



Office of the City Manager

CONSENT CALENDAR  
February 5, 2013

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Andrew Clough, Director, Public Works  
Subject: Agreement: Alameda Countywide Clean Water Program

RECOMMENDATION

Adopt a Resolution:

1. Authorizing the City Manager to execute an agreement with Alameda County, and the 14 cities and 2 special districts in Alameda County, collectively known as “member agencies” of the Alameda Countywide Clean Water Program, for a 15-year term; and
2. Authorizing payments for the Alameda Countywide Clean Water Program for the 3-year period of FY 2014 – FY 2016 for a total not to exceed amount of \$315,000.

FISCAL IMPACTS OF RECOMMENDATION

Berkeley’s share of the Alameda Countywide Clean Water Program (ACCWP) total costs is currently assessed at 5.13% each year. Funding is subject to appropriation in the future fiscal years’ budgets from the Clean Storm Water Fund (831-5218-432-35-20).

The contract management system number for this agreement is CMS No. XKCEK.

CURRENT SITUATION AND ITS EFFECTS

The existing ACCWP Agreement is set to expire on April 1, 2013. ACCWP program costs from FY 2007 through FY 2010 were approximately \$1.8 million per year, and since FY 2011 they increased to over \$2 million as a result of new requirements in the Municipal Regional Permit (MRP). ACCWP had adequate fund balance reserves to offset the increase in program costs for fiscal years 2011 and 2012, and there were no impacts to the member agencies’ contributions. However, starting in FY 2013, member agencies are paying their full proportionate share in accordance with the revised calculated cost allocations.

In the new agreement, Berkeley’s share of costs increases from 4.87% to 5.13% (see Table 1, below); a change from \$85,159 in FY 2012 to \$102,857 in FY 2013.

A workgroup from the Program’s Management Committee reviewed the current agreement in light of the requirements in the MRP. After considering the workgroup’s findings, the Management Committee recommended that each Party to the current agreement approve a new Agreement to accomplish the following objectives:

1. Improve equity by making changes in the allocation of Program costs and voting shares so that the benefits received by the member agencies are proportional to their cost share;
2. Increase flexibility of the Program's operations by allowing parties other than the District to take on the role of program manager and fiscal agent;
3. Establish a new 15-year term starting July 1, 2012 through June 30, 2027; and
4. Improve clarity by adopting a new stand-alone agreement that incorporates the changes described above as well as a number of minor additional changes to reflect current conditions.

The proposed new agreement must be approved by the governing bodies of all parties representing 2/3 or more of the votes, as allocated under the current agreement.

### BACKGROUND

The City of Berkeley is a member agency of the Alameda Countywide Clean Water Program (ACCWP), which includes Alameda County, its 14 cities, the Alameda County Flood Control and Water Conservation District (District), and Zone 7 Water Agency. The Agreement to Implement the Alameda County Urban Runoff Clean Water Program (the Agreement) was initially adopted in 1991 by all the ACCWP member agencies. The current Agreement created the Alameda County Urban Runoff Clean Water Program as a method for the parties to implement permit compliance measures for stormwater quality, in conformance with the National Pollutant Discharge Elimination System (NPDES) permit, and to work collaboratively in implementing a number of permit requirements that could be done more cost-effectively as a group.

The NPDES permit requires implementation of a program designed to reduce or eliminate pollutant discharges from within a member agency's jurisdiction, and is issued by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board). In October 2009, the Regional Water Board reissued the parties' permit, which covers all ACCWP member agencies, as well as 56 other cities and counties that maintain MS4s (Municipal Separate Stormwater Sewer System) throughout the San Francisco Bay Region. This permit is referred to as the Municipal Regional Permit or MRP.

The original Agreement was amended in 1997, 2001, and 2003, and amendments have included: revisions to the cost sharing formula; changing the name of the Program from Alameda County Urban Clean Water Program to the Alameda Countywide Clean Water Program; extending the term of the contract; and allowing for Parties other than the District to contract on behalf of the Program. Recent changes in the cost allocation method, as well as population changes for member agencies, require that the current agreement be modified.

