

AMENDED AND RESTATED CONTRA COSTA CLEAN WATER PROGRAM INSPECTION ACTIVITIES AGREEMENT

This Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement (this "Agreement"), dated June 30, 2013 (the "Effective Date"), is by and among Contra Costa County Flood Control and Water Conservation District (the "District"), Central Contra Costa Sanitary District ("CCCSD"); Delta Diablo Sanitation District ("DDSD") and, West County Wastewater District ("WCWD", and together with CCCSD and DDSD, the "Agencies," and each separately, an "Agency").

RECITALS

WHEREAS, the County of Contra Costa ("County"), the District, and the 19 incorporated cities and towns in the County have joined to form the Contra Costa Clean Water Program (the "Program"), pursuant to the Contra Costa Clean Water Program Agreement (2010-2025), dated July 1, 2010 (the "Program Agreement"), among the County, the District, Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon and Walnut Creek (the "Program Members"); and

WHEREAS, the District and CCCSD, DDSD and East Bay Municipal Utility District previously entered into that certain Agreement Among the Contra Costa County Flood Control and Water Conservation District (on behalf of The Contra Costa Clean Water Program), the Central Contra Costa Sanitary District, the Delta Diablo Sanitation District, and the East Bay Municipal Utility District Regarding the Contra Costa Clean Water Program's Inspection Activities, dated October 26, 2009 (the "Inspection Agreement"); and

WHEREAS, the District and the Agencies desire to revise certain provisions of the Inspection Agreement, including replacing EBMUD with WCWD, by amending and restating the Inspection Agreement; and

WHEREAS, the California Regional Water Quality Control Board has issued Central Valley Region National Pollutant Discharge Elimination System ("NPDES") Stormwater Permit No. CAS083313, and San Francisco Bay Region NPDES Permit No. CAS612008 (together, the "NPDES Permits"), governing waste discharge requirements and stormwater runoff for Program Members; and

WHEREAS, the NPDES Permits contain components related to inspection activities at industrial and commercial facilities (Provision C.4.) and illicit discharge control activities (Provision C.5.); and

WHEREAS, the Agencies wish to provide services to the Participating Municipalities (as defined in Section 2 below) for the inspection activities and illicit discharge control activities, as part of the implementation of the NPDES Permits; and

WHEREAS, the NPDES Permits identify long-term goals of: eliminating non-stormwater discharges into municipal storm drains and creeks; conducting stormwater inspections of industrial and commercial facilities; controlling illicit discharges by conducting field surveys of the storm drainage conveyance system and identifying and eliminating the sources of non-stormwater discharges; and eliminating illicit connections and discharges resulting from inappropriate or illegal processes, activities or housekeeping practices; and

WHEREAS, the Agencies and the District desire to modify the Agencies' existing inspection programs to encompass a stormwater illicit discharge elimination program, rather than establishing new, separate inspection programs to effect the goals of this Agreement; and

WHEREAS, the Participating Municipalities have by contract authorized the District to enter into this Agreement on their behalf.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the parties to this Agreement agree as follows:

1. Term; Termination.

(a) Term. The term of this Agreement is from the Effective Date of this Agreement until it is terminated pursuant to Section 2 (Participating Municipalities) below.

(b) Termination.

(i) Agency Termination. Any Agency may terminate its obligations under this Agreement at its sole discretion by giving written notice to the District, each of the other Agencies, and each Participating Municipality to which it provides Inspection Activities services under this Agreement at least 180 days prior to the effective date of the termination.

(ii) District Termination. The District may terminate this Agreement, at its sole discretion, upon giving all Agencies and Participating Municipalities at least 180 days written notice. The District may terminate a Participating Municipality from receiving services pursuant to this Agreement if a Participating Municipality breaches its obligations under its Stormwater Utility Area Agreement with the District.

(iii) Participating Municipality Termination. Any Participating Municipality may stop receiving Inspection Activities pursuant to this Agreement, at its sole discretion, upon giving the District and each of the Agencies at least 90 days written notice. In the event a Participating

Municipality stops receiving Inspection Activities under this Agreement, the District shall, as of the effective date of the termination, replace Exhibit A (Inspection Agencies And Participating Municipalities) attached hereto and incorporated herein by reference, with a new Exhibit A, dated the date of its effectiveness, and provide a copy of the new Exhibit A to each of the Agencies.

