

April 3, 2024
Board Executive Committee

**AMENDED AND RESTATED HAYWARD AREA SHORELINE PLANNING AGENCY
JOINT EXERCISE OF POWERS AGREEMENT**

July 1, 2024

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**AMENDED AND RESTATED HAYWARD AREA SHORELINE PLANNING AGENCY
JOINT EXERCISE OF POWERS AGREEMENT**

THIS AGREEMENT, dated for convenience as of July 1, 2024, is made and entered into by and among the East Bay Regional Park District, a special district (hereinafter referred to as “Regional Park District”); the Oro Loma Sanitary District, a sanitary district (hereinafter referred to as “Oro Loma”), the Alameda County Mosquito Abatement District, a mosquito control district (hereinafter referred to as “ACMAD”), the Hayward Area Recreation and Park District, a California special district (hereinafter referred to as “HARD”); and the City of Hayward, a municipal corporation (hereinafter referred to as “Hayward”) (collectively “Parties” and individually “Party”); each duly organized and existing in the County of Alameda under the constitution and laws of the State of California.

WITNESSETH:

WHEREAS, the Hayward Area Shoreline Planning Agency (hereinafter referred to as “HASPA” or “Agency”), is a joint powers authority consisting of representatives from the Regional Park District, Oro Loma, ACMAD, HARD, and Hayward;

WHEREAS, HASPA was formed pursuant to the December 7, 1970 Joint Exercise of Powers Agreement (hereinafter the “Agreement”);

WHEREAS, the Agreement was subsequently extended on October 7, 1975, November 13, 1979, June 10, 1985, September 11, 1990, September 21, 1995, August 25, 2000, July 1, 2005, June 30, 2010, June 30, 2015, December 1, 2015, January 1, 2021, January 1, 2022, June 30, 2022, and May 11, 2023;

WHEREAS, HASPA's original purpose, which has been fulfilled, was to study, plan, and adopt policies concerning the land uses in the Shoreline area, in order to develop a

comprehensive plan for the governing bodies of the original parties so that the plans and actions of each party are compatible with those of the other parties;

WHEREAS, the Hayward Shoreline faces serious impacts to infrastructure and resources caused by sea level rise, groundwater intrusion, and storm surge (“Climate Change Impacts”);

WHEREAS, HASPA adopted the Hayward Regional Shoreline Adaptation Master Plan, which creates a framework for a region-wide response to Climate Change Impacts;

WHEREAS, the Parties wish to continue HASPA and its powers and functions in addressing the new mission of responding to Climate Change Impacts by promoting public health and climate adaptation measures, protecting critical infrastructure at the shoreline, and maintaining public access to the shoreline, as more particularly described herein;

WHEREAS, Climate Change Impacts create a unique challenge to the preservation of open space resources at the shoreline. Climate adaptation measures facilitate the conservation and restoration of park lands and habitat for threatened species in the East Bay;

WHEREAS, Climate Change Impacts threaten waste water treatment facilities located along the Hayward Shoreline. Addressing and mitigating sea level rise is necessary to ensure these sanitary sewer facilities remain functional and to prevent the sewer overflows into the San Francisco Bay in order to protect public health;

WHEREAS, the coastal inundation and flooding exacerbated by sea level rise increase the breeding habitat for mosquitoes and warmer temperatures associated with climate change can accelerate mosquito development. Engaging in preventative climate change efforts is a crucial way to combat and prevent the transmission of vector-borne diseases which will further ACMAD’s mission of improving the health and comfort of Alameda County residents;

WHEREAS, HARD is a recreational and park district established under Public Resources Code Section 5780 *et seq.* empowered to, among other things, acquire, operate, maintain, and improve recreational facilities and open space, which includes the authority to respond to Climate Change Impacts by implementing climate adaptation measures to safeguard its property;

WHEREAS, the City of Hayward, pursuant to Section 200 of the City Charter and Article XI, Section 5 of the California Constitution, may make and enforce all laws and regulations in respect to municipal affairs, and pursuant to Article XI, Section 7 of the California Constitution may exercise its police powers to make and enforce ordinances and regulations to promote the public health, safety, and welfare, which includes development and implementation of climate adaption measures to address Climate Change Impacts along the Hayward Shoreline, including sea level rise and/or inundation;

