment Program administrative charges, fees, assessments and penalties (fines) shall be established by the Commission from time to time. The Commission will enact all fees and charges by a unanimous vote.

(5) Uniform Rates; Financing Plan: It is understood and agreed that the rates established from time to time by unanimous resolution of the Board for sewer user charges, infiltration charges and regional facility charges, shall be uniform within each category of sewerage producing units in the regional service area. It is the intention of the parties that the financial provisions of this Paragraph 6 shall be administered so as to conform to the concepts expressed in the "Financing Plan, Sewerage Commission - Oroville Region", prepared by Bartle Wells Associates, dated October, 1973 utilizing updated and current values throughout.

7. REGIONAL PROJECT: Oroville, Thermalito, and LOAPUD hereby agree that the Sewerage Commission - Oroville Region shall design, construct, operate, maintain, repair, and replace the regional facilities consisting of, but not limited to:

- a) A single central treatment plant utilizing conventional activated sludge process with filtration, situated at South 5<sup>th</sup> Avenue site, Oroville, California.
- b) An outfall and diffuser discharging a high quality effluent to the Feather River.
- c) LOAPUD Interceptor.
- d) SC-OR West Interceptor with lift stations.
- e) Land, easements, and facilities necessary or appurtenant to the above.
- f) Such other wastewater treatment and disposal facilities that must be added from time to time to assure continuing compliance with the Waste Discharge Requirements set for the Sewerage Commission - Oroville Region by the State and or Federal Governments.

In order to assure completion and perpetuation of the Regional Project, each of the member entities shall be obligated to carry out the terms and conditions of this Agreement and Resolutions adopted pursuant hereto, and all controversies among them shall be subject to arbitration as hereinafter set forth.

8. ARBITRATION: All controversies between the entities, arising out of an action or decision of the Board shall be settled by arbitration in accordance with the provisions of this paragraph. Within ten (10) days after the action or decision has been taken, the aggrieved entity shall give written notice to the Board and the other entities that it desires arbitration, stating the controversy to be arbitrated. Within ten (10) days thereafter, the aggrieved entity and the Board shall each select one arbitrator, and within ten (10) additional days after their selection, the two arbitrators shall select a third arbitrator. The hearing shall be conducted within fifteen (15) days after the nomination of the third arbitrator and shall be restricted to matters relative to that stated in the notice requesting arbitration. Each entity shall be given an opportunity to be heard and to present evidence. Within ten (10) days after the conclusion of the hearing or hearings, the arbitrators shall state their findings of fact, conclusions of law and decision in writing, and shall sign the same and deliver one signed copy thereof to each entity. Such award shall be final and binding upon the Board, and upon each entity. A majority shall govern if the arbitrators' determination is not unanimous. The aggrieved entity, and the Board, shall each pay the expenses of their respective arbitrators. The costs and expenses of the third arbitrator and the administrative costs of arbitration shall be shared equally between the aggrieved entity and the Board.

9. AMENDMENT OF AGREEMENT: This Agreement may be amended by an agreement approved by all of the entities. Approval of the Board shall not be required for amendment of this Agreement.

10. SEVERABILITY: Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

11. NOTICES: Any notice authorized or required to be given by this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the following addresses or such changed addresses as to which notice is similarly given:


Oroville:  
1735 Montgomery Street  
Oroville, California 95965

LOAPUD:  
1960 Elgin Street  
Oroville, California 95966

Thermalito:  
410 Grand Avenue  
Oroville, California 95965

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

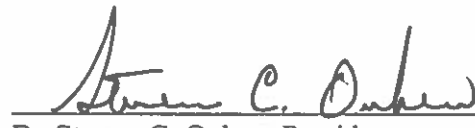
CITY OF OROVILLE



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By Steven D. Jernigan, Mayor

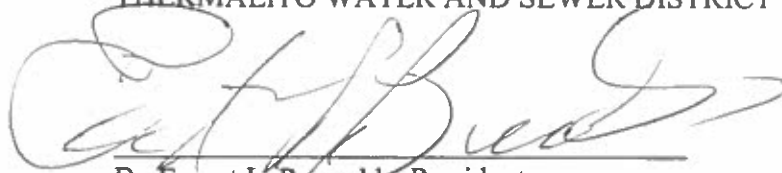
LAKE OROVILLE AREA PUBLIC UTILITY DISTRICT



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By Steven C. Onken, President

THERMALITO WATER AND SEWER DISTRICT



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By Ernest L. Reynolds, President