

ITEM 2
APPEAL OF EXECUTIVE DIRECTOR DECISION
PROPOSED DECISION

Rejection of Duplicate Test Claim Filing

23-AEDD-01

City of San Jose, Appellant

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**CITY OF SAN JOSE’S APPEAL OF THE
EXECUTIVE DIRECTOR’S DECISION TO
REJECT THE TEST CLAIM AND MOTION TO
CONSOLIDATE; DECLARATION OF COLLEEN D.
WINCHESTER IN SUPPORT OF APPEAL**

**RE: NOTICE OF REJECTION OF DUPLICATE
TEST CLAIM ISSUED JUNE 18, 2024**

**CITY OF SAN JOSE
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I. INTRODUCTION

The City of San José (San Jose) appeals Heather Halsey, Executive Director (Director) of the Commission on State Mandates' (Commission) June 18, 2024, *Rejection of Duplicate Test Claim* and moves to Consolidate its Test Claim with that filed by Union City. San Jose's claim tests Provision C.17, *Discharges Associated with Unsheltered Homeless Populations* an entirely new, and unfunded, provision imposed in the San Francisco Regional Water Board issued Municipal Regional Stormwater Permit (MRP 3).

San Jose's proposed Test Claim raises important issues related to the unhoused, the requirements of the Municipal Regional Stormwater Permit, and the permittees inability to fund this mandate. In support of the rejection, the Director cites to Union City's Test Claim for Provision C.17, seeking \$2,455.00. In sharp contrast, San Jose's claim for Provision C.17a.ii.(3) alone is \$19,022,757 for Fiscal Year 22-23. The dramatic difference in the magnitude of the claims make it apparent that San Jose's test claim does not duplicate Union City's and, in fact, Provision C.17 impacts San José differently. San Jose's claim should proceed and be consolidated with Union City's for the Commission's efficiency.

II. PROCEDURAL HISTORY

San Jose's proposed claim is the third in a series of tests of the requirements of Municipal Regional Stormwater Permits, the first two of which have yet to be decided. The present test and this motion focus on the California Regional Water Quality Control Board (Regional Board), San Francisco Bay Region Municipal Regional Stormwater Permit (MRP 3.0), effective on July 1, 2022.

On June 30, 2023, both Union City and San José timely filed test claims on MRP 3.0 with the Commission. In its initial test, San José included the following provisions of MRP 3.0: C.2, C.3, C.5., C.10, C.11, C.12, C.15, C.17, C.20, C.21. Declaration of Colleen D. Winchester ("Winchester Dec.") ¶3. Apparently, Union City's test also included these provisions, and, on October 11, 2023, the Director served a Notice of Duplicate and Incomplete Test Claim (Notice) advising that San José that its claim was incomplete, but also duplicated Union City's, which was filed first. (Winchester Dec., Exhibit "A".) However, at that time, the Director determined that Union City's test claim was incomplete, so if Union City did not timely cure its claim, then San Jose's test would proceed. *Id.*

On January 9, 2024, consistent with the Director's Notice, San José amended its test claim to focus solely Provision C.17. *Discharges Associated with Unsheltered Homeless*. San José reserved its right to present the entire claim if Union City failed to cure its alleged deficiencies. Moreover, if Union City's revised /supplemental claim completely addresses Provision C.17, then San José would revisit whether to withdraw the revised claim. (Winchester Dec. ¶5.)

Nonetheless, on February 23, 2024, the Executive Director provided a new notice of Duplicative and Incomplete Claim, putting San José in the same position -- Union City's claim was not yet

complete, but also San José's duplicated that potential claim, even though the revised claim focused narrowly on Provision C.17. (Winchester Dec. 6, Ex. "B".) Before submitting its Second Revised Claim, San José obtained Union City's revised filing related to C.17. (Winchester Dec. ¶7, Ex. C.) Upon review, San José determined that its claim to C.17 was not duplicative, and was far more comprehensive than Union City's. Moreover, the vast difference in the two claims -- Union City's \$2,445.00, for this provision compared to San José's is \$19,022,757 for one subsection alone -- clearly demonstrates that the provision affects San José far differently than Union City.

On May 23, 2024, San José filed a Second Amended Test Claim addressing all of the alleged deficiencies and further demonstrating that Provision C.17 impacts San José differently than Union City. (Winchester Dec. ¶8.) The Narrative in the Second Amended Test Claim explains:

On February 23, 2024, Commission Staff provided SAN JOSÉ with a Second Notice of Duplicate and Incomplete Test Claim again citing UNION CITY's test claim. However, SAN JOSÉ and UNION CITY are not similarly situated on Provision C.17a, related to the unsheltered. UNION CITY's claim appears to relate to the provision for a regional best management practices report, Provision C.17.a.i.(2) and not the costs *to implement* the best management practices under Provision C.17.a.ii(3). Nair Dec., ¶18. Implementation of the best practices is an extremely costly requirement of the mandate, as evidenced by the dramatically different test claims, SAN JOSE's claim is in the multi-millions, whereas UNION CITY documents less than \$3,000.00. Nair Dec., ¶18.

Regulation 1183.1(b)(3) provides, in relevant part, "Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate why and how they are affected different."

SAN JOSE's work on the unsheltered and *implementation* of best management practices demonstrates the difference in the two claims. SAN JOSÉ has already implemented a Direct Discharge Plan to meet trash load reduction requirements in Provision C.10. Also, SAN JOSE's Council prioritized this work. Provision C.17.a.ii(3) requires implementation of best management practices and lists several examples, like "safe parking areas" the provision of mobile pump-out services, voucher for RV sanitary sewage disposal, cleaning of human waste or pickup programs. SAN JOSÉ has already budgeted and provided many of services listed as examples of "best management practices". Rufino Dec., ¶4.

They are costly, and unfunded. This Commission should be informed by SAN JOSE's experience on this very important issue and its claim should proceed. Once the test claims are accepted, SAN JOSÉ intends to move for consolidation with UNION CITY's to ensure efficiency of the Commission's time. (See, 2 CCR 1183.4)

(Winchester Dec., Ex. D.) However, on June 18, 2024, the Director rejected San Jose’s Second Revised Claim as a duplicate test claim. (Winchester Dec. ¶9, Ex. E.) Comparing San Jose’s test to Union City’s, San José presents a comprehensive challenge to C.17 including the mandate to *implement best management practices* related to the unsheltered, whereas Union City does not calculate this mandate.

San Jose’s experience in addressing unsheltered population should inform the Commission when exercising its important quasi-judicial role.

III. THIS COMMISSION IMPLEMENTS CONSTITUTIONAL REQUIREMENTS FOR STATE MANDATES AND SHOULD BE FULLY INFORMED.

The Constitution requires the State of California to reimburse local governments when the “state enlists their assistance in implementing a state program.” *County of San Diego v Commission on State Mandates* (2018), 6 Cal.5th 196, 207, citing Cal. Const. Art. XIIIB §6. Voters added this Constitutional requirement shortly after Proposition 13 that “severely restricted the taxing powers of local governments to prevent the state from unfairly shifting the costs of local government onto local entities that that were ill equipped to shoulder the task.” (*Id.*)

In 1984, the State Legislature declared:

...(T)he existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state’s responsibilities under Section 6 of Article XIIIB of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIIIB of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIIIB of the California Constitution.

Gov. Code §17500.

Thus, the Legislature tasked this Commission, a quasi-judicial body, with resolving complex legal questions” and providing an “effective means of resolving disputes over the existence of a state-mandated local program.” (*Id.*)

Here, the Director’s decision limits information for the Commission to consider in exercising its important Constitutional role. As discussed in detail below, this filing does not duplicate Union City’s - San Jose’s addresses “implementation” of best management practices, which Union City has yet to incur or calculate. Moreover, Provision C.17a affects San José differently than Union City – as San José has a magnitude of 12 times the unsheltered population.

San Jose’s test should proceed and consolidated with Union City’s to ensure this Commission has information necessary to perform its Constitutional role.

IV. COMMISSION REGULATIONS ALLOW FOR SAN JOSE’S TEST CLAIM TO PROCEED ALONG WITH UNION CITY’S.

As noted in the Director’s Decision, unless there is a joint claim, Regulation 1183.1 provides, in pertinent part:

...the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and ***no duplicate test*** claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section [1181.10](#) of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. ***Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently.***

2 CCR 1183.1, emphasis added.

This Regulation is a two-step process. First, is the claim duplicative; and second, if so, whether the affected agencies are similarly situated. Neither of these factors are present here.

A. San Jose’s claim does not Duplicate Union City’s.

As itemized in San Jose’s test, Provision C.17a, *Discharges Associated with Unsheltered Homeless Populations*, contains several subdivisions summarized with the following headings¹:

Provision C17.a.i(1): Gather and Utilize Data on Unsheltered Homeless Residents, Discharges, and Water Quality Impacts associated with Homelessness and Sanitation-Related Needs

Provision C17.a.i(2): Coordinate and Prepare a Regional Best Management Practices Report that Identifies Effective Practices to Address Non-Stormwater Discharges Related

¹ These headings do not appear in the permit and summarize the requirements. The provisions are provided in full below.

to Homelessness

Provision C17.a.ii(1): Submit a Map Identifying the approximate locations of Unsheltered Homeless Populations and their Locations to Storm Drain Inlets, Rivers, Flood Control Channels and Other Surface Water Bodies

Provision C17.a.ii(2): Report on Programmatic Efforts to Address MS4 Discharges Associated with Homelessness

Provision C17.a.ii(3): Identify and Implement Best Management Practices to Address MS4 Discharges Associated with Homelessness that Impact Water Quality; Evaluate and Assess Effectiveness of BMPs, Portion of Unsheltered Served by BMPs, Approximate Locations of those Not Reached, or not fully Reached

Provision C17.a.ii(4): Review and Update Implementation Practices with data from biennial Point-In-Time Census and Regional Coordination

Provision C17.a.iii(1): Submit a Best Management Report with the 2023 Annual Report

Provision C17.a.iii(2): Submit a Map with the 2023 and 2025 Annual Reports; and Report on the BMPs and Effectiveness in 2023 and 2025 Annual Reports

San José's test itemizes each of these subsections, but Provision C.17.a.ii(3) is likely the most significant. That subsection requires:

Each Permittee shall identify *and implement appropriate best management practices* to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts. In addition, Permittees shall also *evaluate and assess the effectiveness of those practices*, specifically by reporting on the BMP control measures being implemented, the approximate portion of the Permittee's unsheltered homeless population and locations being served by those control measures, and the portion and locations of the Permittee's unsheltered homeless population not reached, or not fully reached by the implemented control measures. *Examples of actions that may be implemented include, but are not limited to, access to emergency shelters; the provision of social services and sanitation services; voucher programs for proper disposal of RV sanitary sewage; establishment of designated RV "safe parking" areas or formalized encampments with appropriate services; provision of mobile pump-out services; establishing and updating sidewalk/street/plaza cleaning standards for the cleanup and appropriate disposal of human waste; and establishing trash and waste cleanup or pickup programs within the Permittee's jurisdiction, or at the countywide or regional level.*

MRP 3.0, C.17.a.ii(3) (Emphasis added.)

San José's claim details the costs across several City departments, including Housing, Environmental Services and Parks, Recreation and Neighborhoods and arrives at a total of \$19,022.757 for this subsection alone for Fiscal year 2022 – 2023. (Winchester Dec, ¶8, Exhs. D, G, and H). "Emergency shelters", "social services" "'safe parking' areas or formalized encampments with appropriate services" listed in the MRP 3.0 are significant, expensive requirements, without funding sources.

In sharp contrast, Union City's claim for the entire C.17a is \$2,455.00, less than three thousand dollars. Union City's declarations demonstrate that the "The Permittees will incur additional costs throughout the MRP3 term to implement the best management practices." (Winchester Dec. Ex. C, p. 6.2.8, 17-18.) However, San Jose already implemented these practices and properly makes its claim. San Jose's claim does not duplicate Union City's and should proceed.

B. Provision C.17 affects San José Differently than Union City.

Even if the claim were considered "duplicate", San Jose's test should proceed because Provision C.17a does not affect San José the same as Union City. Again, the relevant regulation provides, in part:

Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently.

2 CCR 1183.1.

To determine whether a mandate is unfunded, this Commission must analyze whether an agency can pass on the costs through a fee or charge. Government Code Section 17556 (d) provides that if a local agency has the authority to levy service charges, fees, or assessments "sufficient to pay for the mandated program or increased level of service" the requirement is not an unfunded mandate. This analysis can differ when considering costs less than \$3,000.00 as compared to over \$19,000.00.00.

Moreover, Union City and San José face different challenges with the unsheltered. According to Alameda County's 2022 Homeless County and Survey Comprehensive Report, Union City's estimated unsheltered Population is 489. (Winchester Dec. ¶10, Exh. F.) Contrast that with San Jose's homeless population of 6,200 individuals – over twelve times that of Union City's -- approximately 70% of which are unsheltered. (Winchester Dec., ¶11, Ex. G; Declaration of Ragan Henninger, ¶17.)

As explained above and in the Second Amended Narrative, San José's work on *implementation* of best management practices demonstrates the difference in the two claims. Provision C.17.a.ii(3) lists several examples of best management practices, like "safe parking areas" the provision of mobile pump-out services, voucher for RV sanitary sewage disposal, cleaning of human waste or pickup programs. San José provided, and budgeted for, these practices. (Winchester Dec., ¶12, Ex. H; Rufino Dec., ¶4.) San Jose's Housing Department funds homeless provision services, Services, Outreach, Assistance and Resources (SOAR) programs, and Emergency Interim Shelter Beds. (Winchester Dec., Exh. G, Henninger Dec., ¶¶9 – 13.)

San Jose's experience in implementing best practices for the unhoused, the costs associated with it, and the funding sources provides a unique and important perspective for the Commission's consideration when determining whether the state unfairly shifted the costs "onto local entities that were ill-equipped to shoulder the task" as California voters feared when adopting Proposition XIII. San Jose's claim should proceed.

V. CONCLUSION.

Through its test claim, San José focuses this Commission on an important provision in MRP 3.0, C.17 involving the unsheltered homeless, an undoubtedly important public issue. The State mandate placed on local agencies to implement best management practices for the unhoused is significant and unfunded.

This Commission should be informed by San Jose's experience on this very important issue and its claim should proceed and consolidated with Union City's.

NORA V. FRIMANN, CITY ATTORNEY

A handwritten signature in blue ink, appearing to read "Colleen Winchester".

By: Colleen D. Winchester
Senior Deputy City Attorney

Certification

I declare under penalty of perjury that the documents filed with the Commission on State Mandates: CITY OF SAN JOSE'S APPEAL OF THE DIRECTOR OF THE COMMISSION ON STATE MANDATE'S REJECTION OF TEST CLAIM AND MOTION TO CONSOLIDATE; DECLARATION OF COLLEEN D.

WINCHESTER IN SUPPORT OF APPEAL is true and correct to the best of my personal knowledge, information, or belief. Signed this 27th day of June, 2024 at San Jose, California.

A handwritten signature in blue ink, reading "Colleen Winchester". The signature is fluid and cursive, with the first name "Colleen" and last name "Winchester" clearly distinguishable.

By: Colleen D. Winchester
Senior Deputy City Attorney
City of San Jose
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San Jose, CA 95113
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**DECLARATION OF COLLEEN D. WINCHESTER
IN SUPPORT OF THE CITY OF SAN JOSE'S
APPEAL OF THE EXECUTIVE DIRECTOR'S
DECISION TO REJECT THE TEST CLAIM AND
MOTION TO CONSOLIDATE**

**RE: NOTICE OF REJECTION OF DUPLICATE
TEST CLAIM ISSUED JUNE 18, 2024**

I, COLLEEN D. WINCHESTER, declare:

1. I am an attorney licensed by the State Bar of California and employed by the City of San Jose (San Jose) as a Senior Deputy City Attorney. I make this declaration based upon my own personal knowledge and if called upon, could testify competently to the matters in this declaration.

2. On or about May 22, 2022, California Regional Water Quality Control Board (Regional Board) issued the San Francisco Bay Region Municipal Regional Stormwater Permit (MRP 3.0), effective on July 1, 2022.

3. On or about June 30, 2023, San Jose timely presented a test claim to the Commission. In the initial filing, San Jose's test included several provisions: C.2 (Municipal Operations), Provision C.3 (New Development and Redevelopment); C.5 (Illicit Discharge Detection and Elimination); C.8 (Monitoring); C.10 (Trash Load Reduction); C.11, C.12 (Mercury and PCB Diversion Studies; C.25 Emergency Discharges of Firefighter Water and Foam; C.17 (Discharges Associated with the Unsheltered Homeless Populations) and C.20, 21 (Cost Reporting and Asset Management.)

4. On or about October 11, 2023, the Executive Director of the Commission on State Mandates (Executive Director) served a Notice of Duplicate and Incomplete Claim. Attached as Exhibit "A" is a copy of the first notice. The Executive Director determined that Union City filed a claim first which duplicated San Jose's but was also deemed incomplete.

5. On or about January 9, 2024, San Jose filed a First Amended test claim, reserving its right to proceed with its initial claim if Union City's was not timely cured, but focusing on the Discharges Associated with Homeless Populations (Provision C.17) which was vastly different from Union City's.

6. On February 23, 2024, the Executive Director served another Notice of Duplicate and Incomplete Claim. Attached as Exhibit "B" is this Second Notice.

7. Before filing a Second Revised Test Claim on Provision C.17, I obtained Union City's filings related to this provision. Attached as Exhibit "C" are documents from Union City's Revised Filing, including the Declaration of Farooq Azim, an employee of Union City, filed in support of Union City's Test Claim; the Declaration makes it clear that, Union City "will incur additional costs throughout MRP3 term to implement best management practices." (Azim Dec., 6.1.5:12-13.) Similarly, the Declaration of Sandra Mathews filed in support of Union City's Test Claim similarly states that "Permittees will incur additional costs throughout the MRP3 term to implement the best management practices." (Mathews Dec., 6.2.8, 17-18.) Union City's Narrative summarizing the costs of Provision C.17 as \$2,455.00

8. San Jose determined that its test on C.17 is more comprehensive than Union City's and the provision affects San Jose differently than Union City, and on or about May 23, 2024, submitted a Second Revised Test Claim. Attached Exhibit "D" is San Jose's Narrative on its Second Revised Test Claim. San Jose's claim for the implementation of best management practices in C.17.a.ii.(3) alone is \$19,022,757, consisting of work performed by San Jose's Housing Department, Parks and Neighborhood Services, and Environmental Services Department. (See, Narrative, p. 26.)

9. On or about June 18, 2024, the Executive Director issued a Notice of Rejection of Duplicate Test Claim. Attached as Exhibit “E” is a true and correct copy of the Director’s Decision.

10. Attached as Exhibit “F” is a true and correct copy of a portion of Alameda County’s 2022 Homeless Count and Survey Comprehensive Report, accessed from Alameda County Health, Housing and Homelessness Services on June 26, 2024, at <https://homelessness.acgov.org/data.page>; according to the Report, Union City has 489 residents that are currently experiencing homelessness.

11. Attached as Exhibit “G” is a true and correct copy of the Declaration of Ragan Henninger in Support of San Jose’s Second Revised Claim. There are approximately 6,200 individuals experiencing homelessness in San Jose, approximately 70% are unsheltered. (¶17.) Ms. Henninger details the work the Housing Department has done to address homelessness.

12. Attached as Exhibit “H” is a true and correct copy of the Declaration of Neil Rufino in Support of San Jose’s Second Revised Claim. In that declaration, Mr. Rufino details the costs associated with San Jose’s Beautify Program, which includes costs for safe parking areas, mobile pump out services, vouchers, Creek Clean Ups, Encampment Management Routes, and other San Jose work to address unhoused.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Dated this 27th day of June, 2024, at San Jose California.

A handwritten signature in dark ink, appearing to read "Colleen Winchester", written in a cursive style.

COLLEEN D. WINCHESTER

EXHIBIT “A”

Sent via email to: Jennifer.Maguire@sanjoseca.gov and Colleen.Winchester@sanjoseca.gov

October 11, 2023

Jennifer Maguire
City of San Jose
200 E. Santa Clara Street, 17th Floor
San Jose, CA 95113

Colleen Winchester
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

RE: Notice of Duplicate and Incomplete Test Claim

Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

Dear Ms. Maguire and Ms. Winchester:

On June 30, 2023, you filed a test claim filing with the Commission on State Mandates (Commission), on behalf of the City of San Jose, on the above-named matter. The City of Union City, however, filed the first test claim filing on same executive order before yours was filed, on June 30, 2023, which has been found to be incomplete. The first claim filed on a statute or executive order is the test claim under the governing statutes and regulations.

Upon initial review, Commission staff finds your filing to be duplicative and incomplete. But if the City of Union does not timely cure its filing, then it would not be the test claim and the City of San Jose's claim could be accepted as the test claim if it is timely cured. The two cities could also choose to file jointly, if desired, but must still meet the statute of limitations requirements for filing new or amended claims. Therefore, the way to file jointly if the statute has already run for filing new or amended claims, is to add a new claimant to a claim already on file, which, pursuant to section 1181.2 of the Commission's regulations would not be an amendment to the test claim. Note, however, that the pleading of additional provisions, statutes, or executive orders would constitute a new test claim or an amendment to an existing test claim.

Your test claim filing is incomplete for the following reasons:

- (1) Your filing is a duplicate test claim filing since a Test Claim was filed by the City of Union City (claimant) on the above-named executive order before this Test Claim on the same day, June 30, 2023.
- (2) The *Test Claim Form*:
 - a. In *Section 3*, two names are listed on the Name and Title of Claimant Representative line. Pursuant to the Commission's regulations in section 1183.1, only one representative may be designated by the claimant to act as its sole representative in this Test Claim, as is indicated in the directions for this section.
 - b. In *Section 4* Order. No. R2-2022-0018 has been pled, although specific sections of the Order pled are not listed on the Test Claim Form they are listed in the *Narrative* and *Declarations* making it unclear which sections of the Order and associated activities (whether new or modified existing),

fiscal years, and costs of each are being pled in this Test Claim. In addition, the issue date of May 11, 2022 is listed where the effective date is required, as is indicated in the directions for this section. The *Narrative* indicates on May 11, 2022, an updated permit (MRP 3.0) “was issued.” The *Declaration* indicates SAN JOSE is a permittee under the permit, “issued on May 11, 2022.” Therefore, it is unclear if May 11, 2022 is simply the issue date or is also the effective date of the Order.

- c. In *Section 5* although the box is checked, the line for identifying the following fiscal year and the statewide cost estimate of increased costs that all local agencies or school district will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is blank. All sections of the Test Claim Form are required to be completed.
- d. In *Section 5* the box is checked indicating all dedicated funding sources for this program are identified but each of the lines below are left blank. All sections of the Test Claim Form are required to be completed.

(3) The *Narrative* does not provide:

- a. The specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, as required by Government Code section 17553(b)(1).
- b. A detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A).
- c. A detailed description of the existing activities and costs that are modified by the mandate, as required by Government Code section 17553(b)(1)(B).
- d. The actual increased costs that will be incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate, as required by Government Code section 17553(b)(1)(C).
- e. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D).
- f. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- g. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by Government Code section 17553(b)(1)(H).

(4) The *Declaration(s)* do not provide:

- a. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A).
- b. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Duplicate Test Claims Will Not Be Accepted

On June 30, 2023, the City of Union City (claimant) filed a Test Claim prior to this test claim filing on the above-named executive order. A “test claim” is the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. (Gov. Code §17521.) Though multiple claimants may join together in pursuing a single test claim, the Commission will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies. (See Cal. Code Regs., tit. 2, §1183.1; *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, page 872, fn. 10.) Thus, the test claim “functions similarly to a class action and has been established to expeditiously resolve disputes affecting multiple agencies.” (Cal. Code Regs., tit. 2, §1181.2(s).)

Although the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission, other similarly situated affected agencies may participate in the process by submitting comments in writing on any agenda item as provided in section 1181.10 of the Commission’s regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.

The Commission’s regulations also provide that test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.

Otherwise, the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Affected agencies that are not similarly situated, meaning that test claim statutes

affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently. (Cal. Code Regs., tit. 2, §1183.1(b)(1-3).)

In addition, although all new test claims and amendments thereto are required to meet the statute of limitations, pursuant to section 1181.2 of the Commission's regulations adding a new claimant to a claim already on file is not an amendment to the test claim.

Finally, if the City of Union City's filing is not timely cured, your test claim filing may become the Test Claim on this Order if it is timely cured.

All Elements of the Test Claim Form Must Be Completed Accurately

In *Section 3* of the Test Claim Form, two names appear on the line "Name and Title of Claimant Representative: Nora Frimann, City Attorney and Colleen Winchester, Sr. Deputy Attorney."¹ The directions in *Section 3* indicate "Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. (CCR, tit.2, § 1183.1(b)(1-5))."² Pursuant to the Commission's regulations cited on the form, only one representative may be designated by the claimant. In *Section 4* of the Test Claim Form, Order. No. R2-2022-0018 has been pled, although specific sections of the Order pled are not listed on the Test Claim Form they are listed in the *Narrative* and *Declarations* making it unclear which sections of the Order (and associated activities, whether new or modified existing, fiscal years, and costs of each) are being pled in this filing.³ In addition, in *Section 4*, the issue date of May 11, 2022, rather than the effective date of the Order is provided, although the effective date is required by the directions.⁴ The *Narrative* indicates "On May 11, 2022, the California Regional Water Quality Control Board (Regional Board), San Francisco Bay Region issued an updated Municipal Regional Stormwater Permit (MRP 3.0)."⁵ The *Declaration* indicates "SAN JOSE is a permittee under the Municipal Regional Stormwater NPDES Permit, issued on May 11, 2022 by the California Regional Water Quality Control Board ('Regional Water Board'), San Francisco Bay Region, Order No. R2-2022-0018 (NPDES Permit No. CAS612008) (the 'MRP 3.0')."⁶ Therefore, it is unclear if May 11, 2022 is simply the issue date or is also the effective date of the Order.

¹ Filing, page 1 (Test Claim Form).

² Filing, page 1 (Test Claim Form).

³ Filing, page 2 (Test Claim Form), pages 5-33 (Narrative), and pages 35-48 (Declarations).

⁴ Filing, page 2 (Test Claim Form).

⁵ Filing, page 9 (Narrative).

⁶ Filing, page 36 (Declaration of Rajani Nair).

Also, in *Section 5*, although the box is checked, the line for identifying the following fiscal year and the statewide cost estimate of increased costs that all local agencies or school district will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is blank.⁷ Further, in *Section 5*, the box is checked indicating all dedicated funding sources for this program are identified but each of the lines below are left blank and the line for identifying dedicated State funding sources indicates “As described in the narrative.”⁸ Finally, in *Section 5* the box is checked indicating that any legislatively determined mandates that are on, or that may be related to, the same statute or executive order have been identified, however, the form indicates “Pending claims for prior permits, Order No. R2-2009-074 (2009, rev. 2011), Order No. R2-2015-0049 (2015).”⁹ Pending test claims for prior permits do not constitute legislatively determined mandates pursuant to Government Code section 17573.¹⁰ If the response is “None” please indicate “None.” All sections of the Test Claim Form are required to be completed accurately.

The Identification of Specific Sections of Statutes or Executive Orders Allegedly Mandating Activities and Costs Is Required in the Narrative.

The *Narrative*, in the section titled “I. Introduction” states “Thus, the State exercised its discretion in imposing the obligations in all three permits, MRP 1, MRP 2.0, and MPR 3.0. This claim details how MRP 3.0, like the predecessor permits, imposes obligations on San Jose and other permittees which require funding.”¹¹ Throughout the filing, it is unclear where this filing discusses prior permits and other Test Claims pending before the Commission, which activities are new with respect to this Order pled and which activities are modified existing activities with respect to this Order pled. The distinction is required by the Government Code in section 17553(b)(1)(A-B).

In addition, the *Narrative* provides the following list of provisions and a description of activities allegedly mandated by the test claim statute:

C. Present Test Claim

The MRP 3.0 contains 23 separate provisions that establish the prohibitions, limitations, and obligations of SAN JOSE and other Permittees. This Test Claim pertains to several categories of mandates:

- Provision C.2—Municipal Operations
- Provision C.3 – New Development and Redevelopment
- Provision C.5 – Illicit Discharge Detection and Elimination
- Provision C.8—Monitoring

⁷ Filing, page 2 (Test Claim Form).

⁸ Filing, page 3 (Test Claim Form).

⁹ Filing, page 3 (Test Claim Form).

¹⁰ Filing, page 3 (Test Claim Form).

¹¹ Filing, page 9-10 (Narrative).

- Provision C.10—Trash Load Reduction
- Provision C.11 and C.12—Mercury and PCB Diversion Studies
- Provision C.15 – Emergency Discharges of Firefighter Water and Foam
- Provision C.17 Discharges Associated with Unsheltered Homeless Populations
- Provision C.20 and C.21 – Cost Reporting and Asset Management

Each of these provisions imposes a new program or expanded level of service over MRP 2.0 and exceed the mandates of the federal Clean Water Act or its implementing regulations. Finally, compliance with these obligations will impose costs beyond those which SAN JOSE is authorized to recover through the imposition of increased fees without voter approval or notice that is subject to protest.¹²

However, although the *Narrative* indicates above “23 separate provisions,”¹³ none have been properly pled in *Section 4* of the Test Claim Form and only 11 are listed above. Further, the *Narrative* provides a second list of provisions and another description of activities allegedly mandated by the test claim statute:

MRP 3.0 contains 21 separate provisions that establish the prohibitions, limitations, and obligations of SAN JOSE and other Permittees. This Test Claim pertains to several categories of mandates:

- Provision C.2—Municipal Operations
- Provision C.3 – New Development and Redevelopment
- Provision C.5 – Illicit Discharge Detection and Elimination
- Provision C.8—Monitoring
- Provision C.10—Trash Load Reduction
- Provision C.11 and C.12—Mercury and PCB Diversion Studies
- Provision C.17 – Discharges Associated with Unsheltered Homeless Populations
- Provision C.20 and C.21 – Cost Reporting and Asset Management

As explained below, each of these MRP 3.0 provisions imposes a new program or expanded level of service over MRP 2.0.¹⁴

It is unclear why this second listing indicates “21 separate provisions,”¹⁵ why none of these sections have been pled in *Section 4* of the Test Claim Form, as required, and

¹² Filing, page 11-12 (Narrative).

¹³ Filing, page 11 (Narrative).

¹⁴ Filing, pages 18-19 (Narrative).

¹⁵ Filing, page 18 (Narrative).

why Provision C.15 is missing from this second list. Also, the *Narrative* provides additional provisions but does not clarify which activities are new and which are modified existing activities or the associated costs of each with consistency, as follows:

1. The New Requirements of Provision C.2;¹⁶

Provision C.3 of the MRP 3.0 requires Permittees to use their planning authorities to include appropriate source control, design, and stormwater treatment.¹⁷

1. Provision C.3.b and C.3.j Constitutes a new Program or Higher Level of Service¹⁸

MPR 3.0 contains a new provision that all road projects that involve the reconstruction of existing streets or roads which create or replace greater than one acre of impervious surfaces, including existing streets and bicycle lanes must comply with LID (Green stormwater infrastructure) requirements. (C.3.b.ii.5.).¹⁹

In addition, MRP 3.0 adds a new category of Road Reconstruction Projects [C.3.b.ii(5)] that includes utility trenching projects which average \geq 8 feet wide over length of project. The prior permit (MRP 2.0) did not contain these provisions.²⁰

Provision C.5 previously required permittees to implement illicit discharge prohibitions. Now, MRP 3.0 extends beyond regulatory enforcement.²¹

MRP 3.0, Provision C.5 includes a new program or higher level of service by providing that Permittees update their current Municipal Separate Storm Sewer System mapping. SAN JOSE must “identify information missing from the current MS4 maps and develop a plan and schedule to compile additional storm sewer system information, considering the potential to identify component locations, size or specifications, materials of construction, and condition” and submit a plan or schedule to implement an update to the system. (C.5.f.ii.)²²

1. Provision C.8 Contains New Programs.²³

¹⁶ Filing, page 19 (Narrative).

¹⁷ Filing, page 20 (Narrative).

¹⁸ Filing, page 20 (Narrative).

¹⁹ Filing, page 20 (Narrative).

²⁰ Filing, page 20 (Narrative).

²¹ Filing, page 21 (Narrative).

²² Filing, page 22 (Narrative).

²³ Filing, page 23 (Narrative).

Provision C.8.d directs Permittees to conduct LID monitoring during the permit term, and identifies specific parameters and monitoring frequencies that must be achieved to address questions related to the “pollutant removal and hydrologic benefits” of LID facilities. Permittees must assess the design, changes over time, and the operation and maintenance required for those facilities. (C.8.d.)²⁴

In addition, LID Monitoring Plans are required at the regional or countywide level. At a minimum, the Monitoring Plans must contain a laundry list of items including descriptions of the LID facilities, lists of monitoring stations, data evaluation methods, and study-specific Quality Assurance Plans. (C.8.d.i.1) Provision C.8 also requires regional cooperation, methods, and parameters and intensities, implementation levels, and reporting. (C.8.d.ii – vi.)²⁵

For the Santa Clara Valley, a minimum of 25 water quality sampling events must be conducted during the MRP 3.0 permit term, with an annual minimum of three events beginning in Water Year (WY) 2024 (October 1, 2023 through September 30, 2024). Each sampling event must consist of paired flow- (or time) weighted composite samples of the LID facility influent and effluent collected with automated samplers. Provision C.8.d.iv specifies that all composite samples must be analyzed for total mercury, total polychlorinated biphenyls (PCBs), total suspended solids (TSS), per- and polyfluoroalkyl substances (PFAS), total petroleum hydrocarbons (TPH), total and dissolved copper, total hardness, and pH. In addition, flow must be measured at both influent and effluent sampling locations. All new requirements for this permit.²⁶

1. Provision C.10 Constitutes a New Program or Higher Level of Service.²⁷

The Regional Board concedes that the permit “builds on the data and information collected in the last permit term and increases expectations of Permittees...” (Fact Sheet, ¶C.10-10, p. A-236.) In fact, Provision C.10.a.ii requires the installation of trash prevention and control actions with “trash discharge control equivalent to or better than full trash capture systems ...” and area mapping, including private lands, that will be retrofitted by June 30, 2025. (C.10.a.ii) Credits for voluntary Direct Discharge Plans and other alternative compliance measures expire on June 30, 2025 and create a new or higher level of service. (C.10.b.v.)²⁸

²⁴ Filing, page 23 (Narrative).

²⁵ Filing, page 23 (Narrative).

²⁶ Filing, page 23 (Narrative).

²⁷ Filing, page 24 (Narrative).

²⁸ Filing, page 24 (Narrative).

1. Provisions C.11 and C.12 Constitute New Programs.²⁹

Provisions C.11.c and C.12.c require SAN JOSE and other Permittees to implement treatment control measures to treat 664 acres of old industrial lands, map, and report on all implementation and diversion measures. In addition, for PCBs, Provision C.12.d requires SAN JOSE and other Permittees to implement a Cal Trans specification to manage potential PCB containing material in overpass and roadway repair, prepare inventory of ownership of bridges and a replacement schedule, submit documentation of the use of the CalTrans specs on all projects, and report estimates of PCB load reductions resulting from implementing the control measures. Lastly, SAN JOSE and Permittees must prepare, implement, and report on a program for PCBs in oil-filled electrical equipment for municipally owned electrical utilities. (C.12.e)³⁰

4. SAN JOSE Does Not Have Adequate Authority to Recover the Costs of Complying with C.11.f and C.12.f Through the Imposition of a Fee.³¹

MRP 3.0, Provision C.15.a.iii, retains the conditional exemption for emergency discharges of firefighting foam, but mandates regional collaboration and potential implementation of Best Management Practices (BMPs) not in found in prior permits.³²

1. Provision C15 Constitutes a New Program or Higher Level of Service.³³

The conditional exemption for firefighting activities has existed at least since MRP 1.0. MRP 3.0 now increases requirements for the use of the exemption, including participation in a region wide Firefighting Discharges Working Group which must produce a Firefighting Discharges Report. That Report must assess adequacy of different BMPs. After coordination, information sharing, and feedback from other agencies, including CalFire, the California Department of Toxic Substances and Control, and the US Forest Service, the permittees must implement the BMPs, train staff and contractors, and provide reporting. (C.15.b.iii. (2)- (5)).³⁴

1. Provision C.17 Constitutes New Programs.³⁵

Provision C. 17 is an entirely new provision and requires significant actions related to the unsheltered. "The Permit's expectation is that

²⁹ Filing, page 26 (Narrative).