WHEREAS, the Parties desire that this Agreement supersede and supplant all previous iterations of the Agreement set forth above;

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties agree as follows:

Section 1. Definitions

- a. “Agency” means HASPA.
- b. “Agreement” means this Amended and Restated Joint Exercise of Powers Agreement.
- c. “HASPA Board” means the Hayward Area Shoreline Planning Agency Board of Trustees, being the governing body of HASPA.
- d. “Controller” means the public officer performing the functions of auditor or controller as determined pursuant to the Act.

- e. “Hayward Shoreline” or “Service Area” means all areas of the City of Hayward and all areas of the unincorporated land in the Alameda County that are west of the Southern Pacific Railroad tracks and are between the boundaries of the City of San Leandro on the north and the City of Fremont on the south and all areas where the 100 year inundation line is currently shown on FEMA maps, as shown in Schedule A.
- f. “Manager” or “Managing Agency” means the Party, individual, or independent contractor, designated by the HASPA Board to act for and on behalf of the Agency, as the agent or representative of the Agency, pursuant to and within the scope of authority provided in this Agreement and delegated by the HASPA Board, as further described in Section 6.
- g. “Supporting Agency” means a Party that contracts for a project within the Service Area that is not otherwise supported by annual dues.
- h. “Surcharge” means funds required for any expenditure that is approved by the HASPA Board, but is not itemized in the annual budget.
- i. “Treasurer” means the public officer designated and performing the functions of as determined pursuant to Section 6505.5 or Section 6505.6 of the Act.

Section 2. Authority and Purpose

This Agreement is made pursuant to Chapter 5, of Division 7, Title 1 of the California Government Code (Sections 6500 *et seq.*; the "Act") and relates to the joint exercise of powers held by each of the parties and as otherwise granted by the Act. The purpose of this Agreement is to jointly exercise the common powers of the parties to address Climate Change Impacts on the Hayward Shoreline by promoting and implementing climate adaptation measures on the

Hayward Shoreline through shoreline planning activities, collaboration to advance projects, and seeking funding for projects.

Section 3. Creation of HASPA

The Agency is a public agency separate from the Parties. The Agency will exercise the powers set forth in this Agreement. No debt, liability, or obligation of the Agency will constitute a debt, liability, or obligation of the parties, except as expressly provided in this Agreement.

Section 4. Powers

To the greatest extent permitted by law and in the manner provided herein, the Agency will exercise the powers which are common to each Party, or as otherwise permitted under the Act, and all incidental, implied, expressed, or necessary powers to accomplish the purposes of this Agreement. The Agency is hereby authorized, in its own name, to perform all acts necessary to fulfill the purposes of this Agreement, including but not limited to any or all of, the following:

- a. to make and enter into contracts;
- b. to employ agents and employees;
- c. to apply for and accept grants, advances and contributions
- d. to receive, accept, and expend or disburse monies by contract or otherwise for purposes consistent with this Agreement;
- e. to employ or contract for the services of planners, financial advisors, consultants, contractors, fiscal agents, and such other persons as the HASPA Board deems necessary and to establish compensation, salaries, and other benefits for such persons as are necessary to implement this Agreement;
- f. to make plans and conduct studies;
- g. to acquire, hold or dispose of property;

- h. to sue and be sued in its own name;
to incur debts, liabilities or obligations and issue indebtedness;
- i. to prepare and adopt a general budget for HASPA's functions;
- j. to explore shoreline protection in conjunction with climate adaptation;
- k. to develop and adopt bylaws and policies for the conduct of the business of the Agency;
- l. to insure itself and the Parties from loss, liability, and claims arising out of or in any way connected with the performance of this Agreement; and
- m. To enter into joint exercise of powers agreements pursuant to the Act.

For the purposes of California Government Code Section 6509, the powers of the Agency will be exercised subject to the restrictions upon the manner of exercising such powers as are imposed on the City of Hayward, a charter city.

