



Office of the City Manager

CONSENT CALENDAR  
July 23, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Public Works Department

Subject: Agreements: Joint Exercise of Powers Agreement Establishing and Governing Operation of the Collection System Technical Advisory Committee and Defendants' Side Agreement to Facilitate Consent Decree Compliance

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute the Joint Exercise of Powers Agreement with the City of Alameda, City of Albany, City of Berkeley, City of Emeryville, City of Oakland, City of Piedmont, the Stege Sanitary District, and East Bay Municipal Utility District, establishing and governing operation of the Collection System Technical Advisory Committee and the Defendants' Side Agreement to facilitate Consent Decree Compliance.

SUMMARY

On September 22, 2014, the City of Berkeley agreed to a Consent Decree filed by the Federal Government and the State of California to perform certain sanitary sewer capital improvements and maintenance work. The work requires collaboration with East Bay Municipal Utility District (EBMUD) and the seven satellite agencies tributary to the EBMUD wastewater system of wet weather facilities and wastewater treatment plant (satellites)<sup>1</sup>. Staff recommends that the City Council approve the resolution (Attachment 1) authorizing the City Manager to execute both the Joint Exercise of Powers Agreement Establishing and Governing Operation of the Collection System Technical Advisory Committee and the Defendants' Side Agreement to Facilitate Consent Decree Compliance.

FISCAL IMPACTS OF RECOMMENDATION

There is no immediate financial impact of the new Joint Exercise of Powers Agreements (JPA) or the Defendants' Side Agreement (DSA). The new JPA will result in cost savings for contracted common services that would otherwise be contracted directly by the City. Any necessary implementation of the DSA in the future should save the City some of the expenses related to revised work plans or performance evaluation plans since the cost allocations and processes are specified in the DSA. The new JPA creates the Collection

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<sup>1</sup> The satellite agencies are the Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District.

System Technical Advisory Committee (CSTAC) and establishes its governance as a means to coordinate on regional efforts, allows for the agencies to contract with EBMUD for fats, oils, and grease (FOG) services and other wastewater collection related services, and provides access to “economies of scale” services procured by EBMUD. The DSA addresses those items implied, though not explicitly clarified, in the Consent Decree, such as an arbitration process to settle disagreements amongst the JPA agencies.

#### CURRENT SITUATION AND ITS EFFECT

The existing JPA for the control of Wet Weather Overflows was signed by the City Manager on January 9, 1986 as authorized by Resolution No. 52,984-N.S. (Attachment 2). The existing JPA is outdated primarily because the Consent Decree was not in place at the time. The new JPA addresses the work requirements and coordination required by the Consent Decree.

East Bay Municipal Utility District and the satellites will be parties to this new JPA that will provide the means for the JPA agencies to:

- Coordinate on engineering, consulting, and possible legal services for the development, preparation and implementation of studies, reports, and projects to address National Pollutant Discharge Elimination System (NPDES) permit conditions
- Jointly fund efforts related to the regional system for wastewater collection, transmission and treatment, FOG services and agreed upon professional services
- Facilitate the efficient flow of information and the filing of joint reports to appropriate recipients, including regulatory agencies

The new JPA is shown in Attachment 3 and includes the following:

- Ability to designate one or more JPA agencies as being responsible for financial and administrative matters, and the process for replacing that member if required or necessary
- Financial responsibility of each JPA agency for administrative overhead costs, as well as proportional responsibility for each contractual commitment
- A governance structure comprised of representatives from each of the signatory agencies, and the authority with regard to decision-making and contracting
- An opt-out provision for contracts entered into participation in contracts is discretionary, at the option of each JPA agency so no agency is obligated to participate in any contract unless it so chooses
- The ability of a JPA agency to withdraw from the JPA

The DSA is shown in Attachment 4 and includes the following:

- A specified arbitration process to settle any disagreements among the Consent Decree defendants regarding Revised Work Plans that could potentially be required under the terms of the Consent Decree.

- Roles and Responsibilities for all Consent Decree defendants, other than the City of Berkeley (which has its own program), regarding the Private Sewer Lateral program
- Cost Allocation for Performance Evaluation Plan (PEP) implementation in the event that a PEP is required under the terms of the Consent Decree.

Executing the JPA and DSA supports the City's Strategic Plan goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities and being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

## BACKGROUND

### Joint Exercise of Powers Agreement

The City of Berkeley is one of eight defendants named in the September 2014 Consent Decree issued by the Federal Government and State of California. The defendants are EBMUD and the satellites tributary to the EBMUD wastewater system of wet weather facilities and wastewater treatment plant. The Consent Decree requires significant work by the defendants over a twenty-two (22) year period with the purpose of eliminating the use of wet weather facilities for flows up to and including design storm events, includes penalties for failure to complete work and failure to meet flow reductions, and processes for potential revisions to future work if flow reductions are not achieved as planned. The defendants are linked through their use of wet weather facilities during high flow periods, as well as through their joint use of the EBMUD treatment plant. The work and the effectiveness (or not) of work in an individual defendant's systems affects the results of the entire system, so there is a definite interrelationship that necessitates the need for good communications and joint efforts in the group.

The City of Berkeley already has a formal relationship with the other defendants (EBMUD and the six other satellites that are tributary to EBMUD) via an existing joint powers agreement (existing JPA) that was adopted in 1979 and amended in 1986. This existing JPA formed no new public entity and was developed in response to the need for these agencies to combine resources to address inflow/infiltration regulatory concerns and orders in the 1970s and 1980s. The existing JPA has enabled the agencies to contract for and administer common collection system services, realizing cost savings over contracting as individual agencies because of the economies of scale evident due to the magnitude of the contracts. EBMUD serves as the lead agency and is responsible for entering into contracts on behalf of the agencies and providing financial and administrative services to the group.

The existing JPA is outdated in that the specific stated purposes for it are outlived or superseded. It is not applicable to current issues and requirements the agencies face and a new agreement needs to be made to address requirements in the 2014 Consent Decree to which all the existing JPA agencies are subject. A new JPA agreement was developed with the input and review of the existing JPA agencies and all except for the City of Berkeley and the City of Oakland secured approval by their governing bodies in

late 2018. Similar to the existing JPA, this new JPA forms no new public entity. Approval of this new JPA replaces and supersedes the existing JPA agreements and amendments.

#### Defendants' Side Agreement

During the Consent Decree negotiations, in addition to revising the JPA, the agencies' technical and legal staffs also recognized the possibility that revised work and evaluation plans may be imposed by the terms of the Consent Decree, and these plans may cause interrelated activities and requirements for some or all of the JPA agencies. It was also recognized that there could be disputes among the agencies regarding these potential future plans and an agreement was needed in advance of the time such plans may be developed; the agencies are related or linked through their use of downstream wet weather facilities and the EBMUD treatment plant. Successful flow reduction in individual JPA agency systems affects overall results of all JPA agencies, therefore, the staff of these agencies initiated a project to develop a Side Agreement to the new JPA in order to define how any future work plans imposed by the Consent Decree would be devised and implemented. The DSA was developed with the input and review of all JPA agencies, and all except for the City of Berkeley and City of Oakland secured DSA approval by their governing bodies, along with the new JPA. However, the JPA agencies, at their joint meeting on May 15<sup>th</sup>, 2019 decided to change the DSA to be executable by five of the members rather than all eight members in the event that City of Oakland does not sign the DSA or other agencies withdraw their participation in the Agreement in the future. The DSA, which all interested JPA agencies will bring to their governing board for approval, is attached as Attachment 4.