³⁰ Filing, page 26 (Narrative).

³¹ Filing, page 27 (Narrative).

³² Filing, page 27 (Narrative).

³³ Filing, page 27 (Narrative).

³⁴ Filing, page 27 (Narrative).

³⁵ Filing, page 28 (Narrative).

housing and services provided to populations experiencing unsheltered homelessness, and structural and institutional mitigation of illegal dumping sites, will increase over the course of the Permit term.” (C.10.f.ii.)³⁶

“To encourage ongoing regional, countywide and municipal coordination efforts, Permittees shall collectively develop a best management practice report that identifies effective practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges within a given timeframe.” (C.17.a.2.) Each permittee must submit a map identifying the “approximate location(s) unsheltered homeless populations, including homeless encampments and other areas where other unsheltered homeless people live. The map shall identify those location(s) in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies within the Permittee’s jurisdiction” (C.17.a.ii.)³⁷

Permittees also must evaluate and assess the effectiveness of BMP control measures “specifically by reporting on the BMP control measures being implemented, the approximate portion of the Permittee’s unsheltered homeless populations being served by those control measures, and the portions and locations of the Permittee’s unsheltered population not reached, or not fully reached by the implemented control measures.” [C.17.ii(3).] Permittees shall identify and implement best management practices which “include, but are not limited to, access to emergency shelters; the provision of social services and sanitation services; voucher programs for proper disposal of RV sanitary sewage; establishment of designated RV “safe parking” areas or formalized encampments with appropriate services; provision of mobile pump-out services; establishing and updating sidewalk/street/plaza cleaning standards for the cleanup and appropriate disposal of human waste; and establishing trash and waste cleanup or pickup programs within the Permittee’s jurisdiction, or at the countywide or regional level.” [C.17.ii(3).]³⁸

The HUD point in time survey is significantly less intensive than the mapping required under MRP 3.0. Under the new requirement, maps must show the unsheltered “in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies.” (C.17.ii.2.) SAN JOSE retained a consultant for the HUD point in time survey at a cost of \$172,292. Again, that survey is less comprehensive

³⁶ Filing, page 28 (Narrative).

³⁷ Filing, page 28 (Narrative).

³⁸ Filing, page 28-29 (Narrative).

than is required to meet the MRP and SAN JOSE anticipates costs for the new mapping to far exceed this estimate. (Nair Dec.¶19c)³⁹

1. Provisions C.20 and C.21 constitute new programs or higher levels of service.⁴⁰

Provision C.20 requires the permittees to “develop a cost reporting framework and methodology to perform an annual fiscal analysis.” Permittees are “encouraged to collaboratively develop the framework and methodology for purposes of efficiency, cost-savings, and regionwide consistency and comparability.” The annual cost fiscal analysis must include the source of funds, legal restrictions on the use of the funds, and funding resources that are shared by other agencies. (C.20.b) The framework shall “provide meaningful data to assess costs of different program areas, and allow for comparisons and to identify trends over time.” (C.20.b.i)⁴¹

In turn, Provision C.21 requires a comprehensive Asset Management Plan, which also must include an “Operation, Maintenance, Rehabilitation, and Replacement Plan” to inform a strategy for “prioritizing and scheduling maintenance, rehabilitation, and replacement of inventoried assets.” (C.21.b.(3).) An Asset Management Plan must assess the condition of all hard assets defined as, “structural controls that serve a water quality function, for example, bioretention cells, pervious pavement system systems, trash capture devices, trash receptacles, and pet waste stations.” (C.21-1, p. 67.)⁴²

Therefore, the following provisions are listed in the *Narrative*, however, no sections of the executive order are pled in *Section 4* of the Test Claim Form:⁴³ C.2;⁴⁴ C.3;⁴⁵ C.3.b;

³⁹ Filing, page 30 (Narrative).

⁴⁰ Filing, page 30 (Narrative).

⁴¹ Filing, page 30-31 (Narrative).

⁴² Filing, page 31 (Narrative).

⁴³ Filing, page 2 (Test Claim Form).

⁴⁴ Filing, page 19 (Narrative).

⁴⁵ Filing, page 20 (Narrative).

C.3.j;⁴⁶ C.3.b.ii.5;⁴⁷ C.3.b.ii(5);⁴⁸ C.5;⁴⁹ C.5.f.ii;⁵⁰ C.8;⁵¹ C.8.d;⁵² C.8.d.i.1 and C.8.d.ii – vi;⁵³ C.8.d.iv;⁵⁴ C.10;⁵⁵ C.10.a.ii; C.10.b.v;⁵⁶ C.11; C.12;⁵⁷ C.11.c; C.12.c; C.12.d; C.12.e;⁵⁸ C.11.f; C.12.f;⁵⁹ C.15.a.iii;⁶⁰ C.15;⁶¹ C.15.b.iii.(2)– (5);⁶² C.17;⁶³ C.10.f.ii;⁶⁴ C.17.a.2; C.17.a.ii;⁶⁵ C.17.ii(3);⁶⁶ C.17.ii.2;⁶⁷ C.20; C.21;⁶⁸ C.20.b; C.20.b.i;⁶⁹ C.21.b.(3); C.21-1.⁷⁰ Finally, no prior mandate determinations are provided in the *Narrative*, as

⁴⁶ Filing, page 20 (Narrative).

⁴⁷ Filing, page 20 (Narrative).

⁴⁸ Filing, page 20 (Narrative).

⁴⁹ Filing, page 21 (Narrative).

⁵⁰ Filing, page 22 (Narrative).

⁵¹ Filing, page 23 (Narrative).

⁵² Filing, page 23 (Narrative).

⁵³ Filing, page 23 (Narrative).

⁵⁴ Filing, page 23 (Narrative).

⁵⁵ Filing, page 24 (Narrative).

⁵⁶ Filing, page 24 (Narrative).

⁵⁷ Filing, page 26 (Narrative).

⁵⁸ Filing, page 26 (Narrative).

⁵⁹ Filing, page 27 (Narrative).

⁶⁰ Filing, page 27 (Narrative).

⁶¹ Filing, page 27 (Narrative).

⁶² Filing, page 27 (Narrative).

⁶³ Filing, page 28 (Narrative).

⁶⁴ Filing, page 28 (Narrative).

⁶⁵ Filing, page 28 (Narrative).

⁶⁶ Filing, page 29 (Narrative).

⁶⁷ Filing, page 30 (Narrative).

⁶⁸ Filing, page 30 (Narrative).

⁶⁹ Filing, page 31 (Narrative).

⁷⁰ Filing, page 31 (Narrative).

required, although in *Section 5*, the Test Claim Form indicates “In Re: Test Claim, Santa Ana Regional Water Quality Control Board, et al. Case No. 09-TC-03.”⁷¹

Government Code section 17553(b)(1) requires *a written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate*. Government Code section 17553(b)(1)(A) requires *a detailed description of the new activities and costs that arise from the mandate*. Government Code section 17553(b)(1)(B) requires *a detailed description of the existing activities and costs that are modified by the mandate*. Government Code section 17553(b)(1)(C) requires *the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate*. Government Code section 17553(b)(1)(D) requires *the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. Government Code section 17553(b)(1)(H) requires *identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order*. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify which sections of executive orders are pled; identify which are alleged to mandate a new activity and which are alleged to mandate a modified existing activity; and provide the associated total costs of each in full fiscal years. Please provide total estimated amounts of costs where actual costs are unknown for the full fiscal year; and please verify that the information provided in the filing is consistent across the *Test Claim Form*, *Narrative*, *Declaration(s)*, and *Documentation*. In addition, if no legislatively determined mandate that may be related to the same statute or executive order has been identified, please state that fact both on the Test Claim Form and in the *Narrative*, as required.

The Identification of a Statewide Cost Estimate Is Required in the Narrative.

In addition, the *Narrative* states:

The MRP 3.0 governs a portion of the San Francisco Bay region. This Test Claim is even narrower in scope in that, for some programs, it pertains to new programs and higher levels of service imposed by the MRP on SAN JOSE directly or indirectly in the form of contributions to work that will be performed jointly with other Permittees within the Santa Clara Valley Program or in other collaborative efforts, compared to the Prior Permit. Therefore, the cost estimates provided relate only to SAN JOSE and other Permittees participating in the Santa Clara Valley Program.⁷²

Also, the *Narrative* states:

⁷¹ Filing, page 3 (Test Claim Form). Please note, the title of the referenced matter is *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, Adopted May 22, 2009*, 09-TC-03.

⁷² Filing, page 32 (Narrative).

SAN JOSE is unaware of any prior mandate determinations relating to the MRP 3.0, but there are pending test claims on MRP 1.0 and MRP 2.0 pending before the Commission. In addition, test claims on other Municipal Stormwater permits have resulted in some appellate decisions as cited above. (See, for example, *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661; *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535.) Moreover, the Commission recently issued its *Santa Ana Decision* which analyzed a Municipal Stormwater Permit for the Southern California Region.⁷³

Therefore, in the *Narrative*, no statewide cost estimate is provided, as required.

Government Code section 17553(b)(1)(E) requires a *statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. This is a statutory requirement to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please provide the total amount of the statewide cost estimate; and please verify that that the information provided in the filing is consistent across the *Test Claim Form*, *Narrative*, *Declaration(s)*, and *Documentation*.

The Identification of Specific Sections of Executive Orders Alleged to Contain Mandated Activities and Associated Actual or Estimated Costs Are Required In the Declarations.

In *Declarations*, Mr. Rajani Nair states “The Santa Clara Valley Program received a grant of \$100,000 per year for the permit term, which are not included in these estimates. The Santa Clara Valley Program costs will increase based upon the difference between MRP 2.0 and MRP 3.0. SAN JOSE’s share of the Santa Clara Valley Program costs is 30.01%.”⁷⁴ Therefore, the fiscal years associated with all of the costs are not identified and the cost amounts for the claimant remain unclear throughout this *Declaration*. Also, Mr. Nair provides a list of sections of the Order pled, descriptions of activities, and some costs, but does not clearly state: (1) each section of the Order pled alleged to mandate each activity; (2) which activities are new; (3) which activities are modified existing activities; (4) the costs of each activity for the claimant for the full fiscal year the Test Claim is filed; and (5) the costs of each activity for the claimant for the full fiscal year following the fiscal year for which the Test Claim is filed, as required, as follows:⁷⁵

(a) For the implementation of Provision C.8, Monitoring, the anticipated Santa Clara Valley Program's *increase* in costs is \$387,114.00 for Fiscal

⁷³ Filing, page 32-33 (Narrative).

⁷⁴ Filing, page 36 (Declaration of Rajani Nair).

⁷⁵ Filing, pages 35-43 (Declaration of Rajani Nair). It is unclear throughout whether the sections of the Order pled are alleged to be new or higher level of service or whether the activities (and fiscal years and costs) alleged to be mandated by each section of the Order pled are new or are modified existing activities, as required.

Year 2023-2024, and that increase remains roughly consistent on the remaining permit term, for a total of approximately \$1.9 million.⁷⁶

(b) For the implementation of Provision C.17, a new Provision, the Santa Clara Valley Program budgets \$296,000.00 for the permit term.⁷⁷

(c) For the implementation of Provision C.20, a new Provision, the Santa Clara Valley Program budgets \$133,871 for the permit term;⁷⁸

(d) For the implementation of Provision C.21, a new Provision, the Santa Clara Valley Program budgets \$459,646 for the permit term.⁷⁹

(e) SAN JOSE's portion of the Santa Clara Valley Program costs is 30.01%, of \$2,789,517 (the total of the above figures) or \$837,134.00. Other Santa Clara Valley Program member agencies that are also Permittees under MRP 3.0 fund the remaining costs.⁸⁰

9. In addition, I have reviewed MRP 3.0 and MRP 2.0 MRP with respect to sections C.2, C.3, C.8, C.10, C.12 and new provisions C.17, C20 and C.21 and believe that its provisions require SAN JOSE to provide new or higher level of service than that which was required by the Prior Permit.⁸¹

10. For Provision C.2, I have compared MRP 2.0 and 3.0 and C.2.h is a completely new provision. It requires staff training on all the following topics:

- Stormwater pollution prevention;
- Appropriate BMPs for maintenance and cleanup activities;
- Street and Road Repair and Maintenance BMPs;

⁷⁶ Filing, page 36 (Declaration of Rajani Nair). It is unclear which cost amount provided is alleged to be mandated by Provision C.8; whether its associated activities are new or modified existing activities; and what cost amount is alleged for fiscal year 2022-2023.

⁷⁷ Filing, page 36 (Declaration of Rajani Nair). See additional description for C.17 below (no activities or fiscal years provided).

⁷⁸ Filing, page 36 (Declaration of Rajani Nair). See additional description for C.20 below (no activities or fiscal years provided).

⁷⁹ Filing, page 36 (Declaration of Rajani Nair). See additional description for C.21 below (no activities or fiscal years provided).

⁸⁰ Filing, page 36 (Declaration of Rajani Nair). It is unclear which provisions or which new or modified existing activities are pled, however, \$2,789,517 is not the total of the figures referenced (\$387,114+\$296,000+\$133,871+\$459,646=\$1,276,631).

⁸¹ Filing, page 37 (Declaration of Rajani Nair). It is unclear which provisions are being pled as mandating new activities and which are being pled as mandating modified existing activities, and no costs or fiscal years are provided, as required. In the event "higher level of service" is meant to indicate modified existing activities and not new activities, please specify which are new and which are modified existing activities, as required.

- Sidewalk/Plaza Maintenance and Pavement Washing;
- Bridge and Structure Maintenance and Graffiti Removal;
- Corporation Yard SWPPPs and BMPs; and
- Spill and discharge response and notification procedures and contacts.

It is estimated that additional staff training and reporting will exceed \$1,000.00 for the permit term.⁸²

11. For Provision C.3, comparing MRP 2.0 with MRP 3.0, there are several new requirements. The costs for the reduced threshold requirements for private development will be borne by the project applicants are not included in this test claim. However, Provision C.3.b.ii(4) also reduced the threshold requirements (down from 10,000 square feet to 5,000 square feet of impervious surface) for road construction for public development, including pavement maintenance repair practices. Low Impact Development (LID) is now required for these projects, including those that involve the reconstruction of existing streets or roads which create and/or replace greater than or equal to one contiguous acre of impervious surface and that are public road projects and/or fall under the building and planning authority of a Permittee, including sidewalks and bicycle lanes that are built or rebuilt as part of the existing streets or roads. The prior permit (MRP 2.0) only required for new or widen of roadway. In addition, MRP 3.0 adds a new category of Road Reconstruction Projects [C.3.b.ii(5)] that includes utility trenching projects which average ≥ 8 feet wide over length of project. The prior permit (MRP 2.0) did not include a similar provision, this is new to MRP 3.0.⁸³

12. For Provision C.5, comparing MRP 2.0 with MRP 3.0, the investigation into an illicit discharge requires SAN JOSE to respond in 3 business days, instead of the 5 business days in the prior permit. However, SAN JOSE is also required to identify all missing information from the current MS4 maps and develop a plan to compile additional system, size or specifications , as well as materials of construction, and submit a plan to update the map.⁸⁴

13 . For Provision C.8 , comparing MRP 2.0 with MRP 3.0 , the new permit contains increased requirements. Test claims associated with those challenges are pending. However, MRP 3.0, MRP 2.0, " Creek Status

⁸² Filing, page 37 (Declaration of Rajani Nair). It is unclear if Provision C.2 is being pled or if only Provision C.2.h is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸³ Filing, page 37-38 (Declaration of Rajani Nair). For Provision C.3, it is unclear if C.3 is being pled or if only C.3.b.ii(4) and C.3.b.ii(5) are being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸⁴ Filing, page 38 (Declaration of Rajani Nair). For Provision C.5, it is unclear whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

Monitoring" has been replaced with " Low Impact Development (LID) Monitoring " which is intended to measure compliance and effectiveness of LID controls to improve the understanding of LID implementation, in particular green stormwater infrastructure. Summarizing , MRP 3.0 mandates regional cooperation, methods, parameters and intensities , implementation levels, and reporting . It also requires the development of a countywide plan including detailed mandatory provisions and implementation. The monitoring includes PFAS, and, for Santa Clara County, at least 25 monitoring sample events during the permit term , with an annual minimum of three events per year. Moreover, Provision C.8.d.iv of the MRP specifies that all composite samples must be analyzed for total mercury, total polychlorinated biphenyls (PCBs), total suspended solids (TSS), per- and polyfluoroalkyl substances (PFAS), total petroleum hydrocarbons (TPH), total and dissolved copper, total hardness, and pH. In addition, flow must be measured at both influent and effluent sampling locations.⁸⁵

14. For Provision C.10, comparing MRP 2.0 with MRP 3.0, the trash management provisions follow the trash reductions in the prior permits. Test claims associated with those challenges are pending. However , MRP 3.0 contains additional requirements, including the revised Trash Generation Map that includes private land drainage areas that will be retrofitted with full trash capture devices. (See Provision C.10.a.ii.b) In addition, SAN JOSE must ensure that private lands that are moderate, high, or very high trash generating, and that drain to storm drain inlets that Permittees do not own or operate (private), but that are plumbed to SAN JOSE's storm drain systems are equipped with full trash capture systems or are managed with trash discharge control actions equivalent to or better than full trash capture systems by July 1, 2025. MRP 2.0 did not include these requirements. MRP 3.0 also contains updated requirements for SAN JOSE to be eligible for trash load credit, including a revised and updated Direct Discharge Plan. However, that Direct Discharge Plan is optional, and part of the test claim as it relates to C.17, discussed below. The optional credits will expire by June, 2025. San Jose anticipates having a more detailed cost estimate within the next Fiscal Year.⁸⁶

15. For Provision C.15, comparing MRP 2.0 with MRP 3.0, there are increased requirements regarding the Conditionally exempt Emergency Discharges of Firefighting Water and Foam (C.15.b.iii). MRP 3.0 requires

⁸⁵ Filing, page 38 (Declaration of Rajani Nair). For Provision C.8, it is unclear if C.8 is being pled or if only C.8.d.iv. is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸⁶ Filing, page 38-39 (Declaration of Rajani Nair). For Provision C.10, it is unclear if C.10 is being pled or if only C.10.a.ii.b is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

regional coordination to evaluate opportunities to reduce the impacts of firefighting activity, and submit a Firefighting Discharges Report of the Working Group. It requires preparation of outreach materials on containment and BMPs and SOPs for contractors, and coordination with Cal Fire, Cal Department of Toxic Substance Control and United States Forest Service. This coordination and outreach were not required under the prior permit.⁸⁷

16. For Provision C.17 , this is a completely new provision related to Discharges Associated with Unsheltered Homeless Populations. C.17 is to "identify and ensure implementation of appropriate control measures, to address nonstormwater discharges associated with unsheltered homeless and includes numerous components:

- Provide a biennial point-in-time census, locations of unsheltered residents, discharges and water quality related impacts and sanitation-related needs
- Collectively with other Permittees develop Best Management Practices
- Describe BMPs including those already implemented to address discharges with homelessness that impact water quality
- Identify regional efforts to address discharges associated with homelessness, including recommendations for engagement efforts
- Identify actions during COYID-19 pandemic to reduce the spread of virus in homeless population, including hotel housing, and long term practicality of approaches
- Provide mapping of unsheltered populations, including relation to storm drain inlets, streams, rivers, flood control channels, and surface water bodies
- Report on programmatic efforts to address discharges related to homelessness, including service programs, coordination with social services, efforts to provide housing, jobs, and related services
- Identify and implement BMPs to address discharges associated with homelessness that impact public health, and reporting approximate location of portion of the homeless and location of where they are served , actions that may be implemented include " Safe parking areas", provision of mobile pump-out services, voucher for property RV sanitary sewage disposal, updating sidewalk/street plaza cleaning of human waste, clean or pickup programs
- Review biannual point in time census to update services
- Reporting Requirements

17. Although SAN JOSE provided many of these programs and services, including those identified in the Direct Discharge Plan submitted to the

⁸⁷ Filing, page 39 (Declaration of Rajani Nair). For Provision C.15, it is unclear if C.15 is being pled or if only C.15.b.iii. is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

Regional Board, this is the first mandate on the unsheltered populations within a MRP.⁸⁸

18. Provisions C.20 and C.21 are also completely new provisions to MRP 3.0. Provision C.20 requires a fiscal analysis of the capital and operation and maintenance costs to comply with the requirements of the MRP. In addition, the analysis must demonstrate the source of the funds and identify any funding for the upcoming permit year. Provision C.21, requires an update to the Asset Management Plan to ensure the satisfactory condition of all hard assets constructed during the this and MRP 2.0. Asset Management Plant must include a description of all of the categories of assets, and a plan to evaluate a strategy for prioritizing and scheduling maintenance, rehabilitation and replacement of inventories assets , and implementation of the Plan by July 1, 2025. In addition, SAN JOSE must prepare a Climate Change Adaptation Report to identify potential climate change threats to assets.⁸⁹

19. In addition to the SAN JOSE's percentage of the Santa Clara Valley Program Costs identified above , and the costs in the Declaration of Mathew Nguyen filed in support of this test claim, SAN JOSE anticipates increased costs related to MRP 3.0's new or increased requirements as follows:

(a) For Provision C.15, San Jose Fire in cooperation with other Departments, and with the assistance of members of City employees that I supervise, has been participating in regional collaborative meetings. It is estimated that SAN JOSE will incur more than \$1,000.00 in staff time participating in these collaborative meetings. Moreover, implementation of any future Best Management Practices (BMPS) cannot be calculated yet and is not included in this estimate.

(b) City staff responsible for the Beautify San Jose project provided a budget of \$4,232 ,979 for FY 2023- 2024 itemized as follows: the Recreational Vehicle Pollution Prevention Program regarding biowaste (\$1,065,019); Cash 4 Trash (\$1,430,346); Waterway Encampment trash routes/ garbage (\$1,437,014) and Creek Cleanups (\$300,000). These annual costs are not expected to decrease during the permit term resulting in a total cost of at least \$21 million.

(c) In addition, City Housing Staff responsible for the Department of Housing and Urban Development provided the prior point in time housing count conducted by a City Contractor, Applied Survey Research for

⁸⁸ Filing, page 40 (Declaration of Rajani Nair). For Provision C.17, it is unclear whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸⁹ Filing, page 41 (Declaration of Rajani Nair). For Provision C.20 and C.21, it is unclear whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

\$172,292.00. This cost for the count does not include additional mapping or other requirements of C.17, SAN JOSE will provide an updated estimate when it is complete.⁹⁰

Finally, the following sixteen sections of the Order pled are listed in this *Declaration*, however, no sections of the Order are pled in *Section 4* of the Test Claim Form:⁹¹ C.2, C.2.h;⁹² C.3, C.3.b.ii(4) and C.3.b.ii(5);⁹³ C.5;⁹⁴ C.8 and C.8.d.iv;⁹⁵ C.10 and C.10.a.ii.b;⁹⁶ C.12;⁹⁷ C.15 and C.15.b.iii;⁹⁸ C.17;⁹⁹ C.20;¹⁰⁰ and C.21.¹⁰¹ With respect to funding, Mr. Nair states:

20. SAN JOSE diligently pursues other avenues of funding for the MRP requirements. For example, SAN JOSE received grants from CalTrans for large trash capture devices. However, such grants do not include the operation of maintenance of the devices. SAN JOSE also appreciates the state grants it has received which helped fund the Martha Garden Green Streets Ally Projects. Such grants do not cover the entire costs of projects, nor operation and maintenance and require matching funds.

21 . Although SAN JOSE has a stormwater fee in existence prior to the adoption of Proposition 218, funds from that fee are inadequate to meet

⁹⁰ Filing, page 41-42 (Declaration of Rajani Nair). For Provision C.15, it is unclear whether the activities are new or are modified existing activities, only fiscal year 2023-2024 is provided, and the costs appear to be associated with budgets or projects instead of with new activities or modified existing activities alleged to be mandated by the section of the Order pled. Where costs are zero, please state zero costs and associated fiscal year and where costs are unknown, estimates of costs and associated fiscal years must be provided.

⁹¹ Filing, page 2 (Test Claim Form).

⁹² Filing, page 37 (Declaration of Rajani Nair).

⁹³ Filing, page 37-38 (Declaration of Rajani Nair).

⁹⁴ Filing, page 38 (Declaration of Rajani Nair).

⁹⁵ Filing, page 36, 37, 38 (Declaration of Rajani Nair).

⁹⁶ Filing, page 37 and 38-39 (Declaration of Rajani Nair).

⁹⁷ Filing, page 37 (Declaration of Rajani Nair). No further discussion is included regarding provision C.12.

⁹⁸ Filing, pages 39, 41 (Declaration of Rajani Nair).

⁹⁹ Filing, pages 36, 37, 39, 40, 42 (Declaration of Rajani Nair).

¹⁰⁰ Filing, pages 36, 37, 41 (Declaration of Rajani Nair).

¹⁰¹ Filing, pages 36, 37, 41 (Declaration of Rajani Nair).

ongoing existing operation and maintenance requirements of the storm sewer system and are inadequate to meet increased mandates.¹⁰²

However, no funding is listed in *Section 5* of the Test Claim Form, which indicates instead "As described in the narrative."¹⁰³

Also in *Declarations*, Mr. Mathew Nguyen provides a general overview of costs associated with several of San Jose's green street and regional stormwater improvement projects.¹⁰⁴ However, Mr. Nguyen associates no fiscal years with any of the costs and states "These are merely known examples of the unfunded cost of green streets; others are anticipated to rise, given the revised permit language."¹⁰⁵ In addition, Mr. Nguyen provides information regarding four sections of the Order pled, descriptions of activities, and some costs, but does not clearly state: (1) each section of the Order pled alleged to mandate each activity; (2) which activities are new; (3) which activities are modified existing activities; (4) the costs of each activity for the claimant for the full fiscal year the Test Claim is filed; and (5) the costs of each activity for the claimant for the full fiscal year following the fiscal year for which the Test Claim is filed, as required, and as follows:¹⁰⁶

7. SAN JOSE is also required to have GSI low impact development in utility trenching projects that are - on average - over the entire length of the project, larger than 8 feet wide and disturbed over 1 acre of impervious surface. SAN JOSE currently does not have a project planned that would trigger this requirement. However, it is a new permit condition C.3.b.ii.5. Unless the trenching project is required by development , I am not aware of any funding source for this work.¹⁰⁷

8. SAN JOSE must also identify " information missing from MS4 maps and develop a plan to update the maps to include " locations, size or specifications , materials of construction and condition." [C.5.f.ii(1).] SAN JOSE believes it would cost an initial \$2 million to locate and update any gaps in the existing GIS data, and \$2.0 million per year to video the line. It may take approximately 12 years to completely video the system,

¹⁰² Filing, pages 41-42 (Declaration of Rajani Nair).

¹⁰³ Filing, page 2 (Test Claim Form).

¹⁰⁴ Filing, pages 45-48 (Declaration of Mathew Nguyen).

¹⁰⁵ Filing, page 46 (Declaration of Mathew Nguyen).

¹⁰⁶ Filing, pages 45-48 (Declaration of Mathew Nguyen). It is unclear throughout whether the provisions pled are alleged to be new or whether the activities alleged to be mandated by each section of the Order pled are new or are modified existing activities, as required.

¹⁰⁷ Filing, page 46 (Declaration of Mathew Nguyen).

assuming the SAN JOSE can utilize an existing data base system. This estimate does not include any costs of repair or rehabilitation.¹⁰⁸

9. SAN JOSE is required to meet trash load reduction requirements "full trash capture systems or equivalent" by June 30, 2025. The City must also provide an updated Trash Generation Map that includes private land drainage that will include "GIS layers and appropriate metadata" that identifies locations and drainage areas of trash capture devices (C.10.a.ii). I am responsible for estimating the costs of trash capture devices for the City. SAN JOSE is working on estimating the costs of increased mapping requirements. For large trash capture devices, CALTRANS reimbursed construction costs of the devices that also serve its right of way. However, SAN JOSE maintains these devices. SAN JOSE estimates the cost to inspect and maintain the existing trash capture devices is \$2,396,819 annually. This includes the necessary personnel and equipment. SAN JOSE will provide an updated estimate for future installation of trash capture devices, however, CALTRANS will only share costs for trash capture devices that also serve its right of way. SAN JOSE's obligation under C.10 is much broader than that.¹⁰⁹

The following four provisions are listed in Mr. Nguyen's *Declaration*, however, no sections of the executive order are pled in *Section 4* of the Test Claim Form:¹¹⁰ C.3.b.ii.5;¹¹¹ C.5.f.ii(1);¹¹² C.10 and C.10.a.ii.¹¹³ Section C.3.b.ii.5¹¹⁴ and section C.10¹¹⁵ appear in both *Declarations*, and section C.5¹¹⁶ appears in Mr. Nair's *Declaration*, but section C.5.f.ii(1) and C.10.a.ii¹¹⁷ appear only in Mr. Nguyen's *Declaration*.

Therefore, none of the *Declarations* make the connection between which activities performed by the City of San Jose are new and which are modified existing activities, the amount of associated costs of each by full fiscal years, and

¹⁰⁸ Filing, pages 46-47 (Declaration of Mathew Nguyen).

¹⁰⁹ Filing, page 47 (Declaration of Mathew Nguyen).

¹¹⁰ Filing, page 2 (Test Claim Form).

¹¹¹ Filing, page 46 (Declaration of Mathew Nguyen).

¹¹² Filing, pages 46-47 (Declaration of Mathew Nguyen).

¹¹³ Filing, page 47 (Declaration of Mathew Nguyen).

¹¹⁴ Filing, pages 37-38 (Declaration of Rajani Nair) and page 46 (Declaration of Mathew Nguyen).

¹¹⁵ Filing pages 38-39 (Declaration of Rajani Nair) and page 47 (Declaration of Mathew Nguyen).

¹¹⁶ Filing, pages 38 (Declaration of Rajani Nair).

¹¹⁷ Filing, pages 46-47 (Declaration of Rajani Nair).

the specific sections of the executive order pled are alleged to impose a reimbursable state-mandated program in this Test Claim, as required. Although over thirty sections are listed in the *Narrative*, only twenty are supported by the *Declarations*. In fact, the following sections are specified only in the *Narrative* and are not specified in either *Declaration*: C.3.b; C.3.j;¹¹⁸ C.5.f.ii;¹¹⁹ C.8.d;¹²⁰ C.8.d.i.1 and C.8.d.ii – vi;¹²¹ C.10.a.ii; C.10.b.v;¹²² C.11;¹²³ C.11.c; C.12.c; C.12.d; C.12.e;¹²⁴ C.11.f; C.12.f;¹²⁵ C.15.a.iii;¹²⁶ C.15.b.iii.(2)- (5);¹²⁷ C.10.f.ii;¹²⁸ C.17.a.2; C.17.a.ii;¹²⁹ C.17.ii(3);¹³⁰ C.17.ii.2;¹³¹ C.20.b; C.20.b.i;¹³² C.21.b.(3); C.21-1.¹³³ Finally, the following sections are specified in *Declarations*, but are not specified in the *Narrative*: C.2.h;¹³⁴ C.3.b.ii(4)¹³⁵ C.10.a.ii.b.¹³⁶

Government Code section 17553(b)(2)(A) requires *declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate*. Government Code section 17553(b)(2)(B) requires *declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs*. Government Code section 17553(b)(2)(C) requires *declarations*

¹¹⁸ Filing, page 20 (Narrative).

¹¹⁹ Filing, page 22 (Narrative).

¹²⁰ Filing, page 23 (Narrative).

¹²¹ Filing, page 23 (Narrative). See Filing, page 38 (Declaration of Rajani Nair). Mr. Nair identifies only Provision C.8.d.iv.

¹²² Filing, page 24 (Narrative).

¹²³ Filing, page 26 (Narrative).

¹²⁴ Filing, page 26 (Narrative).

¹²⁵ Filing, page 27 (Narrative).

¹²⁶ Filing, page 27 (Narrative).

¹²⁷ Filing, page 27 (Narrative).

¹²⁸ Filing, page 28 (Narrative).

¹²⁹ Filing, page 28 (Narrative).

¹³⁰ Filing, page 29 (Narrative).

¹³¹ Filing, page 30 (Narrative).

¹³² Filing, page 31 (Narrative).

¹³³ Filing, page 31 (Narrative).

¹³⁴ Filing, page 37 (Declaration of Rajani Nair).

¹³⁵ Filing, page 37 (Declaration of Rajani Nair).

¹³⁶ Filing, page 39 (Declaration of Rajani Nair).

describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify the costs associated with each new activity and modified existing activity by full fiscal year that are alleged to be mandated by each specific section of the executive order pled, and where costs are unknown, please provide estimated cost amounts.

Curing This Test Claim

Please verify that the information provided in all of the following documents is consistent across the test claim form, narrative, and declarations, and revise the test claim form(s), the narrative, and declaration(s) as follows:

(1) Revise the Test Claim Forms as follows:

- a. Please complete, electronically sign, and file the revised claim on the new, electronic Test Claim Form by requesting a form from the following link:

<https://csm.ca.gov/request-form.php>

Once a form is requested via the link, the request will be sent to Commission staff, who will log in to Adobe Sign and send the electronic claim form to the first Form Filler listed on the request form. Please note that Commission staff will respond Monday-Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays, only. Therefore, please plan to request the form as soon as you know you will need it and do not wait for your filing deadline to request the form.

Upon receipt, this digital claim form link is unique to your claim and will allow saving of your progress automatically. Once the first Form Filler completes their work, they may click Submit to send the form to the next Form Filler (if any). Once "Submit" is clicked, the Form Filler may not return to the form and the final person to receive it will be the Form Signer, which must be the person authorized to file a test claim pursuant to section 1183.1 of the Commission's regulations. Once it is digitally signed, the form will become locked and not able to be further edited, and a PDF version will be sent to the Form Filler(s) and the Signer. In addition, the names and email addresses of all Form Fillers and Form Signers will be included in the form as part of the digital signature technology and authentication process. The Form Filler (usually the claimant representative) shall then separately upload the digitally signed PDF and any supporting materials to the Commission's Dropbox to complete the filing.

- b. In *Section 3*, two names are listed on the Name and Title of Claimant Representative line. Pursuant to the Commission's regulations in section 1183.1, only one representative may be designated by the claimant to act

as its sole representative in this Test Claim, as is indicated in the directions for this section.

- c. In *Section 4* Order. No. R2-2022-0018 has been pled, although specific sections of the Order pled are not listed on the Test Claim Form they are listed in the *Narrative* and *Declarations* making it unclear which sections of the Order and associated activities whether new or modified existing, and the full fiscal years' costs of each are being pled in this Test Claim. In addition, the issue date of May 11, 2022 is listed where the effective date is required, as is indicated in the directions for this section. The *Narrative* indicates "On May 11, 2022, the California Regional Water Quality Control Board (Regional Board), San Francisco Bay Region issued an updated Municipal Regional Stormwater Permit (MRP 3.0)." The *Declaration* indicates "SAN JOSE is a permittee under the Municipal Regional Stormwater NPDES Permit, issued on May 11, 2022 by the California Regional Water Quality Control Board ('Regional Water Board'), San Francisco Bay Region, Order No. R2-2022-0018 (NPDES Permit No. CAS612008) (the 'MRP 3.0')." Therefore, it is unclear if May 11, 2022 is simply the issue date or is also the effective date of the Order.
- d. In *Section 5* although the box is checked, the line for identifying the following fiscal year and the statewide cost estimate of increased costs that all local agencies or school district will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is blank. All sections of the Test Claim Form are required to be completed.
- e. In *Section 5* the box is checked indicating all dedicated funding sources for this program are identified but each of the lines below are left blank. All sections of the Test Claim Form are required to be completed.

(2) Revise the *Narrative* to identify:

- a. The specific sections of statutes or executive orders alleged to contain a mandate, as required by Government Code section 17553(b)(1). Please link the specific sections of the executive order to the activities and costs alleged to be mandated by full fiscal year.
- b. The detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A). Please specify which provisions of the executive order pled allegedly mandate which new activities and costs by full fiscal year. Where costs are unknown, provide estimated amounts for the full fiscal year.
- c. A detailed description of the existing activities and costs that are modified by the mandate, as required by Government Code section 17553(b)(1)(B). Please specify which provisions of the executive order pled allegedly mandate which modified existing activities and costs by full fiscal year. Where costs are unknown, provide estimated amounts for the full fiscal year.

