

**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 plan 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

{00010478;3}

Approved as to Form
CITY ATTORNEY
By: Michael H. Raul
Assistant City Attorney

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