(iv) Mutual Termination. This Agreement may be terminated by mutual written agreement of the District, all of the Agencies, and all of the Participating Municipalities.

2. Participating Municipalities.

(a) Stormwater Utility Area Agreements. The cities and towns listed on Exhibit A attached hereto (the "Participating Municipalities") have each executed a separate Stormwater Utility Area Agreement with the District that, among other things, authorizes the District to enter into this Agreement on behalf of the particular Participating Municipality, and provides for the invoicing and payment of Inspection Activities costs by the Participating Municipality. The Participating Municipalities are not parties to this Agreement but are intended third-party beneficiaries of this Agreement.

(b) Addition of Participating Municipalities. If a Program Member that is not a Participating Municipality desires to become a Participating Municipality and receive Inspection Activities services pursuant to this Agreement, the District and the Agencies shall execute an amendment to this Agreement in the form of Exhibit B attached hereto and incorporated herein, and the Program Member desiring to become a Participating Municipality shall execute a Stormwater Utility Area Agreement with the District that authorizes the District to enter into this Agreement on behalf of the Participating Municipality, contains an indemnity required by Section 8(c) (Participating Municipality Indemnities) below, and provides for the invoicing and payment of Inspection Activities costs by the Participating Municipality, in form and substance satisfactory to the District.

3. Responsibilities of the Agencies. Each Agency will perform the following services (collectively, the "Inspection Activities") for the respective Participating Municipality set forth on Exhibit A (Inspection Agencies And Participating Municipalities):

(a) Implement stormwater inspection activities and illicit discharge control inspection activities, subject to the direction of the District, and to bill the costs of the Inspection Activities to the District;

(b) Perform scheduled and other inspections and investigations of industrial and commercial facilities and the exterior of residential properties to determine compliance with federal, state and local laws and regulations related

to stormwater discharge. Inspections may have an educational component, as directed by the District. The locations and frequency of an inspection, investigation, or educational efforts shall be at the direction of the District and shall take place between 7:30 a.m. and 4:00 p.m. Pacific Standard Time, Monday through Friday, excluding holidays ("Normal Working Hours");

(c) Perform inspections, investigations and educational efforts described in Section 3(b) above outside of Normal Working Hours if mutually agreed to by the District, the particular Participating Municipality, and the performing Agency;

(d) Prepare inspection and investigation reports;

(e) Issue notices of violation, warning notices and compliance orders to commercial and industrial site operators on behalf of the Participating Municipalities where violations and potential violations occur, all to the extent authority to issue such notices and orders has been lawfully delegated by the Participating Municipalities to the Agencies, in connection with inspections and investigations. The Agencies shall develop a standardized approach to recommending and documenting formal enforcement actions for recurring violations at an inspected location. The Agencies, at the direction of the Participating Municipalities, shall also refer violations and potential violations to appropriate enforcing entities, such as the District Attorney. The Agencies shall notify the appropriate Participating Municipality of the issuance of any warning notice or notice of violation issued by the Agencies, by email, by the close of the business day following issuance;

(f) Assist in formal enforcement actions undertaken by a Participating Municipality, as permitted under the Participating Municipality's enforcement authority and to the extent specifically requested by the Participating Municipality. Activities undertaken by Agencies under this provision include but are not limited to documentation of violations, preparation of documents for use in complaints and at hearings, and assistance in hearing preparation and presentation, including provision of testimony as requested;

(g) Keep records regarding Inspection Activities and investigations accomplished. The Agencies shall retain these records through the term of this Agreement as evidence of Participating Municipality compliance with its NPDES Permit. These records shall become property of the respective Participating Municipality upon termination of this Agreement;

(h) Train, supervise and manage staff of the Agencies necessary to implement the Inspection Activities in a consistent manner;

(i) Provide advice and comments to the District regarding the District's preparation of educational material for distribution to industrial and commercial

facilities and the public. The Agencies shall also provide advice and comments to the District regarding the Contra Costa County Green Business Program, as requested by the District;