- d. The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate, as required by Government Code section 17553(b)(1)(C). Where costs are unknown, please provide estimated amounts by full fiscal year.
- e. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D). Where costs are unknown, please provide estimated amounts by full fiscal year.
- f. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- g. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by Government Code section 17553(b)(1)(H). In the event that there is no legislatively determined mandate, please state that.

(3) Revise the *Declaration(s)* to include:

- a. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A). Where costs are unknown, please provide estimates, as required.
- b. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Retaining Your Original Filing Date

To retain the original filing date of June 30, 2023, please revise the required elements and refile the Test Claim within 30 days of the date of this letter by **5:00 p.m. on November 10, 2023**. If a complete test claim is not received within 30 calendar days from the date of this letter, the executive director may disallow the original test claim filing date. (Cal. Code Regs., tit. 2, § 1183.1(f).)

As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

You are advised that the revised Test Claim is required to be filed on a form prescribed by the Commission and shall be digitally signed, using the digital signature technology and authentication process contained within the Commission forms. The completed form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single PDF file in accordance with subdivision

(c)(1)(C) of this section, and shall not exceed 500 megabytes. Accompanying documents exceeding 500 megabytes shall also comply with subdivision (c)(1)(D) of this section. (Cal. Code Regs., tit. 2, § 1181.3(c)(1)(B).)

You are further advised that the revised accompanying documents to the Test Claim are required to be electronically filed (e-filed) in an unlocked legible and searchable format using a “true-PDF” (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary, using the Commission’s Dropbox. Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission’s website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3(c)(1) and § 1181.3(c)(1)(A).) If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", with a stylized flourish at the end.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 11, 2023, I served via email to: Jennifer.Maguire@sanjoseca.gov and Colleen.Winchester@sanjoseca.gov the:

Notice of Duplicate and Incomplete Test Claim

Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 11, 2023 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

EXHIBIT “B”

Sent via email to: Jennifer.Maguire@sanjoseca.gov and Colleen.Winchester@sanjoseca.gov

February 23, 2024

Jennifer Maguire
City of San Jose
200 E. Santa Clara Street, 17th Floor
San Jose, CA 95113

Colleen Winchester
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

RE: Second Notice of Duplicate and Incomplete Test Claim
Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

Dear Ms. Maguire and Ms. Winchester:

On June 30, 2023, you filed a test claim filing with the Commission on State Mandates (Commission), on behalf of the City of San Jose, on the above-named matter. The City of Union City, however, filed the first test claim filing on same executive order before yours was filed, on June 30, 2023, which has been found to be incomplete. The first claim filed on a statute or executive order is the test claim under the governing statutes and regulations. Upon initial review, Commission staff found and notified you on October 11, 2023 that your filing was duplicative and incomplete. But if the City of Union does not timely cure its filing, then it would not be the test claim and the City of San Jose's claim could be accepted as the test claim if it is timely cured. The two cities could also choose to file jointly, if desired, but must still meet the statute of limitations requirements for filing new or amended claims. Therefore, the way to file jointly if the statute has already run for filing new or amended claims, is to add a new claimant to a claim already on file, which, pursuant to section 1181.2 of the Commission's regulations would not be an amendment to the test claim. Note, however, that the pleading of additional provisions, statutes, or executive orders would constitute a new test claim or an amendment to an existing test claim.

On January 9, 2024, both the City of Union City and the City of San Jose filed responses to each Notice of Duplicate and Incomplete Test Claim filing. Upon initial review, Commission staff finds that your Test Claim is incomplete for the following reasons:

- (1) Your filing is a duplicate test claim filing since a Test Claim was filed by the City of Union City (claimant) on the above-named executive order before this Test Claim on the same day, June 30, 2023.
- (2) The revised, digitally signed *Test Claim Form* was not filed in the Commission's dropbox with your response, as required by the Commission's regulations in section 1181.3(c)(1)(B).
- (3) The *Narrative* does not provide:
 - a. The specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, as required by Government Code section 17553(b)(1).

- b. A detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A)
- c. A detailed description of the existing activities and costs that are modified by the mandate, as required by Government Code section 17553(b)(1)(B).
- d. The actual increased costs that will be incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate, as required by Government Code section 17553(b)(1)(C).
- e. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D).
- f. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- g. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by Government Code section 17553(b)(1)(H).

(4) The *Declaration(s)* do not provide:

- a. Evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.
- b. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A).
- c. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Duplicate Test Claims Will Not Be Accepted

On June 30, 2023, the City of Union City (claimant) filed a Test Claim prior to this test claim filing on the above-named executive order. A “test claim” is the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. (Gov. Code §17521.) Though multiple claimants may join together in pursuing a single test claim, the Commission will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies. (See Cal. Code Regs., tit. 2, §1183.1; *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, page 872, fn. 10.) Thus, the test claim “functions similarly to a class action and has been established to expeditiously resolve disputes affecting multiple agencies.” (Cal. Code Regs., tit. 2, §1181.2(s).)

Although the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission, other similarly situated affected agencies may participate in the process by submitting comments in writing on any agenda item as provided in section 1181.10 of the Commission's regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.

The Commission's regulations also provide that test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.

Otherwise, the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently. (Cal. Code Regs., tit. 2, §1183.1(b)(1-3).)

In addition, although all new test claims and amendments thereto are required to meet the statute of limitations, pursuant to section 1181.2 of the Commission's regulations adding a new claimant to a claim already on file is not an amendment to the test claim.

Finally, if the City of Union City's filing is not timely cured, your test claim filing may become the Test Claim on this Order if it is timely cured.

The Digitally Signed Test Claim Form Must Be Filed in the Commission's Dropbox Separately from the Attachments

The Commission's regulations in section 1181.3(c)(1) require the following:

(c) Filing and Service. New filings and written materials may be filed as described in this subdivision.

(1) E-Filing. Except as provided in subdivision (c)(2) of this section, all new filings and written materials shall be electronically filed (or e-filed) with the Commission.

(A) All new filings and written materials shall be filed via the Commission's e-filing system, available on the Commission's website. Documents e-filed with the Commission shall be in a legible and searchable format using a "true PDF" (i.e., documents digitally created in PDF, converted to PDF or

printed to PDF) or optical character recognition (OCR) function, as necessary.

(B) Any new filing required to be filed on a form prescribed by the Commission shall be digitally signed, using the digital signature technology and authentication process contained within the Commission forms. The completed form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single file in accordance with subdivision (c)(1)(C) of this section, and shall not exceed 500 megabytes. Accompanying documents exceeding 500 megabytes shall also comply with subdivision (c)(1)(D) of this section.

Although the digitally signed *Test Claim Form* was filed with the original filing, the *Test Claim Form* that was filed with the first response was filed as a PDF/A copy and the actual, revised digitally signed *Test Claim Form* was not filed in the Commission's dropbox as required and as was specified in the Notice of Duplicate and Incomplete Test Claim as follows:

The Form Filler (usually the claimant representative) shall then separately upload the digitally signed PDF and any supporting materials to the Commission's Dropbox to complete the filing.¹

Please file the revised, digitally signed *Test Claim Form* that includes the chain of custody page(s) at the end of the form and make any needed edits resulting from changes associated with this Second Notice of Duplicate and Incomplete Test Claim in addition to those already noted in the Notice of Duplicate and Incomplete Test Claim that are not repeated in this letter.

The Identification of Specific Sections of Statutes or Executive Orders Allegedly Mandating Activities and Costs Is Required in the Narrative.

In the *Narrative*, the revised list of permit sections and a description of their associated activities is provided as follows:

Provision CI7.a.i(1): Gather and Utilize Data on Unsheltered Homeless Residents, Discharges, and Water Quality Impacts associated with Homelessness and Sanitation-Related Needs

Provision CI7.a.i(2): Coordinate and Prepare a Regional Best Management Practices Report that Identifies Effective Practices to Address NonStormwater Discharges Related to Homelessness

Provision CI7.a.ii(1): Submit a Map Identifying the approximate locations of Unsheltered Homeless Populations and their Locations to Storm Drain Inlets, Rivers, Flood Control Channels and Other Surface Water Bodies

Provision CI7.a.ii(2): Report on Programmatic Efforts to Address MS4 Discharges Associated with Homelessness

¹ Notice of Duplicate and Incomplete Test Claim issued October 11, 2023, page 24.

Provision C17.a.ii(3): Identify and Implement Best Management Practices to Address MS4 Discharges Associated with Homelessness that Impact Water Quality; Evaluate and Assess Effectiveness of BMPs, Portion of Unsheltered Served by BMPs, Approximate Locations of those Not Reached, or not fully Reached

Provision C17.a.ii(4): Review and Update Implementation Practices with data from biennial Point-In-Time Census and Regional Coordination
Provision C17.a.iii(1): Submit a Best Management Report with the 2023 Annual Report

Provision C17.a.iii(2): Submit a Map with the 2023 and 2025 Annual Reports; and Report on the BMPs and Effectiveness in 2023 and 2025 Annual Reports²

Also, in the *Narrative*, in the section titled “5. SAN JOSE Will Incur Significant Costs as the Result of Provision C.17.a.ii(1): Submit a Map Identifying the approximate Location of Unsheltered Homeless Populations and their Locations to Storm Drain Inlets, Rivers, Flood Control channels and Other Surface Water Bodies”³ provides a description of activities and costs amounts for fiscal year 2022-2023 as follows:

This provision requires two things a survey of the unhoused and mapping of their locations. SAN JOSE is required to do a point in time survey related to the unsheltered for Federal Housing and Urban Development (HUD). 12 SAN JOSE contracts with the County of Santa Clara for the survey, which cost \$125,000.00 for Fiscal Year 2022-2023 (Henninger Dec. ¶18.)

Moreover, the HUD point in time survey is significantly less intensive than the mapping required under MRP 3.0. Under the new requirement, maps must show the unsheltered "in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies." (C.17a.ii.2.) SAN JOSE incurred additional costs through SCVURPP for this additional mapping, which is included in the FY 2022-2023 amounts above (\$22,575.00).⁴

However, no cost amount is provided for the fiscal year following the fiscal year for which the test claim is filed (fiscal year 2023-2024) and the table provided at the end of the section indicates “n/a”⁵ which is incorrect. In the event that the costs alleged for this activity in fiscal year 2023-2024 are zero, please specify that.

² Test Claim, Volume 1, page 14 (Narrative).

³ Test Claim, Volume 1, page 27 (Narrative).

⁴ Test Claim, Volume 1, page 27 (Narrative).

⁵ Test Claim, Volume 1, page 34 (Narrative).

In addition, the *Narrative* includes the following table that purports to provide the amount of costs alleged to be mandated by the state:

The costs for this work are summarized in the table below. SAN JOSE diligently pursues grants and other support for this work. However, as shown, many of the programs are funded by one-time grants. Noteworthy is SAN JOSE's \$16,206,750 investment of voter approved Measure E funds available for general purposes.

HOMELESS PREVENTION, SUPPORT AND MANAGEMENT PROGRAMS, FY 22-23		
Housing Outreach teams	Engagement, case management and connection to social services for individuals experiencing homelessness at 15 SOAR sites, 10 along waterways C.17.a.ii(2), C.17.a.ii(3), C.10.f.iii(b)(i)	28 FTE Citywide teams; \$8.7M from State Homeless Housing Assistance, and Prevention ["HHAP" (one-time)], State, Emergency Solutions Grant "ESG" (ongoing), and Community Block Development Grants "CDBG" (ongoing)
Homeless Street Outreach Valley Water Flood Control Project Area	Engagement, case management and connection to social services along Coyote Creek in Valley Water Flood Project area C.17.a.ii(2), C.10.f.ii(b)(i)	7.0 FTE; \$1.8 M from Valley Water for Coyote Creek (one-time funded)
Safe Encampment Resolution (State Encampment Resolution funds)	Restore and activate a section of the trail through use outreach, housing placement, abatement, beautification and activation; and designing a program model to scale	7.0 FTE; \$2M from State Encampment Resolution program (one-time)

HOMELESS PREVENTION, SUPPORT AND MANAGEMENT PROGRAMS, FY 22-23		
	C.17.a.ii(3), C.10.f.ii(b)(i)	
Emergency Interim Shelter Beds	Provides case management, employment assistance and connection to other services (benefits, healthcare, etc.). C.17.a.ii(3)	Contracted Services; \$19M from Measure E (on-going), State HHAP (one-time) and State Permanent Local Housing Allocation Program "PLHA" (on-going)
Supportive Parking for lived in Recreational Vehicles	Designated parking lot with 42 spaces. Program offers onsite supportive services for individuals living in recreational vehicles. C.17.a.ii(3)	Contracted Services; \$1,516,500 from State HHAP (one-time), Federal American Rescue Plan Act "ARP A" (one-time), Local Housing Trust Fund "HTF" (one-time)
Portable Restrooms	Portable restrooms located at 6 encampment Locations within waterways.	\$2,000,000 from Emergency Solutions Grant "ESG-CV" (one-time)
Mobile Shower and Laundry	Provides mobile shower and laundry services six days a week C.17 .a.ii(3), C.10.f.ii(b)(i)	\$1,000,000 in local HTF (onetime) and State HHAP3 (onetime)
TOTAL for FY 22/23		Total: \$36,016,500 City funded (Voter-approved Measure E) \$16,206,750.

Similarly, for Fiscal Year 23/24, SAN JOSE proposes to spend \$47.5 million in Measure E funds for this housing work. (Henninger Dec., ¶13.)

In addition to SAN JOSE's Housing Department's significant work, SAN JOSE's BEAUTIFY SJ Initiative focuses on cleaning up and restoring public and open space within the city. SAN JOSE piloted several programs identified in the permit, including "cash for trash" which provides vouchers for bags of trash from those living along the waterways and weekly trash pickups from those living along the waterways. (Rufino Dec., ¶¶5-11.)

These programs come at significant expense, the total (\$3,266,320.06) is the percentage of the citywide program for those living along the waterways. SAN JOSE received grant funds in the amount of \$180,000.00 from Valley Water and has a contract with the County of Santa Clara for

unhoused encampment cleaning, routine garbage, debris, biowaste, hazardous materials from encampments within County Roads and Parks.⁶

However, this series of amounts includes sections other than those pled in this Test Claim and does not appear to agree with any of the total amounts provided elsewhere in the *Narrative*.

Further, the following tables are provided in the *Narrative* that do not associate costs with any sections at all:⁷

Program	FY 2022-2023 Expenses
Cash for Trash	\$154,877.06
Coyote Creek Flood Protection Project	\$45,519.64
Creek Partners	\$155,631.43
Encampment Abatements*	\$634,989.22
Encampment Routes*	\$1,047,394.57
Interagency (interjurisdictional partners)*	\$177,278.72
RV Pollution Prevention Program	\$354,895.73
Winter Storm Debris Cleanup	\$596,143.92
Total	\$3,266,320.06
Total program Budget	\$17,873,229.00
Less External Funding Sources	
Valley Water	(\$180,000.00)
County of Santa Clara County, primarily on-land	(\$219,518.00)

(Rufino Dec. ¶ 15)

For Fiscal Year 2023-24, SAN JOSE added a Waterways Encampment Team and increased the budget related to those along the waterways to \$6,411,784, excluding on land routes and abatements. The Valley Water funds were exhausted in FY22-23 are no longer available, but the County of Santa Clara extended its contract through 2027.

Program	FY 2023-2024 Expenses
Cash for Trash	\$1,931,722.00

⁶ Test Claim, Volume 1, pages 29-30 (Narrative).

⁷ Test Claim, Volume 1, page 31 (Narrative).

Program	FY 2023-2024 Expenses
Creek Partners	\$300,000.00
Encampment Routes and Abatements (on-land)	\$13,447,167.00
Interagency	\$1,811,000.00
RV Pollution Prevention Program	\$893,062.57
Waterways Encampment Team	\$1,476,000.00
Total (excluding on land)	\$6,411,784.57
Program Total	\$19,858,951.57
County of Santa Clara (County Parks/lands primarily onland)	(\$360,000.00)

In addition, staff of the Environmental Services Division (ESD) will incur staff time related to coordination on structural barriers, managing contractor clean ups, implementing creek clean ups, preparing, attending and managing clean ups, and assessing trash levels.

FY: 22-23 \$144,284.32 less \$95,489.53 Environmental Protection Agency Grant, "Clean Creeks Healthy Watersheds"

FY: 23-24 \$214,816.01 (less \$147,927.82) Environmental Protection Agency Grant, "Clean Creeks Healthy Watersheds"

(Nair, Dec. ¶14.)⁸

In addition, in the *Narrative*, the section titled "8. SAN JOSE Will Incur Significant Costs as the Result Provision C.17a.ii(4): Review and Update Implementation Practices with Data From the Biennial Point-In-Time Census and Regional Coordination"⁹ provides a description of activities alleged to be mandated by the state and some costs as follows:

Provision C.17.a.ii.(4) requires shall use the information generated through the biennial point- in-time census surveys and related information, and the regional coordination tasks (as described above) to review and update their implementation practices.

BEAUTIFYSJ staff anticipates requiring additional staffing needs to meet the ongoing reporting and coordination as required by the Permit. This is anticipated to be a fulltime Graphic Information Systems Specialist

⁸ Test Claim, Volume 1, page 31-32 (Narrative).

⁹ Test Claim, Volume 1, page 32 (Narrative).

(\$77,121.00 salary) and ½ an analyst position (.5 FTE, \$70,564 salary), and 1.0 FTE Senior Analyst (\$132,765 salary). (Rufino Dec, ¶17.)¹⁰

However, no cost amount is provided for the fiscal year for which the test claim is filed (fiscal year 2022-2023) and the table provided at the end of the section indicates “n/a”¹¹ which is incorrect. In the event that the costs alleged for this activity in fiscal year 2022-2023 are zero, please specify that.

Further, a table is provided near the end of the *Narrative* that appears to track some of the cost amounts provided in the *Narrative* but does not clearly agree with all of the cost amounts already provided:

Provision	FY 22-23	FY23-24 (estimated)
C.17.a.i(I)	\$1,253.85	834.03
CI7.a.i(2)	\$26,923.39	\$16,519.85
C17.a.ii(I)	\$125,000.00	n/a
CI7.a.ii(2)	\$9,242.09	\$5,277.43
CI7.a.ii(3)	\$16,206,750.00	\$47,500,000.00
	\$2,866,802.00	\$6,051,784.67
	\$48,794.50	\$66,888.19
CI7.a.ii(4)	n/a	\$233,407.00
C17.a.iii(I)	Incorporated above	Incorporated above
C.17.a.iii(2)	\$1,917.99	\$2,325.30
Total	\$19,286,683.82	53,877,036.47
TOTAL General Fund, including Measure E	\$19,247,346	\$53,852,081

Of this total number, SAN JOSE has used its storm sewer fee for these programs with the exception of C.17.a.ii(I) and (3). However, SAN JOSE's storm sewer fee predates Proposition 218, cannot be raised without voter approval or notice and an opportunity to protest. As a result, SAN JOSE's fee is inadequate to meet this and future operation and maintenance obligations. Provision C.17.a.ii(3) is only funded with general funds, including funds from Measure E (a voter-approved, general revenue ballot initiative.)¹²

Also, the *Narrative* provides information regarding funding for the activities and costs alleged to be mandated by the state which does not agree with the varied discussions of funding throughout the *Narrative* and *Declarations*.¹³

¹⁰ Test Claim, Volume 1, page 32-33 (Narrative).

¹¹ Test Claim, Volume 1, page 34 (Narrative).

¹² Test Claim, Volume 1, pages 35-35 (Narrative).

¹³ Test Claim, Volume 1, page 36 (Narrative). Please note that the PDF/A copy of the revised *Test Claim Form* lists several dedicated funding sources for this program and lists amounts of the Local Agency's general purpose funds and fee authority to offset

VI. FUNDING SOURCES

As discussed in more detail above, SAN JOSE does not have fee authority to offset these costs. SAN JOSE diligently pursues grants or other alternative funding, but as explained with the various provisions, the work is only partially funded. SAN JOSE is not aware of any state, federal or non-local agency funds that are or will be available to completely fund these new programs and increased levels of service.¹⁴

Finally, there is no mention in the *Narrative*, as required, of whether or not there is a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order. If the response is “none” please specify that in the *Narrative*.

Government Code section 17553(b)(1) requires *a written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate*. Government Code section 17553(b)(1)(A) requires *a detailed description of the new activities and costs that arise from the mandate*. Government Code section 17553(b)(1)(B) requires *a detailed description of the existing activities and costs that are modified by the mandate*. Government Code section 17553(b)(1)(C) requires *the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate*. Government Code section 17553(b)(1)(D) requires *the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. Government Code section 17553(b)(1)(H) requires *identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order*. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify which sections of executive orders are pled; identify which are alleged to mandate a new activity and which are alleged to mandate a modified existing activity; and provide the associated total costs of each in full fiscal years. Please provide total estimated amounts of costs where actual costs are unknown for the full fiscal year; and please verify that that the information provided in the filing is consistent across the *Test Claim Form*, *Narrative*, *Declaration(s)*, and *Documentation*. In addition, if no legislatively determined mandate that may be related to the same statute or executive order has been identified, please state that fact both on the *Test Claim Form* and in the *Narrative*, as required.

The Identification of a Statewide Cost Estimate Is Required in the Narrative.

In addition, the *Narrative* states:

To estimate the statewide costs for the fiscal year following the effective date of the requirements (FY 23-24), SAN JOSE relies on the January 2023 Annual Homeless Assessment Report from the U.S. Department of Housing

costs that are listed as dedicated funding sources for this program that do not appear to be included in the revised *Narrative*.

¹⁴ Test Claim, Volume 1, page 36 (Narrative).

and Urban Development (HUD) **2023 Annual Homeless Assessment Report: Part 1: Point-in-Time Estimates**, for January, 2023 (HUD PIT survey), which provides an annual snapshot of the number of individuals in shelters, temporary housing, and in unsheltered settings, for January, 2023 (report released December, 2023).

In California overall homeless is estimated at 181,399. Of those, 9,903 are located within Santa Clara County, with approximately 6,200 individuals experiencing homelessness, of which approximately 70% are unsheltered. (Henninger Dec.116.) Assuming SAN JOSE's cost per homeless person is extrapolated to all homeless within California, the Statewide Estimate is \$1.08 billion, roughly 30 times SAN JOSE's costs of \$36 million for Fiscal Year 2022-2023. SAN JOSE significantly increased its budget for FY 23-24, which is not used as an estimate because it is unrealistic to assume this level of investment. Assuming that the jurisdictions received the same level of support from outside agencies, the Statewide estimates for these provisions would be:

Provision	FY 22-23	Statewide
C.17.a.i(I)	\$1,253.85	\$25,020.90
CI7.a.i(2)	\$26,923.39	\$807,701.70
C17.a.ii(I)	\$125,000.00	\$3,750,000.00
CI7.a.ii(2)	\$9,242.09	\$277,262.70
CI7.a.ii(3)	\$16,206,750.00	\$486,202,500.00
	\$2,866,802.00	\$86,004,060.00
	\$48,794.50	\$1,463,835.00
CI7.a.ii(4)	n/a	\$7,002,210.00
C17.a.iii(I)	Incorporated above	Incorporated above
C.17.a.iii(2)	\$1,917.99	\$57,539.70
Total	\$19,286,683.82	\$585,590,130.00

HUD PIT survey estimates homeless as 25,029 for the areas governed by the Permit, roughly 4 times the number in SAN JOSE. As a result, assuming permittees implemented all of SAN JOSE's practices, the costs could be \$144 million, based upon SAN JOSE's costs for Fiscal Year 2022-2023.¹⁵

However, it appears at least two different statewide cost estimates have been provided in this Test Claim. The *Narrative* indicates both “1.08 billion”¹⁶ and “\$144 million.”¹⁷ As

¹⁵ Test Claim, pages 35-36 (Narrative).

¹⁶ Test Claim, page 35 (Narrative). Please note that 1.08 billion in numbers is 1,080,000,000 not 1,800,000,000.

¹⁷ Test Claim, page 36 (Narrative).

the Test Claim Narrative states “However, this permit is region-wide, not statewide.¹⁸” Therefore, in the *Narrative*, no single statewide cost estimate is provided, as required.

Government Code section 17553(b)(1)(E) requires a *statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. This is a statutory requirement to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please provide the total amount of the statewide cost estimate; and please verify that that the information provided in the filing is consistent across the *Test Claim Form, Narrative, Declaration(s)*, and *Documentation*.

The Identification of Specific Sections of Executive Orders Alleged to Contain Mandated Activities and Associated Actual or Estimated Costs Are Required In the Declarations.

In *Declarations*, Mr. Ragan Henninger provides information regarding funding as follows:

5. Where appropriate, grant-funding, the source of the funding, and whether these are one-time grant funds are listed in the table below. Attached are documents which are generated at or near the time of the dates on the documents for the services rendered and are prepared by those familiar with the work performed. They are kept in the ordinary course and scope of the SAN JOSE's business and are verifiable through accessing SAN JOSE's system. Contracts supporting these services are attached as Exhibit "A".

6. A portion of this work is funded by Measure E, a voter-approved measure approved on March 3, 2020. Measure E is a real property transfer tax imposed on property transfers of \$2million or more. The revenue provides funding for general city services, including affordable housing for seniors, veterans, the disabled, and low-income families. It is also used to help families who are homeless move into shelters. Measure E is not a dedicated funding source for homeless work. The Fiscal Year 2022-2023 Measure E Proposed Spending Plan (May, 2022) included \$6.17 million for Homeless Prevention and Rental Assistance and \$9 .2625 million for Homeless Support Programs, for a total of \$15.435 million (plus 5% of administrative costs equals \$16.20675 million). A copy of the Memorandum is attached as Exhibit "B", the relevant chart is as follows:¹⁹

However, no specific sections of the test claim permit are included in these descriptions of funding. In addition, Mr. Henniger provides a series of descriptions of programs that are not associated with any of the sections pled.²⁰

¹⁸ Test Claim, page 35 (Narrative).

¹⁹ Test Claim, Volume 1, pages 39-40 (Declaration of Ragan Henninger).

²⁰ Test Claim, Volume 1, pages 40-41 (Declaration of Ragan Henninger).

Further, Mr. Henninger provides the same chart cited above that appears in the *Narrative* that includes some sections pled and costs and section C.10.f.ii(b)(i)²¹ that was not pled in this Test Claim, plus additional charts that also appear to include spending plans that are not associated with any costs or sections pled.²² As was noted above, the *Narrative* states that no funding is available to fund these programs.²³ In addition, Mr. Henniger provides two different statewide cost estimates “\$1.08 billion”²⁴ and “\$144 million”²⁵ therefore it is unclear what is the statewide cost estimate for this Test Claim.

Also in *Declarations*, Mr. Neil Ruffino provides a series of descriptions of programs that are not associated with any of the sections pled.²⁶ In addition, Mr. Rufino states:

4. Under the Municipal Regional Stormwater Permit, effective July 1, 2022, Provision C.17a.ii(3), SAN JOSE must identify and implement Best Management Practices (BMPs) to address discharges associated with homelessness that impact public health, and reporting approximate location of portion of the homeless and location of where they are served. The Permit identified actions that may be implemented include "Safe parking areas", provision of mobile pump-out services, voucher for property RV sanitary sewage disposal, updating sidewalk/street plaza cleaning of human waste, clean or pickup programs.

5. SAN JOSE has piloted several of the potential BMPs identified in Provision C.17 both as part of its Direct Discharge Plan, as well as by Council direction to address the needs of this vulnerable community. SAN JOSE provides the cost of these programs to inform and estimate the amount of the costs necessary to comply with the new Permit Provision C.17 a, but also recognizes that this work and estimates exceeds mandatory requirements, as this work toward eliminating homelessness is a SAN JOSE priority.²⁷

However, it is unclear if these costs apply only to section C.17a.ii(3), the entirety of section C.17 which was not pled in this Test Claim, or C.17a, which also was not pled in its entirety in this Test Claim. In addition, Mr. Ruffino provides the same charts²⁸ that

²¹ Test Claim, Volume 1, pages 29-30 (Narrative) and pages 41-42 (Declaration of Ragan Henninger).

²² Test Claim, Volume 1, pages 43-44 (Declaration of Ragan Henninger).

²³ Test Claim, Volume 1, page 36 (Narrative).

²⁴ Test Claim, Volume 1, page 44 (Declaration of Ragan Henninger).

²⁵ Test Claim, Volume 1, page 45 (Declaration of Ragan Henninger).

²⁶ Test Claim, Volume 1, page 631 (Declaration of Neil Ruffino).

²⁷ Test Claim, Volume 1, page 630-631 (Declaration of Neil Rufino).

²⁸ Test Claim, Volume 1, page 632-633 (Declaration of Neil Rufino).

were provided in the *Narrative*²⁹ and cited above that does not associate the fiscal year 2022-2023 or fiscal year 2023-2024 costs with any of the sections pled in this Test Claim. Further, Mr. Ruffino provides some information regarding funding that is also not associated with any of the sections pled.³⁰ Finally, Mr. Ruffino states:

18. The costs for the relevant programs are anticipated to increase because SAN JOSE implemented a dedicated trash management team. The grant funding from Valley Water noted for Fiscal Year 22-23 was depleted and is not anticipated for Fiscal Year 23-24. However, the County of Santa Clara extended its agreement through 2027 for total cost contract of \$2,025,000.00. The contract does not segregate contract funds based upon year, but for purposes of estimating outside revenue for services, I assume that there will be equal distribution of funds for each year of the contract term, or \$360,000.00 per year. In addition, BEAUTIFYSJ anticipates requiring additional staffing needs to meet the ongoing reporting and coordination as required by the Permit. This is anticipated to be a fulltime Graphic Information Systems Specialist (\$77,121.00 salary) and¹/₂ an analyst position (.5 FTE, \$70,564 salary), and 1.0 FTE Senior Analyst (\$132,765 salary).³¹

Therefore, it is unclear if these additional amounts are in addition to the amounts provided above, which section of the permit pled is associated with these activities and costs that are allegedly mandated by the state.

Further, in *Declarations*, Mr. Rajani Nair provides a list of activities alleged to be mandated by the state and associates them with the sections pled³² and describes the actual activities performed as follows:

14. In addition to the BEAUTIFY SJ and the Housing Department Costs, as stated in the Declarations of Neil Rufino and Ragan Henninger it is estimated that SAN JOSE incurred or will incur additional costs in its Environmental Services Department (ESD).

(a) For Provision C.17.a.i.(1): ESD staff wrote content for, reviewed, and collaborated on the report.

(b) For Provision C.17.a.i.(2): ESD staff attendee regional meetings, edited and contributed to the Best Management Practices Report/

(c) For Provision C.17.a.ii(I): ESD staff has no additional work on the mapping work.

(d) For Provision C.17.a.ii(2): ESD staff works and coordinates with other

²⁹ Test Claim, Volume 1, pages 31-32 (Narrative).

³⁰ Test Claim, Volume 1, pages 632-633 (Declaration of Neil Rufino).

³¹ Test Claim, Volume 1, page 633 (Declaration of Neil Rufino).

³² Test Claim, Volume 2, page 5 (Declaration of Rajani Nair).

partners on the Direct Discharge Progress Report, which is submitted with the Stormwater Annual Report

(e) For Provision C.17.a.ii(3): ESD staff worked with other departments to coordinate work on structural barriers, managing contractor cleanups, implementing creek clean ups, preparing, attending and leading volunteer creek cleanups, assessing and characterizing trash levels, and coordinating with other agencies.

(f) For Provision C.17.a.ii(4): ESD staff has no additional work on the updating biannual point in time census.

(g) For Provision C.17.a.iii(l): ESD staff time is incorporated into other tasks mentioned above

(h) For Provision C.17.a.iii(2): ESD staff attended regional meetings reviewed versions of the mapping, and coordinated with partners
This staff time is summarized in the table below:³³

Provision	FY 22-23	FY 23-24 (estimated)
C.17.a.i(l)	\$1,253.84 ³⁴	\$843.03
Cl7.a.i(2)	\$3,094.55	\$2,966.02
C17.a.ii(l)	n/a	n/a
Cl7.a.ii(2)	\$9,242.09	\$5,277.43
Cl7.a.ii(3)	\$144,284.32 (\$95,489.53 grant from EPA "Clean Creeks Healthy Watersheds")	\$214,816.01 (\$147,927.82 grant from EPA "Clean Creeks Healthy Watersheds")
Cl7.a.ii(4)	n/a	n/a
C17.a.iii(l)	Incorporated above	Incorporated above
C.17.a.iii(2)	\$1,917.99	n/a
Total	\$161,046.63 (95,489.53) Grant \$48,794.79	\$255,699.82 (147,927.82) Grant \$77,772.00

However, as is noted above these costs appear to apply only to the Environmental Services Department and does not appear to represent the total amount of costs alleged to be mandated by the state.

Also in *Declarations*, Mr. Christopher Sommers provides the following cost amounts for section C.17:

11. I have estimated the costs to all Program Permittees during the first two fiscal years of the term of the MRP 3.0 for projects and tasks

³³ Test Claim, Volume 2, pages 6-7 (Declaration of Rajani Nair).

³⁴ Note that in the charts included in the *Narrative* above, this amount is provided as \$1,253.85.

conducted by the Program related to provision C17. These costs are summarized below:

Fiscal Year 2022-2023, \$75,000

Fiscal Year 2023- 2034 - \$46,800

SAN JOSE pays 30.1 % of these costs, and the remaining Program Permittees pay the balance. These costs include contributions to a regional *BMPs Report for Addressing Non-stormwater Discharges Associated with Unsheltered Homeless Populations* ("BMPs Report") submitted to the Regional Water Board in September 2023 in compliance MRP 3.0 provision C.17.a., mapping developed for Program Permittees as required by MRP 3.0 provision C.17, and guidance developed for Program Permittees on documenting BMPs and conducting an effectiveness evaluation of BMPs as required by MRP 3.0 provision C.17.³⁵

However, it is unclear what the amounts for the City of San Jose are, since they do not appear to be stated and the entirety of section C.17 has not been pled in this Test Claim. In addition, Mr. Sommers provides the following cost amounts for section C.17:³⁶

	FY 2022-23	FY2023-24	Total
Alameda Countywide Clean Water Program ¹	\$42,003	\$25,000	\$67,003
Contra Costa Clean Water Program ²	\$120,000	\$30,600	\$150,600
San Mateo Countywide Water Pollution Prevention Program ³	\$45,937	\$24,582	\$70,519
Santa Clara Valley Urban Runoff Pollution Prevention Program ⁴	\$75,000	\$46,800	\$121,800
Solano Stormwater Alliance ⁵	\$22,000	\$18,000	\$40,000
Totals	\$304,940	\$144,982	\$449,922

However, it is not clear that the City of San Jose is included in any of these total amounts and the entirety of section C.17 has not been pled in this Test Claim.

Finally, none of the four *Declarations* provides evidence of the date of first incurred costs, as required³⁷ and as is indicated on the *Test Claim Form* in *Section 4* as follows:

³⁵ Test Claim, Volume 2, page 984 (Declaration of Christopher Sommers).

³⁶ Test Claim, Volume 2, page 985 (Declaration of Christopher Sommers).

³⁷ Please note that the PDF/A copy of the revised *Test Claim Form* indicates both that the effective date of the permit and the date of first incurred costs is July 1, 2022. The originally filed digitally signed *Test Claim Form* did not indicate both.

*This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*³⁸

Therefore, none of the *Declarations* make the connection between the specific sections of the executive order pled, the activities performed by the City of San Jose, the amount of associated costs of each by full fiscal years that are alleged to impose a reimbursable state-mandated program in this Test Claim, as required. In addition, where the *Narrative* indicates that there is no dedicated funding for this program the *Declarations* appear to provide evidence of dedicated funding for this program, which is unclear.

Government Code section 17553(b)(2)(A) requires *declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate*. Government Code section 17553(b)(2)(B) requires *declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs*. Government Code section 17553(b)(2)(C) requires *declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program*. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify the costs associated with each new activity and modified existing activity by full fiscal year that are alleged to be mandated by each specific section of the executive order pled, and where costs are unknown, please provide estimated cost amounts. Please specify all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

A Finding of Costs Mandated by the State May Not Be Based on Hearsay Evidence Alone.