### **Proposed Changes in the Allocation of Costs and Voting Shares**

The current cost sharing formula is weighted evenly between the relative area of each municipality and the relative population of each municipality. Following adoption of the MRP, which included numerous new requirements and increased compliance costs,

several member agencies requested that the cost share methodology be reviewed with regard to each agency’s cost share versus the benefits it receives. Based on this request, the Program’s Management Committee established a budget workgroup (Workgroup), consisting of member cities, to review the existing cost allocation formula.

The Workgroup reviewed the Program’s budget and assessed how well the current allocation reflected Program costs under the MRP. The review suggested there are baseline Program costs that are not affected by the area or population of the member agencies, including: program management by the District; subcommittee support; legal assistance; annual reporting; management of the website; program trainings; green business program contribution; event participation at the County Fair. The Workgroup calculated that these costs account for about 22% of overall Program expenditures.

The Workgroup recommended to the Management Committee that these baseline costs be distributed equally among the member agencies, as all members benefit from these activities equally. This results in a minimum allocation for each Party equivalent to 1.3% of the total Program costs. The Workgroup recommended that the remaining 78% of Program expenditures be allocated based on the existing formula of 50% population and 50% area. The Management Committee approved these recommendations in September 2010. Table 1 illustrates the cost allocation under the existing Agreement and the new Agreement.

TABLE 1: COMPARISON OF CURRENT AND PROPOSED COST ALLOCATIONS

PARTY	EXISTING AGREEMENT COST ALLOCATION	NEW AGREEMENT COST ALLOCATION
Alameda	3.97%	4.42%
Alameda County	11.82%	10.76%
Albany	1.00%	1.85%
Berkeley	4.87%	5.13%
Dublin	2.50%	3.42%
Emeryville	1.00%	1.69%
Fremont	15.92%	14.03%
Hayward	11.05%	10.14%
Livermore	5.65%	6.09%
Newark	2.69%	3.45%
Oakland	21.58%	18.51%
Piedmont	1.00%	1.80%
Pleasanton	5.12%	5.64%
San Leandro	4.82%	5.15%
Union City	5.02%	5.31%
Flood Control District	1.00%	1.30%
Zone 7	1.00%	1.30%
Total	100%	100%

The existing Agreement requires a 2/3 affirmative vote of all allocated shares, and shares are equivalent to the cost allocation (how much each member agency pays).

Under this system, the largest parties have a great deal of influence and the smallest parties have very little. For example, it would only take the votes of the largest cities in Alameda County (Oakland, Hayward, and Fremont) and Alameda County to pass new program rules or make other decisions, since they pay the largest cost share. However, many issues the Program considers are not related to the expenditures of funds, and smaller agencies may have more significant concerns regarding some issues than the larger agencies. To address this, the Management Committee is recommending that, for most issues, the voting requirement be changed to a simple majority vote of the parties to the new Agreement. However, adoption of the Program budget and changes to the new Agreement would require an affirmative vote of both a majority of the parties to the Agreement, and a majority of allocated votes based upon the new costs allocation (50% of the member agencies and 50% of the allocated costs).

### **Proposal to Allow Any Party or Outside Contractor to Provide Program Management Services**

District staff has provided management services to the Program since its inception, and the Management Committee anticipates that this will continue for the foreseeable future. However, considering the resources and staffing constraints currently faced by local governments, the Management Committee recommends providing other options. The new Agreement allows the Management Committee to select another party or outside contractor to act as Program Manager in the event the District is not able to continue providing program management services or if the Management Committee determines a change is necessary or desirable.