(j) Provide comments to the District regarding ordinances necessary to implement the Inspection Activities;

(k) Purchase, operate and maintain all equipment necessary to implement the Inspection Activities, at the cost of the Agencies;

(l) Provide quarterly Inspection Activities reports to the District submitted with the quarterly invoices specified in Section 3(n) below. The final report of the fiscal year (fourth quarter) shall include a status report to each Participating Municipality of all warning notices, notices of violation, and enforcement activities initiated by the Agencies by business name. The final report shall also include a hard or electronic copy of the Agencies' databases of commercial/industrial facilities from their inspections lists grouped by Participating Municipality jurisdiction;

(m) Utilize reasonable efforts to assure that Inspection Activities are implemented by the Agencies in a uniform manner;

(n) Provide quarterly invoices to the District for work performed under this Agreement. Due dates for each quarterly invoice during the fiscal year are as follows: (i) First Quarter - October 15; (ii) Second Quarter - January 15; (iii) Third Quarter - April 15; and (v) Fourth Quarter - July 15 of each fiscal year; and

(o) Provide the District and Participating Municipalities updated inspector rosters that include cellular phone numbers with their assigned service area as needed.

4. Responsibilities of the District. The District will perform the following obligations:

(a) Recommend that the Participating Municipalities draft and adopt such ordinances and laws as are necessary to effectuate the Inspection Activities, including delegation of necessary authority to the Agencies;

(b) Authorize and prioritize inspections and investigations, with direction from the Participating Municipalities and Agencies;

(c) Provide timely input on the scope of the following fiscal year Inspection Activities during budget discussions and timely approval of the Agencies' fiscal year Inspection Activities stormwater program budgets;

(d) Recommend that the appropriate Participating Municipality initiate actions against stormwater permit violators except to the extent enforcement has been initiated on behalf of Participating Municipalities by the Agencies, pursuant to lawfully delegated authority;

(e) Provide educational materials for distribution to industrial and commercial facilities and the public;

(f) Provide comments to the Agencies regarding the formats of inspection and investigation reports;

(g) Adopt and administer a stormwater permitting program, as appropriate;

(h) Make timely payments to the Agencies pursuant to invoices for Inspection Activities costs;

(i) Perform other responsibilities as agreed to in writing between the District and the Agencies;

(j) Notify Participating Municipalities of issues affecting them in a timely manner; and

(k) Provide quarterly Inspection Activities and budget summary reports to Participating Municipalities.

5. Communication between District and the Agencies. Each Agency will designate in writing to the District an Inspection Activities program coordinator and an alternate coordinator, subject to the District's approval of the designated coordinator and alternate coordinator. The purpose of designating an Inspection Activities program coordinator is to facilitate communication between the District and the Agencies. The Agencies shall direct matters such as complaints, claims, legal challenges, and other disputes regarding the Inspection Activities to its Inspection Activities program coordinator who will transmit the matter to the District for handling.

6. Financial. The Agencies shall be reimbursed by the District for all appropriate costs of the Inspection Activities, including the actual inspections and related administrative costs. The costs eligible for reimbursement include, but are not necessarily limited to, labor, benefits, overhead, supplies, equipment, vehicle, laboratory, consultant, legal and insurance costs. The Agencies shall promptly notify the District if the Agencies believe that legal costs will be incurred in connection with the inspection or enforcement activities so that the District may arrange for the affected Participating Municipalities to provide legal services on behalf of Agencies, if the Participating Municipalities so choose.

(a) Each of the Agencies will prepare invoices for costs related to the Inspection Activities and submit the invoices to the District no more frequently than monthly and no less frequently than quarterly. The District will pay invoices within 45 days of receipt.

(b) The Agency's labor costs shall be itemized at base cost per individual for time spent plus an overhead multiplier for benefits, administrative overhead, supplies, equipment and insurance. The Agencies' overhead multipliers for the following fiscal year shall be submitted to the District annually by January 31, and approved as part of an annual cost proposed to the Participating Municipalities.

(c) To the extent practicable, all invoices submitted shall be itemized to allocate costs to the Participating Municipality for which Inspection activities services were performed.