Section 1187.5(a) of the Commission's regulations provides that "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions." Government Code section 17559(b) provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record. This requires that each finding of fact that the Commission makes (including whether there are costs mandated by the state, which is a mixed issue of law and fact) must meet the *Topanga* standard. In *Topanga* the court explained:

Section 1094.5 clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the

³⁸ Test Claim Form, page 2.

agency's decision. Subdivision (b) of Code of Civil Procedure section 1094.5 prescribes that when petitioned for a writ of mandamus, a court's inquiry should extend, among other issues, to whether 'there was any prejudicial abuse of discretion.' Subdivision (b) then defines "abuse of discretion" to include instances in which the administrative order or decision 'is not supported by the findings, or the findings are not supported by the evidence.' (Emphasis added.) Subdivision (c) declares that 'in all . . . cases' (emphasis added) other than those in which the reviewing court is authorized by law to judge the evidence independently, 'abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.' . . .

A finding of increased costs mandated by the state is often a mixed question of law and fact under Government Code sections 17514 and 17556. Thus, any costs alleged, for which you seek a favorable finding of increased costs mandated by the state, must be supported by evidence in the record in accordance with section 1187.5 of the Commission's regulations.

Thus, the claimant must submit either declarations that include all of the required elements described above based on the declarant's own personal knowledge or the declarant's information and belief along with other non-hearsay evidence to support a finding of costs mandated by the state. The claimant must submit evidence of the date of first incurred costs that would be admissible over an objection in civil actions with regard to the issue of costs mandated by the state at this time since this issue is jurisdictional. Additionally, proof of costs of at least \$1000 is required and is jurisdictional. All statements of fact, including alleged actual costs incurred, shall be supported with documentary or testimonial evidence submitted in accordance with section 1187.5 of the Commission's regulations. Estimated costs not yet incurred are not held to the same evidentiary standard, however, as they are only estimates. To approve a test claim, the Commission must make a finding of both a state-mandated new program or higher level of service and costs mandated by the state and this evidence is critical to supporting that finding.

Curing This Test Claim

Please verify that the information provided in all of the following documents is consistent across the test claim form, narrative, and declarations, and revise the test claim form(s), the narrative, and declaration(s) as follows:

(1) Revise the *Test Claim Form* as follows:

- a. Please complete, electronically sign, and file the revised claim on the new, electronic Test Claim Form by requesting a form from the following link:

<https://csm.ca.gov/request-form.php>

Once a form is requested via the link, the request will be sent to Commission staff, who will log in to Adobe Sign and send the electronic claim form to the first Form Filler listed on the request form. Please note that Commission staff will respond Monday-Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays, only. Therefore, please plan to request the

form as soon as you know you will need it and do not wait for your filing deadline to request the form.

Upon receipt, this digital claim form link is unique to your claim and will allow saving of your progress automatically. Once the first Form Filler completes their work, they may click Submit to send the form to the next Form Filler (if any). Once “Submit” is clicked, the Form Filler may not return to the form and the final person to receive it will be the Form Signer, which must be the person authorized to file a test claim pursuant to section 1183.1 of the Commission’s regulations. Once it is digitally signed, the form will become locked and not able to be further edited, and a PDF version will be sent to the Form Filler(s) and the Signer. In addition, the names and email addresses of all Form Fillers and Form Signers will be included in the form as part of the digital signature technology and authentication process. The Form Filler (usually the claimant representative) shall then separately upload the digitally signed PDF and any supporting materials to the Commission’s Dropbox to complete the filing.

(2) Revise the *Narrative* to identify:

- a. The specific sections of statutes or executive orders alleged to contain a mandate, as required by Government Code section 17553(b)(1). Please link the specific sections of the executive order to the activities and costs alleged to be mandated by full fiscal year.
- b. The detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A). Please specify which provisions of the executive order pled allegedly mandate which new activities and costs by full fiscal year. Where costs are unknown, provide estimated amounts for the full fiscal year.
- c. The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate, as required by Government Code section 17553(b)(1)(C). Where costs are unknown, please provide estimated amounts by full fiscal year.
- d. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D). Where costs are unknown, please provide estimated amounts by full fiscal year.
- e. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- f. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by

Government Code section 17553(b)(1)(H). In the event that there is no legislatively determined mandate, please state that.

(3) Revise the *Declaration(s)* to include:

- a. Evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.
- b. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A). Where costs are unknown, please provide estimates, as required.
- c. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Retaining Your Original Filing Date

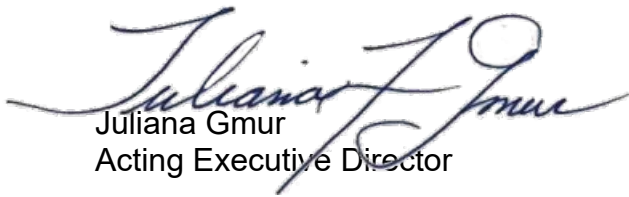
To retain the original filing date of June 30, 2023, please revise the required elements and refile the Test Claim within 30 days of the date of this letter by **5:00 p.m. on March 25, 2024**. If a complete test claim is not received within 30 calendar days from the date of this letter, the executive director may disallow the original test claim filing date. (Cal. Code Regs., tit. 2, § 1183.1(f).)

As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

You are advised that the revised Test Claim is required to be filed on a form prescribed by the Commission and shall be digitally signed, using the digital signature technology and authentication process contained within the Commission forms. The completed form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single PDF file in accordance with subdivision (c)(1)(C) of this section, and shall not exceed 500 megabytes. Accompanying documents exceeding 500 megabytes shall also comply with subdivision (c)(1)(D) of this section. (Cal. Code Regs., tit. 2, § 1181.3(c)(1)(B).)

You are further advised that the revised accompanying documents to the Test Claim are required to be electronically filed (e-filed) in an unlocked legible and searchable format using a "true-PDF" (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary, using the Commission's Dropbox. Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3(c)(1) and § 1181.3(c)(1)(A).) If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

Sincerely,



Juliana Gmur
Acting Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 23, 2024, I served via email to: Jennifer.Maguire@sanjoseca.gov and Colleen.Winchester@sanjoseca.gov the:

Second Notice of Duplicate and Incomplete Test Claim

Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 23, 2024 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

EXHIBIT “C”

5. WRITTEN NARRATIVE

IN SUPPORT OF UNION CITY TEST CLAIM

IN RE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
MUNICIPAL REGIONAL STORMWATER NPDES PERMIT

ORDER NO. R2-2022-0018
AS MODIFIED BY ORDER NO. R2-2023-0019
NPDES PERMIT NO. CAS612008
MAY 11, 2022

7. Discharges Associated with Unsheltered Homeless Populations

New Requirement. Provision C.17.a of the MRP3 requires Permittees to collectively develop and submit a best management practice report that identifies practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges. (MRP3 at C.17-1 – 3, Section 7 at S7-0218-0220.) Provision C.17.a of the MRP3 also requires Permittees to report on the programmatic efforts being implemented within Permittee’s jurisdiction, or at the countywide or regional level, to address MS4 discharges associated with homelessness. (*Id.*) The MRP3 Fact Sheet acknowledges these are new programs. (MRP3 Fact Sheet at A-38, Section 7 at S7-0297.)

Permittees are required to develop and submit a regional best management practice report to identify control measures to address non-stormwater discharges associated with unsheltered homeless populations and identify milestones to reduce such discharges. To meet this new MRP3 requirement, the Program collaborated with the other four countywide programs on a regional project to develop the required best management practice report, which was submitted with each Permittee’s Fiscal Year 22/23 annual report. (Mathews Decl., ¶9.j.) Additionally, each Permittee is required to submit a map identifying, the approximate locations of unsheltered homeless populations, including encampments and other areas where other unsheltered homeless people live relative to storm drains, creeks, and flood control channels. To support its members, the Program worked with County officials to obtain the required geo-located point in time count data, developed an approach for creating the maps, and updated its GIS system to produce the required maps for each of its members. (*Id.*) The City submitted the maps with its Fiscal Year 22/23 annual report.

The Union City Fiscal Year 22/23 Union City costs for new Provision C.17 programs were **\$2,455**. (Mathews Decl., ¶ 10; Azim Decl., ¶ 8.g.)

8. Cost Reporting

New Requirement. Provision C.20.b of the MRP3 requires Permittees to develop a cost reporting framework and methodology to perform an annual fiscal analysis. Permittees are encouraged to

DECLARATION OF SANDRA MATHEWS IN SUPPORT OF TEST CLAIM

I, SANDRA MATHEWS, declare as follows:

1. I make this declaration in support of the Test Claim submitted by the City of Union City ("Union City" or "City"). Except where otherwise indicated, the facts set forth below are of my own personal knowledge and, if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I have received the following degrees and credentials: Bachelor of Arts in Liberal Arts, History of Science, Technology and Society, and Linguistics, State University of New York at Stony Brook; Master's Program in Environmental and Waste Management, State University of New York at Stony Brook; Certified Professional in Erosion and Sediment Control, EnviroCert International.

3. I am employed by Larry Walker Associates as Vice President. In that position, I been the project manager for three consecutive five-year contracts supporting the Alameda Countywide Clean Water Program ("Alameda Countywide Program," or "Program"). Since January 2022, I have served as the Program's Interim Program Manager.

4. The Alameda Countywide Program is a consortium made up of the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City; the County of Alameda; the District, and the Zone 7 Water Agency (collectively, the "Consortium"). The Program was created in 1991 through a Memorandum of Agreement ("MOA"). Among other things, the MOA established a General Program, which carries out activities in common on behalf of the Consortium. The MOA also established a management structure and funding mechanism to carry out general Program activities. I am aware of these facts in my role as Interim Program Manager.

1 5. I have served as the Program's Interim Program Manager since
2 January 2022. In this role, I have primary responsibility on behalf of the
3 Program for coordination of Alameda Countywide Program activities and
4 support of its Management Committee leaders. My duties include preparing
5 and modifying annual budgets and coordinating and submitting required
6 program reports to the Regional Water Quality Control Board (San Francisco
7 Bay Region) ("Regional Water Board"), serving as liaison to region-wide
8 committees and workgroups, and advising the Consortium on compliance with
9 federal and state laws, regulations, and orders.

10 6. Union City is subject to the Municipal Regional Stormwater
11 NPDES Permit, Regional Water Board, San Francisco Bay Region, Order No.
12 R2-2022-0019 (NPDES Permit No. CAS612008), issued by the Regional Water
13 Board on May 11, 2022 ("MRP3") and effective on July 1, 2022. The MRP3
14 was amended in October 2023 by Order No. R2-2023-0019. I have reviewed
15 the MRP3, as modified, and am familiar with its requirements.

16 7. I have also reviewed and am familiar with the requirements of
17 Order No. R2-2015-0049 (NPDES Permit No. CAS612008), issued by the
18 Regional Water Board on November 19, 2015 ("MRP2"), under which the City
19 was also a Permittee. I have also reviewed and am familiar with the
20 requirements of Order No. R2-2009-0074 (NPDES Permit No. CAS612008)
21 issued by the Regional Water Board on October 14, 2009, amended by Order
22 No. R2-2011-0083 on November 28, 2011 ("MRP1")

23 8. In order to provide the information required under Government
24 Code section 17553, subdivision (b)(1)(E), I have been asked by the Program to
25 provide a statewide cost estimate of increased costs that all local agencies will
26 incur to implement the mandates of the MRP3 during the 23/24 fiscal year
27 ("fiscal year" or "FY") – the fiscal year immediately following the fiscal year for
28 which the claim was filed as required by Government Code section

1 17553(b)(1)(E). . The statewide costs are extrapolated from the Union City
2 costs as set forth below. The Union City costs include individual Permittee
3 costs (see Declaration of Farooq Azim (“Azim Declaration”) in support of this
4 Test Claim) *plus* Union City’s share of the Program Costs. I provide actual FY
5 22/23 costs Program costs and estimated FY 23/24 (which ends June 30, 2024)
6 costs and associated methodology below.

7 9. Union City Share of Program Costs. The Program incurred costs
8 on behalf of the Consortium members in order to comply with MRP3
9 mandates. In my role as Interim Program Manager, I track and coordinate
10 compliance actions taken by the Program on behalf of Consortium members. I
11 investigated the Program’s files and records, including consultant invoices,
12 and interviewed Consortium members leading Program workgroups and
13 subcommittees responsible for implementation of the MRP3, as necessary, to
14 estimate the Program costs. The Program supports compliance work through
15 subcommittees that are facilitated by a team of technical consultants. These
16 consultants also provide technical services, such as the preparation of required
17 reports and implementation of monitoring programs. Consultant invoices
18 represent a mix of specific and general tasks. To estimate the Program costs
19 associated with the specific provisions included in the Test Claim, the
20 following assumptions were made based on my knowledge of the subcommittee
21 work and/or by interviewing the Consortium members who oversee the work of
22 the subcommittees.

23 a. C.3.b.ii(4) and C.3.b.ii.(5) – Consultant invoices characterize
24 support in four general support functions: meetings; training; permittee
25 support; and technical material updates. The MRP3 changes were a
26 significant part of the effort for the permittee support and technical material
27 updates in FY 22/23. I estimate two-thirds of the cost of these subtasks were
28 related to the C.3.b.ii(4) and C.3.b.ii.(5) and are included in the summary.

1 Permittees are required to implement changes to the regulated projects in
2 their new and redevelopment programs. To support this work, the Program
3 revised the C.3 Technical Guidance Manual, prepared informational factsheets
4 on the changes to regulated projects, held a training workshop, and provided
5 technical guidance to members on the changes.

6 b. C.8.d – Consultant support for the planning and
7 implementation of LID Monitoring is separately distinguished on the invoices.
8 One of the consultants supporting this work is sub-consultant to another firm.
9 For these invoices, the sub-consultant breaks out the C.8.d costs, but the
10 prime firm roles up all the C.8 costs and applies a 10% mark-up fee (this is a
11 standard mark-up used by all the prime firms working for the Program).
12 Because sub-task costs are not distinguished on the prime firm's invoice, the
13 costs were taken from the sub-consultant invoices and the 10% mark-up was
14 added. Permittees are required to implement a monitoring program to
15 measure compliance and the effectiveness of LID facilities. To meet this
16 requirement, the Program collaborated with the other four countywide
17 programs to form and fund the MRP3 required technical advisory group
18 ("TAG"), developed a regional quality assurance plan, identified monitoring
19 locations for permittees in Alameda County, developed a monitoring plan for
20 LID facilities in Alameda County, revised the monitoring and quality
21 assurance plans based on feedback from the TAG, and submitted the plans to
22 the Regional Water Board. The plans were submitted to the Regional Water
23 Board on May 1, 2023. The Program will incur additional costs throughout the
24 MRP3 term to continue LID monitoring.

25 c. C.8.e – See the explanation for C.8.d, which also applies
26 here. Permittees are required to implement a monitoring program to assess
27 the effectiveness of trash control actions and evaluate whether areas
28 determined to be controlled are contributing to trash impacts. To meet this

1 requirement, the Program collaborated with the other four countywide
2 programs to form and fund the MRP3-required TAG, developed a regional
3 quality assurance plan, identified trash monitoring locations and developed a
4 monitoring plan for the selected sites in Alameda County, revised the
5 monitoring and quality assurance plans based on feedback from the TAG, and
6 submitted the plans to the Regional Water Board. The plans were submitted
7 to the Regional Water Board on July 31, 2023. The Program will incur
8 additional costs throughout the MRP3 term to continue trash monitoring.

9 d. C.8.f – See the explanation for C.8.d, which also applies
10 here. Permittees are required to implement a monitoring program to assess
11 inputs of select POCs to the Bay from local tributaries and urban runoff. To
12 meet this requirement, the Program developed and submitted a POC
13 monitoring plan as part of the Urban Creeks Monitoring Report on March 31,
14 2023, and initiated the required monitoring. The Program will incur
15 additional costs throughout the MRP3 term to continue POC monitoring.

16 e. C.10.a.i and C.10.a.ii – Consultant invoices characterize
17 support under one general support task. The MRP3 new requirements and
18 modified higher levels of service were a portion of the support provided in FY
19 22/23 and I estimate 25% of the cost of the general work was in support of the
20 new MRP3 C.10.a.i and C.10.a.ii Trash Reduction Requirements.
21 Additionally, the Geographical Information System (“GIS”) consultant breaks
22 out costs by technical tasks, not permit provisions. The Consortium member
23 who oversees this work estimates that 60% of the GIS support is for C.10
24 support, and in FY 22/23, 70% of that work was related to C.10.a.i and
25 C.10.a.ii . Permittees are required to implement changes to their trash control
26 programs, in particular, the addition of implementing controls for private land
27 drainage areas. To support this work, the Program held subcommittee
28 meetings and prepared guidance for members on the new requirements,

1 updates and modifications were made to GIS maps to support members, and
2 GIS-based inspection applications were developed. The Program will incur
3 additional costs throughout the MRP3 term to continue providing guidance to
4 permittees.

5 f. C.10.e – Provision C.10.e of the MRP3 requires Permittees to
6 collectively develop a Trash Impracticability Report that includes a process for
7 both evaluating impracticability and implementing partial benefit actions to
8 the maximum extent practicable by March 31, 2023. Consultant invoices
9 characterize support under one general support task. The MRP3 new
10 requirements and modified higher levels of service were a portion of the
11 support provided and I estimate 25% of the cost of the general work was in
12 support of the development of the C.10.e Trash Impracticability Report. The
13 Alameda Countywide Program worked collaboratively with the four other
14 countywide programs to fund the development of the Trash Impracticability
15 Report. The Trash Impracticability Report was submitted to the Regional
16 Water Board on March 27, 2023.

17 g. C.11.c/C.12.c – See the explanation for C.8.d, which also
18 applies here. Permittees in Alameda County are collectively required to
19 implement treatment controls on 664 acres of old industrial areas to reduce
20 mercury and PCBs loads over the course of the permit term. According to the
21 MRP3 Fact Sheet at A-255 [Section 7 p. S7-0514], “Because PCBs are more
22 concentrated in some locations, the choice of where to implement control
23 measures may be more influenced by known areas of PCBs contamination.
24 However, the mercury removal benefit can be an important contribution to
25 overall mercury load reductions, and available data indicate that this strategy
26 of focusing on PCBs will yield mercury load reductions in many
27 circumstances.” Thus, the Program conducted these two requirements
28 concurrently and the costs cannot be separated by provision. To meet these

1 requirements, the Program developed the Old Industrial Area Control
2 Measure Plan that included plans and schedules for implementing the
3 required control measures to reduce PCBs and mercury. The plan was
4 submitted in March 2023. Subsequent to submittal, the Program met with
5 Regional Water Board staff and planned revisions to the plan, which are due
6 in March 2024. The Program and Permittees will incur additional costs
7 throughout the MRP3 term to implement the Old Industrial Area Control
8 Measure Plan and to treat 664 acres of old industrial areas in Alameda
9 County.

10 h. C.12.a – See the explanation for C.8.d, which also applies
11 here. Permittees are required to quantify mercury and PCBs loads reduced
12 through the implementation of pollution prevention, source control, green
13 stormwater infrastructure, and other treatment control measures
14 implemented. To meet this requirement, the Program consultants tracked and
15 analyzed data on control measure implementation to calculate loads reduced.
16 The Program will incur additional costs throughout the MRP3 term to track
17 load reductions for Permittees.

18 i. C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j) – The
19 Consortium member who oversees the GIS work estimates that 30% of the GIS
20 support is for C.3 support, and in FY 22/23, 20% of that work was related to
21 C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j). As a modified higher level of
22 service requirement, Permittees are required to implement the Green
23 Infrastructure Plans that they developed under MRP2. To meet this
24 requirement, the Program updated and maintained a GIS platform that allows
25 members to track their green infrastructure projects. The Program will incur
26 additional costs throughout the MRP3 term to maintain the GIS system and
27 Permittees will incur additional cost to update and implement their Green
28 Infrastructure Plans.

1 j. C.17.a – This special project is identified individually on
2 consultant invoices. Permittees are required to develop and submit a regional
3 best management practice report to identify control measures to address non-
4 stormwater discharges associated with unsheltered homeless populations and
5 identify milestones to reduce such discharges. To meet this new MRP3
6 requirement, the Program collaborated with the other four countywide
7 programs on a regional project to develop the required best management
8 practice report, which was submitted with each Permittee’s FY 22/23 annual
9 report. Additionally, each Permittee is required to submit a map identifying,
10 the approximate locations of unsheltered homeless populations, including
11 encampments and other areas where other unsheltered homeless people live
12 relative to storm drains, creeks, and flood control channels. To support its
13 members, the Program worked with County officials to obtain the required
14 geo-located point in time count data, developed an approach for creating the
15 maps, and updated its GIS system to produce the required maps for each of its
16 members. Members submitted the maps with their FY 22/23 annual report.
17 The Permittees will incur additional costs throughout the MRP3 term to
18 implement the best management practices.

19 k. C.20.b – This special project is identified individually on
20 consultant invoices. Permittees are required to develop and submit a cost
21 reporting framework and methodology to guide the preparation of a fiscal
22 analysis of the capital and operation and maintenance costs incurred to
23 comply with MRP3. To meet this new requirement, the Program collaborated
24 with the other four countywide programs on a regional project to develop the
25 cost reporting framework and methodology, which was submitted on June 26,
26 2023. Updates to the cost reporting framework and methodology based on
27 Regional Water Board comments are in process. The Program will
28 additionally provide training for its members on the use of the cost reporting

1 framework and methodology. The Permittees will incur additional costs
2 throughout the MRP3 term to track and report permit implementation costs.

3 1. C.21.b – This special project is identified individually on
4 consultant invoices. Permittees are required to develop and implement an
5 asset management plan to ensure the satisfactory condition of all hard assets
6 constructed during MRP3 and the pervious permit terms pursuant to
7 provisions C.2, C.3, C.10, C.11, C.12, C.13, and C.17. Additionally, Permittees
8 are required to develop and submit a climate change adaptation report to
9 identify potential climate change-related threats to assets and appropriate
10 adaptation strategies. To help Permittees meet these new requirements the
11 Program initiated work on a framework to guide the development of the asset
12 management plans by individual members. The Permittees will incur
13 additional costs throughout the MRP3 term to develop and implement their
14 asset management plans. The Program and Permittees will incur additional
15 costs to develop the climate change adaptation report.

16 m. C.8 continuing costs (MRP1 Test Claim) – See the
17 explanation for C.8.d. However, for some of the subtasks, I estimated that
18 one-half of the effort for Program and Regional meetings was related to C.8 so
19 the effort for these subtasks was reduced by fifty percent. Permittees are
20 required to implement monitoring programs. To meet these requirements, the
21 Program develops and implements an area-wide monitoring program on behalf
22 of its members. The Program develops and implements the required
23 monitoring program and participates in regional monitoring planning
24 meetings and discussions on behalf of its members.

25 n. C.10.b continuing costs (MRP2 Test Claim) – Consultant
26 invoices characterize support under one general support task. The continuing
27 costs were a portion of the support provided and I estimate that 25% of the
28 general work was in support of the continuing costs. Permittees are required

1 to install and maintain full trash capture systems. To support this work, the
2 Program continued support for members by holding subcommittee meetings
3 and providing guidance on the inspection and maintenance of full trash
4 capture system, visual assessments, calculation of discharge reductions and
5 source controls.

6 o. C.11/C.12 continuing costs (MRP2 Test Claim) – There were
7 continuing costs associated with the GIS system to support compliance with
8 these provisions. The Consortium member who oversees this work estimates
9 that 10% of the GIS support is for C.11/C.12 support, and in FY 22/23 100% of
10 that work was related to C.11.e and C.12.f. Permittees are required to
11 implement green infrastructure projects to reduce mercury and PCBs loads.
12 To support its members, the Program continued to maintain a GIS platform
13 for members to track their green infrastructure projects. The GIS platform
14 provides a centralized method to track projects and calculate load reductions.

15 10. Below is summary of the Program's actual FY 22/23 costs incurred
16 regarding the MRP3 and continuing MRP1 and MRP2 mandates at issue in
17 Union City's Test Claim. These costs cover the entire FY 22/23. The
18 documentation for the Program costs is set forth in **Exhibit 1** hereto. Union
19 City's share of Program costs (5.31%) was derived from a formula based in part
20 on the relative area and population of the Program member agencies. The
21 Program sets the annual member contribution based on the MRP
22 implementation costs handled by the Program. The annual member
23 contribution level for FY 22/23 was \$2,535,000 for all Program costs regarding
24 the MRP3, for which Union City's paid 5.31% or \$134,609. Union City's share
25 of actual Program costs FY 22/23 (which is the same one-year period of the
26 first year of the MRP3 term) are as follows:

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

Task	Applicable Invoice (see Exhibit 1)	Program Costs	Union City Share of Program Costs (5.31%)
MRP3 New / Increased Programs			
C.3.b.ii(4) and C.3.b.ii.(5)(New or Widening Roads and Road Reconstruction) [New Requirements]	LWA: 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31	\$41,418.96	\$2,199.35
C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j) (Green Infrastructure Retrofits and update their Green Infrastructure Plans) [New and Modified Requirements]	Psomas: 233-187476, 233-188514, 236- 188514, 236-189563, 233-189563, 236- 189861, 236-190853, 236-192070, 236- 193162, 236-193892, 236-195324	\$5,522.16	\$293.23
C.5.f (MS4 Maps) [New Requirement]		None	\$0
C.8.d, C.8.e and C.8.f (New Water Monitoring Requirements) [Modified Higher Levels of Service Requirements]	AMS: 430-21/20, 430- 21/21, 430-21/22, 430- 21/23, 430-21/24, 430- 21/25, 430-21/26, 430- 21/27, 430-21/28, 430- 21/29, 430-21/30, 430- 21/31 LWA: 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31	\$289,528.06	\$15,373.94
C.10.a.i and C.10.a.ii (Trash Load Reduction and Trash Control on Private Lands) [Both New Requirements and Modified Higher Levels of Service Requirements]	EOA: AL22X-0123, AL22X-0223 AL22X-0323, AL22X- 0423, AL22X-0523, AL22X-0623, AL22X- 0722, AL22X-0822, AL22X-0922, AL22X- 1022, AL22X-1122, AL22X-1222 Psomas: 233-187476, 233-188514, 236-	\$52,362.35	\$2,780.44

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

Task	Applicable Invoice (see Exhibit 1)	Program Costs	Union City Share of Program Costs (5.31%)
	188514, 236-189563, 233-189563, 236- 189861, 236-190853, 236-192070, 236- 193162, 236-193892, 236-195324		
C.10.e (Impracticability Report) [New Requirement]	EOA: AL22X-0123, AL22X-0223, AL22X- 0323, AL22X-0423, AL22X-0523, AL22X- 0623, AL22X-1022, AL22X-1122, AL22X- 1222	\$11,977.25	\$635.99
C.11.c and C.12.c. (Mercury and PCBs Controls on Old Industrial Lands) [Modified Higher Levels of Service Requirements]	LWA: 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31	\$59,429.70	\$3,155.72
C.12.a (Quantify PCBs Reductions) [Modified Higher Levels of Service Requirement]	LWA: 436.14-20, 436.14-21	\$6,619.25	\$351.48
C.15.b.iii(Firefighti ng Discharges Working Group) [New Requirement]	EOA: AL22X-0223, AL22X-0323, AL22X- 0423, AL22X-0523, AL22X-0623,	\$5,275.75	\$280.14
C.17.a (Homelessness) [New Requirement]	AMS: 430-21/24, 430- 21/25, 430-21/26, 430- 21/27, 430-21/28, 430- 21/29, 430-21/30, 430- 21/31	\$42,002.97	\$2,230.36
C.20.b. (Cost Reporting Framework) [New Requirement]	EOA: AL22X-0123, AL22X-0223, AL22X- 0323, AL22X-0423, AL22X-0523, AL22X- 0623, AL22X-0822, AL22X-0922, AL22X- 1022, AL22X-1122, AL22X-1222	\$54,197.00	\$2,877.86
C.21.b (Asset Management Plan) [New Requirement]	AMS: 430-21/28, 430- 21/29, 430-21/30, 430- 21/31	\$8,833.84	\$469.08

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

Task	Applicable Invoice (see Exhibit 1)	Program Costs	Union City Share of Program Costs (5.31%)
TOTAL MRP3 New/Increased FY22/23 Actual Costs			\$30,647.59
Continuing MRP1 and MRP2 Test Claims Provisions			
C.8 (Water Quality Monitoring)	LWA: 436.14-20, 436.14-21, 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31 AMS: 430.21/20, 430.21/21, 430.21/22, 430.21/23, 430.21/24, 430.21/25, 430.21/26, 430.21/27, 430.21/28, 430.21/29, 430.21/30, 430.21/31	\$209,164.61	\$11,106.64
C.10.b (Trash Capture Maintenance)	EOA: AL22X-0123, AL22X-0223, AL22X- 0323, AL22X-0423, AL22X-0523, AL22X- 0623, AL22X-0722, AL22X-0822, AL22X- 0922, AL22X-1022, AL22X-1122, AL22X- 1222	\$30,273.72	\$1,607.53
C.11.e, C.12.f (C.11.c, C.12.c of the MRP2) (Green Infrastructure Projects)	Psomas: 233-187476, 233-188514, 236- 188514, 236-189563, 233-189563, 236- 189861, 236-190853, 236-192070, 236- 193162, 236-193892, 236-195324, 197552, 198218	\$9,203.60	\$488.71
C.12.h (C.12.d in the MRP2) (RAA Plans)		None	\$0

11. As set forth in paragraph 10 above, the total amount of Union City's share of actual Program costs for fiscal year 22/23 for the new programs

or higher levels of service for the MRP3 Provisions pled in this Test Claim (Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b) is \$30,648. As set forth in paragraph 10 above and in the Azim Declaration at paragraph 8, the total amount of Union City's actual increased costs for fiscal year 22/23 for the new programs and higher levels of service for the MRP3 Provisions pled in this Test Claim (C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b) **\$51,619.**

12. The continuing monitoring required under Provision C.8 (i.e., monitoring requirements that are not new in the MRP3) is allocated to the countywide programs roughly based on the relative populations of the counties.

13. The costs for implementation of MRP3 will continue in FY 23/24. The Program has approved a budget for FY 23/24 and this budget was used to extrapolate test claim costs. Similar assumptions were made regarding apportioning non-specific costs as are described in paragraph 9 above. The Union City share of the estimated FY 23/24 new and continuing Program costs for MRP3 is **\$49,334.**

New or Modified Higher Levels of Service for MRP3	Estimated FY 23/24 Costs	Brief Description	Anticipated Activities FY 23/24	Basis of FY 23/24 Cost Estimates	Union City Cost Share (5.31%)
C.10.a.i and C.10.a.ii	\$67,750	Trash Reduction Support	Program member support and guidance materials on trash load reductions. GIS support for work.	Program Approved 23/24 Revised Budget	\$3,598
C.10.e	\$0	Regional Trash Impracticability Report	Report was submitted in 22/23.	Program Approved 23/24 Revised Budget	\$0.00

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

New or Modified Higher Levels of Service for MRP3	Estimated FY 23/24 Costs	Brief Description	Anticipated Activities FY 23/24	Basis of FY 23/24 Cost Estimates	Union City Cost Share (5.31%)
C.11c/C.12.c	\$41,250	Old Industrial Area Plan and Support	Annual progress accounting, revisions to the Old Industrial Area Control Measure Plan, initial planning for development of regional control projects.	Program Approved 23/24 Revised Budget	\$2,190
C/11.a/C.12.a	\$16,500	Pollutant of Concern (POC) Load Reduction Report	Annual progress accounting.	Program Approved 23/24 Revised Budget	\$876
C.15.b.iii	\$26,000	Firefighting Discharges work group	Participate in regional workgroup meetings, contribution to regional tasks, collaborating with other organizations. and Program member guidance and support.	Program Approved 23/24 Revised Budget	\$1,381
C.17.a	\$25,000	Unsheltered Homeless work group	Regional coordination and updates to final report, coordination and support for Program member mapping, annual report assistance.	Program Approved 23/24 Revised Budget	\$1,328
C.20.b	\$37,000	Cost Reporting Framework	Revise final framework, Program workgroup meetings, Program member support and training, and regional workgroup meetings.	Program Approved 23/24 Revised Budget	\$1,965
C.21.b	\$68,000	Asset Management Framework	Draft and finalize a framework, Program workgroup meetings, regional coordination, Program member support, coordination.	Program Approved 23/24 Revised Budget	\$3,611
C.3.b.ii(4) and C.3.b.ii(5)	\$34,980	C.3 Regulated Project Support	Program member support and guidance materials on regulated projects, new factsheets, revisions to C.3 Technical Guidance Manual.	Program Approved 23/24 Revised Budget	\$1,857
C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j)	\$22,800	Green Infrastructure Planning and Implementation	Special project to evaluate options for alternative compliance programs; initiate regional project for long term green	Program Approved 23/24 Revised Budget	\$1,211

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

New or Modified Higher Levels of Service for MRP3	Estimated FY 23/24 Costs	Brief Description	Anticipated Activities FY 23/24	Basis of FY 23/24 Cost Estimates	Union City Cost Share (5.31%)
			stormwater infrastructure numeric targets and form TAG, and GIS support for Program members.		
C.8.d	\$258,800	LID Monitoring	Monitoring plan revisions, TAG meetings, equipment purchase and installation, conduct sampling events.	Program Approved 23/24 Revised Budget	\$13,742
C.8.e	\$189,000	Trash Monitoring	Monitoring plan revisions, TAG meetings, equipment purchase and installation, conduct sampling events, match for Water Quality Improvement Fund grant.	Program Approved 23/24 Revised Budget	\$10,036
C.8.f	\$142,000	POC Monitoring Support	Planning support, conduct sampling events, contribution to Regional Monitoring Program (RMP).	Program Approved 23/24 Revised Budget	\$7,540
Total	\$929,080				\$49,334

14. As set forth in paragraph 13 above, the total amount of Union City's share of estimated Program costs for fiscal year 23/24 for the new programs or higher levels of service for the MRP3 Provisions pled in this Test Claim (Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b) is \$49,334. As set forth in paragraph 13 above and in the Azim Declaration at paragraph 8, the total estimated amount of Union City's increased costs for fiscal year 23/24 for the new programs and higher levels of service for the MRP3 Provisions pled in this Test Claim (Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21) is **\$852,749**.

1 15. Estimated Statewide Costs. MRP3 requirements apply to the 79
2 cities, counties, and flood control districts subject to MRP3. Costs for each of
3 the Permittees will vary depending on a number of factors specific to each of
4 the Permittees. However, the population of each Permittee is a primary
5 determining factor in the cost to comply with MRP3 requirements. In the
6 MRP3, for example, the required mercury and PCBs load reductions are
7 explicitly determined by each agency's population. (MRP3 Provision C.11.a.ii
8 at C.11-1 – 2 and Provision C.12.a.ii at C.12-1 – 2.) Entities with higher
9 populations will tend to have higher levels of trash reduction required to meet
10 the MRP3's required trash reductions. These higher population entities tend
11 to have higher levels of unsheltered homeless populations requiring more
12 engagement by the MS4s to implement best management practices to control
13 associated pollutants. The more extensive municipal infrastructure associated
14 with larger entities will increase costs and effort associated with other new
15 MRP provisions including asset management, cost reporting, and
16 implementing best management practices associated with emergency
17 firefighting discharges. Monitoring requirements in Provision C.8 vary
18 generally based upon the relative populations of the countywide programs. As
19 Union City is a fairly typical Bay Area city, it is reasonable to extrapolate from
20 Union City costs to the entire MRP3 area based upon the relative population
21 of Union City compared to the population of the entire area covered by MRP3.
22 According to the MRP3, Union City's population is 74,107 (MRP3 at
23 Attachment H-2). According to the MRP3, the population for the entire MRP
24 area is 5,917,090 (MRP3 at Attachment H-5). The population of the entire
25 MRP population is approximately 80 times the population of Union City.
26 Based on information obtained from Union City (see Azim Declaration) and
27 extrapolating statewide costs based on the relative population of Union City as
28 compared to the MRP area, I estimate the FY 23/24 statewide costs as follows:

Task	Estimated Union City FY 23/24 Costs ¹	Union City Share of FY 23/24 Program Costs (5.31%)	Total Union City Costs	Estimated FY 23/24 Statewide Costs (80 x Union City)
MRP3 New or Modified Higher Levels of Service Programs	\$803,415	\$49,334	\$852,749	\$68,200,880

16. I investigated the pertinent consultant invoices that were provided by the District and consulted with the Consortium members who oversee the work of the subcommittees to determine the precise date that the Program, acting on behalf of Union City and other members, first incurred increased costs as a result of the new activities and modified existing activities mandated by MRP3. The start of MRP3 coincided with the start of the Program's fiscal year, July 1, 2022, which is the same date that consultant invoices indicate incurred costs as a result of implementing the new activities and modified existing activities mandated by MRP3.