#### ENVIRONMENTAL SUSTAINABILITY

The regional collaborative effort from the JPA and DSA has a direct benefit to the environment by supporting compliance with the regulatory requirements and having a long-term plan to eliminate wastewater discharges and overflows to the bay. The collaborative effort will help protect water quality by reducing the frequency of sanitary sewer overflows, and infiltration and inflows into the City's sanitary sewer system that can negatively affect the water quality of the San Francisco Bay.

#### RATIONALE FOR RECOMMENDATION

The new JPA should result in cost savings for contracted common services that would otherwise be contracted for directly by the City. The DSA should save the City some of the expenses related to revised work plans or performance evaluation plans since the cost allocations and processes are specified in the agreement. In addition, these agreements provide for better coordination and facilitate compliance with the Consent Decree.

#### ALTERNATIVE ACTIONS CONSIDERED

No other alternative actions were considered as the agreements are required to comply with the Consent Decree.

CONTACT PERSON

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Andrew Brozyna, Deputy Director, Public Works (510) 981-6496

Nisha Patel, Manager of Engineering, Public Works (510) 981-6406

Attachments:

1. Resolution
2. Resolution No. 52,984-N.S. Authorizing Amendment to JPA Agreement
3. New Joint Exercise of Powers Agreement
4. Defendants' Side Agreement

RESOLUTION NO. ##,###-N.S.

AGREEMENTS: JOINT EXERCISE OF POWERS AGREEMENT ESTABLISHING AND GOVERNING OPERATION OF THE COLLECTION SYSTEM TECHNICAL ADVISORY COMMITTEE AND DEFENDANTS' SIDE AGREEMENT TO FACILITATE CONSENT DECREE COMPLIANCE

WHEREAS, the City is one of eight defendants in the September 2014 Consent Decree issued by the Federal Government and State of California; and

WHEREAS, the Consent Decree requires significant work by all defendants over a twenty-two (22) year period with the purpose of eliminating the use of wet weather facilities for wastewater flows up to and including design storm events; and

WHEREAS, the City already has a formal relationship with EBMUD and the six other wastewater satellite agencies (satellites) that are tributary to EBMUD via an existing joint powers agreement (existing JPA) that was adopted in 1979 and amended in 1986; and

WHEREAS, the existing JPA is outdated in that the specific stated purposes for it are outlived or superseded, it is not applicable to current issues and requirements the agencies face, and a new agreement is required to address requirements in the 2014 Consent Decree to which all defendants are subject; and

WHEREAS, successful flow reduction in individual defendants' systems affects overall results of all defendants, therefore, the staffs of the eight defendant agencies initiated a project to develop a Defendants' Side Agreement (DSA) to a new JPA in order to define how any future imposed work plans will be devised and implemented by the defendants; and

WHEREAS, the new JPA and the DSA were developed with the input and review of all eight defendants.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute the Joint Exercise of Powers Agreement Establishing and Governing Operation of the Collection System Technical Advisory Committee and the Defendants' Side Agreement and any amendments to facilitate Consent Decree compliance. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

RESOLUTION NO. 52,984-N.S.

AUTHORIZING AMENDMENT TO JOINT POWERS AGREEMENT FOR THE INFILTRATION/INFLOW CONTROL PROJECT.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

WHEREAS, by Resolution No. 49,211-N.S., the Council authorized execution of a joint powers agreement with the cities of Alameda, Albany, Emeryville, Oakland and Piedmont, the Stege Sanitary District and East Bay Municipal Utility District for the infiltration/inflow control project; and

WHEREAS, it has become necessary to extend the time period for the agreement and make other changes, as set forth in the draft amendment attached hereto as Exhibit A and made a part hereof.

NOW, THEREFORE, Be it Resolved that the City Manager is hereby authorized to execute the amendment to the joint powers agreement (Exhibit A); a copy of the amendment to be filed in the office of the City Clerk.

Copies sent 12/17/85

To: Public Works  
Auditor

RESOLUTION

No. 52,984 N.S.

Dated November 19, 1985

Adopted by the Council of the City of Berkeley by the following vote:

Ayes: Councilmembers Chandler, Denton, Fukson, Jelinek, Shirek,  
and President Newport.

Noes: None.

Abstaining: None.

Absent: Councilmembers Hester, Lashley, and Skinner.

*Eugene S. Newport*  
Mayor and President of the Council

Attest *Edythe Campbell*  
City Clerk and Clerk of the Council



AMENDMENT TO JOINT EXERCISE OF POWERS  
AGREEMENT FOR CONTROL OF WET WEATHER  
OVERFLOWS AND BYPASSES

This Amendment to Agreement is made and entered into by and between the following owners and operators of community sewer systems: City of Oakland, City of Piedmont, Town of Emeryville, City of Alameda, City of Berkeley, City of Albany and the Stage Sanitary District (all hereinafter referred to as "Communities") and the East Bay Municipal Utility District (hereinafter referred to as "District".)

WHEREAS, Communities and District entered a Joint Powers Agreement (JPA) dated February 13, 1979 for the conduct of a Study for the Control of Wet Weather Overflows and Bypasses in Community Sewer Systems and in the District interceptor system, said Study to include an infiltration/inflow analysis of community sewer systems and a Sewer System Evaluation Study for each community; a copy of said Agreement is attached hereto as Exhibit "A"; and

WHEREAS, the District has served as administrative lead agency for the conduct of said Study and applied for and received federal and state grant funds for the Study; and the goal of the Study was to develop a separate element for each Community and to incorporate the results of the Study with the District's Wet Weather Facilities Plan in order to seek the most cost effective way to eliminate untreated wet weather overflows from community sewer systems and District interceptor treatment systems to the benefit of residents and taxpayers common to communities and District; and

WHEREAS, each community signatory to the JPA, agreed to assume responsibility for implementation and funding study recommendations for its community sewer system to eliminate wet weather overflows; and

WHEREAS, in September 1984 revised NPDES permits were issued to communities and District requiring control of wet weather overflows; and each community and the District were required to submit a Compliance Plan by October 1, 1985; and

WHEREAS, the Draft I/I Study and SSES Report for each community was completed and filed with each community in April 1985; and each community has reviewed and commented on the element of the Study applying to its community service area; and

WHEREAS, each Community has adopted and filed with RWQCB a Compliance Plan accepting major recommendations setting forth a schedule for implementation of said recommendation over

approval of the Technical Advisory Board (TAB), an Implementation Program for the initial five years of community sewer system wet weather projects and programs recommended in the I/I Study and adopted in the respective communities Compliance Plans;

The Program shall include, on an annual basis, programs, studies and projects of general and special benefit as approved by the TAB in an Annual Budget and Work Plan, as provided herein, and shall include a priority list of construction projects for each community (including joint community facilities).

Upon approval of the first Annual Budget and Work Plan of the Implementation Program, District will apply on behalf of communities for state and federal grant or loan funds for the design and construction of projects (including joint community facilities) in the Implementation Program.