(d) To further cost efficiency, Agency staff time spent at meetings relative to the Inspection Activities will be minimized to the extent practicable. Laboratory services will be similarly minimized.

(e) Prior to the beginning of each fiscal year, the District shall approve an Inspection Activities budget, including individual Inspection Activities budgets for each of the Participating Municipalities. The District shall have the Participating Municipalities review and approve the Inspection Activities budget through the Program. Discussions for the annual budget shall begin in January prior to the upcoming fiscal year. The Agencies shall not exceed their approved written Inspection Activities budgets, absent written consent of the Participating Municipality through the District.

7. Insurance: During the term of this Agreement, each Agency shall carry Workers' Compensation and Employers' Liability Insurance as required by law, and General Liability and Automobile Liability insurance in the amount of at least \$1,000,000 per occurrence. If an Agency is self insured, written notification of the self insurance program shall be made to the other parties to this Agreement within 30 days after the execution of this Agreement. Any change to self insured status by any Agency shall be reported to the District in writing within 30 days of such change.

8. Indemnification.

(a) District Indemnity. The District shall indemnify, defend and hold harmless the Agencies and each of them and their officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities, and expenses, such as but not limited to constitutional or property rights claims, arising out of or related to the District's willful misconduct or the negligent acts, errors or omissions of the District in the performance of this Agreement.

(b) Agency Indemnity. Each Agency shall indemnify, defend and hold harmless the District and each Participating Municipality, and their respective officers, directors, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses arising out of or related to such Agency's willful misconduct or the negligent acts, errors or omissions of such Agency in the performance of this Agreement, except that each Participating Municipality shall be solely liable for any fines resulting from NPDES Permit non-compliance.

(c) Participating Municipality Indemnities. The District shall obtain individual indemnification agreements from each Participating Municipality in the Inspection Activities program, which shall specify that such Participating Municipality shall indemnify the District and Agencies. The indemnification shall read "[Name of City/Town] ("Participating Municipality") shall for its jurisdictional area, indemnify, defend and hold harmless Central Contra Costa Sanitary District; Delta Diablo Sanitation District, West County Wastewater District (the "Agencies"), the Contra Costa County Flood Control and Water Conservation District, and each of them, and their respective officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses (collectively, "Claims") arising out of or related to the Participating Municipality's willful misconduct or the negligent acts, errors or omissions of the Participating Municipality, and the Participating Municipality shall also indemnify, defend and hold harmless Agencies, and their respective officers, directors, agents, and employees from and against all Claims that are not based on Agencies' active negligence, willful misconduct, or vehicle accident, such as but not limited to constitutional or property rights claims arising from an Agency's performance under the Inspection Agreement."

9. Notices. Notices required or permitted under this Agreement shall be in writing and made as follows:

If to District, to:

Mr. Thomas E. Dalziel, Program Manager
Contra Costa Clean Water Program
255 Glacier Drive
Martinez, CA 94553
(925) 313-2373

If to the Agencies collectively, to:

Mr. Timothy Potter
Central Contra Costa Sanitary District
5019 Imhoff Place

Martinez, CA 94553-4392
(925) 229-7380

If to CCCSD, to:

Mr. Timothy Potter
Central Contra Costa Sanitary District
5019 Imhoff Place
Martinez, CA 94553-4392
(925) 229-7380

If to WCWD, to:

Mr. Steve Linsley
West County Wastewater District
2910 Hilltop Drive
Richmond, CA 948065238
510- 237-6603

If to DDSD, to:

Mike Bakaldin
Delta Diablo Sanitation District
2500 Pittsburg-Antioch Highway
Antioch, CA 94509-1373
(925) 756-1942

10. Arbitration: In the event of a dispute arising under this Agreement, the parties may jointly agree to submit the dispute to non-binding arbitration. In the event the parties cannot agree to an arbitrator within 30 days after a party requests arbitration by written notice to the other parties, the arbitrator may be selected by petition of any party to the Superior Court of the County of Contra Costa.

11. Amendments. This Agreement may only be amended by written mutual agreement of the each of the parties hereto. Participating Municipalities shall be notified in writing of any written modification to this Agreement. Any amendment to this Agreement to add a Participating Municipality shall be undertaken according to Section 2(b) (Addition of Participating Municipalities) above.