### **Proposal to Allow any Party to the Agreement to Act as Fiscal Agent**

The District has been the fiscal agent for the Program since its inception, and the Management Committee anticipates that this will continue for the foreseeable future. However, considering the resource and staffing constraints currently faced by local governments, the Management Committee recommends providing other options in the event that the District is unable to or no longer desires to act as fiscal agent in the future, or if the Management Committee determines a change is necessary or desirable. For example, if another party takes on providing program management services, it may be more cost effective to have the same party act as the fiscal agent.

### **Establish a New 15-year Term**

The Agreement proposes to establish a new 15-year term. Each time the Agreement is amended, it needs to be approved by 2/3 of the member agencies. The purpose of the longer term is to minimize the need for cities to take the Agreement to their respective City Councils to receive approval simply to extend the agreement term.

### **Improve the Clarity by Adopting a New Agreement**

The existing Agreement is the result of several previous revisions of the original Agreement, with references back to earlier versions; it fails to adequately reflect current conditions, and lacks clarity. Adoption of a new Agreement will allow member agencies to refer to a single, updated document and its appendices regarding all operations of the Program, which would supersede all prior versions of the Agreement.

The new Agreement includes the following additions: incorporates the new name of the Program (Clean Water Program Alameda County); refers to the most recent Basin Plan and NPDES permits; eliminates reference to updated funding commitments; clarifies Program invoicing and termination procedures; establishes a 15-year term for the Agreement; updates duties of the Parties; and clarifies that the Management Committee approval of a report submittal to the Regional Water Board must be approved by all Parties

CONTACT PERSON

Jeffrey Egeberg, Manager of Engineering, Public Works, 981-6400  
Lorin Jensen, Supervising Civil Engineer, Public Works, 981-6411  
Danny Akagi, Associate Civil Engineer, Public Works, 981-6394

Attachments:

1: Resolution

Exhibit A: Agreement Providing for Implementation of the Alameda Countywide Clean Water Program

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

AGREEMENT: ALAMEDA COUNTYWIDE CLEAN WATER PROGRAM

WHEREAS, the City of Berkeley is required to obtain a National Pollutant Discharge Elimination System (NPDES) municipal stormwater discharge permit as prescribed by the 1972 Federal Clean Water Act; and

WHEREAS, the City of Berkeley has met its requirement to obtain an NPDES permit since 1991 through participation in the existing *Agreement Providing for Implementation of the Alameda County Urban Runoff Program* (Agreement); and

WHEREAS, the City of Berkeley seeks to renew its participation in the existing Agreement; and

WHEREAS, the other parties to the Agreement include Alameda County, all 14 cities in Alameda County, and the 2 special districts of Alameda County Flood Control and Water Conservation District (District), and Alameda County Zone 7 (Zone 7), collectively known as “member agencies”; and

WHEREAS, the activities, benefits, duties, and responsibilities of the Agreement are implemented by member agencies through a program known as the Alameda Countywide Clean Water Program (ACCWP); and

WHEREAS, the NPDES permit is administered by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board); and

WHEREAS, in October 2009, the Regional Board re-issued the permit as the Municipal Regional Stormwater NPDES Permit No. CAS612008 (MRP); and

WHEREAS, the MRP imposes additional requirements on permittees that could result in significant cost increases for each member agency; and

WHEREAS, the City of Berkeley has determined that participation in implementation of the Agreement through the Program to be the most cost-effective strategy for meeting MRP requirements; and

WHEREAS, the cost sharing allocations system has been amended under the new Agreement such that Berkeley’s cost share currently increases from 4.87% to 5.13%; and

WHEREAS, funding is subject to appropriation in the future fiscal years’ budgets in the Clean Storm Water Fund (831-5207-432-3520) and the Agreement has been entered into the Citywide contract database with CMS No. XKCEK.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a new agreement with Alameda County, and the 14 cities and 2 special districts in Alameda County, collectively known as “member agencies” of the Alameda Countywide Clean Water Program, for a 15-year term.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes payments for the Alameda Countywide Clean Water Program for the 3-year period of FY 2014 – FY 2016 for a total not to exceed amount of \$315,000.