17. I have personally compiled the information in the tables above related to actual FY 22/23 Program costs for the entire fiscal year and estimates of FY 23/24 Program costs and believe that the information they contain is accurate.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge.

Executed on May 20, 2024, at Berkeley, California.


SANDRA MATHEWS

5721835.3

¹ The estimated Union City costs for FY 23/24 are set forth the Azim Declaration in support of this Test Claim.

DECLARATION OF FAROOQ AZIM IN SUPPORT OF TEST CLAIM

I, FAROOQ AZIM, declare as follows:

1. I make this declaration in support of the Test Claim submitted by the City of Union City (“Union City” or “City”) to the Commission on State Mandates. Except where otherwise indicated, the facts set forth below are of my own personal knowledge and, if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I have received the following credentials: In 1981, I received a Bachelor of Science degree in Civil Engineering from the Mapua Institute of Technology, Manila, Philippines. In 1982, I received a Bachelor of Science degree in Engineering (BSE), with concentration in Civil Engineering from Indiana Institute of Technology, Fort Wayne, IN. In 1985, I received a Master of Science in Civil Engineering (MSCE), specializing in Geotechnical (Soils and Foundation) Engineering. In 2005, I received a Master of Business Administration (MBA), with concentration in Finance from California State University, East Bay. In 1995, I received a Professional Engineer License from the California Board for Professional Engineers, Land Surveyors, and Geologists.

3. I am employed by the City as the City Engineer. I was appointed by the City Manager and have held this position since 2018. I supervise a staff of six, consisting of three Inspectors and three Engineers. I am responsible for designing, managing, and implementing all aspects (e.g., sampling, design, field work, analytical analysis, quality control, data management, O&M reports, interpretation and reporting) of water quality monitoring and other compliance actions required by regional municipal stormwater National Pollutant Discharge Elimination System (“NPDES”) permits issued to the City.

///

1 4. I have a total of 34 years of experience as a civil engineer. I
2 started my civil engineering career with W.H. Gordon Associates in Reston,
3 VA, a suburb of Washington DC, where I designed and reviewed new
4 development projects, including housing tract developments. My second job
5 was with a private Geotechnical Engineering firm in Pleasanton, CA. I joined
6 the City in 1991 as a junior engineer (Engineer I) and was introduced to
7 municipal engineering. I have been promoted since then and have been the
8 City Engineer since 2018. I have been involved with various aspects of
9 municipal engineering including the capital improvement program (“CIP”) and
10 the Land Development aspect of municipal engineering, which includes the
11 review and approval of all new private developments in the City, including the
12 storm water aspects of new development. I have also been attending a variety
13 of Alameda Countywide Clean Water Program (“Program”) meetings,
14 including representing the City at various quarterly meetings which are
15 attended by all member agencies of the Program, for more than 10 years.

16 5. Union City is subject to the Municipal Regional Stormwater
17 (“MRP”) NPDES Permit, issued by the California Regional Water Quality
18 Control Board, San Francisco Bay Region (“Regional Board”), Order No. R2-
19 2022-0018 (NPDES Permit No. CAS612008), issued by the Regional Board on
20 May 11, 2022 (“MRP3” [Section. 7 p. S7-0002]) with an effective date of July 1,
21 2022, and amended on October 11, 2023. I have reviewed the MRP3 and am
22 familiar with its requirements.

23 6. I have also reviewed and am familiar with the requirements of
24 Order No. R2-2015-0049 (NPDES Permit No. CAS612008), issued by the
25 Regional Board on November 19, 2015 (“MRP2” [Section 7 p. S7-0992]), under
26 which the City was a Permittee, and with Order No. R2-2009-0074 (NPDES
27 Permit No. CAS612008) issued by the Regional Board on October 14, 2009,
28

1 amended by Order No. R2-2011-0083 on November 28, 2011 (“MRP1” [Section
2 7 p. S7-1352]), under which the City was a Permittee.

3 7. Based on my understanding of the MRP2 and the MRP3, I believe
4 the MRP3 requires Permittees, including Union City, to perform new activities
5 that are unique to local governmental entities that were not required by the
6 MRP2.

7 8. The MRP3’s new activities and higher levels of service include the
8 following. The City’s actual costs for FY 22/23 are identified herein; the City’s
9 actual share of Program costs for FY 22/23 are identified in the Declaration of
10 Sandra Mathews in support of this Test Claim (“Mathews Declaration). The
11 costs herein for FY 22/23 are actual for the entire FY 22/23. The estimated
12 costs for FY 23/34 herein, which ends on June 30, 2024, and therefore is
13 ongoing, are estimated based on activities to-date and anticipated activities.
14 Unless otherwise noted, the employee rates provided below are rounded to the
15 nearest dollar and are based on my discussions with Jackie Acosta, Finance
16 Director for Union City, which were developed based on salaries plus benefits.

17 (a) New Development and Redevelopment.

18 i. New Requirements. Provision C.3.b of the MRP3
19 requires Permittees to implement low impact development (“LID”) source
20 control, site design, and stormwater treatment onsite or at a joint stormwater
21 treatment facility for certain “regulated projects,” including the following:

22 (1) New or widening roads (Provision C.3.b.ii.(4)).

23 **FY 22/23 Actual Costs:** Applicable Regulated Projects are unknown at this
24 time. Union City attended the Program’s New Development Subcommittee
25 meetings in FY 22/23. There were four 2-hour quarterly meetings in FY 22/23,
26 with approximately 1/8 of the time spent on Provision C.3.b.ii.(4).

27 ///

28 ///

FY22/23 Provision C.3.b.ii.(4) Actual Costs			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$117	\$117
Tommy Cho (Principal Civil Engineer)	1	\$103	\$103
TOTAL			\$220

FY 23/24 Estimated Costs: Applicable Regulated Projects are unknown at this time. Union City has attended and will attend the Program's New Development Subcommittee meetings in FY 23/24. It is anticipated there will be four 2-hour quarterly meetings in FY 23/24, with approximately 1/8 of the time spent on Provision C.3.b.ii.(4).

FY23/24 Provision C.3.b.ii.(4) Estimated Costs			
Person	Time (Hours)	FY23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$129	\$129
Tommy Cho (Principal Civil Engineer)	1	\$111	\$111
TOTAL			\$240

(2) Road reconstruction projects (Provision C.3.b.ii.(5)).

FY 22/23 Actual Costs: Applicable Regulated Projects are unknown at this time. Union City attended the Program's New Development Subcommittee meetings in FY 22/23. There were four 2-hour quarterly meetings in FY 22/23, with approximately 1/8 of the time spent on Provision C.3.b.ii.(5).

FY22/23 C.3.b.ii.(5) Actual Costs			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$117	\$117
Tommy Cho (Principal Civil Engineer)	1	\$103	\$103
TOTAL			\$220

FY 23/24 Estimated Costs: Applicable Regulated Projects are unknown at this time. Union City has attended and will attend the Program's New Development Subcommittee meetings in FY 23/24. It is anticipated there will

be four 2-hour quarterly meetings in FY 23/24, with approximately 1/8 of the time spent on Provision C.3.b.ii.(5).

FY23/24 C.3.b.ii.(5) Estimated Costs			
Person	Time (Hours)	FY 23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$129	\$129
Tommy Cho (Principal Civil Engineer)	1	\$111	\$111
TOTAL			\$240

(b) Green Stormwater Infrastructure (GSI)

i. Modified Higher Levels of Service Requirements.

Provision C.3.j.ii.(1)(a)-(g) of the MRP3 requires Permittees to update and/or supplement their Green Infrastructure Plans as needed to ensure that municipal processes and ordinances allow and appropriately encourage implementation of green infrastructure, and incorporate lessons learned. This includes revising implementation mechanisms; continuing to update related municipal plans; developing funding mechanisms; updating guidance, details and specifications as appropriate; implementing tracking/mapping tools; and adopting/amending legal mechanisms as necessary.

FY22/23 Actual Costs: I contacted HDR Consultants in June 2023 requesting it provide a quote to update the Green Infrastructure Plan that HDR had prepared in 2019. We discussed the need and scope for the Plan and exchanged emails and engaged in telephone conversations.

FY22/23 Provision C.3.j.ii.(1)(a)-(g) Actual Costs			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	2	\$117	\$234
TOTAL			\$234

FY 23/24 Estimated Costs: The HDR proposal was received in July 2023 and was reviewed by me. Given the relatively large amount of the HDR proposal, it was determined that the City would have to go through the request for proposal (RFP) process which would allow other prospective consultants to

provide a proposal for this task. I do not anticipate this activity to occur in FY 23/24, however.

FY23/24 Provision C.3.j.ii.(1)(a)-(g) Costs		
Activity: Update and/or supplement their Green Infrastructure Plans		
Person	Hours x FY23/24 Rate	Rate/Hour
Farooq Azim (City Engineer)	18 x 129	\$2,222
TOTAL		\$2,322

ii. Modified Higher Level of Service Requirements.

Provision C.3.j.ii.(2)(a)-(j) of the MRP3 requires Permittees to implement, or cause to be implemented, green infrastructure projects within their jurisdictions which are not already defined as Regulated Projects. The Permittees may meet the numeric retrofit requirements on a countywide basis. Though Permittees may meet their total individual numeric retrofit requirements on a countywide basis, each Permittee shall implement, or cause to be implemented, a green infrastructure project or projects treating no less than 0.2 acres of impervious surface within its jurisdiction, where that project is not already defined as a Regulated Project. Alternatively, a Permittee may contribute substantially to such a green infrastructure project(s) outside of its jurisdiction and within its County.

FY 22/23 Actual Costs: The City has attended meetings with the Program regarding these Provision C.3.j.ii.(2)(a)-(j) requirements, including municipal staff training, and incurred the following costs implementing C.3.j.ii.(2)(a)-(j) programs in FY 22/23.

FY 22/23 Actual Costs C.3.j.ii.(2)(a)-(j)			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	6	\$117	\$702
Tommy Cho (Principal Civil Engineer)	3	\$103	\$309
TOTAL			\$1,011

1 Although the Second Incomplete Letter states “no fiscal year 2023-2024 costs
2 are provided” (p. 10), those estimate costs are provided in the next table.

3 **FY 23/24 Estimated Costs:** Union City has attended and will attend the
4 Program’s New Development Subcommittee meetings in FY 23/24. It is
5 anticipated there will be four 2-hour quarterly meetings in FY 23/24, with
6 approximately 1/4 of the time spent on Provision C.3.j.ii.(2)(a)-(j) .

7 Additionally, the Union City Bike Lane Improvement Project includes
8 approximately 2.5 miles of improvements on Union City Blvd. from Smith
9 Street to the southern City limits. Union City Blvd., a major arterial, has two
10 traffic lanes in each direction. The project involves widening the roadway by
11 reducing the existing median to accommodate the installation of bicycle lanes
12 alongside the existing two traffic lanes. The MRP3 mandates municipalities to
13 meet the numeric retrofit requirements listed in Table H-1 of Attachment H in
14 the MRP3. Union City, in compliance with this, is required to implement
15 green infrastructure to treat a total of 4.45 acres throughout the City. The
16 City has chosen to incorporate stormwater treatment into the Bike Lane
17 Improvement Project to meet the numeric retrofit requirements. A total of 12
18 landscaping areas were identified for bioretention installation in the project,
19 providing a total of 6,970 square feet to treat roughly 4.16 acres of impervious
20 area. The estimated total cost for implementing these bioretention treatment
21 areas is approximately \$520,000 which includes the design and construction
22 management. These costs are expected to be incurred in FY23/24.

23 Additionally, the Program recently initiated an Alternative Compliance
24 and Numeric GSI Target workgroup to develop approaches for Permittees to
25 meet the C.3.j numeric targets. In addition to the costs below, the City may
26 incur additional costs is FY 23/24 participating in these meetings.

27 ///

Y23/24 Provisions C.3.j.ii.(2)(a)-(j) Estimated Costs			
Program Meeting Attendance			
Person	Time (Hours)	FY23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	2	\$129	\$258
Tommy Cho (Principal Civil Engineer)	2	\$111	\$222
Provision C.3.j.ii.(2)(a)-(j) Retrofits			520,000
TOTAL			\$520,480

(c) Illicit Discharge Detection and Elimination.

i. New Requirements. Provision C.5.f of the MRP3 requires Permittees to identify information missing from the current municipal separate storm sewer systems ("MS4") maps and develop a plan and schedule to compile additional storm sewer system information, considering the potential to identify component locations, size or specifications, materials of construction, and condition. I have analyzed and coordinated with Sandra Mathews, consultant for the Program, to discuss the implementation of this requirement. In FY22/23, I spent a total of one hour for such coordination at a cost of \$117 per hour; therefore, these are the actual costs for Provision C.5.f for FY 22/23. For FY23/24, I estimate spending additional time to identify what maps are available, what information is missing and work to fill in gaps in information.

FY23/24 Provision C.5.f Estimated Costs			
Person	Time (Hours)	FY 23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	10	\$117	\$1,170
Eddie Yu (Principal Civil Engineer)	70	\$78	\$5,460
TOTAL			\$6,630

(d) Trash Load Reduction

i. Modified Higher Levels of Service Requirements.

(1) The MRP3 requires Permittees to implement trash load reduction control actions and demonstrate attainment of trash discharge reduction requirements of 90% by June 30, 2023; and 100% trash load reduction or no adverse impact to receiving waters from trash by June 30, 2025 (Provision C.10.a.i.).

FY 22/23 Actual Costs: The City expended the following costs on pre-design and planning in FY 22/23 associated with these higher level of service requirements:

FY 22/23 Provision C.10.a.i. Actual Costs			
Person/Activity	Time (Hours)	FY 22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	10	\$117	\$1,170
Eddie Yu (Civil Engineer II)	15	\$78	\$1,170
TOTAL			\$2,340

FY 23/24 Estimated Costs: Union City anticipates expending costs to develop a bid package to install trash capture devices (“TCDs”) to meet the increased trash load reduction benchmarks. Additionally, the engineer’s estimate for installation of the TCDs is \$250,000 for FY 23/24 (this is 1/4 of estimated costs for purchase and installation of new TCDs to comply with this requirement which the City anticipates will take four years to complete). Additionally, I anticipate staff costs to include working with a consultant to finalize a report regarding the effort needed to achieve 100% load reduction, staff support for installation of TCDs and work with City attorney office to explore ability to install TCDs on private property (see Provision C.10.a.ii, discussed below).

FY23/24 Provision C.10.a.i. Estimated Costs			
Develop Bid Package			
Staff Costs	Time (Hours)	FY23/24 Rate/Hour	Cost
Eddie Yu (Civil Engineer II)	80	78	\$6,240

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Install TCDs			
Install TCDs to meet new benchmarks under Provision C.10.a.i.			\$250,000
TOTAL			\$256,240

(2) If 90% benchmark is not attained by June 30, 2023, submit revised trash load reduction plan and implementation schedule of additional trash load reduction control actions to achieve 90% and 100% benchmarks by June 30, 2023 and June 30, 2025 (Provision C.10.a.i.).

FY 22/23 Actual Costs: The City used consultant Schaaf & Wheeler to perform this activity as the benchmark was not achieved. The following costs in FY 22/23 are associated with this requirement.

FY 22/23 Provision C.10.a.i. Actual Costs			
Consultant/Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Schaaf & Wheeler (Exhibit 1)	n/a	n/a	\$13,458 ¹
Farooq Azim (City Engineer)	10	\$117	\$1,170
Eddie Yu (Civil Engineer II)	15	\$78	\$1,170
TOTAL			\$15,798

FY 23/24 Costs: The City paid the remainder of the Schaaf & Wheeler contract in FY 23/24.

FY Provision C.10.a.i. 23/24 Costs			
Consultant			Cost
Schaaf & Wheeler (Exhibit 1)	n/a	n/a	\$16,452
TOTAL			\$16,452

(3) New Requirements. Provision C.10.a.ii requires that Permittees ensure that private lands that are moderate, high, or very high trash generating, and that drain to storm drain inlets that Permittees do not own or operate (private), but that are plumbed to Permittees' storm drain systems are equipped with full trash capture systems or are managed with

¹ The Schaaf & Wheeler contract amount is for \$29,910. The remainder was paid in FY 23/24.

trash discharge control actions equivalent to or better than full trash capture systems by July 1, 2025.

FY 22/23 Actual Costs: City staff attended the Program's Trash Subcommittee meetings in FY 22/23. There were four 2-hour quarterly meetings in FY 22/23, with approximately 12.5% of time spent on Provision C.10.a (or 1 hour).

FY22/23 Provision C.10.a.ii Actual Costs			
Person	Time (Hours)	FY 22/23 Rate/Hour	Cost
Mark Camfield (Public Works Superintendent)	1	\$117	\$117
Paul Roman (Streets Supervisor)	1	\$93	\$93
TOTAL			\$210

FY 23/24 Estimated Costs: To date in FY 23/24, Union City has not attended the Program's Trash Subcommittee meetings, but I anticipate there will be two additional 2-hour quarterly meetings in FY 23/24, with approximately 12.5% of the time spent on Provision C.10.a.ii.

FY23/24 Provision C.10.a.ii Estimated Costs			
Person	Time (Hours)	FY 23/24 Rate/Hour	Cost
Public Works Superintendent	0.5	\$117	\$59
Paul Roman (Streets Supervisor)	0.5	\$93	\$47
TOTAL			\$106

ii. New Requirements. Provision C.10.e of the MRP3 requires Permittees to:

(1) Use an approved Trash Impracticability Report in developing updated Trash Load Reduction Work Plans (Provisions C.10.d, C.10.e.iv).

FY 22/23 Actual Costs: The City engaged in planning activities with the Program regarding the new Provision C.10.e requirements. Additionally, City staff attended the Program's Trash Subcommittee meetings in FY 22/23.

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There were four 2-hour quarterly meetings in FY 22/23, with approximately 12.5% of time spent on Provision C.10.e (or 1 hour).

FY 22/23 Provision C.10.e Actual Costs			
Person	Time (Hours)	Fy22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	0.25	\$117	\$29
Tommy Cho (Principal Civil Engineer)	0.25	\$103	\$26
Mark Camfield (Meeting Attendance)	1	\$117	\$117
Paul Roman (Meeting Attendance)	1	\$93	\$93
TOTAL			\$265

FY 23/24 Estimated Costs: To date in FY 23/24, Union City has not attended the Program's Trash Subcommittee meetings, but I anticipate there will be two additional 2-hour quarterly meetings in FY 23/24, with approximately 12.5% of the time spent on Provision C.10.e.

FY23/24 Provision C.10.e Estimated Costs			
Person	Time (Hours)	FY23/24 Rate/Hour	Cost
Public Works Superintendent	0.5	\$117	\$59
Paul Roman (Streets Supervisor)	0.5	\$93	\$47
TOTAL			\$106

(e) Mercury Controls

i. Modified Higher Levels of Service Requirements.

Provision C.11.c of the MRP3 requires Permittees to implement or cause to be implemented treatment control measures to treat old industrial land use at 70% efficiency, or by demonstrating an equivalent mercury load reduction.

(f) PCB Controls

i. Modified Higher Levels of Service Requirements.

Provision C.12.a of the MRP3 requires Permittees to quantify the PCBs load reductions achieved through all the pollution prevention, source control, green stormwater infrastructure, and other treatment control measures and submit documentation annually confirming that all control measures effectuated during the previous Permit term for which PCB load reduction credit was

1 recognized continue to be implemented at an intensity sufficient to maintain
2 the credited load reduction.

3 ii. Modified Higher Levels of Service Requirements.

4 Provision C.12.c of the MRP3 requires Permittees to implement or cause to be
5 implemented treatment control measures to treat old industrial land use at
6 70% efficiency, or by demonstrating an equivalent PCBs load reduction.

7 **FY 22/23 Actual Costs:** The City engaged in planning activities with the
8 Program regarding the new Provision C.11 and C.12 requirements described
9 above as follows. According to the MRP3 Fact Sheet, “Because PCBs are more
10 concentrated in some locations, the choice of where to implement control
11 measures may be more influenced by known areas of PCBs contamination.
12 However, the mercury removal benefit can be an important contribution to
13 overall mercury load reductions, and available data indicate that this strategy
14 of focusing on PCBs will yield mercury load reductions in many
15 circumstances.” (MRP3 at A-255 [Section 7 p. S7-0514].) Thus, as planning
16 was conducted concurrently on these requirements, the time cannot be
17 separated by provision.

FY 22/23 Provisions C.11., C.12.a C.12.c Actual Costs			
Person/Activity	Time (Hours)	FY22/33 Rate/Hour	Cost
Farooq Azim (City Engineer)	1.5	\$117	\$176
Tommy Cho (Principal Civil Engineer)	1.5	\$103	\$155
TOTAL			\$331

22 **FY 22/23 Estimated Costs:** The City anticipates engaging in planning
23 activities with the Program regarding the new Provision C.11 and C.12
24 requirements described above as follows in FY 23/24. According to the MRP3
25 Fact Sheet, “Because PCBs are more concentrated in some locations, the choice
26 of where to implement control measures may be more influenced by known
27 areas of PCBs contamination. However, the mercury removal benefit can be
28 an important contribution to overall mercury load reductions, and available

data indicate that this strategy of focusing on PCBs will yield mercury load reductions in many circumstances.” (MRP3 at A-255 [Section 7 p. S7-0514].) Thus, as planning was conducted concurrently on these requirements, the time cannot be separated by provision.

FY 23/24 Provisions C.11.a, C.12.a C.12.c Estimated Costs			
Person/Activity	Time (Hours)	FY23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	1.5	\$129	\$194
Tommy Cho (Principal Civil Engineer)	1.5	\$111	\$167
TOTAL			\$361

(g) Discharges Associated with Unsheltered Homeless Populations (see Mathews Declaration).

i. New Requirements. Provision C.17.a of the MRP3 requires Permittees to collectively develop and submit a best management practice report that identifies practices to address non-storm water discharges associated with unsheltered homeless populations into MS4s that impact water quality and specific milestones for reducing such discharges. Permittees are required to develop and submit a regional best management practice report to identify control measures to address non-stormwater discharges associated with unsheltered homeless populations and identify milestones to reduce such discharges. To meet this new MRP3 requirement, the Program collaborated with the other four countywide programs on a regional project to develop the required best management practice report, which was submitted with each Permittee’s Fiscal Year 22/23 annual report. (See Mathews Decl., ¶9.j.) Additionally, each Permittee is required to submit a map identifying, the approximate locations of unsheltered homeless populations, including encampments and other areas where other unsheltered homeless people live relative to storm drains, creeks, and flood control channels. To support its members, the Program worked with County officials to obtain the required

1 geo-located point in time count data, developed an approach for creating the
2 maps, and updated its GIS system to produce the required maps for each of its
3 members. (See *id.*) The City submitted the maps identifying, the approximate
4 locations of unsheltered homeless populations, including encampments and
5 other areas where other unsheltered homeless people live relative to storm
6 drains, creeks, and flood control channels, with its FY 22/23 annual report.

FY 22/23 Provision C.17.a Actual Costs			
Person/Activity	Time (Hours)	FY22/23 Rate/Hour	Cost
Jesus Garcia (Homeless Prog. Coordinator)	3	\$75	\$225
TOTAL			\$225

11 ii. The City will incur additional costs throughout the
12 MRP3 term to implement the best management practices.

13 (h) Cost Reporting (see Mathews Declaration).

14 i. New Requirements. Provision C.20.b of the MRP3
15 requires Permittees to develop a cost reporting framework and methodology to
16 perform an annual fiscal analysis. Permittees are encouraged to
17 collaboratively develop the framework and methodology for purposes of
18 efficiency, cost-savings, and regionwide consistency and comparability. The
19 framework shall consider identification of costs incurred solely to comply with
20 the Permit's requirements as listed in Provision C.20.b.(iii) as compared to
21 costs shared with other programs or regulatory requirements, provide
22 meaningful data to assess costs of different program areas, and allow for
23 comparisons and to identify trends over time. The City had no actual costs for
24 FY22/23 but the Program did have actual costs inn FY22/23. As set forth in
25 paragraph 10 the Mathews Declaration, the City's share of these costs
26 \$2,877.86. In FY 23/24, I anticipate attending the Program's training for
27
28

1 Provision C.20.b for two hours at a \$119 per hour for a total of \$238; therefore,
2 these are estimated costs FY for 23/24.

3 (i) Asset Management (see Mathews Declaration).

4 i. Requirements. Under C.21.b, Permittees must
5 develop and implement an asset management plan to ensure the satisfactory
6 condition of all hard assets constructed during this and Previous Permit terms
7 pursuant to Provisions C.2, C.3, C.10, C.11, C.12, C.13, C.14, C.17, C.18, and
8 C.19. In addition to the City's share of Program costs in the Mathews
9 Declaration, in FY 23-24 the Program is convening an Asset Management
10 Workgroup to develop framework outline and draft asset management
11 framework methodology. Four Program workgroup meetings, likely one hour
12 each, and three regional meetings to discuss consistent approaches for aspects
13 of the plans are anticipated. The City may participate in these meetings.

14 9. Continuing Requirements from the MRP1 and MRP2 Test Claims

15 The requirements below were raised in our MRP1 and MRP2 test
16 claims, which are currently pending before the Commission, and are
17 continuing in the MRP3.

18 (a) Permittees were required to implement a number of water
19 quality monitoring programs under Provision C.8. These requirements are
20 discussed in our MRP1 test claim, which is currently pending before the
21 Commission. Permittees continue to incur costs necessary to comply with this
22 Provision, as discussed in the Declaration of Sandra Mathews in support of
23 this Test Claim. Costs associated with these continuing activities are
24 contained in the Mathews Declaration in support of this Test Claim.

25 (b) Provision C.10.b. required Permittees to "maintain, and
26 provide for inspection and review upon request, documentation of the design,
27 operation, and maintenance of each of their full trash capture systems,
28 including the mapped location and drainage area served by each system."

(MRP2 at C.10.b [Section 7 p. S7-1093.]) This provision specified detailed full trash capture system installation and maintenance instructions. Provision C.10.b. in the MRP2 required increased activities by Union City that are best characterized as a higher level of service in comparison to the MRP1. MRP3 continues these requirements. Additionally, Provision C.10.a of the MRP2 required 70% trash load reduction by July 1, 2017, and 80% by July 1, 2019. (MRP2 at C.10.a [Section 7 p. S7-1091].) Continuing costs associated with these requirements include maintenance of trash capture devices and maintenance and parts associated with the City's existing three sweepers as summarized as follows:

FY22/23 Continuing Costs			
Activity	Rate x Est. Hours/Year	Hours x Cost per Hour	Costs (Exhibit 1)
Trash Capture Device Maintenance			
Maintenance Crew 1	\$45 x 17		\$765
Maintenance Crew 2	\$40 x 37		\$1,480
Vacuum Truck		182 x \$237.50	\$43,255
Sweeper Maintenance			\$162,833
Sweeper Parts			\$7,076
TOTAL			\$215,409

(c) Provision C.11.b. required Permittees "to develop and implement an assessment methodology and data collection program to quantify mercury loads reduced through implementation of any and all pollution prevention, source control and treatment control efforts required by the provisions of this Permit or load reductions achieved through other relevant efforts." (MRP2 at C.11.b [Section 7 p. S7-1259.]) This program is continuing under Provision C.11.a. of the MRP3.

(d) Provision C.11.c. required Permittees to implement green infrastructure projects during the term of the permit to achieve mercury load reductions of 48 g/year by June 30, 2020. (MRP2 at C.11.c [Section 7 p. S7-1103 – S7-1105].) Provision C.11.e of the MRP3 requires Permittees to

“implement green stormwater infrastructure (GSI) projects during the term of the Permit consistent with implementing requirements in Provision C.3.j.” (MRP3 C.11-6 [Section 7 p. S7-0161].)

(e) Provision C.12.c. required Permittees to “implement green infrastructure projects during the term of the Permit to achieve PCBs load reductions of 120 g/year by June 30, 2020.” (MRP2 at C.12.c [Section 7 p. S7-1273].) Provision C.12.f of the MRP3 requires Permittees to “implement green stormwater infrastructure (GSI) projects during the term of the Permit consistent with implementing requirements in Provision C.3.j.” (MRP3 at C.12-8 [Section 7 p. S7-0172].)

Continuing costs associated with requirements C.11.c and C.12.c include maintenance of the Green Street Infrastructure (“GSI”) in the following table. Rates were provided to me by Jesus Banuelos, Public Works Streets Supervisor.

FY22/23 Continuing Costs		
GSI Maintenance by City Maintenance Crews	FY22/23 Rate x Hours/Year	Costs (Indirect)
Maintenance 1 Crew	\$45 x 400	\$18,000
Maintenance 2 Crew	\$40 x 1,200	\$48,000
TOTAL		\$66,000

1 (f) Provision C.12.d. required Permittees to “prepare a plan and
2 schedule for PCBs control measure implementation and corresponding
3 reasonable assurance analysis to quantitatively demonstrate that sufficient
4 control measures will be implemented to attain the PCBs TMDL wasteload
5 allocations.” (MRP2 at C.12.d [Section 7 p. S7-1273.] In 2020, Permittees
6 submitted a Reasonable Assurance Analysis and plan (“RAA”) demonstrating
7 that sufficient control measures will be implemented to attain the PCBs
8 TMDL wasteload allocations by 2030. Provision C.12.h of the MRP3 requires
9 Permittees to “update, as necessary, their PCBs control measures
10 implementation plan and RAA.” (MRP3 at C.12-11 [Section 7 p. S7-0175].)

11 10. As set forth in paragraph 8 above, the total amount of Union City’s
12 actual increased costs for Fiscal Year 22/23 for the new programs or higher
13 levels of service for MRP3 Provisions as set forth in this this Declaration is
14 \$20,971 As set forth in paragraph 8 above and in the Mathews Declaration at
15 paragraph 10, the total amount of Union City’s actual increased costs for
16 Fiscal Year 22/23 for the new programs or higher levels of service for MRP3
17 Provisions MRP3 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4),
18 C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c,
19 C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b. **\$51,619.**

20 11. As set forth in paragraph 8 above, the total amount of Union City’s
21 estimated costs for Fiscal Year 23/24 for the new programs or higher levels of
22 service for MRP3 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4),
23 C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c,
24 C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b is \$803,415. As set forth in
25 paragraph 8 above and in the Mathews Declaration at paragraph 13, the total
26 amount of Union City’s estimated increased costs for Fiscal Year 23/24 for the
27 new programs or higher levels of service for MRP3 Provisions MRP3
28 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j),

1 C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c,
2 C.15.b.iii, C.17.a, C.20.b and C.21.b is **\$852,511**.

3 12. I am confident from my own knowledge of the MRP3, MRP2 and
4 MRP1 and the City's stormwater program that the actual and/or estimated
5 costs resulting from the MRP3 mandates at issue in this Test Claim will
6 exceed one thousand dollars (\$1,000). All costs identified in this Declaration
7 as incurring in FY 22/23 were incurred after the effective date of the MRP3
8 (July 1, 2022).

9 13. I am not aware of any state or federal funds that will be available
10 to pay for these increased costs.

11 14. I am not aware of any other local or non-local agency funds that
12 are or will be available to pay for these increased costs. The City has a Clean
13 Water Fund, which obtains revenue from property tax assessments, and is
14 supplanted by the General Funds. The salaries and benefits identified in this
15 Declaration are paid from general funds, which include the City's General
16 Fund and the Clean Water Fund. The other costs identified in this
17 Declaration are funded by the City's General Fund and the Clean Water Fund.
18 The City's share of the Program's costs as identified in the Declaration of
19 Sandra Mathews are funded by the Clean Water Fund. The City has no
20 authority to increase these revenue sources without complying with
21 Proposition 218. Thus, the City does not have authority to increase these fees
22 – only the voters have that authority. Furthermore, the money from the Clean
23 Water Fund is already consumed by existing stormwater compliance costs and
24 is insufficient to cover increased activities required by the MRP3.

25 15. The City is not confident that it will be able to avail itself of future
26 grant opportunities. The City has no grant applications pending for the
27 stormwater program. Furthermore, multiple jurisdictions must compete for
28 limited funding sources, creating stiff competition among municipalities.

16. I have personally reviewed the costs provided in this Declaration and I am satisfied that the information is accurate and was correctly compiled according to my instructions.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on May 20, 2024, at Union City, California.


Farooq Azim

5721830.3

EXHIBIT “D”

**CITY OF SAN JOSE'S SECOND REVISED TEST CLAIM
IN RE:
CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD
SAN FRANCISCO REGION
ORDER NO. R2-2022-0018
NPDES PERMIT NO. CAS612008
MAY 11, 2022, EFFECTIVE JULY 1, 2022**

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NARRATIVE STATEMENT IN SUPPORT OF SECOND REVISED TEST CLAIM

I. INTRODUCTION

The CITY OF SAN JOSE (SAN JOSE) is an internationally recognized leader in both environmental policy and action.¹ Its commitment to strong environmental protection aligns with the State of California's. However, when the State exercises its discretion to mandate action, subject to limited exceptions, it must provide funding. On May 11, 2022, the California Regional Water Quality Control Board (Regional Board), San Francisco Bay Region² issued an updated Municipal Regional Stormwater Permit (MRP 3.0), which became effective on July 1, 2022. As explained in detail below, MRP 3.0 contains mandates, imposed in the exercise of State discretion, which SAN JOSE cannot fund through other avenues. SAN JOSE respectfully requests the Commission on State Mandates approve this test claim and provide reimbursement.

The undisputed purpose of the unfunded mandate process is “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities ...” *County of San Diego v. State of California* (1991) 15 Cal.4th 68, 81.

This action follows test claims on two prior versions of the MRP, MRP 1.0 issued in 2009 and MRP 2.0 issued in 2015. Both claims are pending before this Commission. Since the filing of these tests, the Commission has considered several other claims regarding Municipal Stormwater Permits, and the Courts have also provided guidance. In fact, the California Supreme Court summarizes the issue here³:

¹ See, for example, SAN JOSE's recognition in the Carbon Disclosure Project (CDP) as an “A List” city that have receive the highest score for “transparency and bold climate action.” <https://www.cdp.net/en/cities/cities-scores>

² A copy of the MRP 3.0, NPDES No. CAS612008, issued on May 11, 2022 is attached, Section 7 pp. 2 – 725. A copy of the MRP 2.0 NPDES No. CAS612008, issued on November 19, 2015, order R2-2015-0049 is attached, Section 7 pp. 726 – 1075.

³ Any dispute about the scope of the Board's authority to impose these requirements under State law is not within the scope of this Test Claim. Rather, it is the subject of petitions for review pending before the State Water Resources Control Board

The question here was not whether the Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California's constitutional, statutory, and common law to the single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law.

Department of Finance v. Commission on State Mandates (2016) 1 Cal.5th 749, 754.)

The Supreme Court concludes that “no federal law or regulation imposed the [permit] conditions nor did the federal regulatory system require the state to impose them. Instead, the permit conditions were imposed as a result of the state’s discretionary action.” *Id.* at 371.

Thus, the State exercised its discretion in imposing the obligations in all three permits, MRP 1, MRP 2.0, and MRP 3.0. This claim details how MRP 3.0, like the predecessor permits, imposes obligations on SAN JOSE and other permittees which require funding. Provision C.17.a is new to MRP 3.0, and is an unfunded mandate. SAN JOSE respectfully requests this Commission accept this claim and award compensation.

II. LEGAL AND PROCEDURAL BACKGROUND

A. Regional Stormwater Permits

The MRPs regulate stormwater discharged through the municipal separate storm sewer systems (MS4s).⁴ In *Department of Finance v. Commission on State Mandates* (2016) 1 Cal. 5th 749, the Supreme Court details the Municipal Stormwater permitting system, California’s Porter-Cologne Water Quality Act (Water Code §§13000, et seq.) and the Regional Water Board’s role in issuing permits, that history will not be repeated here. When a Regional Water Board issues a stormwater permit, it implements both federal and state law. *Id.* at 757. *City of Burbank v. State Water Res. Control Bd.* (2005) 35 Cal.4th 613 at 619-621;

filed on behalf of several permittees, and on each permit.

⁴ Municipal separate storm sewer system is abbreviated MS4, “M” for municipal, then S4 for four words that start with the letter “S”.