The Implementation Program may include such functions as:

- o Development of sewer and lateral testing and rehabilitation methods.
- o Conduct of sewer flow monitoring
- o Conduct of revenue and financial studies
- o Conduct of joint public information programs
- o Coordination of the planning, design and construction of joint community facilities and joint community - district facilities.
- o Coordination of community and district wet weather projects.
- o Coordination of legislative efforts as necessary for joint community benefit.
- o Procurement of necessary equipment for joint community use
- o Development of uniform sewer and lateral construction specifications standards and practices.
- o Other joint wet weather programs of mutual interest and benefit to District and Communities for regional control of wet weather overflows and bypasses.

c) Annual Budget and Work Plan

The five year Implementation Program shall be developed and implemented on a year to year basis, as reflected in Annual Budgets and Work Plans. The Annual Budget and Work Plan shall be divided into separate elements consisting of Part A (joint wet weather programs for general benefit to communities and district, including administrative expenses and a wet weather project priority listing and scheduling), and Part B (wet weather programs whose benefits are significantly greater for one or more communities than for others). Approval of Part A of the Annual Budget and Work Plan shall require a unanimous vote and approval of Part B of the Annual Budget and Work Plan shall require the affirmative vote of a simple majority (five members) of the Board, including the affirmative vote of all members participating in a program of specific benefit.

d) Implementation Revolving Fund.

In order to provide funds to cover costs under this Amendment to Agreement, for District administrative costs, and to facilitate the administration of this Agreement, an implementation revolving fund shall be established as provided herein. This fund shall be separate and independent from the JPA revolving fund established for the Step One East Bay I/I Study.

Within 30 days of the effective date of this Amendment to Agreement, communities agree to deposit with District a total initial sum of \$50,000 to establish said Implementation Revolving Fund, to be paid by each community as follows:

Alameda

Albany

Berkeley

Emeryville

Oakland

Piedmont

Stege

Said initial sum shall be credited towards the pro rata share which each community shall ultimately be required

phases of the Program.

Section 7. "Term" is amended to add the following:

The term of this Amendment to Agreement will be five years from the effective date hereof, or until such time as the work to be accomplished under the State and Federal grants to the lead agency has been accomplished to the announced satisfaction of the SWRCB and EPA, whichever occurs first.

Funds, including any interest earned on deposits, remaining in the Revolving Fund on the completion of the Implementation Program after payment of all Program obligations, shall be distributed to the communities in proportion to their respective contributions.

Section 8. It is understood and agreed that the provisions of the 1979 Joint Exercise of Powers Agreement shall remain in full force and effect, including the "Revolving Fund" provisions, through completion of the Final I/I Study Report, and thereafter as applicable to the Wet Weather Project Implementation Program.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment to Agreement by their duly authorized officers and representatives as of the day and year hereinafter set forth. This Agreement may be executed in counterpart and shall be effective on the date of execution by the last party hereto.

Attest:

CITY OF ALAMEDA

By \_\_\_\_\_

By \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:

CITY OF ALBANY

By \_\_\_\_\_

By \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:

CITY OF BERKELEY

By \_\_\_\_\_

By \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**JOINT EXERCISE OF POWERS AGREEMENT  
ESTABLISHING AND GOVERNING OPERATION  
OF THE COLLECTION SYSTEM TECHNICAL ADVISORY COMMITTEE**

This Joint Exercise of Powers Agreement (“Agreement”) is made and entered into by and between the following owners and operators and community sewer systems: CITY OF ALAMEDA, CITY OF ALBANY, CITY OF BERKELEY, CITY OF EMERYVILLE, CITY OF OAKLAND, CITY OF PIEDMONT and STEGE SANITARY DISTRICT (all hereinafter referred to as “Communities”) and EAST BAY MUNICIPAL UTILITY DISTRICT (hereinafter referred to as “District”), jointly hereinafter referred to as Collection System Technical Advisory Committee (“CSTAC”) Agencies (“CSTAC Agencies” or individual Communities or the District as an “Agency” or a “CSTAC Agency”).

RECITALS

A. Communities own, operate and maintain community sewer systems for the collection and transport of sewage and industrial wastes from residents and industries within the boundaries of the Special District No. One of District.

B. District owns, operates and maintains interceptors and sewage treatment facilities for the interception and treatment of sewage and industrial wastes flowing from said Communities’ sewer systems.

C. In February 1975, District did, with the assistance and cooperation of Communities, file with the Regional Water Quality Control Board, and the governing bodies of Communities, that certain report entitled, “The Control of Wet Weather Overflows” and said report did include an infiltration and inflow analysis of the respective sewer systems of said Communities, as well as the interceptor facilities of District and did recommend the development of certain alternatives for further study to develop projects for the control of wet weather flows and said alternatives consist generally of Project A (Sewer System Evaluation Study and Infiltration-Inflow Control) to be undertaken by Communities by separating combined sewers and disconnecting roof leaders, yard drains and catch basins and of Project B (wet weather flow storage-treatment) to be undertaken by District by constructing storage and treatment facilities to reduce overflows from the interceptor and treatment plant systems.

D. The CSTAC Agencies entered into that certain “Joint Exercise Powers Agreement for Control of Wet Weather Overflows and Bypasses” dated February 13,

1979, for the purpose of establishing responsibilities with respect to further study of the alternatives to address wet weather overflows.

E. In September 1984, National Pollutant Discharge Elimination Systems (NPDES) permits were issued to CSTAC Agencies which require control of wet weather overflows.

F. On January 17, 1986, the CSTAC Agencies amended the February 13, 1979, agreement to provide for the 5-year initial phase of implementation of wet weather overflow study recommendations and provide for the performance of joint efforts to carry out wet weather implementation programs described therein.

G. In furtherance of the study recommendations, District designed and constructed three (3) Wet Weather Facilities (“WWFs”) during the period between 1987 and 1996 that provide primary treatment and disinfection of peak flows that would otherwise be discharged untreated into the San Francisco Bay.

H. The United States Environmental Protection Agency (“EPA”) and the California State Water Resources Control Board (“State Water Board”) determined in 2004 and 2007, respectively, that the WWFs do not provide the level of treatment required by law, and California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”) subsequently reissued the District’s WWF NPDES permit on January 14, 2009, and such reissued permit prohibited further discharges from the WWFs.

I. On January 15, 2009, Plaintiff United States of America (“United States”), on behalf of the EPA and Plaintiff People of the State of California *ex rel.*, State Water Board and Regional Water Board (together with the State Water Board, “Water Boards”) filed a complaint against the District pursuant to section 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319, and Cal. Water Code sections 13376, 13385 and 13386, in *United States, et al. v. East Bay Municipal Utility District*, Case No. C 09-00186 RS (N.D. Cal.) (“District Litigation”).

J. Inflow and Infiltration of stormwater into the Communities collection systems and sewer laterals during severe wet weather events - via cross-connections, cracks and other imperfections in system pipes, joints and manholes - can lead to a greater-than-10-fold increase in the volume of wastewater that reaches the District’s interceptor system. During such severe wet weather events, partially treated discharges from the WWFs are discharged to the San Francisco Bay.

K. Reduction of inflow and infiltration requires the active participation of the Communities. On December 3, 2009, the United States, on behalf of the EPA, filed a complaint against the Communities pursuant to section 309 of the CWA, 33 U.S.C. § 1319, in *United States, et al. v. City of Alameda, et al.*, Case No. C 09-05684 RS (N.D. Cal.) (“Communities Litigation”).

L. The complaint filed in the Communities Litigation alleged that the Communities have discharged pollutants without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a), and have discharged pollutants and failed to properly operate and maintain their sanitary sewage collection systems in violation of the terms and conditions of their NPDES Permits. The complaint joined the State of California to this action pursuant to section 309(e) of the CWA, 33 U.S.C. § 1319(e).