Section 5. Organization

a. HASPA Board

The Agency will be governed by the HASPA Board, which will exercise all powers and authority on behalf of the Agency except as otherwise provided herein. The HASPA Board is composed of representatives from each Party, who are known as trustees. Each party to this Agreement will appoint one member of its governing body to be a trustee and will appoint a second member of its governing body to be an alternate trustee to serve in the absence of that Party's trustee. Each trustee and alternate will serve at the pleasure of his or her governing body, but in no event will either a trustee or alternate trustee serve on the HASPA Board if he or she is no longer a member of the governing body of a party. Each trustee (or alternate trustee serving the absence of the trustee) is allocated one vote on any matter before the HASPA Board. In

accordance with the Bylaws, the trustees will elect from among themselves, and establish the terms of office for, a Chair and such other officers, as they deem necessary or desirable.

b. Voting

1. Majority Vote and Weighted Voting. Generally, the affirmative vote of a majority of the total membership of the HASPA Board is required to adopt any action. However, any HASPA Board member may call for any motion to be subject to weighted voting. The call for weighted voting must be made before the motion is made. The weighted percentage of each member's vote will be as set forth in Schedule C. An affirmative vote of at least 51% is required to adopt any motion subject to weighted voting, subject to the consent requirement in Section 8(a) if applicable.

c. JPA Amendments.

Unless explicitly provided in the Agreement, the HASPA Board and the governing boards of the Parties must approve all amendments to the Agreement, including any amendments to the Agreement that effect the rights, obligations, or status of the Parties to this Agreement, add new parties to the Agreement, or alter the authority and purpose of the Agency.

d. Certain JPA Amendments Delegated to the Board.

The Parties have delegated to the HASPA Board the authority to make any revision to the provisions of the Agreement related to the operations of the Agency, which is necessary to effect the purpose of the Agency.

e. Certain JPA Amendments Delegated to the Manager/Managing Agency.

In addition, the Parties have delegated to the Manager/Managing Agency the authority to make such administrative revisions to the Agreement as described in Section 12.

f. Meetings

All meetings of the HASPA Board are public meetings and will be held subject to the requirements of the Ralph M. Brown Act, Section 54950 *et seq.* of the California Government Code, other applicable laws of the State of California, and the bylaws of the HASPA Board. A majority of the trustees will constitute a quorum.

g. Bylaws

The HASPA Board may adopt, and from time to time amend, bylaws of the HASPA Board as necessary or convenient in the determination of the HASPA Board to achieve its purposes. The bylaws may set forth how meetings of the HASPA Board will be conducted.

Section 6. Managing Agency/Manager

a. Managing Agency

If the HASPA Board designates a Party as the Managing Agency, the duties of the Managing Agency will alternate among the Tier 3 Parties as set forth in Schedule C. The Tier 3 Parties will rotate the Managing Agency role as needed.

b. Manager

The HASPA Board may employ a staff member of one of the Parties or other individual to manage the Agency, or it may contract for the services of the Manager. In such case, the HASPA Board will prescribe the duties, compensation, and terms and conditions of employment, or of the contract, of the Manager. At a minimum, the Manager will coordinate the business of the Agency, hire and direct any Agency employees, attend HASPA Board meetings, prepare, distribute and maintain agendas and minutes of the HASPA Board meetings and official actions of the Agency, and carry out other duties as may be assigned by the HASPA Board. The Manager will serve at the pleasure of the HASPA Board. In the event the HASPA Board

employs or contracts for the services of a Manager, the Managing Agency will be responsible for supporting tasks such as administration of the contract for the services of a Manager and use of office resources.

Section 7. Employees

a. Agency Employees

The Agency may directly employ officers, agents, or employees, but none of the officers, agents, or employees directly employed by the Agency will be deemed, by reason of their employment by the Agency, to be employed by any Party or to be subject to any of the requirements of any Party. Any officer, employee, or agent of the Agency may also be an officer, employee, or agent of any Party, provided that the HASPA Board or Manager determines that the two positions are compatible.

b. Officers, Employees, Agents of the Parties

All privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of a Party when performing their respective functions will apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