33 U.S.C. § 1342(p)(3)(B).⁵

Under this clear precedent, it is undisputed that the Regional Board may issue permits with terms that exceed federal law when the conditions are necessary to achieve state water standards. *City of Burbank v. State Water Res. Control Bd.* (2005) 35 Cal.4th 613 at 619, Cal. Water Code § 133770). However, the crux of this and other test claims pending before this Commission is whether the Regional Board imposed requirements that also require funding.

B. Prior Test Claims

This is the third in a series of Test Claims requesting that the Commission fund the mandates in MRPs. At each reissuance of the MRP, the permittees have requested relief from the unfunded mandates. As a result, two previous test claims are pending before the Commission. On November 30, 2010, the City of San Jose, filed a test claim for the unfunded mandates in the MRP issued on October 14, 2009, revised November 28, 2011. Other jurisdictions also filed claims, including the County of Santa Clara and City of Dublin, which are consolidated.⁶ On June 30, 2017, the City of Union City filed a test claim for the unfunded mandates in the MRP 2.0, issued on November 19, 2015.

SAN JOSE incorporates the arguments in the test claims pending before the Commission. An analysis of whether MRP 3.0 requires new or increased requirements as compared to MRP 2.0 is not the end of the inquiry, and the pending test claims should be resolved first. If the original mandate requires funding, so do increased requirements in subsequent permits.

For purposes of this test claim, however, Provision C.17.a. *Discharges Associated with Unsheltered Homeless Populations* is an entirely new provision in MRP 3.0.⁷

⁵ The relevant provisions of the Clean Water Act are set forth in Appendix A to this Test Claim.

⁶ The Consolidated Test Claims on MRP 1.0 are pending before the Commission, matter number 10-TC-002, California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii, and vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f. (“Consolidated MRP 1.0 Test Claim”)

⁷ However, Provision C.10 itself is challenged in MRP 1.0. SAN JOSE adopted its Direct Discharge Plan and modified it in 2023 as required by that provision.

C. Present Second Revised Test Claim and Duplication

On June 30, 2023, SAN JOSE timely filed its Test Claim which addressed several categories of MRP provisions:

- Provision C.2—Municipal Operations
- Provision C.3 – New Development and Redevelopment
- Provision C.5 – Illicit Discharge Detection and Elimination
- Provision C.8—Monitoring
- Provision C.10—Trash Load Reduction
- Provision C.11 and C.12—Mercury and PCB Diversion Studies
- Provision C.15 – Emergency Discharges of Firefighter Water and Foam
- Provision C.17 Discharges Associated with Unsheltered Homeless Populations
- Provision C.20 and C.21 – Cost Reporting and Asset Management

On October 11, 2023,⁸ Commission Staff served SAN JOSE with a Notice of Duplicate and Incomplete Test Claim (Notice). The Notice stated that SAN JOSE's Test Claim was duplicative of UNION CITY'S, which was filed first, and that the Test Claim was incomplete. SAN JOSE does not challenge that its Test Claim duplicates the majority of UNION CITY's, or that UNION CITY filed first. UNION CITY also challenged provision C.17, but SAN JOSE'S claim provided more information.

On January 8, 2024, SAN JOSE consistent with the Commission's direction, amended its claim to focus solely Provision C.17. Discharges Associated with

⁸ Regulations require the staff notify the claimant within 10 days if a claim is complete or incomplete. 2 CCR §1183.1(f). This short deadline suggests a cursory administrative review.

Unsheltered Homeless Populations, as summarized with the following headings⁹:

Provision C17.a.i(1): Gather and Utilize Data on Unsheltered Homeless Residents, Discharges, and Water Quality Impacts associated with Homelessness and Sanitation-Related Needs

Provision C17.a.i(2): Coordinate and Prepare a Regional Best Management Practices Report that Identifies Effective Practices to Address Non-Stormwater Discharges Related to Homelessness

Provision C17.a.ii(1): Submit a Map Identifying the approximate locations of Unsheltered Homeless Populations and their Locations to Storm Drain Inlets, Rivers, Flood Control Channels and Other Surface Water Bodies

Provision C17.a.ii(2): Report on Programmatic Efforts to Address MS4 Discharges Associated with Homelessness

Provision C17.a.ii(3): Identify and Implement Best Management Practices to Address MS4 Discharges Associated with Homelessness that Impact Water Quality; Evaluate and Assess Effectiveness of BMPs, Portion of Unsheltered Served by BMPs, Approximate Locations of those Not Reached, or not fully Reached

Provision C17.a.ii(4): Review and Update Implementation Practices with data from biennial Point-In-Time Census and Regional Coordination

Provision C17.a.iii(1): Submit a Best Management Report with the 2023 Annual Report

Provision C17.a.iii(2): Submit a Map with the 2023 and 2025 Annual Reports; and Report on the BMPs and Effectiveness in 2023 and 2025 Annual Reports

SAN JOSE noted that, if UNION CITY does not timely cure its test claim, SAN JOSE should be afforded the opportunity to revise its claim to include other provisions. Moreover, if UNION CITY's revised/supplemental claim completely addresses Provision C.17.a., and the Commission determines SAN JOSE's Test Claim is therefore duplicative, SAN JOSE will revisit whether to withdraw this Revised Claim.

⁹ These headings to not appear in the permit and summarize the requirements. The provisions are provided in full below.

SAN JOSE has piloted several of the programs identified within the MRP 3.0 related to the work with the unhoused and homelessness and is uniquely situated to respond to questions and provide testimony about the costs with this work. [See, CCR 1183.1(b)(3).] Under Commission Regulation 1181.10, SAN JOSE requests the ability to participate in UNION CITY's claim as to all of its test provisions, and further requests notification of the proceedings as an interested party.

On February 23, 2024, Commission Staff provided SAN JOSE with a Second Notice of Duplicate and Incomplete Test Claim again citing UNION CITY's test claim. However, SAN JOSE and UNION CITY are not similarly situated on Provision C.17a, related to the unsheltered. UNION CITY's claim appears to relate to the provision for a regional best management practices report, Provision C.17.a.i.(2) and not the costs *to implement* the best management practices under Provision C.17.a.ii(3). Nair Dec., ¶18. Implementation of the best practices is an extremely costly requirement of the mandate, as evidenced by the dramatically different test claims, SAN JOSE's claim is in the multi-millions, whereas UNION CITY documents less than \$3,000.00. Nair Dec., ¶18.

Regulation 1183.1(b)(3) provides, in relevant part, "Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate why and how they are affected different."

SAN JOSE's work on the unsheltered and *implementation* of best management practices demonstrates the difference in the two claims. SAN JOSE has already implemented a Direct Discharge Plan to meet trash load reduction requirements in Provision C.10. Also, SAN JOSE's Council prioritized this work. Provision C.17.a.ii(3) requires implementation of best management practices and lists several examples, like "safe parking areas" the provision of mobile pump-out services, voucher for RV sanitary sewage disposal, cleaning of human waste or pickup programs. SAN JOSE has already budgeted and provided many of services listed as examples of "best management practices". Rufino Dec., ¶4. They are costly, and unfunded. This Commission should be informed by SAN JOSE's experience on this very important issue and its claim should proceed. Once the test claims are accepted, SAN JOSE intends to move for consolidation with UNION CITY's to ensure efficiency of the Commission's time. (See, 2 CCR 1183.4)

D. State Mandate Law

Article XIII B section 6 of the California Constitution provides in relevant part:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service . . .

Cal. Const. Art. XIII.B, § 6.

The purpose of section 6 “is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” *County of San Diego v. State of California* (1991) 15 Cal.4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

The section “was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” (*County of Fresno, supra*, at 487; *Redevelopment Agency v. Comm’n on State Mandates* (1997) 55 Cal.App.4th 976, 984-85.) The Legislature implemented section 6 by enacting a comprehensive administrative scheme to establish and pay mandate claims. (Cal. Gov’t Code §§ 17500 *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333 [statute establishes “procedure by which to implement and enforce section 6”].)

There are seven exceptions to the rule requiring reimbursement for state mandated costs, the two most relevant to this claim are as follows:

...

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. . . .

(d) The local agency . . . has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

...

Cal. Gov’t Code § 17556.

However, as discussed in detail, these exceptions do not apply to the test claim present here.

Taken together, the Constitution, statutes, and case law described above establish a three-prong test to determine whether a claimant is eligible for reimbursement through the state's mandate law: (1) the obligations imposed must represent a new program or higher level of service; (2) the mandate must arise from a law, regulation, or executive order imposed by the state, rather than the federal government; and (3) the local agency has insufficient authority to recover the costs through the imposition of a fee.

When all three are satisfied, a mandated cost falls within the subventure requirement of article XIII B section 6. These three requirements are met with Provision C.17a MRP 3.0:

1. NEW PROGRAM OR HIGHER LEVEL OF SERVICE

The first step in state mandate law is to determine whether obligations imposed by the state present a "new program" or "higher level of service". "Programs" "carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." *County of Los Angeles v. State of California, supra*, (1987) 43 Cal.3d 46, 56. A higher level of service is determined by comparing the legal requirements before and after the issuance of the order or change in the law. *Id.*

MRP 3.0, specifically, Provision C.17a, imposes new programs or higher levels of service as compared to both MRP 2.0 as well as federal law. Provision C17.a was not contained in prior permits.

2. STATE MANDATES

The second step is whether the mandate arises from a state-imposed law, regulation, or executive order as opposed a federal one. The determination of what is a federally mandated program is "largely a question of law." *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768.

In *Department of Finance*, the Supreme Court reviewed prior cases regarding federal mandates and distilled the following principle:

If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other

hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a “true choice,” the requirement is not federally mandated.

Id. at 765.

The Court continues that the “key factor” in the cases involving federal requirements is “how the costs came to be imposed on the entity that was required to bear them.” *Id.* at 767. In fact, the purpose of the Constitution’s reimbursement for new programs and services (Article XIII B section 6) is “to protect local governments from state attempts to impose or shift the costs of new programs or increased levels of service by entitling local governments to reimbursement. (Citation) Placing the burden on the State to demonstrate that a requirement is federally mandated, and thus excepted from reimbursement, serves those purposes.” *Id.*

Provision C.17a imposes an extensive list of work to be performed for the unhoused. In essence, it shifts the burden of a societal problem down to the local governments and their residents. As a result, SAN JOSE residents bear not only the day-to-day impact of the significant humanitarian challenges, but the costs as well. Under the Constitution, the State cannot simply “impose or shift” the programs to SAN JOSE, without compensation, no matter how laudable.

3. FEE AUTHORITY

Lastly, a mandate is unfunded if the public entity does not have “the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Cal. Gov’t Code § 17556(d). The Commission on Mandates exists *because of the recognized limitation on the local entities ability to raise funds*, yet the Regional Board concludes that the permit contains *no* unfunded mandates – the permittees can pass on all costs. This position ignores real, Constitutional limitations on the permittee’s authority.

Proposition 218 (Article XIII D of the California Constitution) requires that, with certain limited exceptions, fees incident to property ownership be subjected to a majority vote by affected property owners or by 2/3 registered voter approval. Cal. Const., art. XIII D.

Moreover, even if voter approval is not required, for water, sewer or garbage, the

use of “property related fees” must meet the following substantive requirements:

1. Fee revenues cannot exceed the funds required to provide the service (*cost of service limitation*);
2. Fee revenues cannot be used for any purposes other than that for which the fee is imposed (*use limitation*);
3. The amount of the fee imposed on a parcel or person as an incident of property ownership cannot exceed the proportional cost of service attributable to the parcel (*proportionality limitation*);
4. Fees may be imposed only for service actually used by, or immediately available to, the owner of the property (*service limitation*);
5. Fees may not be imposed for general governmental services where the service is available to the public at large in substantially the same manner as it is to the property owners (*general-purpose limitation*).

Cal. Const. art XIII D. Sec. 6, subdivisions (b)(1)– (5).

Regulatory fees can be imposed under the general police powers afforded to local government without the need for a vote (or subject to a majority voter protest mechanism), but only where there is sufficient nexus between the “effect of the regulation and the objectives it was supposed to advance to support the regulatory scheme.” *Tahoe Keys Property Owner’s Assn. v. State Water Res. Control Bd.* (1993) 23 Cal.App.4th 1459. In the *Tahoe Keys* case, the Court of Appeal found sufficient nexus between properties surrounding Lake Tahoe and nutrient loads in the lake and refused to enjoin a fee to fund efforts to minimize nutrients contributing to eutrophication. *Id.* at 1480.

Similarly, in *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866, 874, the California Supreme Court upheld a fee imposed on paint manufacturers to fund a program aimed at treating children exposed to lead. The Court held that the fee—which was targeted at “the producers of contaminating products” and was used to mitigate the harm caused by those products—was an appropriate exercise of the police power. *Id.* at 877.

Proposition 26, approved by the voters in 2010, places limitations on all other levy, charges, or exaction of any kind, with a few exceptions. The exceptions include,

- “A charge for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs ... of conferring the benefit or granting the privilege;”
- “A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs ... of providing the service or product;”
- “A charge imposed for the reasonable regulatory costs to a local government for issuing license and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders and the administrative enforcement and adjudication thereof;”
- “A charge imposed for entrance to or use of local governmental property, or the purchase, rental or lease of local government property;”
- “A charge imposed as a condition of property development;” and
- “Assessments and property-related fees imposed in accordance with the provisions of Article XIID.”

Proposition 26, amending California Constitution, Article XIIC.

In contrast to the Constitutional limitations on fee authority, the Regional Board summarily concludes, “ability of Permittees to levy fees, assessments, or service charges to pay for compliance with the Order cannot be disputed.” [MRP 3.0, Attachment A Fact Sheet, p. A-89.) However, as with demonstrating a federal mandate, if the State imposes a new program or higher level of service on local agencies, it should have the burden to show that such costs are recoverable through fees or charges.

For example, in support of the broad decree that the permittees can pass on the costs of compliance through fees and charges, or other exceptions, the Regional Board cites to *voter-approved fees* in the City of Palo Alto (2017), Berkeley (2018) Alameda (2019) and Moraga (2018).] This Commission recently recognized that when voter approval is required, the permittees do not have the authority to levy fees and charges for those costs.

The Regional Board relies on *Paradise Irrigation District v. Commission on State*

Mandates (2019) 33 Cal.App.5th 174, for the principle that a protest procedure does not make a charge an unfunded mandate. However, *Paradise Irrigation* involves water services, clearly exempt from the voter requirement of Proposition 218, nor does that case analyze in detail the substantive limitations on property related fees.

The Regional Board also mistakenly relies upon SAN JOSE’s ability to use “trash collection fees” to fund homeless encampment best management practices (BMPs). As discussed below, SAN JOSE’s general fund absorbs these costs, they are not paid by trash service ratepayers. The Regional Board fails to address whether services related to the unhoused are “available to the public at large” as opposed to property owners. (See, Cal. Const. art XIII D. Sec. 6, subdivisions (b)(5).)

On March 24, 2023, this Commission issued its Decision on the Santa Ana Regional Water Quality Control Board’s permits governing the Orange County permittees.¹⁰ In the *Santa Ana* Decision, the Commission presumes the validity of Senate Bill 231 (effective January 1, 2018) and holds that requirements of the permit, although were state mandates, could be funded through the imposition of fees. (See, for example, *Santa Ana Decision*, at p. 209.) However, even the Regional Board acknowledges that ratepayer advocates raise concerns about SB 231 and its validity.

The *Santa Ana* Decision and the Regional Board also rely on SAN JOSE’s ability to impose development fees. (See, *Santa Ana Decision*, at p. 209; Fact Sheet A-90.) As the name implies, development fees are imposed when a property owner applies for a development permit. (See, for example, Mitigation Fee Act (Gov. Code §§6600.) This test claim focuses on MRP 3.0 requirements that are not encompassed in private, new development.

SAN JOSE has limited storm sewer revenue from a fee adopted prior to Proposition 218. The total related to the storm sewer operations is excluded from this claim, and that fee cannot be raised without voter approval or notice and an

¹⁰ *In re: Test Claim: Santa Ana Regional Water Quality Control Board, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII (Adopted May 22, 2009) v. County of Orange, Orange County Flood Control District; and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Claimants.*, Case No.: 09-TC-03 (Santa Ana Decision)

opportunity to protest. Even so, SAN JOSE's work related to the homeless (FY 22-23, \$19,247,346.00) vastly exceeds the amount funded by storm sewer revenue (\$39,337.00). Again, the State must demonstrate that SAN JOSE has the legal ability to impose these costs onto ratepayers.

III. THE UNFUNDED MANDATES AT ISSUE IN THIS TEST CLAIM

SAN JOSE joins in Union City test of the Provisions of MRP 3.0 as outlined in its Test Claim filed on June 30, 2023, including any amendment to those claims in a revised filing. SAN JOSE focuses this amended claim on Provision C.17a – Discharges Associated with Unsheltered Homeless Populations. As explained below, each of the subparagraphs of C.17 impose a new program or expanded level of service over MRP 2.0. Moreover, these new requirements exceed the mandates of the federal Clean Water Act or its implementing regulations. Finally, compliance with these obligations will impose costs beyond those which SAN JOSE is authorized to recover through the imposition of increased fees without voter approval or notice that is subject to protest.

A. Provisions related to the Unhoused Population

MRP 3.0 adds a *completely new provision*, C.17¹¹, which addresses the Discharges Associated with the Unsheltered Homeless Population, an undeniable societal challenge. Although SAN JOSE is a leader in innovative solutions and associated funding for the unsheltered, State mandates must be funded.

Provision C.17a contains the following provisions, all of which are unfunded mandates:

C.17.a. Permittee Requirements

i. Task Description

- (1) Permittees shall use results from biennial point-in-time census surveys and related information, such as municipal reports, databases, complaint logs, and other efforts, to gain a better understanding of unsheltered homeless population numbers within the Permittee's jurisdiction, the locations of unsheltered homeless residents, discharges and water quality-related impacts associated with homelessness, and associated sanitation-related needs.

¹¹ C.17 only contains one subdivision C.17.a, which is then divided into subparts. This test is for the entirety of C.17.

- (2) To encourage ongoing regional, countywide, and municipal coordination efforts, Permittees shall collectively develop a best management practice report that identifies effective practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges within a given timeframe. The report shall:
- (a) Describe practices that may be implemented by Permittees, including those currently being implemented, to address discharges associated with homelessness that are impacting water quality;
 - (b) Identify regional and/or countywide efforts and implementation actions to address discharges associated with homelessness (including how those efforts and actions have been affected by unsheltered homeless population growth). Include recommendations for engaging in these efforts and incorporating discharge-reduction strategies that also help meet the unsheltered population's clean water needs; and
 - (c) Identify actions taken during the COVID-19 pandemic to reduce the spread of the virus in homeless populations, such as temporarily housing homeless people in hotels, that may have reduced discharges associated with homelessness. Permittees shall consider the practicability of such actions for longer-term implementation.

This task's broader goals are to recognize non-stormwater pollutant sources associated with unsheltered homeless populations, reasons for discharges, and means by which they occur, and develop useful information that can be used toward prioritizing individual Permittee and collaborative best management practices for reducing or managing such discharges, while ensuring the protection of public health. Examples of collaborative implementation programs could include collaborative efforts between Permittees, Caltrans, sanitary sewer agencies, railroads, non-governmental organizations (NGOs), social service agencies and organizations, and other agencies.

ii. Implementation Level

- (1) Each Permittee shall submit a map identifying, within its jurisdiction, the approximate location(s) of unsheltered homeless populations, including homeless encampments and other areas where other unsheltered homeless people live. The map shall identify those location(s) in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies within the Permittee's jurisdiction. The map shall be updated once during the Permit term, in 2025. Where Permittees are working collaboratively to address discharges associated with homelessness, they may collaborate to submit a joint map that covers their respective jurisdictions.
- (2) Permittees shall report on the programmatic efforts being implemented within their jurisdiction, or at the countywide or regional level, to address MS4 discharges associated with homelessness. Examples of these efforts may include, but are not limited to: funding initiatives; adoption of ordinances to implement service programs; coordination with social services departments and NGOs; efforts to establish relationships with homeless populations; and alternative actions to reduce discharges to surface waters associated with homelessness, such as efforts towards providing housing, jobs, and related services for residents experiencing homelessness.
- (3) Each Permittee shall identify and implement appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts. In addition, Permittees shall also evaluate and assess the effectiveness of those practices, specifically by reporting on the BMP control measures being implemented, the approximate portion of the Permittee's unsheltered homeless population and locations being served by those control measures, and the portion and locations of the Permittee's unsheltered homeless population not reached, or not fully reached by the implemented control measures. Examples of actions that may be implemented include, but are not limited to, access to emergency shelters; the provision of social services and sanitation services; voucher programs for proper disposal of RV sanitary sewage; establishment of designated RV "safe parking" areas or formalized encampments with appropriate services; provision of mobile pump-out services; establishing and updating

sidewalk/street/plaza cleaning standards for the cleanup and appropriate disposal of human waste; and establishing trash and waste cleanup or pickup programs within the Permittee's jurisdiction, or at the countywide or regional level.

- (4) Permittees shall use the information generated through the biennial point- in-time census surveys and related information, and the regional coordination tasks (as described above) to review and update their implementation practices.

iii. Reporting

- (1) With the 2023 Annual Report, Permittees shall collectively submit, acceptable to the Executive Officer, a best management practice report as described in Provision C.17.a.i.(2).
- (2) With the 2023 and 2025 Annual Reports, Permittees shall submit a map as described in Provision C.17.a.ii.(1).

With the 2023 and 2025 Annual Reports, each Permittee shall report on the best management practices being implemented and include the effectiveness evaluation reporting required in Provision C.17.a.ii.(3) and additional actions or changes to existing actions that the Permittee will implement to improve existing practices.

1. Provision C.17 Constitutes New Programs, effective with the permit on July 1, 2022.

Provision C. 17 is an entirely new provision and requires significant actions related to the unsheltered. The Fact Sheet acknowledges that C.17 is a new provision. (See, Attachment A-38.) "The purpose of this Provision is to identify and ensure the implementation of appropriate control measures, by all Permittees, to address non-stormwater discharges into MS4s associated with unsheltered homeless populations, including discharges from areas where unsheltered people congregate (e.g., formal and informal encampments, areas where people living in vehicles park, and safe parking areas.)" (C.17.)

SAN JOSE began incurring costs related to these mandates on July 1, 2022. As explained below, SAN JOSE's work with the unhoused is ongoing and unparalleled. Provision C.17a.iii(2) requires all permittees to submit a report on the implementation of best management practices with its 2023 Annual Report. As

a result, these practices must be implemented beginning in Fiscal Year 2022-2023. (Nair Dec., ¶8.) SAN JOSE’s work was in progress on July 1, 2022, but as of that date, it became mandated.

2. Provision C.17a is a State Mandate

The Regional Board identifies a broad range of authority in support of C.17a. However, none of the provisions specifically address the issue of the unhoused. As cited by the Regional Board, SAN JOSE has significant programs in place to address the unhoused living in waterways, which have been part of its Direct Discharge Control Program (DDCP) since at least 2016. However, in prior permits, the DDCP was optional and provided SAN JOSE credit to meet the trash load reduction requirements under C.10.¹² After June 30, 2025, these credits are no longer available. (C.10.f.ii.) Provision C. 17 now shifts the optional program for trash credits to mandates.

3. SAN JOSE Will Incur Significant Costs as the Result of Provision C.17.a.i(1): Gather and Utilize Data on Unsheltered Homeless Residents, Discharges, and Water Quality Impacts associated with Homelessness and Sanitation-Related Needs

SAN JOSE will incur significant costs related to the new Provision C.17a(i)(1), SAN JOSE must use results from surveys and “related information, such as municipal reports, databases, complaint logs, and other efforts, to gain a better understanding of unsheltered homeless population numbers within the Permittee’s jurisdiction, the locations of unsheltered homeless residents, discharges and water quality-related impacts associated with homelessness, and associated sanitation-related needs.” This provision requires SAN JOSE and other permittees to essentially collect and analyze data related to the homeless. SAN JOSE already does significant work as part of its program related to the unsheltered. However, under Provision C.17.a, this work is now State-mandated.

SAN JOSE estimated it incurred \$1,253.84 in staff time (FY 22-23) and will incur \$843.03 (FY23-24). (Nair Dec.¶14.)

¹² Provision C.10 is the subject of pending test claims on MRP 1.0 and 2.0 and, as stated in those claims, is an unfunded mandate. SAN JOSE reserves that claim here, but this test focuses on the new or increased programs in MRP 3.0.

4. **SAN JOSE Will Incur Significant Costs as the Result of Provision C.17.a.i(2): Coordinate and Prepare a Regional Best Management Practices Report that Identifies Effective Practices to Address Non-Stormwater Discharges Related to Homelessness**

Provision C.17.a.i(2) requires the development of a “a best management practice report that identifies effective practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges within a given timeframe.”

SAN JOSE is member of the Santa Clara Valley Urban Runoff Pollution Prevention Program (“Santa Clara Valley Program”) which contributed to a regional *BMPs Report for Addressing Non-stormwater Discharges Associated with Unsheltered Homeless Populations* (“BMPs Report”) submitted to the Regional Water Board in September 2023 in compliance MRP 3.0 provision C.17.a.. (Declaration of Chris Sommers, SOMMERS DEC. ¶11.) SAN JOSE pays 30.1% of the Santa Clara Valley Program Costs. The Santa Clara Valley Program incurred a total of \$75,000.00 for Fiscal Year 2022-2023; and is anticipated to incur \$46,800.00 for Fiscal Year 2023- 2024; SAN JOSE’s share of these costs is \$22,575.00 (FY22-23) and \$14,086.80 (FY 23-34).

In addition to the Program costs, SAN JOSE incurred staff time attending regional meetings, editing and contributing to the report: \$3,094.55 (FY 22-23) and \$2,966.02 (FY 23-24) (Nair Dec., ¶14) for the following totals:

FY 22-23: \$25,669.55

FY 23-24: \$17,052.82.

For these costs, SAN JOSE has used its storm sewer fee, which predates Proposition 218. The storm sewer fee cannot be raised without voter approval or noticing and as a result, SAN JOSE’s fee is inadequate to cover these ongoing costs, as well as the construction and maintenance obligation of the system. (Nair Dec., ¶19.)

5. **SAN JOSE Will Incur Significant Costs as the Result of Provision C.17.a.ii(1): Submit a Map Identifying the approximate Location of Unsheltered Homeless Populations and their Locations to Storm Drain Inlets, Rivers, Flood Control channels and Other Surface Water Bodies.**

Provision C.17.a.ii(1) requires SAN JOSE to submit a map identifying, within its jurisdiction, “the approximate location(s) of unsheltered homeless populations, including homeless encampments and other areas where other unsheltered homeless people live. The map shall identify those location(s) in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies within the Permittee’s jurisdiction.”

This provision requires two things a survey of the unhoused and mapping of their locations. SAN JOSE is required to do a point in time survey related to the unsheltered for Federal Housing and Urban Development (HUD).¹³ SAN JOSE contracts with the County of Santa Clara for the survey, which cost \$125,000.00 for Fiscal Year 2022-2023 (Henninger Dec. ¶19.)

Moreover, the HUD point in time survey is significantly less intensive than the mapping required under MRP 3.0. Under the new requirement, maps must show the unsheltered “in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies.” (C.17a.ii.2.) SAN JOSE incurred additional costs through its regional program. Those costs are included in the FY 2022-2023 amounts above and are therefore not duplicated here. (See, Sommers Dec. ¶11.)

6. **SAN JOSE Will Incur Significant Costs as the Result of Provision C.17.a.ii(2): Report on Programmatic Efforts to Address MS4 Discharges Associated with Homelessness.**

Provision C.17.a.ii(2) is a reporting requirement (as opposed to an implementation requirement.) It mandates that SAN JOSE and other permittees “report on the programmatic efforts being implemented within their jurisdiction, or at the countywide or regional level, to address MS4 discharges associated with

¹³ Notice for Housing Inventory Count (HIC) and Point-in-Time (PIT) Count Data Collection for Continuum of Care (CoC) Program and the Emergency Solutions Grants (ESG) Program

homelessness.” The mandate lists a range of reporting examples from ordinances to implementation of social services.

SAN JOSE will incur significant expense for this reporting, including the SCVURPPP program costs, which are included in provision c.17.a.i(2) above, as well as ESD staff estimated at \$9,242.09 (FY 22-23) and \$5,277.43 (FY23-24.) (Nair Dec. ¶14.) SAN JOSE uses its storm sewer fee, adopted pre-Proposition 218 for these costs. However, these funds are inadequate to meet ongoing needs and cannot be raised without voter approval or with noticing and protest.

7. **SAN JOSE Will Incur Significant Costs as the Result of Provision C.17a.ii(3): Identify and Implement Best Management Practices to Address MS4 Discharges Associated with Homelessness that Impact Water Quality; Evaluate and Assess the Effectiveness of BMPs, Portion of the Unsheltered Served by the BMPs and the Approximate Locations of those Not Reached or Not Fully Reached**

Provision C.17.a.ii(3) requires SAN JOSE to “identify and implement best management practices” associated with the unhoused. SAN JOSE’s costs for the development of the BMP report are captured under Provision C.17.a.i(2): above. Implementation of BMPs related to the unhoused is a very significant cost. The Permit requires reporting on the “best management practices being implemented and additional actions or changes to existing actions ... to improve existing practices” with the 2023 and 2025 Annual Reports. (Provision C.17.iii(2).) With a 2023 reporting deadline, these requirements are in effect as of the permit date, July 1, 2022, and SAN JOSE began incurring costs.

SAN JOSE’s efforts for the unhoused is a multi-departmental effort. There are expenses from the Housing Department (Henninger Declaration); Parks, Recreation and Neighborhoods (Rufino Declaration) and Environmental Services Department (Nair Declaration). This multi-departmental approach far exceeds a best management practice, but SAN JOSE’s commitments of both staff and resources to this work are unprecedented and are provided as estimates of the costs to implement the work identified in MRP 3.0.

The permit lists several examples of BMPs that permittees can implement, “access to emergency shelters; the provision of social services and sanitation services;

voucher programs for proper disposal of RV sanitary sewage; establishment of designated RV “safe parking” areas or formalized encampments with appropriate services; provision of mobile pump-out services; establishing and updating sidewalk/street/plaza cleaning standards for the cleanup and appropriate disposal of human waste; and establishing trash and waste cleanup or pickup programs within the Permittee’s jurisdiction, or at the countywide or regional level.” C.17.a.i.(2).

SAN JOSE has experience with many of these programs which can be used to estimate this cost to Permittees. In Fiscal Year 22-23, SAN JOSE’s Housing Department incurred significant expenses related to the unhoused (\$36,016,500.00), and received grant funding to support this work as noted in the chart below. (See, Henninger Dec. ¶13.) Of this total, SAN JOSE funded \$16,206,750.00, through funds from Measure E, a voter-approved measure approved on March 3, 2020. Measure E is a real property transfer tax imposed on property transfers of \$2 million or more. The revenue provides funding for general city services, including affordable housing for seniors, veterans, the disabled, and low-income families. It is also used to help families who are homeless move into shelters. Measure E is not a dedicated funding source for homeless work and generates general fund dollars. SAN JOSE Council chooses to use these funds for the purpose. (See, Henninger Dec. ¶7.)

The costs for this work are summarized in the table below. SAN JOSE diligently pursues grants and other support for this work. However, as shown, many of the programs are funded by one-time grants. Noteworthy is SAN JOSE’s \$16,206,750 investment of voter approved Measure E funds, which is not a dedicated source of funding, and is available for general purposes.

HOUSING DEPARTMENT HOMELESS PREVENTION, SUPPORT AND MANAGEMENT PROGRAMS, FY 22-23		
Housing Outreach teams	Engagement, case management and connection to social services for individuals experiencing homelessness at 15 SOAR sites, 10 along waterways C.17.a.ii(2), C.17.a.ii(3)	28 FTE Citywide teams; \$8.7 M from State Homeless Housing Assistance, and Prevention [“HHAP” (one-time)], State, Emergency Solutions Grant “ESG” (ongoing), and Community Block Development Grants “CDBG” (ongoing)

Homeless Street Outreach Valley Water Flood Control Project Area	Engagement, case management and connection to social services along Coyote Creek in Valley Water Flood Project area C.17.a.ii(2), C.17.a.ii(3)	7.0 FTE; \$1.8 M from Valley Water for Coyote Creek (one- time funded)
Safe Encampment Resolution (State Encampment Resolution funds)	Restore and activate a section of the trail through use outreach, housing placement, abatement, beautification, and activation; and designing a program model to scale C.17.a.ii(3)	7.0 FTE; \$2M from State Encampment Resolution program (one-time)
Emergency Interim Shelter Beds	Provides case management, employment assistance and connection to other services (benefits, healthcare, etc.). C.17.a.ii(3)	Contracted Services; \$19M from Measure E (on-going), State HHAP (one-time) and State Permanent Local Housing Allocation Program “PLHA” (on-going)
Supportive Parking for lived in Recreational Vehicles	Designated parking lot with 42 spaces. Program offers onsite supportive services for individuals living in recreational vehicles. C.17.a.ii(3)	Contracted Services; \$1,516,500 from State HHAP (one-time), Federal American Rescue Plan Act “ARPA” (one-time), Local Housing Trust Fund “HTF” (one-time)
Portable Restrooms	Portable restrooms located at 6 encampment Locations within waterways.	\$2,000,000 from Emergency Solutions Grant “ESG-CV” (one-time)
Mobile Shower and Laundry	Provides mobile shower and laundry services six days a week C.17.a.ii(3)	\$1,000,000 in local HTF (one-time) and State HHAP3 (one-time)
TOTAL for FY 22/23		Total:\$36,016,500 City funded (Voter-approved Measure E) \$16,206,750.

Similarly, for Fiscal Year 23/24, SAN JOSE proposes to spend \$47.5 million in Measure E funds for this housing work. (Henninger Dec., ¶14.)

In addition to SAN JOSE’s Housing Department’s significant work, SAN JOSE’s BEAUTIFY SJ Initiative focuses on cleaning up and restoring public and open space within the city. SAN JOSE piloted several programs identified in the permit, including “cash for trash” which provides vouchers for bags of trash from

those living along the waterways and weekly trash pickups from those living along the waterways. (Rufino Dec., ¶¶6-12.)

These programs come at significant expense, the total (\$3,166,730.29) is the percentage of the citywide program for those living along the waterways. SAN JOSE received grant funds in the amount of \$180,000.00 from Valley Water and has a contract with the County of Santa Clara for unhoused encampment cleaning, routine garbage, debris, biowaste, hazardous materials from encampments within County Roads and Parks.

BEAUTIFY SAN JOSE INITIATIVE (Parks, Recreation and Neighborhood Department) Provision C.17.a.ii(3)	
Program	FY 2022-2023 Expenses [Provision C.17.a.ii.(3)]
Cash for Trash	\$154,877.06
Coyote Creek Flood Protection Project	\$45,519.64
Creek Partners	\$155,631.43
Encampment Abatements	\$634,989.22
Encampment Routes	\$1,047,394.57
Interagency (inter-jurisdictional partners)	\$177,278.72
RV Pollution Prevention Program	\$354,895.73
Winter Storm Debris Cleanup	\$596,143.92
Total	\$3,166,730.29
Total program Budget	\$17,873,229.00
Less External Funding Sources	
Valley Water	(\$180,000.00)
County of Santa Clara County	(\$219,518.00)
REVISED Total Budget less funding sources	\$2,767,212.29

(Rufino Dec. ¶15)

For Fiscal Year 2023-24, SAN JOSE added a Waterways Encampment Team and increased the budget related to those along the waterways to \$6,411,784.57 excluding on land routes and abatements. (Rufino Dec., ¶17.) The Valley Water funds were exhausted in FY22-23 are no longer available, but the County of Santa Clara extended its contract through 2027.

BEAUTIFY SAN JOSE INITIATIVE (Parks, Recreation and Neighborhood Department) Provision C.17.a.ii(3)		
Program	FY 2023-2024 Estimated Expenses [Provision C.17.a.ii(3)]	FY 2024-2025 Proposed Budget [Provision C.17.a.ii(3)]
Cash for Trash	\$1,931,722.00	\$1,931,722.00
Creek Partners	\$300,000.00	\$375,000.00
Encampment Routes and Abatements (on-land)	\$13,447,167.00	\$15,292,916.00
Interagency	\$1,811,000.00	\$1,811,000.00
RV Pollution Prevention Program	\$893,062.57	\$2,318,062.57
Waterways Encampment Team	\$1,476,000.00	\$7,902,378
Total (excluding on land)	\$6,411,784.57	\$14,338,162.57
Program Total	\$19,858,951.57	\$29,631,078.57
County of Santa Clara (County Parks/lands primarily on-land)	(\$360,000.00)	(\$400,000.00)
Revised total minus external funding	\$6,051,784.57	\$13,938,162.57

In addition, staff of the Environmental Services Division (ESD) will incur staff time related to coordination on structural barriers, managing contractor clean ups, implementing creek clean ups, preparing, attending and managing clean ups, and assessing trash levels.