M. On September 22, 2014, the court entered a Consent Decree resulting from the District Litigation and Communities Litigation brought by the EPA against the CSTAC Agencies. The work required by the Consent Decree represents a comprehensive regional asset management approach by eight (8) different agencies and is based on complex and evolving hydrologic and hydraulic modeling. The term of the Consent Decree, including the ultimate compliance deadline for eliminating discharges from the last WWF by the end of 2035, represents CSTAC Agencies’ understanding regarding an achievable timeline based on current information.

NOW, THEREFORE, the CSTAC Agencies hereto agree as follows:

1. Purpose. CSTAC Agencies wish to enter into this Agreement to establish and govern the operation of the CSTAC. The CSTAC is a decision-making body formed of representatives of the member agencies but is not an agency or entity separate from its members. The purpose of the CSTAC is to provide means for the CSTAC Agencies to do all of the following: (1) coordinate on engineering, consulting, and potentially legal services for the development, preparation and implementation of studies, reports and projects to address NPDES permit conditions for the CSTAC Agencies and additional legal or regulatory requirements applicable to the regional wastewater collection, transmission, and treatment system, and (2) jointly fund efforts related to the regional system for wastewater collection, transmission, and treatment, as may be agreed to by the CSTAC Agencies in accordance with this Agreement, which may include payment for Communities’ fats, oils and grease (FOG) services and agreed upon professional consultant services, and (3) facilitate the efficient flow of information among the parties and the filing of joint reports to appropriate recipients.

2. Decision Making Structure. Decisions regarding the actions of CSTAC including decisions regarding which projects to pursue and fund, will be made by a committee made up of one (1) designated staff representative from each CSTAC Agency. This body of CSTAC Agency staff representatives shall be referred to as the "Committee." Each designated representative will have the authority to vote on behalf of that Agency, and one or more designated alternates will have the authority to vote on behalf of that Agency when the designated representative is absent or in the case of a conflict of interest. Each Agency shall have one (1) vote on the Committee. Except for voting on the annual budget, and special, unbudgeted, or outside projects, all other CSTAC decisions will require a minimum of a majority of affirmative votes by designated representatives or designated alternates of all CSTAC Agencies.

(a) Committee Meetings. A quorum shall be present or present by telephone for all Committee meetings. A quorum is a simple majority of CSTAC member agencies. Votes may be taken by voice vote or from the designated representatives present or attending by telephone at a noticed Committee meeting. Written votes may be submitted on behalf of a CSTAC Agency at a meeting when neither the designated representative nor the designated alternate can be present at the meeting or attend by telephone.

CSTAC shall elect a chair and vice chair as its officers annually at the first meeting of the fiscal year or as soon thereafter as is practical. The election may be administered by a written vote of CSTAC Agencies tabulated by the "Administrative Agency" (discussed in Section 3), if difficulty in obtaining a quorum, resignation or unavailability of officers or other occurrence prevents holding of an election at a Committee meeting early in a fiscal year. Each officer may serve for two (2) consecutive years in either of the positions. Additional sequential terms may be permitted by a supermajority vote of CSTAC Agency representatives as set forth below.

(b) Fiscal Year. This Agreement and all decisions made herein shall operate on a fiscal year basis, where such fiscal year commences on July 1 and ends on June 30. All references to "annual" or "annually" in this Agreement relate to the fiscal year.

(c) Annual Budget. The scope of the work to be performed will be determined annually as part of the annual budget. The Committee shall annually prepare and adopt a budget prior to the beginning of each fiscal year, and no later than June 30 of each year. To adopt or modify the annual budget or approve any



unbudgeted projects, a minimum of seven (7) affirmative votes of the Committee members will be required. The budget shall include, but not be limited to, anticipated total annual expenditures, other contemplated expenditures, and any contingency reserve amount. The budget shall also contain sufficient detail to specify the anticipated projects and administrative costs for the fiscal year, a basis for the annual contribution of each Agency, and the total amount of administrative costs that will be reimbursed to the Administrative Agency or a procedure for effecting such reimbursement.

If fewer than eight (8) CSTAC Agencies remain parties to this Agreement due to withdrawal or termination in subsequent years, then a supermajority of affirmative votes of the remaining CSTAC Agencies is required in order to adopt or modify the annual budget or approve any unbudgeted projects. A supermajority is determined as follows: if seven (7) CSTAC Agencies remain then six (6) votes are required; if six (6) CSTAC Agencies remain, then five (5) votes are required; if five (5) CSTAC Agencies remain, then four (4) votes are required; if four (4) CSTAC Agencies remain, then three (3) votes are required. The term "supermajority" as used elsewhere in this Agreement shall have the meaning set forth in this paragraph.

(d) Joint and Special Projects. Joint projects are those that are undertaken jointly by CSTAC Agencies and provide a measure of benefit to all CSTAC Agencies. Joint projects typically will be approved through the annual budget process. As benefits may differ among CSTAC Agencies for joint projects, the proportionate funding responsibility for joint projects will be designated through the annual budget process.

Special projects are those that are undertaken through this CSTAC Agreement and are set forth in the annual budget, but where one or more CSTAC Agencies will not participate. A non-participating CSTAC Agency will not be required to fund the costs associated with a special project, such special project shall be the separate responsibility of the participating agencies. Any contract, obligation, or liability related to such project shall not constitute a debt, liability, or obligation of such non-participating CSTAC Agency. All CSTAC Agencies participating in a special project must vote favorably to the inclusion of the special project in the budget and the cost sharing proportion set forth therein.

(e) Unbudgeted Project Approval. Unbudgeted projects are projects that: (a) were either not included in the annual budget (new projects); or (b) pertain to projects that were included in the budget, but require supplemental

authorization to carry out additional activities that were not contemplated in the budget. Both new projects and projects that require supplemental authorization shall be approved by a minimum of seven (7) affirmative votes of the CSTAC Agencies or a supermajority of affirmative (as described in Section 2(c) above) votes if fewer than eight (8) CSTAC Agencies remain parties to the Agreement.

If the annual budget is not sufficient to fund the unbudgeted project, then within forty-five (45) days of the unbudgeted project's approval, the Administrative Agency shall conduct an evaluation of the CSTAC Agencies' ability to pay the unfunded portion of unbudgeted project costs and take appropriate steps to prevent project costs in excess of any Agency's ability to fund its cost share.

Any Agency may choose to opt out of any unbudgeted project at the time of its approval and will not be required to contribute funds toward such a project. If one or more of the CSTAC Agencies opt out of an unbudgeted project, then said project will be deemed an outside project.

(f) Outside Projects. Outside projects are projects that were not included in the annual budget and that only some CSTAC Agencies choose to pursue. At least two (2) CSTAC Agencies must participate in an outside project. Agencies wishing to participate in an outside project must unanimously approve the outside project. Participating agencies will allocate and assess costs separately from joint and special projects. Agencies that do not participate in the outside project will not be required to contribute funds toward the outside project, and the outside projects shall be the separate responsibility of the participating agencies. Any contract, obligation, or liability related to such project shall not constitute a debt, liability, or obligation of such non-participating CSTAC Agency. If requested and authorized by the participating Agencies, the Administrative Agency may also serve as Administrative Agency for the outside project, and shall account for all finances of the outside projects and projects undertaken pursuant to this Agreement entirely separately.