Exhibits

A: Agreement Providing for the Implementation of the Alameda Countywide Clean Water Program

**Exhibit A**  
**AGREEMENT**  
**PROVIDING FOR IMPLEMENTATION**  
**OF THE**  
**ALAMEDA COUNTYWIDE CLEAN WATER PROGRAM**

THIS AGREEMENT, is made and entered into by and between the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a local public agency of the State of California; Zone 7 of ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a local public agency of the State of California; COUNTY OF ALAMEDA, a subdivision of the State of California; CITY OF ALAMEDA, a municipal corporation of the State of California; CITY OF ALBANY, a municipal corporation of the State of California; CITY OF BERKELEY, a municipal corporation of the State of California; CITY OF DUBLIN, a municipal corporation of the State of California; CITY OF EMERYVILLE, a municipal corporation of the State of California; CITY OF FREMONT, a municipal corporation of the State of California; CITY OF HAYWARD, a municipal corporation of the State of California; CITY OF LIVERMORE, a municipal corporation of the State of California; CITY OF NEWARK, a municipal corporation of the State of California; CITY OF OAKLAND, a municipal corporation of the State of California; CITY OF PIEDMONT, a municipal corporation of the State of California; CITY OF PLEASANTON, a municipal corporation of the State of California; CITY OF SAN LEANDRO, a municipal corporation of the State of California; and CITY OF UNION CITY, a municipal corporation of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as “PARTIES” or individually as ‘PARTY.’”

**RECITALS:**

- A. The Water Quality Control Plan for the San Francisco Bay Basin (hereinafter “Basin Plan”), adopted by the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter “Regional Water Board”), in implementation of the Federal Clean Water Act, and the Municipal Regional Stormwater NPDES Permit (hereinafter “NPDES Permit”) required that the PARTIES develop a program to control the discharge of pollutants from urban runoff in the Alameda County area.
- B. In furtherance of their responsibilities pursuant to the Basin Plan and the applicable NPDES Permit, the PARTIES have previously entered into a series of agreements to jointly fund the costs of preparing an action plan to evaluate nonpoint source pollutants, monitor identified pollutants, and develop control measures to mitigate or reduce the discharge of pollutants. Collectively, the measures undertaken pursuant to the previous agreements and anticipated to continue pursuant to this Agreement and upon execution of this agreement henceforth shall continue to be known as the Alameda Countywide Clean

Water Program (hereafter “the Program”). The Program contains elements that provide a general benefit to the PARTIES (such as monitoring, public education, staff training, program administration, etc.). In addition to the Program elements, each Party has the responsibility to implement permit requirements within its jurisdiction. Activities carried out by a Party may include but are not limited to municipal operations and maintenance, construction site inspections and enforcement, commercial and industrial inspection and enforcement, illicit and illegal connection inspections, and implementation of new development and redevelopment treatment requirements.

- C. In 1987 Congress added Section 402 (p) to the Federal Clean Water Act (CWA) (33 U.S.C. Section 1342 (p), which requires National Pollutant Discharge Elimination System Permits for certain stormwater discharges from municipal separate storm sewer systems, stormwater discharges associated with industrial activity (including construction activity), and designated stormwater discharges, which are considered significant contributors of pollutants to waters of the United States.
- D. Previous agreements have been executed between the PARTIES for the administration of the Program, and it is the intention of the PARTIES that this Agreement supersedes all prior agreements. In and for the mutual interests of the PARTIES, the PARTIES desire to continue the Program and to enter into this Agreement for the purpose of ensuring continued participation, in terms of cost and administrative responsibilities, and to make certain updates and procedural revisions to facilitate implementation of the Program in compliance with the NPDES Permit.
- E. The Alameda County Flood Control and Water Conservation District (hereinafter “the District”) and Zone 7 of the Alameda County Flood Control and Water Conservation District (hereinafter “Zone 7”) are local public agencies of the State of California duly organized, existing and empowered to conserve water and to provide maintenance and flood control management of the water courses and have the authority to control the discharge of surface waters to their facilities. The County of Alameda and all the cities herein are political subdivisions of the State of California with authority to control the discharge of surface waters from their respective jurisdictions.

**NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:**

Section 1. Alameda Countywide Clean Water Program

- 1.01 The Alameda Countywide Clean Water Program is hereby continued (hereinafter “the Program”) to assist the PARTIES to fulfill the requirements of NPDES Permit No. CAS612008 as it exists, may be modified, or may be reissued in the future (hereinafter “NPDES Permit”).
- 1.02 The Program is a collective effort and implementation of area-wide activities, designed to benefit all PARTIES.

Section 2. Management Committee

- 2.01 A Management Committee shall provide overall Program direction and coordination. The Management Committee shall review and adopt an annual budget.
- 2.02 The Management Committee may, as necessary, adopt and revise Bylaws for its governance.
- 2.03 The Management Committee shall consider NPDES Permit compliance, including benefit to a majority of the PARTIES, as a primary objective in approving Program tasks and corresponding budgets.
- 2.04 Management Committee members, and their alternates, shall be appointed by the City Manager or the equivalent of the respective PARTIES and a confirming letter sent to the Program Manager. The voting membership of the Management Committee shall consist of one designated voting representative from each PARTY. Alternate voting representatives may be appointed by each PARTY.
- 2.05 Each PARTY to this Agreement is assigned a “Proportional Vote” in proportion to the Cost Allocation in Exhibit A.
- 2.06 A quorum for the conduct of business by the Management Committee shall be a majority (50% plus one) of the voting PARTIES to the Agreement. The Proportional Vote allocated to a PARTY shall not be considered in the determination of a quorum.
- 2.07 The PARTIES shall continue to utilize the Program’s preferred approach of achieving consensus to resolve issues and reach decisions and to rely on a simple majority vote (50% plus one) for all decisions requiring a vote, except for changes to the Agreement (including changes to the Cost Allocation) and approval of the Annual Budget. Approval of Annual Budgets require both an affirmative vote by a majority of the PARTIES and an affirmative vote by PARTIES representing more than 50% of the Proportional Votes. Changes to the Agreement require an affirmative vote by a majority of the PARTIES, an affirmative vote by PARTIES representing more than 50% of the Proportional Votes of the PARTIES, and the approval by the governing bodies of the PARTIES representing both a majority of the PARTIES and more than 50% of the Proportional Votes of the PARTIES.
- 2.08 Management Committee approval is required prior to any Program expenditure by the Fiscal Agent or any other PARTY to this Agreement.
- 2.09 Approval by the Management Committee of a motion to submit a report to the Regional Water Board or the State Water Board will be considered a submittal on behalf of all

PARTIES unless a PARTY notifies the Management Committee in writing that it does not wish the report to be submitted on its behalf.

Section 3. Program Budget Cost Allocation

- 1.01 The PARTIES shall each pay a yearly contribution into a fund established for Program operations. Each PARTY's contribution shall be based upon the cost allocation in Exhibit A. The cost allocation in Exhibit A shall remain in effect unless and until a revised cost allocation is adopted through an amendment to the Agreement.
- 1.02 Invoices for payment of Program cost allocations will be sent out by July 30 of each year. If payment has not been received by the Fiscal Agent by September 30, a notice of non-payment will be mailed to the PARTY. If payment has not been received within 60 days of the notice of non-payment, the PARTY will receive notice that their participation in the Program will be terminated effective 30 days from the notice of termination.