Section 8. Budget and Finance

a. Budget

The Agency may adopt a budget for activities consistent with its powers and may require the contribution of funds from the Parties for the expenditures included in that budget. As opportunities arise, the Board may approve the imposition of Surcharges to fund expenses that are not otherwise included in the adopted budget. Generally, Surcharges will be allocated to each

Party in accordance with the percentages in Schedule C. However, at the request of any Party, the Board may consider a different allocation for the Surcharge. At the Board's discretion, such allocation may be among all of the Parties or only a portion of the Parties. The intent of any such alternative allocation is to give Supporting Agencies and/or any party that may receive unique benefits from the expense the opportunity to contribute at a higher level than the applicable percentage in Schedule C. If a Party's Surcharge allocation is higher than the percentage in Schedule C, the Party must consent in writing to the Surcharge allocation. The Board's decision on any allocation will be final.

b. Dues

On July 1 of each year, each Party will pay the annual dues to the Agency. The total amount of annual dues will equal the total adopted budget for that fiscal year. Each Party's allocation of the annual dues will be based on the percentages set forth in Schedule C.

c. Funding and Agency Financial Commitments

The Agency may apply for and receive grants and other funding from outside sources to support its purpose. The Agency may be the responsible fiscal agency for the funding or an appropriate Party may be selected. The Agency may not make any financial commitment that requires revenues in excess of those available to it.

Section 9. Treasurer, Controller, Accountability, and Access to Property

a. Treasurer

Pursuant to Government Code Section 6505.5, the treasurer of the Managing Agency, or other duly authorized staff person, is the Treasurer of the Agency. Alternatively, pursuant to Government Code Section 6505.6, the HASPA Board may appoint one of the Agency's officers

or employees as Treasurer of the Agency. The Treasurer will be the depository, and have custody of all the money of the Agency from whatever source. The Treasurer will:

1. Receive and receipt for all money of the Agency and place it in the treasury of the Treasurer to the credit of HASPA.
2. Be responsible upon his or her official bond for the safekeeping and disbursement of all Agency money and personal property.
3. Pay, when due, out of money of the Agency, all sums due from the Agency, or any portion thereof, only upon warrants of the public officer performing the functions of Controller of the Agency.
4. Verify and report in writing on the first day of July, October, January, and April of each year to the Agency, and to each of the Parties, the amount of money held for HASPA, the amount of receipts since the last report, and the amount paid out since the last report.
5. Invest all of the Agency's funds not currently required in the manner provided by law including but not limited to Government Code sections 6509.5 and 53601 and collect interest thereon for account of the Agency.
6. Have the powers, duties, and responsibilities of the treasurer as specified in the Act, including, without limitation, Sections 6505 and 6505.5 thereof.

b. Controller

Pursuant to Government Code Section 6505.5, the auditor of the Managing Agency, or other duly authorized staff person, is the Controller of HASPA. Alternatively, pursuant to Government Code Section 6505.6, the HASPA Board may appoint one of the Agency's officers

or employees as Controller of the Agency. If an appointment is made pursuant to Government Code Section 6505.6, the offices of the Treasurer and Controller may be held by the separate individuals or the offices may be held by the same individual. The Controller will draw warrants to pay demands against the Agency when the demands have been duly authorized by the HASPA Board. The Controller will have the powers, duties, and responsibilities specified in the Act, including, without limitation, Sections 6505 and 6505.5 thereof.

c. Accountability of Funds

There will be strict accountability of all HASPA funds and report of all receipts and disbursements and compliance with the Act. The Controller will either make or arrange for a contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Agency.

d. Access to Property and Funds

As provided in Section 6505.1 of the Act, the Treasurer is hereby designated as the person who has charge of, handles, and has access to the property of the Agency. The HASPA Board will require such person to file an official bond in an amount to be fixed by the HASPA Board and the cost of said bond will be paid by the Agency.