3. Administrative Agency and Financial Agent: Authority, Responsibilities and Duties.

(a) One of the CSTAC Agencies shall serve as the "Administrative Agency" and in that role shall administer the projects undertaken jointly pursuant to this Agreement to accomplish the purposes of this Agreement, subject to the limitations herein set forth.

(b) The Committee may select the Administrative Agency with a minimum of six (6) affirmative votes, or by a supermajority vote as described in Section 2(c) if fewer than eight (8) agencies remain CSTAC members. The District and Stege Sanitary District have agreed to initially continue to assume their existing roles of serving as the Administrative Agency for selected tasks for the remainder of the fiscal year in which this Agreement becomes effective, and for the first full fiscal year that follows. The District has also agreed to continue to act as the “Financial Agent” (as defined in Section 3(h) below) for that same period.

(c) Neither the Administrative Agency nor CSTAC will authorize any work in a Community without the concurrence of the designated representative of the Community.

(d) The Administrative Agency shall perform routine administrative and legal functions incident to the administration of approved CSTAC projects.

(e) The Administrative Agency shall be responsible for administering the services on behalf of the CSTAC Agencies provided by engineers, consultants or attorneys.

The Administrative Agency may enter into contracts on behalf of the CSTAC Agencies without specific Committee approval, provided that the contract is within the adopted annual budgetary authorization, and that the total aggregate annual value of each contract does not exceed Fifteen Thousand Dollars (\$15,000.00). Contracts that are not consistent with the approved annual budget or exceed a total aggregate annual value of Fifteen Thousand Dollars (\$15,000.00) shall require specific Committee approval separate from the annual budget and a minimum of six (6) affirmative votes of the CSTAC members or a supermajority if there are less than eight (8) CSTAC members. This not-to-exceed Administrative Agency contracting limit may be adjusted from time to time by a supermajority vote of the Committee. The Administrative Agency shall procure such contracts in a manner that complies with the contracting laws, policies, and practices that govern the Administrative Agency.

(f) The Administrative Agency will be responsible for making payments, or authorizing payments if the Administrative Agency is not the Financial Agent of CSTAC. This authority shall include payments to engineers, consultants or attorneys on behalf of the CSTAC Agencies. The Administrative Agency shall provide regular financial reports to the Committee of all payments made and outstanding

balances remaining on all projects. No payments shall be made in excess of the authorized project amount without unanimous approval of the Committee.

(g) The term of the Administrative Agency shall be at least one (1) full fiscal year. The Administrative Agency may resign its position as Administrative Agency upon written notice to all CSTAC Agencies within one hundred twenty (120) days prior to the end of the fiscal year. Unless otherwise agreed to by the Administrative Agency and a majority of CSTAC members, the last day of the fiscal year shall be the effective date of resignation. Upon resignation, the successor Administrative Agency shall direct the prior Administrative Agency to transfer or cause to have transferred to it all funds held on behalf of the CSTAC Agencies, CSTAC records and financial statements that were in the prior Administrative Agency's possession. The prior Administrative Agency shall also take any further action necessary to effectuate the transfer of Administrative Agency duties and responsibilities as directed by a majority of CSTAC members.

The successor Administrative Agency shall be chosen by a supermajority vote of the CSTAC as is set forth above for the initial selection of the Administrative Agency. If thirty (30) days after the resignation effective date no successor Administrative Agency is designated or no alternative administrative protocol is adopted by a vote of the CSTAC, this Agreement shall terminate and the prior Administrative Agency shall, with the assistance of the Financial Agent, distribute all property held on behalf of the CSTAC Agencies pursuant to Section 11.

(h) Either the Administrative Agency or another CSTAC Agency will be the Financial Agent of the CSTAC Agencies, subject to CSTAC approval by majority vote. The Financial Agent will be the depositor, and will have custody of all money of the CSTAC Agencies, strictly accounting for all CSTAC Agency funds held pursuant to this Agreement in trust in a segregated, interest bearing account. Any CSTAC Agency that assumes the role of Financial Agent must keep sufficient records that would allow appropriate review by an outside auditor at any time, at the request of the Administrative Agency or a majority of the CSTAC Agencies. The Administrative Agency's financial activities shall also be subject to an outside audit at any time, at the request of a majority of the CSTAC Agencies. For the remainder of the fiscal year in which this Agreement becomes effective, and for the first full fiscal year that follows, the District has agreed to act as the Financial Agent.

(i) There may be circumstances where it benefits CSTAC to designate a second Agency to serve as the Administrative Agency for one or more CSTAC projects. This may occur to facilitate ease of contracting and procurement of

consultants, or when a CSTAC Agency has a special interest or experience related to one or more CSTAC projects or programs. A second Community or the District may be designated as an Administrative Agency for designated projects or programs by a supermajority vote of the Committee. The term and scope of that Agency's administrative responsibilities shall be set forth by the Committee consistent with the general provisions for the Administrative Agency set forth herein. The authority and responsibility of any Agency providing Administrative Agency functions at the time this Agreement becomes effective shall continue at least until the end of the first full fiscal year, consistent with Section 3(g) above.

4. Cost Estimate and Proportionate Community Share.

(a) Distribution of Costs. Except as provided herein with respect to the participation in and funding of outside projects, each of the CSTAC Agencies agrees to contribute its annual share of the estimated project costs based upon the approved allocations adopted with the annual budget or as designated and approved subsequent to the adoption of the annual budget.

Upon approval of the annual budget or any approved mid-year project, each of the CSTAC Agencies agrees to contribute its share of the costs in cash and/or creditable goods, materials, supplies or services as agreed to at the time of such approval. Creditable goods, materials, supplies or services are those goods, materials, supplies or services that are properly chargeable to the relevant project. None of the signatories to this Agreement shall be entitled to a credit for goods, materials, supplies or services furnished unless the credit has been previously approved by CSTAC. In allocating costs to the CSTAC Agencies hereto, the Administrative Agency shall give credit for the furnishing of such creditable goods, materials, supplies or services. When creditable goods, materials, supplies and services are furnished by CSTAC Agencies, they shall be charged for and invoiced in accordance with the accounting practices of the particular Agency unless otherwise agreed to in advance by CSTAC .

No compensation shall be paid under the terms of this Agreement to any member of the CSTAC for services rendered in such capacity.

Each party's financial obligation hereunder is expressly limited to the appropriation and contribution of such funds as are provided for in this Agreement.

(b) Administrative Costs. The Administrative Agency shall be reimbursed for its reasonable direct and indirect administrative costs incurred,

commencing upon execution of this Agreement. In accounting for donated labor services, reimbursement shall be made at the rate of one hundred ten (110) percent of the Administrative Agency's labor charges for employees working on administrative tasks for the CSTAC Agency. For any period of less than one (1) month, said charge shall be prorated.

In accounting for goods, materials, supplies and services (other than labor services) furnished by Administrative Agency under this Agreement, actual cash value, rental values, or hourly rate shall be used in accordance with the Administrative Agency's standard accounting practices and in accordance with any applicable state and federal grant guidelines. The Administrative Agency shall provide CSTAC with a budget of anticipated administrative costs and shall make periodic reports, at least annually, to said CSTAC. Said budget shall be approved by two-thirds (2/3) of the members of the Committee. The Administrative Agency and the Financial Agent shall be strictly accountable for all funds received and expended on behalf of the CSTAC Agency.