FY: 22-23 \$144,284.32 less \$95,489.53 Environmental Protection Agency Grant, “Clean Creeks Healthy Watersheds” for a total of \$48,794.79

FY: 23-24 \$214,816.01 (less \$147,927.82) Environmental Protection Agency Grant, “Clean Creeks Healthy Watersheds” for a total of \$66,888.19.

FY 22-23: \$1,917.99

(Nair Dec. ¶14.)

IV. COSTS TO IMPLEMENT MANDATED ACTIVITIES

As detailed above, over the five-year term of the MRP, SAN JOSE and other Permittees will incur significant new costs to implement and administer the new programs and higher levels of service mandated by MRP 3.0., and more particularly, Provision C.17.a. SAN JOSE appreciates the support from State and Federal Grants as well as funding from other agencies for work related to their properties. However, despite SAN JOSE's best efforts to obtain funding, it is far short of the requirements of the permit and are an unfunded mandate.

To summarize, SAN JOSE costs, excluding external funding sources are as follows:

Provision	FY 22-23	FY23-24 (estimated)
C.17.a.i(1)	\$1,253.85 ¹⁴	\$843.03
C17.a.i(2)	\$25,669.55 ¹⁵	\$17,052.82
C17.a.ii(1)	\$125,000.00 ¹⁶	0
C17.a.ii(2)	\$9,242.09 ¹⁷	\$5,277.43
C17.a.ii(3)	Housing \$16,206,750.00 ¹⁸ Beautify \$2,767,212.29 ¹⁹ ESD \$48,794.79 ²⁰ Subtotal: \$19,022,757.08 ²¹	\$47,500,000.00 \$6,051,784.57 \$66,888.19 Subtotal \$53,618,672.76

¹⁴ Nair Dec. ¶14.

¹⁵ Sommers Dec. ¶ 11; Nair Dec. ¶14: FY22-23 (\$3,094.55 + \$22,575.00); FY 23-24 \$2,955.02 + \$14,086.80)

¹⁶ Henninger Dec. ¶18; Sommers Dec. ¶11.

¹⁷ Nair Dec. ¶14.

¹⁸ Henninger Dec. ¶13

¹⁹ Rufino Dec. ¶15

²⁰ Nair Dec. ¶14 (FY 22-23: \$144,284.32 - \$95,489.53) FY 23-24 \$214,816.01 - \$147,927.82)

(Nair, Dec. ¶14.)

8. **SAN JOSE Will Incur Significant Costs as the Result
Provision C.17a.ii(4): Review and Update Implementation
Practices with Data From the Biennial Point-In-Time
Census and Regional Coordination**

Provision C.17.a.ii.(4) requires shall use the information generated through the biennial point- in-time census surveys and related information, and the regional coordination tasks (as described above) to review and update their implementation practices.

BEAUTIFYSJ staff anticipates requiring additional staffing needs to meet the ongoing reporting and coordination as required by the Permit as well as provisions C.17.a..ii(1). This is anticipated to be a fulltime Graphic Information Systems Specialist (\$77,121.00 salary) and ½ an analyst position (.5 FTE, \$70,564 salary), and 1.0 FTE Senior Analyst (\$132,765 salary) for a total of \$245,168.00. (Rufino Dec, ¶17.)

9. **SAN JOSE Will Incur Significant Costs as the Result
Provision C.17a.iii(1): Submit a Best Management
Practices Report with the 2023 Annual Report**

Provision C.17.a.iii(1) mandates the timing of the best management practice report as described in Provision C.17.a.i.(2). The costs for this report are captured in the analysis for the creation of the report, so are not duplicated here.

10. **SAN JOSE Will Incur Significant Costs as the Result
Provision C.17a.iii(2): Submit a Map with the 2023 and
2025 Annual Reports; and Report on the BMPs and
Effectiveness in the 2023 and 2025 Reports**

Provision C.17.a.iii(2) mandates the timing of the mapping requirements and updates to the best management practices reports. The estimated costs for this report are captured in the analysis for the creation of the maps and best management practices, other than additional ESD staff time, which is estimated as follows:

C17.a.ii(4)	0 ²²	\$245,168.00 ²³
C17.a.iii(1)	0 ²⁴	0
C.17.a.iii(2)	ESD \$1,917.99 ²⁵	\$0
Total	\$19,185,840.56	\$53,887,014.04
Less Storm Fund	(\$38,083.48)	(\$23,173.28)
TOTAL General Fund, including Measure E	\$19,147,757.08 ²⁶	\$53,863,840.76

SAN JOSE has used its storm sewer fee for ESD's portion of these mandates with the exception of C.17.a.ii (3). However, SAN JOSE's storm sewer fee predates Proposition 218, cannot be raised without voter approval, or notice and an opportunity to protest. Even so, SAN JOSE must use its fee revenue in compliance with Proposition 218's substantive provisions. As a result, SAN JOSE's fee is inadequate to meet this and future operation and maintenance obligations. Provision C.17.a.ii(3) is only funded with general funds, including funds from Measure E (a voter-approved, *general revenue* ballot initiative.)

V. STATEWIDE COST ESTIMATE

To estimate the statewide costs for the fiscal year following the effective date of the requirements (FY 23-24), SAN JOSE relies on the January 2023 Annual Homeless Assessment Report from the U.S. Department of Housing and Urban Development (HUD) [2023 Annual Homeless Assessment Report: Part 1: Point-in-Time Estimates](#), for January, 2023 (HUD PIT survey), which provides an annual snapshot of the number of individuals in shelters, temporary housing, and in unsheltered settings, for January, 2023 (report released December, 2023).

In California overall homeless is estimated at 181,399. Of those, 9,903 are located

²¹ Subtotals rounded to nearest dollar

²² Reporting starts with 2023 annual report, which is in FY 23-24.

²³ Rufino Dec. ¶17

²⁴ The expense to submit the Best Management Practices Report is included in the creation of the report, so not duplicated here.

²⁵ Nair Dec. ¶14

²⁶ ESD costs for all provisions except for C.17.a.ii(3) are funded by SAN JOSE's storm water fee, which is inadequate to support future mandates. Nair Dec. ¶19.

within Santa Clara County, with approximately 6,200 individuals experiencing homelessness, of which approximately 70% are unsheltered. (Henninger Dec. ¶17.) The provisions of the permit impact residents within Alameda, Contra Costa, Santa Clara, San Mateo, and Solano Counties. For all Permittees, the homeless estimate is 25,029, or roughly 4 times the number for SAN JOSE alone. SAN JOSE obtained estimates from other regional programs about their costs to design the programs and the expenses associated with all provisions except for the implementation of the best management practices for the unhoused in Provision C.17a.ii.(3). That estimate is \$304,940.00 for fiscal year 22-23. (Sommers Dec. ¶14.)

Assuming SAN JOSE's cost per unhoused person is extrapolated to the areas of those covered by the Permit, and that all permittees were able to receive the same grant funding, the permit wide estimate is four times SAN JOSE's implementation number (\$19,185,840.57) equals \$76,743,362.28, plus \$304,940.00 (other C.17.a. requirements) totals \$77,048,302.28.

Permit Wide

C.17.a.i(1), C.17.a.i(2), C.17.a.ii(1), C.17.a.ii(2), C.17.a.ii(4), C.17.a.iii(1), C.17.a.iii(2)	\$304,940.00 ²⁷
C.17.a.ii(3)	SJ: \$19,185,840.57 times 4 = \$76,743,362.28
Total	\$77,048,302.28

If the requirements were implemented in areas not covered by the permit and include all areas of the state, and assuming the same amount of grant funding, since the unhoused for the entire state is roughly 30 times that of SAN JOSE's, best management practices (roughly \$19.2 million) would cost \$576 million. However, without external funding/grants it would be roughly \$1.08 billion (30 times, SAN JOSE's \$36m, just for the Housing Department alone.)

VI. FUNDING SOURCES

As discussed in more detail above, SAN JOSE does not have fee authority to

²⁷ Sommers Dec., ¶14.)

offset these costs. SAN JOSE diligently pursues grants or other alternative funding, but as explained with the various provisions, the work is only partially funded. SAN JOSE is not aware of any state, federal or non-local agency funds that are or will be available to completely fund these new programs and increased levels of service.

VII. PRIOR MANDATE DETERMINATIONS

There are no legislatively determined mandates that is on the same permit. There are pending test claims on MRP 1.0 and MRP 2.0 pending before the Commission. In addition, test claims on other Municipal Stormwater permits have resulted in some appellate decisions as cited above. (See, for example, *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661; *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535.) Moreover, the Commission recently issued its proposed decision in *Santa Ana Decision* which analyzed a Municipal Stormwater Permit for the Southern California Region. In addition, on November 17, 2023, the Commission issued a Draft Proposed Decision in *California Regional Water Quality Control Board, Santa Ana Region*, Order No. R8-2010-0033, 10-TC-07²⁸, testing Municipal Regional Stormwater Permits for the Santa Ana Region, effective January 29, 2010.

VIII. CONCLUSION

Through the MRP 3.0, the California Regional Water Quality Control Board, San Francisco Bay Region has exercised its discretion to impose many new state-mandated activities and demand that SAN JOSE deliver a higher level of services than what was required under the Prior Permit. As detailed above, their development and implementation impose substantial costs. SAN JOSE contends the costs incurred and to be incurred satisfy all the criteria for reimbursable mandates and respectfully requests that the Commission make such findings as to each of the mandated programs and activities as detailed in this claim.

²⁸ California Regional Water Quality Control Board, Santa Ana Region, Order No. R82010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VII.D.3; VIII.A; VIII.C; VIII.H; IX.C; IX.D; IX.E; IX.H; X.D; XI.D.1; XI.D.6; XI.D.7; XI.E.6; XII.A.1; XII.A.5; XII.B; XII.C.1; XII.D.1; XII.E.1; XII.E.2; XII.E.3; XII.E.4; XII.E.6; XII.E.7; XII.E.8; XII.E.9; XII.F; XII.G.1; XII.K.4; XII.K.5; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3

EXHIBIT “E”

Sent via email to: Nora.Frimann@sanjoseca.gov and Jennifer.Maguire@sanjoseca.gov

June 18, 2024

Ms. Nora Frimann
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

Ms. Jennifer Maguire
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

RE: Notice of Rejection of Duplicate Test Claim

In Re: Regional Water Quality Control Board, San Francisco Bay Region, Order R2-2022-018

Dear Ms. Frimann and Ms. Maguire:

On June 30, 2023, you filed a test claim filing with the Commission on State Mandates (Commission), on behalf of the City of San Jose, on the above-named matter. The City of Union City, however, filed the first test claim filing on same executive order before yours was filed, on June 30, 2023. The first claim filed on a statute or executive order is the test claim under the governing statutes and regulations. Upon initial review, Commission staff found and notified you on October 11, 2023, that your filing was duplicative and incomplete but if Union City did not timely cure its filing, then it would not be the test claim and San Jose's claim could be accepted as the test claim if it was timely cured. The two cities could also choose to file jointly, if desired, but must still meet the statute of limitations requirements for filing new or amended claims. Therefore, the way to file jointly if the statute has already run for filing new or amended claims, is to add a new claimant to a claim already on file, which, pursuant to section 1181.2 of the Commission's regulations would not be an amendment to the test claim. Note, however, that the pleading of additional provisions, statutes, or executive orders would constitute a new test claim or an amendment to an existing test claim.

On October 20, 2023, Union City filed a request for extension of time to file documents to cure the Test Claim, which was granted. On October 24, 2023, San Jose filed a request for extension of time to file documents to cure the Test Claim, which was partially granted. On January 9, 2024, both Union City and San Jose filed documents to cure their filings. Upon review, Commission staff found both filings to be duplicate and incomplete, and on February 23, 2024, notified both filers. On March 7, 2024, Union City and San Jose each filed a request for extension of time to file documents to cure the Test Claim, which were both granted.

On May 22, 2024, Union City filed documents to cure the Test Claim. Upon review, Commission staff found Union City's Test Claim complete, that it retains the original filing date of June 30, 2023, in accordance with section 1183.1(f) of the Commission's regulations (California Code of Regulations, Title 2), and issued the Test Claim for comment on June 18, 2024. On May 24, 2024, San Jose filed documents to cure its filing. Upon review, Commission staff finds that your filing is a duplicate test claim filing since a Test Claim was filed by the City of Union City (claimant) on the above-named executive order before this Test Claim on the same day, June 30, 2023.

Duplicate Test Claims Will Not Be Accepted

On June 30, 2023, the City of Union City (claimant) filed a Test Claim prior to this test claim filing on the above-named executive order. A “test claim” is the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. (Gov. Code §17521.) Though multiple claimants may join together in pursuing a single test claim, the Commission will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies. (See Cal. Code Regs., tit. 2, §1183.1; *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, page 872, fn. 10.) Thus, the test claim “functions similarly to a class action and has been established to expeditiously resolve disputes affecting multiple agencies.” (Cal. Code Regs., tit. 2, §1181.2(s).)

Although the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission, other similarly situated affected agencies may participate in the process by submitting comments in writing on any agenda item as provided in section 1181.10 of the Commission’s regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.

The Commission’s regulations also provide that test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.

Otherwise, the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently. (Cal. Code Regs., tit. 2, §1183.1(b)(1-3).)

In addition, although all new test claims and amendments thereto are required to meet the statute of limitations, pursuant to section 1181.2 of the Commission’s regulations adding a new claimant to a claim already on file is not an amendment to the test claim.

In your second response, you provided the following explanation of how and why San Jose is affected differently than Union City by the order pled:

SAN JOSE noted that, if UNION CITY does not timely cure its test claim, SAN JOSE should be afforded the opportunity to revise its claim to include

other provisions. Moreover, if UNION CITY's revised/supplemental claim completely addresses Provision C.17.a., and the Commission determines SAN JOSE's Test Claim is therefore duplicative, SAN JOSE will revisit whether to withdraw this Revised Claim.

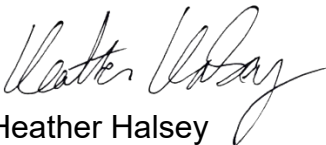
The claim filed by Union City does plead C.17.a. in its entirety and alleges costs mandated by the state related to both the joint preparation of the plan as well as for reporting and implementation requirements. Commission staff finds the filing of City of San Jose duplicative and is therefore rejecting it. Pursuant to the Commission's regulations in section 1183.1(g): Any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for any reason, including that the test claim was not filed within the period of limitation required by subdivision (c) of this section, may be rejected or dismissed by the executive director with a written notice stating the reason therefor.

Therefore, because Union City's claim was filed first and was timely cured first and although San Jose has described how and why they may have implemented the requirements of the permit differently than Union City, San Jose has not demonstrated how and why it is affected differently by the order pled and is therefore rejected. Union City's filing is the Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07* and you have been added to the mailing list, per your request.

Please note that this in no way prevents the City of San Jose or any other interested party (which includes all of the co-permittees) from participating in the test claim process by filing comments on the test claim filing which may include evidence if desired, filing comments the Draft Proposed Decision when it issues, and testifying at the hearing on the Union City test claim.

As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 18, 2024, I served via email to: Nora.Frimann@sanjoseca.gov and Jennifer.Maguire@sanjoseca.gov the:

Notice of Rejection of Duplicate Test Claim

Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 18, 2024, at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

EXHIBIT “F”

2022 ALAMEDA COUNTY



HOMELESS COUNT AND SURVEY COMPREHENSIVE REPORT

REPORT BY ASR

Individuals identifying as Black/African American were overrepresented in the population experiencing homelessness. An estimated 43% of persons experiencing homelessness identified as Black/African American compared to 10% of the county's overall population. Alternatively, 5% of those counted identified as Asian compared to 31% of the general population.

GEOGRAPHIC DISTRIBUTION

Similar to 2019, the population of individuals experiencing homelessness in Alameda County was concentrated in the urban centers. Over half (52%) were enumerated in Oakland, followed by 11% each in Berkeley and Fremont. Five percent (5%) of those experiencing homelessness were located in Union City and 4% were in Hayward.

Figure 9. Total Number of Homeless Persons by Jurisdiction and Shelter Status

	2019				2022			
Jurisdiction	Sheltered	Unsheltered	Total Count	Total %	Sheltered	Unsheltered	Total Count	Total %
Alameda	99	132	231	3%	84	180	264	3%
Albany	0	35	35	<1%	0	23	23	<1%
Berkeley	295	813	1,108	14%	254	803	1,057	11%
Dublin	0	8	8	<1%	0	29	29	<1%
Emeryville	0	178	178	2%	0	91	91	1%
Fremont	123	485	608	8%	160	866	1,026	11%
Hayward	115	372	487	6%	114	267	381	4%
Livermore	85	179	264	3%	68	174	242	2%
Newark	30	59	89	1%	26	32	58	1%
Oakland	861	3,210	4,071	51%	1,718	3,337	5,055	52%
Piedmont	0	0	0	0%	0	42	42	<1%
Pleasanton	0	70	70	1%	0	72	72	1%
San Leandro	74	344	418	5%	97	312	409	4%
Union City	0	106	106	1%	0	489	489	5%
Unincorporated	28	321	349	4%	91	418	509	5%
Total	1,710	6,312	8,022	100%	2,612	7,135	9,747	100%

EXHIBIT “G”

Test Claim: Municipal Regional Stormwater Permit
Claimant: CITY OF SAN JOSE (Second Revised)
Section 7. Henninger Declaration

**DECLARATION OF RAGAN HENNINGER ON BEHALF OF CITY OF SAN JOSE
IN SUPPORT OF SECOND REVISED TEST CLAIM**

I, RAGAN HENNINGER, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I have been employed by the CITY OF SAN JOSE (SAN JOSE) since 2007, and currently am the Deputy Director for the SAN JOSE’S Housing Department.

3. In my current role, I oversee SAN JOSE’s work on ending homelessness, including work to implement SAN JOSE’s declaration of a homelessness emergency, temporary and permanent housing, getting unsheltered individuals to safer locations, while managing budgetary constraints.

4. General Assumptions. The anticipated costs stated below are reasonable estimates based on available information and best professional judgment of myself and other SAN JOSE staff, considering San Francisco Bay Area market rates for SAN JOSE staff, outside consultants and services, and materials. Where appropriate, additional assumptions are identified in the subsections below, detailing costs.

5. Where appropriate, grant-funding, the source of the funding, and whether these are one-time grant funds are listed in the table below. Attached are documents which are generated at or near the time of the dates on the documents for the services rendered and are prepared by those familiar with the work performed. They are kept in the ordinary course and scope of the SAN JOSE’s business and are verifiable through accessing SAN JOSE’s system. Contracts supporting these services are attached as Exhibit “A”.

6. Provision C.17a.ii.(3) requires SAN JOSE to “identify and implement appropriate best management practices to address MS4 discharges associated with homelessness ...” Provision C.17.a.ii(3) provides examples, “access to emergency shelters; the provision of social services and sanitation services; voucher programs for proper disposal of RV sanitary sewage; establishment of ‘safe parking’ areas or formalized encampments with appropriate services;

Test Claim: Municipal Regional Stormwater Permit
Claimant: CITY OF SAN JOSE (Second Revised)
Section 7. Henninger Declaration

provision of mobile pump-out services; establishing and updating sidewalk/street/plaza cleaning standards for the cleanup and appropriate disposal of human waste; and establishing trash cleanup or pickup programs within the Permittees jurisdiction, or at the countywide or regional level.” For the Housing Department, the Housing Outreach Teams, Homeless Street Outreach Valley Water Flood Control Project Area, Safe Encampment Resolution, Emergency Interim Shelter Beds, Supportive Parking for lived in RV Vehicles, Portable Restrooms, and Mobile Sower and Laundry are all within the best management practices contemplated by C.17a.ii.(3) and are detailed below.

7. A portion of SAN JOSE’s work is funded by Measure E, a voter-approved measure approved on March 3, 2020. Measure E is a real property transfer tax imposed on property transfers of \$2million or more. The revenue provides funding for general city services, including affordable housing for seniors, veterans, the disabled, and low-income families. It is also used to help families who are homeless move into shelters. Measure E is not a dedicated funding source for homeless work. The Fiscal Year 2022-2023 Measure E Proposed Spending Plan (May, 2022) included \$6.17 million for Homeless Prevention and Rental Assistance and \$9.2625 million for Homeless Support Programs, for a total of \$15.435 million (plus 5% of administrative costs equals \$16.20675 million). A copy of the Memorandum is attached as Exhibit “B”, the relevant chart is as follows:

Test Claim: Municipal Regional Stormwater Permit
 Claimant: CITY OF SAN JOSE (Second Revised)
 Section 7. Henninger Declaration

Spending Category Items	%	2022-2023 Proposed Spending Plan
Funding for Acquisition and Rehabilitation		\$5,000,000
Funding for Land Acquisition		\$10,000,000
Funding for Rental and For-Sale Housing for Moderate-Income Households	5%	\$3,087,500
Funding for Affordable For-Sale Housing		\$3,087,500
Funding for Homeless Prevention and Rental Assistance	10%	\$6,175,000
Destination: Home: Homeless Prevention and Rental Assistance		\$3,460,000
Destination: Home: Homeless Prevention and Rental Assistance Serving Victims of Domestic Violence		\$600,000
Bill Wilson Center: Student Housing*		\$60,000
County of Santa Clara, Office of Supportive Housing: Rental Assistance, Supportive Services, Deposits and Move-in Support for targeted encampments		\$2,055,000
Funding for Homeless Support Programs**	15%	\$9,262,500
HomeFirst: Arena Hotel Operations		\$3,000,000
PATH: Pacific Motor Inn Operations		\$3,000,000
Emergency Interim Housing Maintenance and Operations		\$1,800,000
Reserve for Emergency Interim Housing Operations		\$1,462,500
Total Funds Allocated		\$61,750,000
Administration Fee	5%	\$3,250,000
Administrative Costs		\$3,250,000
Measure E Total Available (est.)		\$65,000,000

* The plan presented to Commission showed \$115,000 allocated towards student housing. After reviewing the Mayor's Budget memo, staff aligned this amount to match; the remaining \$55,000 has been allocated to Rental Assistance.

**The plan presented to Commission showed all funds allocated to the Reserve for Emergency Interim Housing Operations. Staff outlined more specific uses eligible in this category.

8. **Housing Outreach/SOAR program:** SAN JOSE currently operates the Services, Outreach, Assistance and Resources (SOAR) program. SOAR sites are encampments at which the City provides basic trash service, portable toilets and hand washing stations, and connects encampment residents with case managers to support their search for permanent housing. There are currently 15 SOAR sites, 10 are located along the waterways. SJ Housing expenses for this program are itemized in the table below.

9. **Homeless Street Outreach:** SAN JOSE engages with those living in waterways along the areas of Valley Water's flood control project. This 7-person, full time employee team is funded by Valley Water at a cost of 1.8 million.

Test Claim: Municipal Regional Stormwater Permit
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10. **Supportive Parking:** SAN JOSE also has a supportive parking program (sometimes known as safe parking) that provides people who temporarily live in their cars, recreational vehicles (RVs), or other vehicles a managed and secure place to park while they work with case managers to find temporary or permanent housing opportunities. Contracted Services; \$1,516,500 from State HHAP (one-time), Federal ARPA (one-time), Local Housing Trust Fund (one-time)

11. **Safe Encampment Resolution** (State Encampment Resolution funds) Restore and activate a section of the Guadalupe River trail through homeless outreach, housing placement, abatement, beautification, and activation. One-time funded program by State of California Encampment Resolution Program grant of \$2 million.

12. **Emergency Interim Shelter Beds:** The City operates six emergency interim housing sites that offer shelter and supportive services to individuals experiencing unsheltered homelessness. Referrals for the six locations come from the City’s street outreach teams. Contracted services from State HHAP (one-time), local Measure E (on-going), State local Permanent Local Housing Allocation (PLHA) (on-going).

13. For Fiscal Year 22-23, the Housing Department incurred significant expenses related to the unhoused:

HOMELESS PREVENTION, SUPPORT AND MANAGEMENT PROGRAMS		
Housing Outreach teams	Engagement, case management and connection to social services for individuals experiencing homelessness at 15 SOAR sites, 10 along waterways C.17.a.ii(2), C.17.a.ii(3),	28 FTE Citywide teams; \$8.7 M from State Homeless Housing Assistance, and Prevention [“HHAP” (one-time)], State, Emergency Solutions Grant “ESG” (ongoing), and Community Block Development Grants “CDBG” (ongoing)
Homeless Street Outreach Valley Water Flood Control Project Area	Engagement, case management and connection to social services along Coyote Creek in Valley Water Flood Project area C.17.a.ii(2), C.17.a.ii(3)	7.0 FTE; \$1.8 M from Valley Water for Coyote Creek (one-time funded)

Test Claim: Municipal Regional Stormwater Permit
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Safe Encampment Resolution (State Encampment Resolution funds)	Restore and activate a section of the trail through use outreach, housing placement, abatement, beautification, and activation; and designing a program model to scale C.17.a.ii(3),	7.0 FTE; \$2M from State Encampment Resolution program (one-time)
Emergency Interim Shelter Beds	Provides case management, employment assistance and connection to other services (benefits, healthcare, etc.). C.17.a.ii(3)	Contracted Services; \$19M from Measure E (on-going), State HHAP (one-time) and State Permanent Local Housing Allocation Program “PLHA” (on-going)
Supportive Parking for lived in Recreational Vehicles	Designated parking lot with 42 spaces. Program offers onsite supportive services for individuals living in recreational vehicles. C.17.a.ii(3)	Contracted Services; \$1,516,500 from State HHAP (one-time), Federal American Rescue Plan Act “ARPA” (one-time), Local Housing Trust Fund “HTF” (one-time)
Portable Restrooms	Portable restrooms located at 6 encampment Locations within waterways.	\$2,000,000 from Emergency Solutions Grant “ESG-CV” (one-time)
Mobile Shower and Laundry	Provides mobile shower and laundry services six days a week C.17.a.ii(3)	\$1,000,000 in local HTF (one-time) and State HHAP3 (one-time)
TOTAL for FY 22/23		Total:\$36,016,500 City funded (Voter-approved Measure E) (see above) \$16,206,750:

14. The Fiscal Year 2023-2024 Measure E Proposed Spending Plan (May, 2023) included \$9.5 million for Homeless Prevention and Rental Assistance and \$38 million for Homeless Support Programs, for a total of \$47.5 million (plus 5% of administrative costs equals \$49.857 million). The May, 2023 Memorandum also explains the Fiscal Year 2022-2023 budget and reconciliation of the projected numbers from May, 2022. A copy of the Memorandum is attached as Exhibit “B”, the relevant chart is as follows:

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City Council Approved Spending Categories and Allocation Percentages		Reallocation Proposed Plan		FY 2023-2024 Proposed Plan		Total Funds in Proposed Plan
Spending category and Proposed Activities	Allocation Percentages per approved spending priorities	Allocation percentage of reallocation	Allocation of unspent funds from previous years	Proposed Modification to Allocation percentages	Proposed 2023-2024 Spending Plan	Total fund uses in 2023-2024
Homelessness Prevention, Gender-based Violence Programs, Legal Services and Rental Assistance	10%	4%	\$2,712,628	20%	\$9,500,000	\$12,212,628
Eviction Prevention and Diversion			\$2,712,628			
Homeless Prevention and Rental Assistance					\$9,500,000	
Homeless Support Programs, Shelter Construction and Operations	15%	18%	\$12,054,868	80%	\$38,000,000	\$50,054,868
OWLS			\$1,500,000			
Motel Program			\$8,000,000			
Public Works Interim Shelter Site Identification and Development (4.0 FTE)			\$2,006,789			
Interim Housing Operation and Maintenance Reserve			\$548,079		\$3,081,730	
Surestay Operations					\$500,000	
Public Works Interim Shelter Staffing (5.0 FTE)					\$2,000,000	
Public Works Interim Shelter Maintenance					\$3,000,000	
CARE Coordination Program					\$1,000,000	
Homeless Outreach Contracts					\$3,700,000	
SJ Bridge					\$5,000,000	

Test Claim: Municipal Regional Stormwater Permit
 Claimant: CITY OF SAN JOSE (Second Revised)
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City Council Approved Spending Categories and Allocation Percentages		Reallocation Proposed Plan		FY 2023-2024 Proposed Plan		Total Funds in Proposed Plan
Spending category and Proposed Activities	Allocation Percentages per approved spending priorities	Allocation percentage of reallocation	Allocation of unspent funds from previous years	Proposed Modification to Allocation percentages	Proposed 2023-2024 Spending Plan	Total fund uses in 2023-2024
Interim Shelter Site Identification and Development					\$18,890,750	
Housing Homeless Response Staffing (2.0 FTE)					\$827,520	
Total Funds Allocated			\$67,602,749		\$47,500,000	\$115,102,749

15. For Fiscal Year 2024- 2025, SAN JOSE is in the process of the budget process, including the allocation of Measure E fund. The Proposed Spending Plan for Measure E Real Property Tax Revenue for Fiscal Year 2024 – 2025 (May, 2024) is attached as Exhibit C. Under the Proposed Spending Plans, \$15,025,000 is identified for Stormwater Permit Implementations, including Safe or Alternative Sleeping Sites (\$10m); Outreach, Sanitation, and Other Supportive Services (\$3.6m) and the Recreational Vehicle Pollution Prevention Program (\$1.425m). This discussion is ongoing, and has not been approved by Council, so the numbers can change. The relevant chart is as follows:

Test Claim: Municipal Regional Stormwater Permit
Claimant: CITY OF SAN JOSE (Second Revised)
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ATTACHMENT A: PROPOSED FY 2024-2025 SPENDING PLAN

Spending Category Items	%s	2024-2025 Proposed Spending Plan - Scenario 1	%s	2024-2025 Proposed Spending Plan - Scenario 2
Creation of New Affordable Housing for Extremely Low-Income Households	12%	\$5,830,000	0%	\$0
Funding for New Construction of Affordable Rental Housing		\$5,830,000		\$0
Creation of New Affordable Housing for Low-Income Households	11%	\$5,170,000	0%	\$0
Funding for New Construction of Affordable Rental Housing		\$5,170,000		\$0
Creation of New Affordable Housing for Moderate-Income Households	0%	\$0	0%	\$0
Funding for New Construction of Affordable Rental Housing		\$0		\$0
Homelessness Prevention, Gender-based Violences Programs, Legal Services and Rental Assistance	10%	\$4,750,000	10%	\$4,750,000
Santa Clara County Contract		\$4,500,000		\$4,500,000
Eviction Protection and Diversion		\$250,000		\$250,000
Homeless Support Programs, Shelter Construction and Operations	67%	\$31,750,000	90%	\$42,750,000
First Street Interim Housing Operations		\$3,000,000		\$3,000,000
Supportive Parking Site Berryessa Road		\$1,700,000		\$1,700,000
Lived In Vehicle Safe Parking Site		\$1,000,000		\$1,000,000
City Outreach Team (Reactive)		\$600,000		\$600,000
Interim Housing Construction and Operations		\$10,425,000		\$21,425,000
Storm Water Permit Implementation		\$15,025,000		\$15,025,000
Safe or Alternative Sleeping Sites		\$10,000,000		\$10,000,000
Outreach, Sanitation and Other Support Services		\$3,600,000		\$3,600,000
Recreational Vehicle Pollution Prevention Program		\$1,425,000		\$1,425,000
Total Funds Allocated		\$47,500,000		\$47,500,000
Administration Fee	5%	\$2,500,000	5%	\$2,500,000

16. The January 2023 Annual Homeless Assessment Report from the U.S. Department of Housing and Urban Development (HUD) [2023 Annual Homeless Assessment Report: Part 1: Point-in-Time Estimates](#), (HUD PIT survey), provides an annual snapshot of the number of individuals in shelters, temporary housing, and in unsheltered settings, for January, 2023 (report released December, 2023).

17. The HUD PIT estimates overall homelessness in California at 181,399. Some of the estimates are based upon a count of only those sheltered, others count unsheltered. Of the California total 9,903 are located within Santa Clara County. SAN JOSE has the largest population of homeless within Santa Clara County, with approximately 6,200 individuals experiencing homelessness, of which, approximately 70% are unsheltered.

18. To estimate the expenses permit wide, because MRP 3.0 only covers a portion of Northern California, SAN JOSE again relies on the HUD PIT survey. Permittees are located

Test Claim: Municipal Regional Stormwater Permit
Claimant: CITY OF SAN JOSE (Second Revised)
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within Alameda, Contra Costa, Santa Clara, San Mateo, and Solano Counties. The HUD PIT total homeless estimate is 25,029 in the areas governed by the Permit, which is roughly 4 times the number only in SAN JOSE.

19. SAN JOSE contracted with the COUNTY OF SANTA CLARA to conduct the most recent point in time survey. The total contract cost was \$125,000.00 for FY 22-23. This work does not include mapping of proximity to creeks or storm drains. A copy of the contract is attached as Exhibit "D".

Executed this May 23, 2024
____th day of _____ at _____ San Jose, California.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Ragan Henninger
Ragan Henninger (May 23, 2024 16:06 PDT)
RAGAN HENNINGER

Created:	2024-05-23
By:	Colleen Winchester (colleen.winchester@sanjoseca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA0MNq7a-pyZQSdYc4FH4YgryrJnDhWZvV

"2118700_2" History







-  Document created by Colleen Winchester (colleen.winchester@sanjoseca.gov)
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-  Document emailed to ragan.henninger@sanjoseca.gov for signature
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-  Email viewed by ragan.henninger@sanjoseca.gov
2024-05-23 - 11:05:58 PM GMT
-  Signer ragan.henninger@sanjoseca.gov entered name at signing as Ragan Henninger
2024-05-23 - 11:06:16 PM GMT
-  Document e-signed by Ragan Henninger (ragan.henninger@sanjoseca.gov)
Signature Date: 2024-05-23 - 11:06:18 PM GMT - Time Source: server
-  Agreement completed.
2024-05-23 - 11:06:18 PM GMT

EXHIBIT “H”

Test Claim: Municipal Regional Stormwater Permit
Claimant: CITY OF SAN JOSE (Second Revised Test Claim)
Section 6. Rufino Declaration

**DECLARATION OF NEIL RUFINO ON BEHALF OF CITY OF SAN JOSE
IN SUPPORT OF SECOND REVISED TEST CLAIM**

I, NEIL RUFINO, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I have been employed by the CITY OF SAN JOSE (SAN JOSE) since 1996 and am currently the Assistant Director for the SAN JOSE’S Parks, Recreation, and Neighborhoods Department.

3. In my current role, I oversee the BeautifySJ initiative work, which focuses on cleaning up and restoring public and open space within SAN JOSE. SAN JOSE staff working on the Beautify SJ project report are within my line of report.

4. Under the Municipal Regional Stormwater Permit, effective July 1, 2022, Provision C.17a.ii(3), SAN JOSE must identify and implement Best Management Practices (BMPs) to address discharges associated with homelessness that impact public health, and reporting approximate location of portion of the homeless and location of where they are served. The Permit identified actions that may be implemented include “Safe parking areas”, provision of mobile pump-out services, voucher for property RV sanitary sewage disposal, updating sidewalk/street plaza cleaning of human waste, clean or pickup programs. The Permit also requires reporting on the implementation of the best management practices by the 2023 Annual Reports. [C.17.a.iii(2)] and include the effectiveness of the work. Therefore, the best management practices start with the date of the permit (July 1, 2022) and the City started to incur those costs during Fiscal Year 2022 – 2023.

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5. SAN JOSE has piloted several of the potential BMPs identified in Provision C.17 both as part of its Direct Discharge Plan, as well as by Council direction to address the needs of this vulnerable community. SAN JOSE provides the cost of these programs to inform and estimate the amount of the costs necessary to comply with the new Permit Provision C.17a.ii(3), but also recognizes that this work and estimates exceeds mandatory requirements, as this work toward eliminating homelessness is a SAN JOSE priority.