Section 4. Fiscal Agent

- 4.01 DISTRICT shall serve as the initial Fiscal Agent for the Program. If the District, or another Fiscal Agent, decides to relinquish the role of Fiscal Agent, the Fiscal Agent will notify the Management Committee prior to December 30 and will continue to act as Fiscal Agent until June 30 of the following year. In the event that the District or another Fiscal Agent withdraws from the Program or from providing Fiscal Agent services to the Program, the Management Committee will then select a willing PARTY as Fiscal Agent to serve commencing July 1.
- 4.02 If the Management Committee decides to select a new Fiscal Agent, the Management Committee will notify the Fiscal Agent prior to December 30<sup>th</sup> that another entity will become the new Fiscal Agent as of the following July 1<sup>st</sup>.
- 4.03 The Fiscal Agent shall be the treasurer of Program funds. The Fiscal Agent, in accordance with generally accepted accounting procedures, shall keep the Program funds segregated from any other funds administered by the Fiscal Agent; shall credit the Program with appropriate interest income earned on Program funds in each fiscal year; and shall not expend any funds except in accordance with the annual budget approved by the Management Committee or as otherwise directed by the Management Committee.
- 4.04 The Fiscal Agent will provide a proper accounting of funds and reports of all receipts and disbursements. The Fiscal Agent shall execute contracts and process invoices in a timely manner. The Fiscal Agent may be reimbursed for reasonable expenses associated with oversight of Program accounts with the agreement of the Management Committee. In addition, a PARTY to this Agreement, pursuant to the direction of the Management Committee, may let and administer approved consultant contracts on behalf of the Program. Any PARTY to this Agreement who is administering a contract for the Program

(Contracting Agent) shall be compensated for its services and/or contract costs as agreed to in advance by the Management Committee. All consultant contracts will contain hold harmless and indemnity provisions and insurance requirements for the benefit of all PARTIES.

Section 5      Program Management

- 5.01 The District shall serve as the initial Program Manager for the Program. If the District, or another Program Manager, decides to relinquish the role of Program Manager, the Program Manager will notify the Management Committee at least 90 days prior to their termination of Program Management services.
- 5.02 The Management Committee may select a willing PARTY or outside contractor to act as Program Manager. If the Management committee decides to select a new Program Manager, the Management Committee will notify the current Program Manager at least 90 days prior to the termination of the current Program Manager's services.
- 5.03 The Program Manager shall be responsible for Program management and administration, and technical program management in accordance with the PARTIES' NPDES Permit and as directed by the Management Committee. The Program Manager shall be paid from Program funds in accordance with the adopted Program budget.

Section 6.      Duties of the PARTIES

- 6.01 In addition to the participation in the Management Committee, the PARTIES accept and agree to perform the following duties:
  - 1. Each will authorize a representative to reapply for an NPDES Permit at the appropriate time as co-applicant with the other PARTIES;
  - 2. Each will comply with its applicable identified portion of Program implementation;
  - 3. Each will select a representative to participate in Management Committee meetings and other required meetings of the PARTIES as set forth in subsection 2.04 above;
  - 4. Each will fund and implement its share of the Program;
  - 5. Each has the responsibility to implement permit requirements within its jurisdiction.
- 6.02 This Agreement does not restrict the PARTIES from the ability to individually (or collectively) request NPDES Permit modifications and/or initiate NPDES Permit appeals or related actions relating to permit provisions to the extent that a provision affects an individual Party (or group of PARTIES).

Section 7. Term of Agreement

- 7.01 The term of this Agreement shall commence upon execution by the PARTIES and terminate on June 30, 2027. The cost allocation in Exhibit A shall become effective starting July 1, 2012, so that costs are allocated based on one amount for the fiscal year.
- 7.02 Any PARTY may terminate its participation in this Agreement by giving the Chair of the Management Committee at least ninety (90) days written notice. The terminating PARTY will bear the full responsibility for its compliance with the NPDES Permit commencing on the date it terminates its participation. Unless the termination is scheduled to be effective at the close of the fiscal year in which the notice is given, termination shall constitute forfeiture of all the terminating PARTY's share of the Program Budget, for the fiscal year in which the termination occurred (both paid and obligated but unpaid amounts). The Management Committee shall recalculate the cost allocations for the remaining PARTIES accordingly for the following fiscal year by the PARTIES without the withdrawing PARTY's participation.