5. Revolving Fund. In order to provide funds for all expenditures authorized by this Agreement, including Administrative Agency administrative costs, and to facilitate the administration of this Agreement, a revolving fund shall be established as provided herein. On or about July 1 of each year, after CSTAC adopts the annual budget, the Financial Agent shall send an invoice to each CSTAC Agency that sets forth that Agency's total annual allocated costs of the work ("budget payments"). On or before August 1 of each year, each CSTAC Agency shall remit to the Financial Agent a minimum of one-half (1/2) of that Agency's annual budget payments, which money the Financial Agent shall hold solely for payment to consultants for services rendered. Each Agency shall remit its other half of budget payments due to the Financial Agent on or before December 20 of each year.

Upon the Financial Agent's determination that monies submitted by the CSTAC Agencies have been or will be exhausted, the Financial Agent, in coordination with the Administrative Agency, shall notify each CSTAC Agency of its share of the costs of the work, and each CSTAC Agency shall promptly deposit its share with the Financial Agent. Each CSTAC Agency's share shall be fixed in the same proportion as that Agency's proportion of the general annual budget, unless the shortfall is due to costs resulting from special projects for which the Agency did not participate or contributed an agreed to, customized share. No reimbursements shall be made to any Agency until said share is deposited with the Financial Agent. CSTAC Agencies

shall be responsible for submitting payment to the Financial Agent for any additional invoices no later than ten (10) days before each payment is due.

If, in the Financial Agent's determination, there are sufficient funds in the revolving fund at the time the annual budget payments would be due, the Financial Agent will notify the CSTAC Agencies that their annual budget payments need not be paid for that year, or that the payments may be reduced by any carry over balances from the preceding annual budget. The Financial Agent's notification that annual budget payments are not required or have been reduced shall not excuse the CSTAC Agencies from their ongoing obligations to fund payment of work.

6. Payments. Pursuant to this Agreement, all payments shall be by check, warrant or electronic transfer. The Administrative Agency and/or the Financial Agent shall indicate the address where payments shall be sent and to whom payments shall be made payable.

7. Effective Date and Term. The Effective Date of this Agreement shall be the first date that it has been signed by at least six (6) CSTAC Agencies. The initial term of this Agreement shall be two (2) years from the Effective Date. For CSTAC Agencies that remain active parties to this Agreement, the term shall automatically renew in one (1) year increments unless and until the Agreement is terminated by mutual written agreement of the CSTAC Agencies or as otherwise provided for in Section 11, provided that any CSTAC Agency may withdraw from the Agreement as provided in Section 9.

8. Notices. Notices and invoices shall be delivered to the CSTAC Agencies at the following addresses via U.S. mail:

City of Alameda  
2263 Santa Clara Avenue  
Alameda, CA 94501

City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

City of Oakland  
One Frank Ogawa Plaza  
Oakland, CA 94612

City of Piedmont  
120 Vista Avenue  
Piedmont, CA 94611

East Bay Municipal Utility District  
375 11th Street  
Oakland, CA 94607

Stege Sanitary District  
7500 Schmidt Lane  
El Cerrito, CA 94530

9. Withdrawal. Any CSTAC Agency may withdraw from this Agreement by providing no less than ninety (90) days written notice prior to the end of the fiscal year. Any CSTAC Agency that does not provide requisite notice to withdraw shall automatically remain as an active member of this Agreement. A withdrawing CSTAC Agency shall still be financially responsible for its shared costs for any work done or continuing thereafter while it was a party to this Agreement, including pre-authorized work continuing thereafter. The withdrawing CSTAC Agency's financial responsibility is limited to work performed, or costs approved, during the fiscal year in which notice of withdrawal is given, unless a specific CSTAC supermajority approval was provided for multi-year funding of a joint project prior to the notice of withdrawal and the withdrawing Agency voted affirmatively. The Administrative Agency shall calculate any amount owed by the withdrawing Agency for its share of costs of the annual budget, and the Agency's withdrawal will be effective upon proper notice and payment to the Administrative Agency of its remaining annual budget share. The withdrawing Agency shall have no right to receive any proportional share of any net surplus that may result from the last year's annual budget. However, CSTAC has authority to direct any distribution to the withdrawn Agency that CSTAC deems appropriate.



10. Default and Remedies. If a CSTAC Agency fails to make a payment or to provide assurances within fifteen (15) business days after receipt of notice given by the Administrative Agency of such non-payment, that Agency shall be in default of this Agreement (“Defaulting Agency”) and the Administrative Agency may suspend the provision of services under this Agreement for that CSTAC Agency. A minimum of five (5) affirmative votes of the CSTAC are required to suspend or terminate this Agreement with respect to a Defaulting Agency provided there are eight (8) CSTAC Agencies prior to termination. A supermajority applies if there are fewer remaining members as described in Section 2(c).

CSTAC may also take such other action to remedy the default. The suspension or termination of this Agreement will not terminate, waive or otherwise discharge any ongoing liability for payment arising from this Agreement until such obligations are satisfied in full. In the event a Defaulting Agency is terminated, this Agreement will not automatically renew for the Defaulting Agency, and a simple majority vote of remaining CSTAC members is required to reinstate the Defaulting Agency. Following termination of any Defaulting Agency, the remaining CSTAC Agencies shall cooperate and act in good faith to negotiate and agree upon the method of reallocating the costs attributable to the terminated Defaulting Agency.

11. Termination and Disposition of Funds upon Termination. This Agreement shall terminate upon the earliest occurrence of any of the following: (a) mutual written agreement of all CSTAC Agencies that remain parties to the Agreement; (b) if CSTAC members are unable to obtain the required affirmative supermajority of votes to approve the next year’s annual budget; (c) if a successor Administrative Agency is not timely designated; or (d) if all CSTAC Agencies have withdrawn from the Agreement. Upon termination of this Agreement, and after payment of all engineering, consultant, and legal obligations, all assets remaining in the Revolving Fund, including any interest earned on deposits shall be distributed to any remaining CSTAC Agencies. Assets available for distribution shall be returned to the members remaining at the time of dissolution in a manner consistent with and in proportion to each remaining Agency’s respective contribution. Similarly, any liabilities in excess of the assets held by the Administrative Agency on behalf of the CSTAC Agencies at the time of dissolution shall be assessed against those CSTAC Agencies, and the CSTAC Agencies shall be responsible for such liabilities.

12. CSTAC Agencies not Agents; Indemnification.

(a) With the exception of the Administrative Agency when performing its duties as Administrative Agency and the Financial Agent when

performing its duties as Financial Agent, in the performance of this Agreement, each Agency and its agents, employees, and contractors shall act in an independent capacity and not as officers, employees or agents of any other Agency.

(b) Costs and liabilities associated with paying the Administrative Agency, engineers, consultants, or attorneys, and the funding of joint projects, shall be allocated in accordance with Section 4. Costs and liabilities related to the funding of special projects shall be allocated in accordance with Section 4, subject to the exclusions provided for the benefit of non-participating agencies in Section 2(d). Costs and liabilities for outside projects shall be allocated between the participating CSTAC Agencies and set forth in a separate side agreement.