Section 10. Term, Termination, and Withdrawal of a Party

a. Term

This Agreement is effective as of the date of execution by the last party hereto and will continue in full force and effect until terminated by mutual agreement of the Parties.

b. Termination

Upon mutual agreement of the Parties to terminate the Agreement, the Agency will liquidate any assets. After the discharge of all enforceable liabilities, the liquidated assets will be

divided equally among the Parties, unless otherwise agreed to by the Parties. In terminating this Agreement, the Parties agree to apportion any employee retirement obligations of the Agency equally among all Parties. All Parties will comply with all legal requirements related to the Agency's pension liabilities and obligations as specified in the Act and the Public Employees Retirement Law (California Government Code Section 20000 et seq.).

c. Withdrawal

Any Party may withdraw from the Agency by reaching an agreement with the remaining Parties, whereby the remaining Party(ies) acquires all of the rights in this Agreement and in the Agency and assumes all liability, including bonded indebtedness, of the withdrawing Party.

d. Reinstatement

A party, subsequent to its filing of its notice of withdrawal or its actual withdrawal from the Agency, may seek reinstatement as a member of the Agency in accordance with the procedures for adding a new party as set forth in Section 14.

Section 11. Elections

For the purpose of holding any election within the Agency's boundaries, the HASPA Board may call and hold an election to submit propositions to the electors of the Agency in the same manner as the board of supervisors of a county may call and hold county elections, and the electors of the Agency will have the right to petition for referendum on any ordinance enacted by the HASPA Board in the same manner as the electors of a county, except that all computations referred to in those sections and the officers of the county mentioned in those sections will be construed to refer to comparable computations and officers of the Agency. For the purposes of any such election or referendum petition, the electors residing within the boundaries of the

Agency who would be qualified to vote for candidates for Governor at any general election will be the electors of the Agency.

Section 12. Boundaries and Service Area

The boundary of the Agency will be the consolidated boundaries of all Parties, as may be amended from time to time. The current boundaries are shown in Schedule B. In the event the Agency's boundaries change, the Managing Agency or Manager will prepare an updated Schedule B, which will be automatically incorporated into this Agreement. For clarity, HASPA generally will exercise the common powers described in this Agreement within the Service Area, as shown in Schedule A. In the event the Service Area changes (e.g. due to the withdrawal of a Party, updates to the FEMA maps), the Managing Agency or Manager will prepare an updated Schedule A, which will be automatically incorporated into this Agreement.

Section 13. Amendments

The Parties authorize the HASPA Board to approve amendments to the Agreement as described in section 5(d) and the trustees are each authorized to execute any such amendments on behalf of their respective agencies. All other amendments to this Agreement require approval

by unanimous vote of the total membership of the HASPA Board and a writing approved and executed by the governing bodies of all Parties.

Section 14. New Parties

A new party may be added to this Agreement by forwarding a duly adopted resolution of its governing body to the Manager or Managing Agency. If approved by the HASPA Board, the addition of the new party will be effective upon approval of the amendment by all Parties.

Section 15. Dispute Resolution

In the event of any dispute, the parties will promptly meet and confer, first at a staff level and then elevated to a meeting of the HASPA Board, in a good faith attempt to resolve the dispute. In connection with such negotiations, the party asserting the dispute must provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally. In the alternative, a party may choose to resolve questions or disputes arising under the Agreement through arbitration or judicial determination.

Section 16. Severability

If any one or more of the covenants or agreements set forth in this Agreement should be contrary to any provision of law or contrary to the policy of law to such an extent as to be unenforceable in any court of competent jurisdiction then such covenant or covenants, or such agreement or agreements, will be null and void and will be deemed separable from the remaining covenants and agreements and will in no way affect the validity of remaining portions of this Agreement.

Section 17. Counterparts.

This Agreement may be separately executed in any number of counterparts, and each counterpart signature page and the remainder of this Agreement will constitute the original Agreement. Facsimile, electronic, or digital signatures will be treated in all respects as having the same effect as an original signature.

Section 18. Successors; Assignment

This Agreement will be binding upon and inure to the benefit of the successors of the Parties. No Party may assign any right or obligation hereunder without the consent of the others.

Section 19. Governing Law

This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of California, without giving effect to conflict of law provisions.

Section 20. Joint Drafting

All Parties participated in the drafting of this Agreement and the Agreement will not be construed against any Party as the drafter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and attested by their respective officers, duly authorized to so act, on the dates set forth.

SIGNATURE BLOCKS ON FOLLOWING PAGES