Section 8. General Legal Provisions

- 8.01 This Agreement may be amended from time to time by an affirmative vote of the PARTIES and an affirmative vote of the governing bodies of the PARTIES as specified in Section 2.07..
- 8.02 This Agreement supersedes any and all prior agreement among all the PARTIES regarding the Program, but does not supersede any other agreements between any of the PARTIES.
- 8.03 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile. When each PARTY has signed and delivered at least one counterpart to the Program, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.
- 8.04 No PARTY shall, by entering into this Agreement, participating in the Management Committee, or agreeing to serve as Fiscal Agent, Contracting Agent and/or Program Manager assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of the NPDES Permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the United States Environmental Protection Agency, the State Water Resources Control Board, the Regional Water Board, and private non-governmental organizations, or any person acting on their behalf of in their stead.

8.05 It is understood and agreed that, pursuant to Government Code section 895.4, each PARTY (“indemnitor”) shall, to the extent permitted by law, defend, indemnify and save harmless each other PARTY, and its officers, employees, volunteers, and contractors from all claims, suits or actions of every name, kind and description resulting from indemnitor’s performance of this Agreement, excluding any injuries, death, damage or liability resulting from the gross negligence or willful misconduct of the other PARTIES or their officers or employees.

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**EXHIBIT A**

<b>AGENCY</b>	<b>COST ALLOCATION</b>
Alameda	4.42%
Alameda County	10.76%
Albany	1.85%
Berkeley	5.13%
Dublin	3.42%
Emeryville	1.69%
Fremont	14.03%
Hayward	10.14%
Livermore	6.09%
Newark	3.45%
Oakland	18.51%
Piedmont	1.80%
Pleasanton	5.64%
San Leandro	5.15%
Union City	5.31%
District	1.30%
Zone 7	1.30%
Total*	100%

\* Sum equals 99.99% due to rounding.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement on the dates hereafter set forth.

COUNTY OF ALAMEDA, a political subdivision of the State of California

By \_\_\_\_\_  
President, Board of Supervisors

Date \_\_\_\_\_

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on \_\_\_\_\_, and that a copy has been delivered to the President as provided by Government Code Section 25103.

APPROVED AS TO FORM:  
DONNA ZIEGLER  
County Counsel

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

Attest: \_\_\_\_\_  
Clerk, Board of Supervisors  
Board of Supervisors, County  
of Alameda, State of  
California

APPROVED AS TO FORM:  
DONNA R. ZIEGLER  
County Counsel

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

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a local public agency of the State of California

By \_\_\_\_\_  
President, Board of Supervisors

Date \_\_\_\_\_

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly

authorized to execute this document on behalf of the Alameda County Flood Control and Water Conservation District by a majority vote of the Board on \_\_\_\_\_, and that a copy has been delivered to the President as provided by Government Code Section 25103.

Attest: \_\_\_\_\_  
Clerk, Board of Supervisors,  
Alameda County Flood Control  
and Water Conservation District

ZONE 7 OF ALAMEDA COUNTY  
FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT, a local  
public agency of the State of California

By \_\_\_\_\_  
Chair, Board of Directors

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney

ATTEST: \_\_\_\_\_  
Secretary, Board of Directors

CITY OF ALAMEDA, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF ALBANY, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF BERKELEY, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF DUBLIN, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF EMERYVILLE, a municipal corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF FREMONT, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF HAYWARD, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF LIVERMORE, a municipal corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF NEWARK, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF OAKLAND, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF PIEDMONT, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF PLEASANTON, a municipal  
corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF SAN LEANDRO, a municipal corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

CITY OF UNION CITY, a municipal corporation of the State of California

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_