(c) In the case of non-contractual liabilities arising out of the activities of one or more individual Agencies under this Agreement, CSTAC Agencies specifically repudiate the divisions of liability outlined in Government Code sections 895.2, 895.4, and 895.6 and instead agree to share liability based on the relative fault of each individual CSTAC Agency. Each CSTAC Agency shall have the right to contribution against other Agencies based on the terms of this Agreement.

Each CSTAC Agency agrees that it is solely responsible for all loss, liability, expense, claims, suits, and damages, including attorneys' fees, relating to or arising out of the design, construction, inspection, operation, or maintenance of its projects undertaken without the approval of the Committee, excepting such loss, liability, expense, claims, suits, and damages, including attorneys' fees, relating to or arising out of the actions or activities of the other CSTAC Agencies. Each CSTAC Agency agrees that nothing in this Agreement shall create, impose, or give rise to any liability, obligation, or duty of the CSTAC Agency to the other CSTAC Agencies or to any third party with respect to the manner in which the CSTAC Agency designs, constructs, inspects, operates or maintains the projects that it undertakes without the approval of the CSTAC Committee.

Each CSTAC Agency agrees to indemnify, defend, and hold harmless the Administrative Agency and the Financial Agent from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, relating to or arising out of any contract entered into by or administered in whole or part by the Administrative Agency or the Financial Agent for the benefit of said CSTAC Agency (collectively, "Covered Losses"), provided that the CSTAC Agency share of liability for Covered Losses shall be reduced in proportion to the extent (if any) the Covered Losses resulted from the negligence of, or the breach of this Agreement by, the Administrative Agency or the Financial Agent. In the event of concurrent negligence

of one or more CSTAC Agency(ies) and the Administrative Agency or the Financial Agent, then the liability for any and all Covered Losses shall be apportioned according to the California theory of comparative negligence.

The provisions of this Section 12(c) will survive the expiration or termination of this Agreement and as against any Agency that has withdrawn from this Agreement.

13. Dispute Resolution. The Agencies shall resolve their disputes informally to the maximum extent possible. The disputing Agencies shall negotiate all matters of joint concern in good faith, with the intention of resolving issues between them in a mutually satisfactory manner. If the disputing Agencies cannot informally resolve the dispute, they shall first attempt to resolve such dispute through non-binding mediation for a period not to exceed ninety (90) days, unless that period is mutually extended by the parties involved. If the Agencies cannot mutually agree upon a mediator, then the Presiding Judge of the Alameda County Superior Court shall designate a mediator. Should mediation be unsuccessful, the dispute may be referred to private arbitration upon mutual written approval of the disputing Agencies. If the disputing Agencies do not mutually agree in writing to arbitration, a disputing Agency may commence an adversarial proceeding before any court of competent jurisdiction in the county of Alameda.

14. Entire Agreement. This Agreement, together with any exhibits hereto, constitutes the entire agreement among the CSTAC Agencies with respect to the subject matter hereof, and supersedes all prior understandings or agreements whether written or verbal.

15. Amendment. This Agreement may not be amended except in writing. Any such amendment must be approved and executed by all CSTAC Agencies that remain party to the Agreement at the time of the amendment.

16. Drafter. Each CSTAC Agency has participated in negotiating and drafting this Agreement. If an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the CSTAC Agencies had drafted it jointly, as opposed to being construed against an Agency because it was responsible for drafting one or more provisions of this Agreement.

17. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

18. Governing Law; Venue. This Agreement shall be interpreted, governed by and construed under the laws of the state of California. Venue for any legal proceeding initiated to enforce or interpret the terms of this Agreement shall be in the Superior Court of the County of Alameda, California.

19. Execution of Separate Agreements by CSTAC Agencies. Nothing in this Agreement shall preclude any CSTAC Agency from executing separate agreements among two (2) or more such CSTAC Agency members for activities which are similar and in addition to the activities pursued under this Agreement. Any such separate agreement for projects which are not approved by the CSTAC Committee shall not be the responsibility of any CSTAC Agency which is not a signatory to such separate agreement. CSTAC Agencies operating under this Agreement shall not assume any responsibility or liability for activities performed under such a separate agreement.

20. Supersede Prior Agreements. Immediately upon Effective Date of this Agreement, this Agreement shall replace and supersede in its entirety that certain Joint Exercise of Powers Agreement for Control of Wet Weather Overflows and Bypasses dated February 13, 1979, by and between the CSTAC Agencies, and that certain Amendment to Joint Exercise of Powers Agreement for Control of Wet Weather Overflows and Bypasses dated January 17, 1986, by and between the CSTAC Agencies, and said 1979 and 1986 agreements shall be cease to be of further legal effect.

21. Execution of Agreement in Separate Parts. This Agreement may be executed by the CSTAC Agencies in separate parts. The Effective Date of this Agreement shall be the date when the sixth (6th) CSTAC Agency executes the Agreement.

**CITY OF ALAMEDA**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: David Rudat

Title: Interim City Manager

**CITY OF ALBANY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Nicole Almaguer \_\_\_\_\_

Title: \_\_\_\_\_ City Manager \_\_\_\_\_

**CITY OF BERKELEY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Dee Williams-Ridley \_\_\_\_\_

Title: \_\_\_\_\_ City Manager \_\_\_\_\_

**CITY OF EMERYVILLE**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ James N. Holgersson \_\_\_\_\_

Title: \_\_\_\_\_ City Manager \_\_\_\_\_

**CITY OF OAKLAND**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Jason Mitchell \_\_\_\_\_

Title: \_\_\_\_\_ Director of Public Works \_\_\_\_\_

**CITY OF PIEDMONT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Paul Benoit

Title: City Administrator

**EAST BAY MUNICIPAL UTILITY DISTRICT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Eileen M. White

Title: Director of Wastewater

**STEGE SANITARY DISTRICT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Rex Delizo

Title: District Manager

**DEFENDANTS' SIDE AGREEMENT TO  
FACILITATE CONSENT DECREE COMPLIANCE**

This Side Agreement to Facilitate Consent Decree Compliance ("Agreement") is entered into by and among the CITY OF ALAMEDA, CITY OF ALBANY, CITY OF BERKELEY, CITY OF EMERYVILLE, CITY OF OAKLAND, CITY OF PIEDMONT and STEGE SANITARY DISTRICT (collectively, the "Satellites") and EAST BAY MUNICIPAL UTILITY DISTRICT ("EBMUD"). The Satellites and EBMUD are collectively referred to as the "Defendants."

RECITALS

A. On September 22, 2014, a stipulated final judgment was entered in the consolidated cases *United States, et al. v. EBMUD* (N.D. Cal. CV 09-0186 RS) and *United States, et al. v. City of Alameda, et al.* (N.D. Cal. CV 09-5684 RS). That stipulated final judgment is referred to in this Agreement as the "Consent Decree."

B. The Consent Decree requires the Defendants to perform numerous interrelated actions over a period of time.

C. To facilitate compliance with the Consent Decree, the Defendants wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and following provisions of this Agreement and the Defendants' promises in the Consent Decree, the Defendants agree as follows:

AGREEMENT

1. Definitions. All terms with initial capitals not defined in this Agreement shall be defined as provided in the Consent Decree.

2. Arbitration. In the event the Defendants are required under the Consent Decree to prepare and submit a Revised Work Plan ("RWP"), the Defendants shall submit any disagreement (regarding the contents of the RWP or selection of competing RWPs) to arbitration by a panel of three arbitrators. The arbitration will be subject to the joint-defense-privilege as stated under the Consent Decree.

