

**AGREEMENT BETWEEN
THE CITY OF HAYWARD AND
THE ALAMEDA COUNTY WATER DISTRICT**

THIS AGREEMENT is made as of the 27 day of July, 2000, by and between the **CITY OF HAYWARD** ("City") and the **ALAMEDA COUNTY WATER DISTRICT** ("Water District").

This Agreement is entered into in light of the following facts and circumstances:

1. The City adopted Resolution No. 98-216 on December 15, 1998, authorizing the filing of an application with the Local Agency Formation Commission (LAFCO) requesting detachment of the Oliver East property (as shown on Exhibit A attached hereto) from the Water District and its annexation to the City.

2. The Water District adopted Resolution No. 99-034 on April 22, 1999, authorizing and directing the General Manager to communicate to LAFCO that the Water District does not object to the detachment, provided that LAFCO makes the detachment and annexation to the City subject to the City adopting ordinances implementing fees and conditions related to well construction, operation, and destruction, and the City entering into an agreement with the Water District by which it agrees to enforce such ordinances and to implement a cooperative program for the oversight of hazardous materials spills and tank leak cases.

3. LAFCO adopted Resolution No. 99-08 on May 13, 1999, approving the detachment of the Oliver East property from the Water District and its annexation to the City subject to the terms and conditions set forth in the Water District's Resolution No. 99-034.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. OVERSIGHT PROGRAM PROCEDURES

The City shall work cooperatively with the Water District to ensure the protection of groundwater. If contamination is discovered in areas previously detached or detached in the future, then the City shall notify, consult, and work cooperatively with the Water District in managing the investigation and cleanup. If agreeable to both parties, the City may allow the Water District to provide technical oversight of individual contamination cases which threaten or affect water quality.

2. ENFORCEMENT OF ORDINANCES

City, as required by LAFCO Resolution No. 99-08 and Water District Resolution No. 99-034, has, by Ordinance No. 00- 04, amended the provisions of the Hayward Municipal Code pertaining to fees and development conditions on wells constructed, operated or destroyed within the Oliver East property, thereby agreeing to continue the Water District fees, taxes and charges referenced in such resolutions.

The Water District believes that the taxes, fees and charges described in the amendments are either exempt from or meet the requirements of Proposition 218 that added Articles XIIC and XIID to the state constitution. In the event that any of those taxes, fees or charges are challenged in any legal proceeding on the basis that the Water District has failed to comply with the requirements of Proposition 218, the Water District agrees to defend, indemnify and hold harmless the City, its employees, agents and elected officials.

The City agrees to defend, indemnify and hold harmless the Water District, its employees, agents and elected officials from costs and expenses resulting from the sole negligence of the City in collecting the taxes, fees and charges described in the amendments. The City also agrees not to itself challenge such taxes, fees or charges, nor to refuse or delay payment of them, on any well which is, or may be in the future, located on land owned by the City within the Oliver East property.

3. TERM

The term of this Agreement shall be indefinite.

4. NOTICE

Any notice required under this Agreement shall be in writing and shall be given by personal delivery, fax, or deposit in the U.S. mail addressed as follows:

Hayward
City of Hayward
777 B Street
Hayward, CA 94541-5007
Attn: Public Works Director and Fire Chief

Water District
Alameda County Water District
43885 South Grimmer Boulevard
P.O. Box 5110
Fremont, CA 94537-5110
Attention: General Manager

5. ACTIVITIES ARE DISCRETIONARY

The activities contemplated herein to be taken by the City and the Water District are discretionary in that they involve the exercise of judgement and discretion, rather than merely ministerial.

6. AMENDMENTS

This Agreement may be amended only by writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written by their respective duly authorized officers.