12. Governing Law. This Agreement is made and will be performed in the State of California, and is governed by California laws shall apply.

13. Severability. If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and

conditions of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

14. Assignment. No Agency shall assign any of its right, title or interest under this Agreement without the prior written consent of the District. Any purported assignment of any Agency's rights under this Agreement is void and without effect.

15. Entire Agreement. This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

<p>CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM: Sharon L. Anderson, County Counsel</p> <p>By: _____ Eric Gelston, Deputy County Counsel</p>	<p>WEST COUNTY WASTEWATER DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Name: _____ Title: _____</p>
<p>CENTRAL CONTRA COSTA SANITARY DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Name: _____ Title: _____</p>	<p>DELTA DIABLO SANITATION DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Name: _____ Title: _____</p>

EXHIBIT A

INSPECTION AGENCIES AND PARTICIPATING MUNICIPALITIES

<u>Inspection Agency:</u>	Central Contra Costa Sanitary District	West County Wastewater District	Delta Diablo Sanitation District
<u>City or Town:</u>	Clayton	El Cerrito	Antioch
	Concord	Hercules	
	Danville	Richmond	Pittsburg
	Lafayette		
	Martinez		
	Moraga		
	Orinda		
	Pleasant Hill		
	San Ramon		
	Walnut Creek		

EXHIBIT B

FORM OF AMENDMENT TO AMENDED AND RESTATED CONTRA COSTA CLEAN WATER PROGRAM INSPECTION ACTIVITIES AGREEMENT ADDING A PARTICIPATING MUNICIPALITY

This Participating Municipality Amendment, dated _____, 20[___], (this "Amendment"), amends that certain Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement (the "Agreement"), dated June 30, 2013, and is by and among Contra Costa County Flood Control and Water Conservation District (the "District"), Central Contra Costa Sanitary District ("CCCSD"); Delta Diablo Sanitation District ("DDSD") and, West County Wastewater District ("WCWD", and together with CCCSD and DDSD, the "Agencies," and each separately, an "Agency"). Capitalized terms used in this Amendment and not otherwise defined have the meaning given in the

RECITALS

1. The [City/Town] of [_____] ("Participating Municipality") is a Program Member and a party to the Program Agreement, and desires to participate in the Contra Costa Clean Water Program Inspection Program and receive Inspection Activities conducted in its jurisdiction pursuant to the Agreement by becoming a Participating Municipality under the Agreement.

2. Participating Municipality has executed a Stormwater Utility Area Agreement with the District that authorizes the District to execute this Amendment on its behalf, and that provides for the invoicing and payment of Inspection Activities costs by Participating Municipality pursuant to the Agreement and the indemnification required by the Agreement.

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the parties to this Amendment agree that the Agreement is amended as follows:

1. The [City/Town] of [_____] is hereby made a Participating Municipality under the Agreement.

2. Exhibit A (Inspection Agencies And Participating Municipalities) attached to the Agreement is hereby deleted in its entirety and replaced with the Exhibit A attached hereto.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Amendment as follows:

<p>CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM: Sharon L. Anderson, County Counsel</p> <p>By: _____ Eric Gelston, Deputy County Counsel</p>	<p>WEST COUNTY WASTEWATER DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Name: _____ Title: _____</p>
<p>CENTRAL CONTRA COSTA SANITARY DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Name: _____ Title: _____</p>	<p>DELTA DIABLO SANITATION DISTRICT</p> <p>By: _____ Name: _____ Title: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Name: _____ Title: _____</p>

EXHIBIT A¹

INSPECTION AGENCIES AND PARTICIPATING MUNICIPALITIES

<u>Inspection Agency:</u>	Central Contra Costa Sanitary District	West County Wastewater District	Delta Diablo Sanitation District
<u>City or Town:</u>	Clayton	El Cerrito	Antioch
	Concord	Hercules	Pittsburg
	Danville	Richmond	
	Lafayette		
	Martinez		
	Moraga		
	Orinda		
	Pleasant Hill		
	San Ramon		
	Walnut Creek		

¹ Revise as necessary to add new Participating Municipality
Exhibit B