(a) In advance of the confidential arbitration, each Defendant shall either: (1) declare its support for a single RWP that is presented to the panel, or (2) declare that it will accept any of the proposed RWPs and opt out of participation in the arbitration process, in which case it shall have no liability for any costs of

arbitration. More than one Defendant may declare support for a single RWP. Thus, the panel may be presented with anywhere from two to eight RWPs (there being a total of eight Defendants, and there being no need for arbitration if they all support a single RWP).

(b) The first arbitrator shall be the Chair of the Department of Civil Engineering at one of the following universities: California/Berkeley, California/Los Angeles; CalTech, Carnegie Mellon, MIT, Stanford, or other comparable civil or environmental engineering expert agreed to by the Defendants. If the Defendants cannot agree on which Chair shall serve, a Chair shall be chosen by drawing lots.

(c) The second arbitrator shall be the Dean of the Graduate School of Public Policy at one of the following universities: California/Berkeley (Goldman), University of Southern California (Price), University of Washington (Evans), University of California/Los Angeles (Luskin) or University of Chicago (Harris), or other comparable public policy expert agreed to by the Defendants. If the Defendants cannot agree on which Dean shall serve, a Dean shall be chosen by drawing lots.

(d) The third arbitrator shall be an experienced professional arbitrator chosen from the panel of the Judicial Arbitration and Mediation Service ("JAMS"). If the Defendants cannot agree on which such arbitrator shall serve, each Defendant shall submit a nominee, and the arbitrator shall be chosen by drawing lots. Any disputes regarding procedural matters (e.g., the length of briefs, the timing for filing them, etc.) shall be decided by this arbitrator alone, applying JAMS' Streamlined Arbitration Rules and Procedures.

(e) The fees and costs of the arbitrators shall be assigned in equal shares to each Defendant participating in the arbitration, or as otherwise agreed by the Defendants participating.

(f) The arbitrators shall consider the cost effectiveness of the RWPs proposed, and may consider any other factors they deem appropriate, but may only select an RWP that is an Effective RWP.

3. PSL Roles and Responsibilities. Attached hereto as Exhibits A, B, C, D, E, and F, are Statements of Roles and Responsibilities between the Cities of Alameda, Albany, Emeryville, Oakland and Piedmont, and Stege Sanitary District, respectively, and EBMUD for implementation of the Regional Private Sewer Lateral Program. The attached exhibits are part of this Agreement and are hereby incorporated into it by reference. Any new or amended Statement of Roles and Responsibilities executed by EBMUD and any Satellite shall, upon its full execution, be incorporated into this



Agreement without need for further amendment of this Agreement. The Defendants shall perform their respective roles and responsibilities under these agreements as they may be amended from time to time in furtherance of the goals of the Consent Decree.

4. Regional Standards Program Participation and Responsibilities.

(a) Each Defendant shall participate in meetings as needed to update the Regional Standards as required by the Consent Decree, and shall cooperate in the production of a report every five years thereafter.

(b) In the event one or more Defendants disagree with any Regional Standard agreed upon by the remaining Defendants, it will draft an appendix to the report explaining that disagreement and setting forth its different or additional standard addressing its local concerns. Each Defendant shall not be required to use any standard with which it disagrees.

5. Performance Evaluation Plan (PEP) Implementation Cost Allocation.

If a PEP is triggered and must be implemented under the CD, then:

(a) Each Satellite shall bear the cost of installing, maintaining and collecting data from flow monitoring and precipitation monitoring equipment described in the PEP as being located within that Satellite's Collection System. In the event that additional or other data gathering equipment is described in the PEP as being located within that Satellite's Collection System, determination on cost appropriation will be performed during the PEP development process through discussions between EBMUD and the Satellite(s).

(b) EBMUD shall bear the cost of installing, maintaining and collecting data from flow monitoring and other data gathering equipment described in the PEP as being located within EBMUD's Interceptor System. EBMUD shall also bear the cost of loading those data into a digital format compatible with EBMUD's software.

(c) EBMUD shall bear the costs of (i) incorporating into the Flow Model the Satellites' and EBMUD's data, (ii) calibrating the Flow Model, and (iii) preparing the reports required by the PEP and performing any modeling and other analytical work necessary to prepare those reports.

(d) All data and information collected under this section shall be accessible to all Defendants. At no time may any Defendant interfere with, or deny

access needed to perform, any action reasonably necessary for the timely implementation of the approved PEP.

6. General Provisions.

(a) Entire Agreement. This Agreement and the exhibits hereto, along with the Consent Decree, contains the entire agreement of the Defendants with respect to its subject matter and supersedes all prior negotiations, agreements and understandings with respect thereto, whether written or oral.

(b) Amendment. The Defendants may amend this Agreement at any time in a writing duly executed by all affected Defendants. The Defendants agree to meet and confer in good faith upon another Defendant's request for amendment. Any PSL Roles & Responsibilities agreement attached as an exhibit to this Agreement may be amended by a writing executed by EBMUD and the affected Satellite.

(c) Interpretation and Construction. Each Defendant and its counsel has had an opportunity to participate in the review and revision of this Agreement. The Defendants agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement. Should any provision of this Agreement irreconcilably conflict with any part of the Consent Decree, the Consent Decree shall control.

(d) No Implied Waiver. The failure by one Defendant to require performance of any provision of this Agreement will not affect that Defendant's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

(e) Severability. Should any part, term, portion or provision of this Agreement be determined unlawful or otherwise rendered unenforceable, ineffectual or invalid by any court of competent jurisdiction, the validity of the remaining parts, terms, portions or provisions of this Agreement shall be deemed severable and shall not be affected thereby, provided that such remaining parts, terms, portions or provisions can be construed in substance to constitute the Agreement that the Defendants intended to enter into in the first instance.

(f) Attorney's Fees. If a judicial action or proceeding is commenced to secure the performance of this Agreement or to enforce or interpret any provision of this Agreement or the rights and duties of any Defendant or Defendants in relation

to the Agreement, the prevailing Defendant or Defendants shall be entitled to reasonable attorney fees, costs, and other expenses incurred by the prevailing Defendant or Defendants in connection with such action or proceeding, in addition to any other relief to which such Defendant or Defendants may be entitled.

(g) Warranty of Authorization to Execute Agreement. Each Defendant represents and warrants to the other Defendants that the person signing this Agreement is duly authorized to execute this Agreement on such Defendant's behalf and to bind such Defendant to its terms.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(i) Effective Date. This Agreement will take effect on the first date it is executed by EBMUD and at least five other Defendants and shall remain binding on each signatory Defendant while the Consent Decree remains in effect.

WHEREFORE, the Defendants have executed and entered into this Agreement as of the dates indicated below.

**CITY OF ALAMEDA**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Eric Levitt

Title: City Manager

**CITY OF ALBANY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Nicole Almaguer

Title: City Manager

**CITY OF BERKELEY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Dee Williams-Ridley

Title: City Manager

**CITY OF EMERYVILLE**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Christine Daniel

Title: City Manager

**CITY OF OAKLAND**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Jason Mitchell

Title: Director of Public Works

**CITY OF PIEDMONT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Sara Lillevand

\_\_\_\_\_

Title: City Administrator

**EAST BAY MUNICIPAL UTILITY DISTRICT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Eileen M. White

Title: Director of Wastewater

**STEGE SANITARY DISTRICT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Rex Delizo

Title: District Manager