CITY OF HAYWARD

By: Jesús Armas
Jesús Armas
City Manager

Approved by City Council
Resolution No. 00-102
Dated: July 11, 2000

APPROVED AS TO FORM:

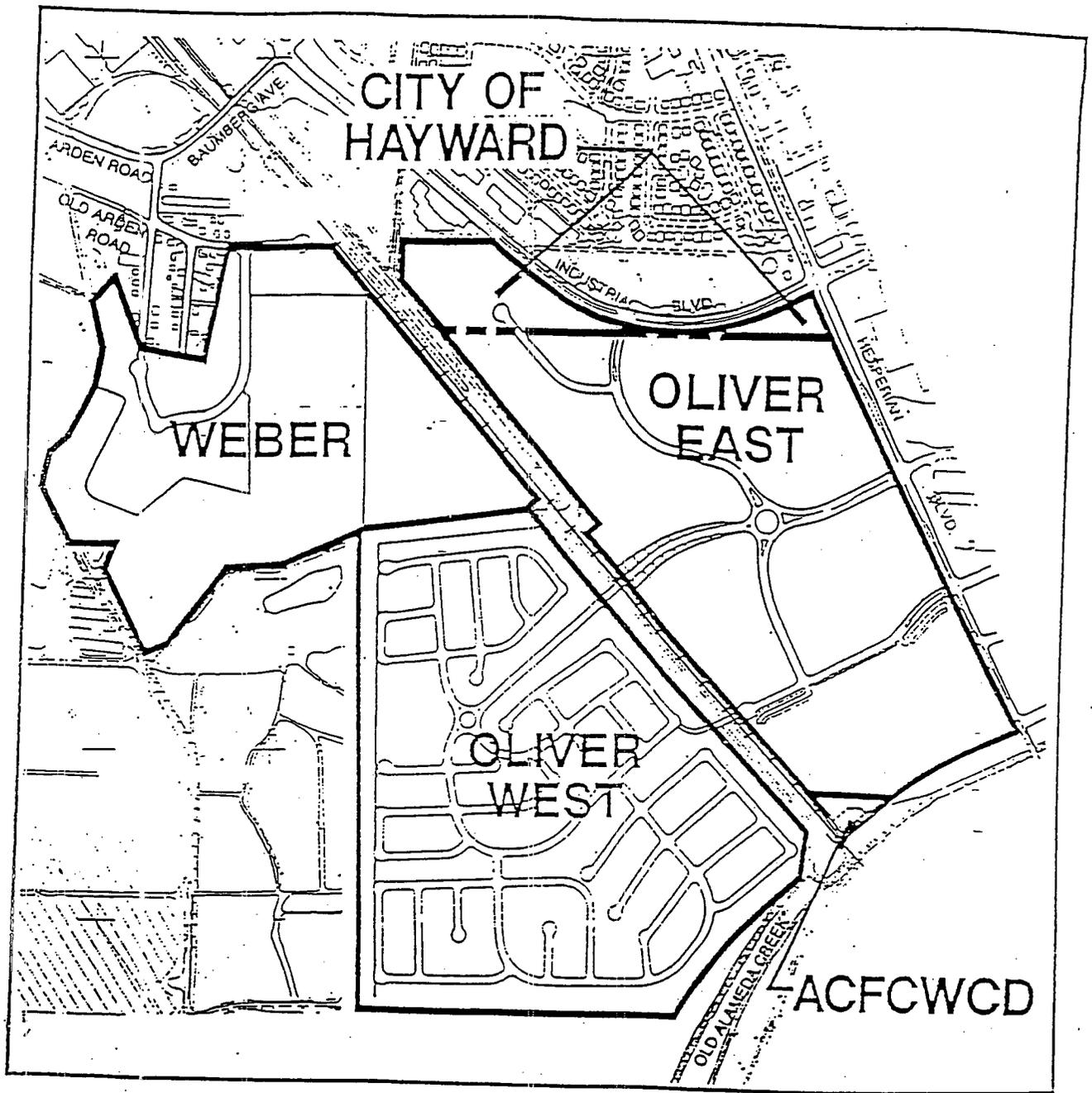
By: M. O. [Signature]
City Attorney

ALAMEDA COUNTY WATER DISTRICT

By: Paul Piraino
Paul Piraino
General Manager

Approved by District
Resolution No. 00-043
Dated: July 13, 2000

ATTEST: Angelina Reyes
Angelina Reyes, City Clerk



SITE MAP