6. **Encampment Waterways Team:** BeautifySJ has two teams on waterways who work to reduce illicit discharges into the waters, which include scheduled trash pickups along the waterways. In FY 22-23, approximately 23% of the work of a citywide team focusing on encampments performed work within 150 feet of a waterway. In FY 23-24, SAN JOSE added additional resources to fund a team dedicated to the encampments along the waterways.

7. **Creek Clean Ups:** BeautifySJ currently has three creek partners (Keep Coyote Creek Beautiful, Southbay Clean Creeks Coalition, and Trash Punx) that receive \$100k per year to lead volunteer program efforts to remove trash and debris along waterways.

8. **RV Pollution Prevention Program:** This pilot project removes and disposes human waste from RVs/lived-in vehicles, preventing these discharges from making their way into storm drains/ waterways.

9. **Encampment Management Trash Routes:** BSJ provides weekly trash pickup at encampments throughout the City.

10. **Interagency Team:** BSJ coordinates with interjurisdictional partners to address homeless and blight.

11. **Cash 4 Trash** The Cash for Trash Program provides a redemption value program for residents at designated homeless encampments to bag their trash. Grant funds from Valley Water funded Cash for Trash program participants along the waterways.

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12. **Coyote Creek Flood Protection Project** Through this project, funded by Valley Water, BeautifySJ abated encampment along the waterways to clear the project construction zone. Agreement established in 2023.

13. General Assumptions. The anticipated costs stated below are reasonable estimates based on available information and best professional judgment of myself and other SAN JOSE staff, considering San Francisco Bay Area market rates for SAN JOSE staff, outside consultants and services, and materials. Where appropriate, additional assumptions are identified in the subsections below, detailing costs.

14. Where appropriate, I have provided information about grant-funding, the source of the funding, and whether these are one-time grant funds. There is no dedicated ongoing funding source for these costs.

15. BeautifySJ's work on land also helps to reduce the impact on the environment. However, to estimate the specifically related to homeless work within the waterways, BeautifySJ staff pulled together actual costs for Fiscal Year 2022-2023 and estimated the percentage of work that occurred within 150 feet of a creek. The totals for the relevant programs are as follows:

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Program	FY 2022-2023 Expenses [Provision C.17.a.ii.(3)]
Cash for Trash	\$154,877.06
Coyote Creek Flood Protection Project	\$45,519.64
Creek Partners	\$155,631.43
Encampment Abatements	\$634,989.22
Encampment Routes	\$1,047,394.57
Interagency (inter-jurisdictional partners)	\$177,278.72
RV Pollution Prevention Program	\$354,895.73
Winter Storm Debris Cleanup	\$596,143.92
Total	\$3,166,730.29
Total program Budget	\$17,873,229.00
Less External Funding Sources	
Valley Water	(\$180,000.00)
County of Santa Clara County	(\$219,518.00)
REVISED TOTAL less external funding	\$2,767,212.29

16. The table also notes whether SAN JOSE received grant funding for a particular expense, all other expenses were paid with SAN JOSE's general fund dollars, without any grant funding. SAN JOSE received funding in the following amounts:

(a) Santa Clara Valley Water District (Valley Water) \$180,000 for Cash for Trash services at designated areas Valley Water properties;

(b) Santa Clara County (from July, 2022 – March, 2023), \$219,158 for unhoused encampment cleaning, routine garbage, debris, biowaste, hazardous materials from encampments within County Roads and Parks (primarily on-land work)

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17. SAN JOSE's budget for Fiscal Year 2023-2024 and proposed for 2024-2025 are as follows:

Program	FY 2023-2024 Estimated Expenses [Provision C.17.a.ii(3)]	FY 2024-2025 Proposed Budget [Provision C.17.a.ii(3)]
Cash for Trash	\$1,931,722.00	\$1,931,722.00
Creek Partners	\$300,000.00	\$375,000.00
Encampment Routes and Abatements (on-land)	\$13,447,167.00	\$15,292,916.00
Interagency	\$1,811,000.00	\$1,811,000.00
RV Pollution Prevention Program	\$893,062.57	\$2,318,062.57
Waterways Encampment Team	\$1,476,000.00	\$7,902,378
Total (excluding on land)	\$6,411,784.57	\$14,338,162.57
Program Total	\$19,858,951.57	\$29,631,078.57
County of Santa Clara (County Parks/lands primarily on-land)	(\$360,000.00)	(\$400,000.00)
Revised total minus external funding	\$6,051,784.57	\$13,938,162.57

18. SAN JOSE's Council is in the process of setting the budget for Fiscal Year 2024 – 2025, so the proposed numbers may change during that budget process. The costs for the relevant programs are anticipated to increase because SAN JOSE implemented a dedicated trash management team. The grant funding from Valley Water noted for Fiscal Year 22-23 was depleted and is not anticipated for Fiscal Year 23-24. However, the County of Santa Clara extended its agreement through 2027 for total cost contract of \$2,025,000.00. The contract does not segregate contract funds based upon year, but for purposes of estimating outside revenue for services, I assume that there will be equal distribution of funds for each year of the contract term, or \$360,000.00 per year. In addition, BEAUTIFYSJ anticipates requiring additional staffing needs to meet the ongoing reporting and coordination as required by the Permit. This is anticipated to be a fulltime Graphic Information Systems Specialist (\$77,121.00 salary) and ½ an analyst position (.5 FTE, \$70,564 salary), and 1.0 FTE Senior Analyst (\$132,765 salary) for a total of \$245,168.00 in increased staff costs for Provisions C.17.a.ii(1); C.17.iii(2).

19. Attached are documents and contracts which are generated at or near the time of the date on the documents for the services and are prepared by those familiar with the work

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performed. They are kept in the ordinary course and scope of the SAN JOSE's business and are verifiable through accessing SAN JOSE's system.


May 23, 2024


Executed this ___th day of _____ at _____ San Jose, California.


I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.


Neil Rufino
Neil Rufino (May 23, 2024 11:44 PDT)
NEIL RUFINO


Created:	2024-05-23
By:	Colleen Winchester (colleen.winchester@sanjoseca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA56Fzc4p_Urzc3_phjeax3JoAIdOPQPkV


 Document created by Colleen Winchester (colleen.winchester@sanjoseca.gov)
2024-05-23 - 6:42:54 PM GMT

 Document emailed to neil.rufino@sanjoseca.gov for signature
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 Signer neil.rufino@sanjoseca.gov entered name at signing as Neil Rufino
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 Document e-signed by Neil Rufino (neil.rufino@sanjoseca.gov)
Signature Date: 2024-05-23 - 6:44:33 PM GMT - Time Source: server

 Agreement completed.
2024-05-23 - 6:44:33 PM GMT

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 18, 2024, I served the:

- **Current Mailing List dated July 2, 2024**
- **Draft Proposed Appeal of Executive Director Decision, Schedule for Comments, and Notice of Hearing issued July 18, 2024**
- **Appeal of Executive Director Decision (AEDD) filed June 28, 2024**

Rejection of Duplicate Test Claim Filing, 23-AEDD-01
City of San Jose, Appellant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 18, 2024 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/2/24

Claim Number: 23-AEDD-01

Matter: Appeal of Executive Director Decision

Claimant: City of San Jose

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Sent via email to: Jennifer.Maguire@sanjoseca.gov and
Colleen.Winchester@sanjoseca.gov

Exhibit B

October 11, 2023

Jennifer Maguire
City of San Jose
200 E. Santa Clara Street, 17th Floor
San Jose, CA 95113

Colleen Winchester
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

RE: Notice of Duplicate and Incomplete Test Claim

*Test Claim for Unfunded Mandates Relating to the California Water Quality
Control Board, San Francisco Region*

Dear Ms. Maguire and Ms. Winchester:

On June 30, 2023, you filed a test claim filing with the Commission on State Mandates (Commission), on behalf of the City of San Jose, on the above-named matter. The City of Union City, however, filed the first test claim filing on same executive order before yours was filed, on June 30, 2023, which has been found to be incomplete. The first claim filed on a statute or executive order is the test claim under the governing statutes and regulations.

Upon initial review, Commission staff finds your filing to be duplicative and incomplete. But if the City of Union does not timely cure its filing, then it would not be the test claim and the City of San Jose's claim could be accepted as the test claim if it is timely cured. The two cities could also choose to file jointly, if desired, but must still meet the statute of limitations requirements for filing new or amended claims. Therefore, the way to file jointly if the statute has already run for filing new or amended claims, is to add a new claimant to a claim already on file, which, pursuant to section 1181.2 of the Commission's regulations would not be an amendment to the test claim. Note, however, that the pleading of additional provisions, statutes, or executive orders would constitute a new test claim or an amendment to an existing test claim.

Your test claim filing is incomplete for the following reasons:

- (1) Your filing is a duplicate test claim filing since a Test Claim was filed by the City of Union City (claimant) on the above-named executive order before this Test Claim on the same day, June 30, 2023.
- (2) The *Test Claim Form*:
 - a. In *Section 3*, two names are listed on the Name and Title of Claimant Representative line. Pursuant to the Commission's regulations in section 1183.1, only one representative may be designated by the claimant to act as its sole representative in this Test Claim, as is indicated in the directions for this section.
 - b. In *Section 4* Order. No. R2-2022-0018 has been pled, although specific sections of the Order pled are not listed on the Test Claim Form they are listed in the *Narrative* and *Declarations* making it unclear which sections of the Order and associated activities (whether new or modified existing),

fiscal years, and costs of each are being pled in this Test Claim. In addition, the issue date of May 11, 2022 is listed where the effective date is required, as is indicated in the directions for this section. The *Narrative* indicates on May 11, 2022, an updated permit (MRP 3.0) “was issued.” The *Declaration* indicates SAN JOSE is a permittee under the permit, “issued on May 11, 2022.” Therefore, it is unclear if May 11, 2022 is simply the issue date or is also the effective date of the Order.

- c. In *Section 5* although the box is checked, the line for identifying the following fiscal year and the statewide cost estimate of increased costs that all local agencies or school district will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is blank. All sections of the Test Claim Form are required to be completed.
- d. In *Section 5* the box is checked indicating all dedicated funding sources for this program are identified but each of the lines below are left blank. All sections of the Test Claim Form are required to be completed.

(3) The *Narrative* does not provide:

- a. The specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, as required by Government Code section 17553(b)(1).
- b. A detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A).
- c. A detailed description of the existing activities and costs that are modified by the mandate, as required by Government Code section 17553(b)(1)(B).
- d. The actual increased costs that will be incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate, as required by Government Code section 17553(b)(1)(C).
- e. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D).
- f. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- g. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by Government Code section 17553(b)(1)(H).

(4) The *Declaration(s)* do not provide:

- a. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A).
- b. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Duplicate Test Claims Will Not Be Accepted

On June 30, 2023, the City of Union City (claimant) filed a Test Claim prior to this test claim filing on the above-named executive order. A “test claim” is the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. (Gov. Code §17521.) Though multiple claimants may join together in pursuing a single test claim, the Commission will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies. (See Cal. Code Regs., tit. 2, §1183.1; *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, page 872, fn. 10.) Thus, the test claim “functions similarly to a class action and has been established to expeditiously resolve disputes affecting multiple agencies.” (Cal. Code Regs., tit. 2, §1181.2(s).)

Although the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission, other similarly situated affected agencies may participate in the process by submitting comments in writing on any agenda item as provided in section 1181.10 of the Commission’s regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.

The Commission’s regulations also provide that test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.

Otherwise, the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Affected agencies that are not similarly situated, meaning that test claim statutes

affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently. (Cal. Code Regs., tit. 2, §1183.1(b)(1-3).)

In addition, although all new test claims and amendments thereto are required to meet the statute of limitations, pursuant to section 1181.2 of the Commission's regulations adding a new claimant to a claim already on file is not an amendment to the test claim.

Finally, if the City of Union City's filing is not timely cured, your test claim filing may become the Test Claim on this Order if it is timely cured.

All Elements of the Test Claim Form Must Be Completed Accurately

In *Section 3* of the Test Claim Form, two names appear on the line "Name and Title of Claimant Representative: Nora Frimann, City Attorney and Colleen Winchester, Sr. Deputy Attorney."¹ The directions in *Section 3* indicate "Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. (CCR, tit.2, § 1183.1(b)(1-5))."² Pursuant to the Commission's regulations cited on the form, only one representative may be designated by the claimant. In *Section 4* of the Test Claim Form, Order. No. R2-2022-0018 has been pled, although specific sections of the Order pled are not listed on the Test Claim Form they are listed in the *Narrative* and *Declarations* making it unclear which sections of the Order (and associated activities, whether new or modified existing, fiscal years, and costs of each) are being pled in this filing.³ In addition, in *Section 4*, the issue date of May 11, 2022, rather than the effective date of the Order is provided, although the effective date is required by the directions.⁴ The *Narrative* indicates "On May 11, 2022, the California Regional Water Quality Control Board (Regional Board), San Francisco Bay Region issued an updated Municipal Regional Stormwater Permit (MRP 3.0)."⁵ The *Declaration* indicates "SAN JOSE is a permittee under the Municipal Regional Stormwater NPDES Permit, issued on May 11, 2022 by the California Regional Water Quality Control Board ('Regional Water Board'), San Francisco Bay Region, Order No. R2-2022-0018 (NPDES Permit No. CAS612008) (the 'MRP 3.0')."⁶ Therefore, it is unclear if May 11, 2022 is simply the issue date or is also the effective date of the Order.

¹ Filing, page 1 (Test Claim Form).

² Filing, page 1 (Test Claim Form).

³ Filing, page 2 (Test Claim Form), pages 5-33 (Narrative), and pages 35-48 (Declarations).

⁴ Filing, page 2 (Test Claim Form).

⁵ Filing, page 9 (Narrative).

⁶ Filing, page 36 (Declaration of Rajani Nair).

Also, in *Section 5*, although the box is checked, the line for identifying the following fiscal year and the statewide cost estimate of increased costs that all local agencies or school district will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is blank.⁷ Further, in *Section 5*, the box is checked indicating all dedicated funding sources for this program are identified but each of the lines below are left blank and the line for identifying dedicated State funding sources indicates “As described in the narrative.”⁸ Finally, in *Section 5* the box is checked indicating that any legislatively determined mandates that are on, or that may be related to, the same statute or executive order have been identified, however, the form indicates “Pending claims for prior permits, Order No. R2-2009-074 (2009, rev. 2011), Order No. R2-2015-0049 (2015).”⁹ Pending test claims for prior permits do not constitute legislatively determined mandates pursuant to Government Code section 17573.¹⁰ If the response is “None” please indicate “None.” All sections of the Test Claim Form are required to be completed accurately.

The Identification of Specific Sections of Statutes or Executive Orders Allegedly Mandating Activities and Costs Is Required in the Narrative.

The *Narrative*, in the section titled “I. Introduction” states “Thus, the State exercised its discretion in imposing the obligations in all three permits, MRP 1, MRP 2.0, and MPR 3.0. This claim details how MRP 3.0, like the predecessor permits, imposes obligations on San Jose and other permittees which require funding.”¹¹ Throughout the filing, it is unclear where this filing discusses prior permits and other Test Claims pending before the Commission, which activities are new with respect to this Order pled and which activities are modified existing activities with respect to this Order pled. The distinction is required by the Government Code in section 17553(b)(1)(A-B).

In addition, the *Narrative* provides the following list of provisions and a description of activities allegedly mandated by the test claim statute:

C. Present Test Claim

The MRP 3.0 contains 23 separate provisions that establish the prohibitions, limitations, and obligations of SAN JOSE and other Permittees. This Test Claim pertains to several categories of mandates:

- Provision C.2—Municipal Operations
- Provision C.3 – New Development and Redevelopment
- Provision C.5 – Illicit Discharge Detection and Elimination
- Provision C.8—Monitoring

⁷ Filing, page 2 (Test Claim Form).

⁸ Filing, page 3 (Test Claim Form).

⁹ Filing, page 3 (Test Claim Form).

¹⁰ Filing, page 3 (Test Claim Form).

¹¹ Filing, page 9-10 (Narrative).

- Provision C.10—Trash Load Reduction
- Provision C.11 and C.12—Mercury and PCB Diversion Studies
- Provision C.15 – Emergency Discharges of Firefighter Water and Foam
- Provision C.17 Discharges Associated with Unsheltered Homeless Populations
- Provision C.20 and C.21 – Cost Reporting and Asset Management

Each of these provisions imposes a new program or expanded level of service over MRP 2.0 and exceed the mandates of the federal Clean Water Act or its implementing regulations. Finally, compliance with these obligations will impose costs beyond those which SAN JOSE is authorized to recover through the imposition of increased fees without voter approval or notice that is subject to protest.¹²

However, although the *Narrative* indicates above “23 separate provisions,”¹³ none have been properly pled in *Section 4* of the Test Claim Form and only 11 are listed above. Further, the *Narrative* provides a second list of provisions and another description of activities allegedly mandated by the test claim statute:

MRP 3.0 contains 21 separate provisions that establish the prohibitions, limitations, and obligations of SAN JOSE and other Permittees. This Test Claim pertains to several categories of mandates:

- Provision C.2—Municipal Operations
- Provision C.3 – New Development and Redevelopment
- Provision C.5 – Illicit Discharge Detection and Elimination
- Provision C.8—Monitoring
- Provision C.10—Trash Load Reduction
- Provision C.11 and C.12—Mercury and PCB Diversion Studies
- Provision C.17 – Discharges Associated with Unsheltered Homeless Populations
- Provision C.20 and C.21 – Cost Reporting and Asset Management

As explained below, each of these MRP 3.0 provisions imposes a new program or expanded level of service over MRP 2.0.¹⁴

It is unclear why this second listing indicates “21 separate provisions,”¹⁵ why none of these sections have been pled in *Section 4* of the Test Claim Form, as required, and

¹² Filing, page 11-12 (Narrative).

¹³ Filing, page 11 (Narrative).

¹⁴ Filing, pages 18-19 (Narrative).

¹⁵ Filing, page 18 (Narrative).

why Provision C.15 is missing from this second list. Also, the *Narrative* provides additional provisions but does not clarify which activities are new and which are modified existing activities or the associated costs of each with consistency, as follows:

1. The New Requirements of Provision C.2;¹⁶

Provision C.3 of the MRP 3.0 requires Permittees to use their planning authorities to include appropriate source control, design, and stormwater treatment.¹⁷

1. Provision C.3.b and C.3.j Constitutes a new Program or Higher Level of Service¹⁸

MPR 3.0 contains a new provision that all road projects that involve the reconstruction of existing streets or roads which create or replace greater than one acre of impervious surfaces, including existing streets and bicycle lanes must comply with LID (Green stormwater infrastructure) requirements. (C.3.b.ii.5.).¹⁹

In addition, MRP 3.0 adds a new category of Road Reconstruction Projects [C.3.b.ii(5)] that includes utility trenching projects which average \geq 8 feet wide over length of project. The prior permit (MRP 2.0) did not contain these provisions.²⁰

Provision C.5 previously required permittees to implement illicit discharge prohibitions. Now, MRP 3.0 extends beyond regulatory enforcement.²¹

MRP 3.0, Provision C.5 includes a new program or higher level of service by providing that Permittees update their current Municipal Separate Storm Sewer System mapping. SAN JOSE must “identify information missing from the current MS4 maps and develop a plan and schedule to compile additional storm sewer system information, considering the potential to identify component locations, size or specifications, materials of construction, and condition” and submit a plan or schedule to implement an update to the system. (C.5.f.ii.)²²

1. Provision C.8 Contains New Programs.²³

¹⁶ Filing, page 19 (Narrative).

¹⁷ Filing, page 20 (Narrative).

¹⁸ Filing, page 20 (Narrative).

¹⁹ Filing, page 20 (Narrative).

²⁰ Filing, page 20 (Narrative).

²¹ Filing, page 21 (Narrative).

²² Filing, page 22 (Narrative).

²³ Filing, page 23 (Narrative).

Provision C.8.d directs Permittees to conduct LID monitoring during the permit term, and identifies specific parameters and monitoring frequencies that must be achieved to address questions related to the “pollutant removal and hydrologic benefits” of LID facilities. Permittees must assess the design, changes over time, and the operation and maintenance required for those facilities. (C.8.d.)²⁴

In addition, LID Monitoring Plans are required at the regional or countywide level. At a minimum, the Monitoring Plans must contain a laundry list of items including descriptions of the LID facilities, lists of monitoring stations, data evaluation methods, and study-specific Quality Assurance Plans. (C.8.d.i.1) Provision C.8 also requires regional cooperation, methods, and parameters and intensities, implementation levels, and reporting. (C.8.d.ii – vi.)²⁵

For the Santa Clara Valley, a minimum of 25 water quality sampling events must be conducted during the MRP 3.0 permit term, with an annual minimum of three events beginning in Water Year (WY) 2024 (October 1, 2023 through September 30, 2024). Each sampling event must consist of paired flow- (or time) weighted composite samples of the LID facility influent and effluent collected with automated samplers. Provision C.8.d.iv specifies that all composite samples must be analyzed for total mercury, total polychlorinated biphenyls (PCBs), total suspended solids (TSS), per- and polyfluoroalkyl substances (PFAS), total petroleum hydrocarbons (TPH), total and dissolved copper, total hardness, and pH. In addition, flow must be measured at both influent and effluent sampling locations. All new requirements for this permit.²⁶

1. Provision C.10 Constitutes a New Program or Higher Level of Service.²⁷

The Regional Board concedes that the permit “builds on the data and information collected in the last permit term and increases expectations of Permittees...” (Fact Sheet, ¶C.10-10, p. A-236.) In fact, Provision C.10.a.ii requires the installation of trash prevention and control actions with “trash discharge control equivalent to or better than full trash capture systems ...” and area mapping, including private lands, that will be retrofitted by June 30, 2025. (C.10.a.ii) Credits for voluntary Direct Discharge Plans and other alternative compliance measures expire on June 30, 2025 and create a new or higher level of service. (C.10.b.v.)²⁸

²⁴ Filing, page 23 (Narrative).

²⁵ Filing, page 23 (Narrative).

²⁶ Filing, page 23 (Narrative).

²⁷ Filing, page 24 (Narrative).

²⁸ Filing, page 24 (Narrative).

1. Provisions C.11 and C.12 Constitute New Programs.²⁹

Provisions C.11.c and C.12.c require SAN JOSE and other Permittees to implement treatment control measures to treat 664 acres of old industrial lands, map, and report on all implementation and diversion measures. In addition, for PCBs, Provision C.12.d requires SAN JOSE and other Permittees to implement a Cal Trans specification to manage potential PCB containing material in overpass and roadway repair, prepare inventory of ownership of bridges and a replacement schedule, submit documentation of the use of the CalTrans specs on all projects, and report estimates of PCB load reductions resulting from implementing the control measures. Lastly, SAN JOSE and Permittees must prepare, implement, and report on a program for PCBs in oil-filled electrical equipment for municipally owned electrical utilities. (C.12.e)³⁰

4. SAN JOSE Does Not Have Adequate Authority to Recover the Costs of Complying with C.11.f and C.12.f Through the Imposition of a Fee.³¹

MRP 3.0, Provision C.15.a.iii, retains the conditional exemption for emergency discharges of firefighting foam, but mandates regional collaboration and potential implementation of Best Management Practices (BMPs) not in found in prior permits.³²

1. Provision C15 Constitutes a New Program or Higher Level of Service.³³

The conditional exemption for firefighting activities has existed at least since MRP 1.0. MRP 3.0 now increases requirements for the use of the exemption, including participation in a region wide Firefighting Discharges Working Group which must produce a Firefighting Discharges Report. That Report must assess adequacy of different BMPs. After coordination, information sharing, and feedback from other agencies, including CalFire, the California Department of Toxic Substances and Control, and the US Forest Service, the permittees must implement the BMPs, train staff and contractors, and provide reporting. (C.15.b.iii. (2)- (5)).³⁴

1. Provision C.17 Constitutes New Programs.³⁵

Provision C. 17 is an entirely new provision and requires significant actions related to the unsheltered. "The Permit's expectation is that

²⁹ Filing, page 26 (Narrative).

³⁰ Filing, page 26 (Narrative).

³¹ Filing, page 27 (Narrative).

³² Filing, page 27 (Narrative).

³³ Filing, page 27 (Narrative).

³⁴ Filing, page 27 (Narrative).

³⁵ Filing, page 28 (Narrative).

housing and services provided to populations experiencing unsheltered homelessness, and structural and institutional mitigation of illegal dumping sites, will increase over the course of the Permit term.” (C.10.f.ii.)³⁶

“To encourage ongoing regional, countywide and municipal coordination efforts, Permittees shall collectively develop a best management practice report that identifies effective practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges within a given timeframe.” (C.17.a.2.) Each permittee must submit a map identifying the “approximate location(s) unsheltered homeless populations, including homeless encampments and other areas where other unsheltered homeless people live. The map shall identify those location(s) in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies within the Permittee’s jurisdiction” (C.17.a.ii.)³⁷

Permittees also must evaluate and assess the effectiveness of BMP control measures “specifically by reporting on the BMP control measures being implemented, the approximate portion of the Permittee’s unsheltered homeless populations being served by those control measures, and the portions and locations of the Permittee’s unsheltered population not reached, or not fully reached by the implemented control measures.” [C.17.ii(3).] Permittees shall identify and implement best management practices which “include, but are not limited to, access to emergency shelters; the provision of social services and sanitation services; voucher programs for proper disposal of RV sanitary sewage; establishment of designated RV “safe parking” areas or formalized encampments with appropriate services; provision of mobile pump-out services; establishing and updating sidewalk/street/plaza cleaning standards for the cleanup and appropriate disposal of human waste; and establishing trash and waste cleanup or pickup programs within the Permittee’s jurisdiction, or at the countywide or regional level.” [C.17.ii(3).]³⁸

The HUD point in time survey is significantly less intensive than the mapping required under MRP 3.0. Under the new requirement, maps must show the unsheltered “in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies.” (C.17.ii.2.) SAN JOSE retained a consultant for the HUD point in time survey at a cost of \$172,292. Again, that survey is less comprehensive

³⁶ Filing, page 28 (Narrative).

³⁷ Filing, page 28 (Narrative).

³⁸ Filing, page 28-29 (Narrative).

than is required to meet the MRP and SAN JOSE anticipates costs for the new mapping to far exceed this estimate. (Nair Dec.¶19c)³⁹

1. Provisions C.20 and C.21 constitute new programs or higher levels of service.⁴⁰

Provision C.20 requires the permittees to “develop a cost reporting framework and methodology to perform an annual fiscal analysis.” Permittees are “encouraged to collaboratively develop the framework and methodology for purposes of efficiency, cost-savings, and regionwide consistency and comparability.” The annual cost fiscal analysis must include the source of funds, legal restrictions on the use of the funds, and funding resources that are shared by other agencies. (C.20.b) The framework shall “provide meaningful data to assess costs of different program areas, and allow for comparisons and to identify trends over time.” (C.20.b.i)⁴¹

In turn, Provision C.21 requires a comprehensive Asset Management Plan, which also must include an “Operation, Maintenance, Rehabilitation, and Replacement Plan” to inform a strategy for “prioritizing and scheduling maintenance, rehabilitation, and replacement of inventoried assets.” (C.21.b.(3).) An Asset Management Plan must assess the condition of all hard assets defined as, “structural controls that serve a water quality function, for example, bioretention cells, pervious pavement system systems, trash capture devices, trash receptacles, and pet waste stations.” (C.21-1, p. 67.)⁴²

Therefore, the following provisions are listed in the *Narrative*, however, no sections of the executive order are pled in *Section 4* of the Test Claim Form:⁴³ C.2;⁴⁴ C.3;⁴⁵ C.3.b;

³⁹ Filing, page 30 (Narrative).

⁴⁰ Filing, page 30 (Narrative).

⁴¹ Filing, page 30-31 (Narrative).

⁴² Filing, page 31 (Narrative).

⁴³ Filing, page 2 (Test Claim Form).

⁴⁴ Filing, page 19 (Narrative).

⁴⁵ Filing, page 20 (Narrative).

C.3.j;⁴⁶ C.3.b.ii.5;⁴⁷ C.3.b.ii(5);⁴⁸ C.5;⁴⁹ C.5.f.ii;⁵⁰ C.8;⁵¹ C.8.d;⁵² C.8.d.i.1 and C.8.d.ii – vi;⁵³ C.8.d.iv;⁵⁴ C.10;⁵⁵ C.10.a.ii; C.10.b.v;⁵⁶ C.11; C.12;⁵⁷ C.11.c; C.12.c; C.12.d; C.12.e;⁵⁸ C.11.f; C.12.f;⁵⁹ C.15.a.iii;⁶⁰ C.15;⁶¹ C.15.b.iii.(2)– (5);⁶² C.17;⁶³ C.10.f.ii;⁶⁴ C.17.a.2; C.17.a.ii;⁶⁵ C.17.ii(3);⁶⁶ C.17.ii.2;⁶⁷ C.20; C.21;⁶⁸ C.20.b; C.20.b.i;⁶⁹ C.21.b.(3); C.21-1.⁷⁰ Finally, no prior mandate determinations are provided in the *Narrative*, as

⁴⁶ Filing, page 20 (Narrative).

⁴⁷ Filing, page 20 (Narrative).

⁴⁸ Filing, page 20 (Narrative).

⁴⁹ Filing, page 21 (Narrative).

⁵⁰ Filing, page 22 (Narrative).

⁵¹ Filing, page 23 (Narrative).

⁵² Filing, page 23 (Narrative).

⁵³ Filing, page 23 (Narrative).

⁵⁴ Filing, page 23 (Narrative).

⁵⁵ Filing, page 24 (Narrative).

⁵⁶ Filing, page 24 (Narrative).

⁵⁷ Filing, page 26 (Narrative).

⁵⁸ Filing, page 26 (Narrative).

⁵⁹ Filing, page 27 (Narrative).

⁶⁰ Filing, page 27 (Narrative).

⁶¹ Filing, page 27 (Narrative).

⁶² Filing, page 27 (Narrative).

⁶³ Filing, page 28 (Narrative).

⁶⁴ Filing, page 28 (Narrative).

⁶⁵ Filing, page 28 (Narrative).

⁶⁶ Filing, page 29 (Narrative).

⁶⁷ Filing, page 30 (Narrative).

⁶⁸ Filing, page 30 (Narrative).

⁶⁹ Filing, page 31 (Narrative).

⁷⁰ Filing, page 31 (Narrative).

required, although in *Section 5*, the Test Claim Form indicates “In Re: Test Claim, Santa Ana Regional Water Quality Control Board, et al. Case No. 09-TC-03.”⁷¹

Government Code section 17553(b)(1) requires *a written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate*. Government Code section 17553(b)(1)(A) requires *a detailed description of the new activities and costs that arise from the mandate*. Government Code section 17553(b)(1)(B) requires *a detailed description of the existing activities and costs that are modified by the mandate*. Government Code section 17553(b)(1)(C) requires *the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate*. Government Code section 17553(b)(1)(D) requires *the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. Government Code section 17553(b)(1)(H) requires *identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order*. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify which sections of executive orders are pled; identify which are alleged to mandate a new activity and which are alleged to mandate a modified existing activity; and provide the associated total costs of each in full fiscal years. Please provide total estimated amounts of costs where actual costs are unknown for the full fiscal year; and please verify that the information provided in the filing is consistent across the *Test Claim Form*, *Narrative*, *Declaration(s)*, and *Documentation*. In addition, if no legislatively determined mandate that may be related to the same statute or executive order has been identified, please state that fact both on the Test Claim Form and in the *Narrative*, as required.

The Identification of a Statewide Cost Estimate Is Required in the Narrative.

In addition, the *Narrative* states:

The MRP 3.0 governs a portion of the San Francisco Bay region. This Test Claim is even narrower in scope in that, for some programs, it pertains to new programs and higher levels of service imposed by the MRP on SAN JOSE directly or indirectly in the form of contributions to work that will be performed jointly with other Permittees within the Santa Clara Valley Program or in other collaborative efforts, compared to the Prior Permit. Therefore, the cost estimates provided relate only to SAN JOSE and other Permittees participating in the Santa Clara Valley Program.⁷²

Also, the *Narrative* states:

⁷¹ Filing, page 3 (Test Claim Form). Please note, the title of the referenced matter is *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, Adopted May 22, 2009*, 09-TC-03.

⁷² Filing, page 32 (Narrative).

SAN JOSE is unaware of any prior mandate determinations relating to the MRP 3.0, but there are pending test claims on MRP 1.0 and MRP 2.0 pending before the Commission. In addition, test claims on other Municipal Stormwater permits have resulted in some appellate decisions as cited above. (See, for example, *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661; *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535.) Moreover, the Commission recently issued its *Santa Ana Decision* which analyzed a Municipal Stormwater Permit for the Southern California Region.⁷³

Therefore, in the *Narrative*, no statewide cost estimate is provided, as required.

Government Code section 17553(b)(1)(E) requires a *statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. This is a statutory requirement to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please provide the total amount of the statewide cost estimate; and please verify that that the information provided in the filing is consistent across the *Test Claim Form*, *Narrative*, *Declaration(s)*, and *Documentation*.

The Identification of Specific Sections of Executive Orders Alleged to Contain Mandated Activities and Associated Actual or Estimated Costs Are Required In the Declarations.

In *Declarations*, Mr. Rajani Nair states “The Santa Clara Valley Program received a grant of \$100,000 per year for the permit term, which are not included in these estimates. The Santa Clara Valley Program costs will increase based upon the difference between MRP 2.0 and MRP 3.0. SAN JOSE’s share of the Santa Clara Valley Program costs is 30.01%.”⁷⁴ Therefore, the fiscal years associated with all of the costs are not identified and the cost amounts for the claimant remain unclear throughout this *Declaration*. Also, Mr. Nair provides a list of sections of the Order pled, descriptions of activities, and some costs, but does not clearly state: (1) each section of the Order pled alleged to mandate each activity; (2) which activities are new; (3) which activities are modified existing activities; (4) the costs of each activity for the claimant for the full fiscal year the Test Claim is filed; and (5) the costs of each activity for the claimant for the full fiscal year following the fiscal year for which the Test Claim is filed, as required, as follows:⁷⁵

(a) For the implementation of Provision C.8, Monitoring, the anticipated Santa Clara Valley Program's *increase* in costs is \$387,114.00 for Fiscal

⁷³ Filing, page 32-33 (Narrative).

⁷⁴ Filing, page 36 (Declaration of Rajani Nair).

⁷⁵ Filing, pages 35-43 (Declaration of Rajani Nair). It is unclear throughout whether the sections of the Order pled are alleged to be new or higher level of service or whether the activities (and fiscal years and costs) alleged to be mandated by each section of the Order pled are new or are modified existing activities, as required.

Year 2023-2024, and that increase remains roughly consistent on the remaining permit term, for a total of approximately \$1.9 million.⁷⁶

(b) For the implementation of Provision C.17, a new Provision, the Santa Clara Valley Program budgets \$296,000.00 for the permit term.⁷⁷

(c) For the implementation of Provision C.20, a new Provision, the Santa Clara Valley Program budgets \$133,871 for the permit term;⁷⁸

(d) For the implementation of Provision C.21, a new Provision, the Santa Clara Valley Program budgets \$459,646 for the permit term.⁷⁹

(e) SAN JOSE's portion of the Santa Clara Valley Program costs is 30.01%, of \$2,789,517 (the total of the above figures) or \$837,134.00. Other Santa Clara Valley Program member agencies that are also Permittees under MRP 3.0 fund the remaining costs.⁸⁰

9. In addition, I have reviewed MRP 3.0 and MRP 2.0 MRP with respect to sections C.2, C.3, C.8, C.10, C.12 and new provisions C.17, C20 and C.21 and believe that its provisions require SAN JOSE to provide new or higher level of service than that which was required by the Prior Permit.⁸¹

10. For Provision C.2, I have compared MRP 2.0 and 3.0 and C.2.h is a completely new provision. It requires staff training on all the following topics:

- Stormwater pollution prevention;
- Appropriate BMPs for maintenance and cleanup activities;
- Street and Road Repair and Maintenance BMPs;

⁷⁶ Filing, page 36 (Declaration of Rajani Nair). It is unclear which cost amount provided is alleged to be mandated by Provision C.8; whether its associated activities are new or modified existing activities; and what cost amount is alleged for fiscal year 2022-2023.

⁷⁷ Filing, page 36 (Declaration of Rajani Nair). See additional description for C.17 below (no activities or fiscal years provided).

⁷⁸ Filing, page 36 (Declaration of Rajani Nair). See additional description for C.20 below (no activities or fiscal years provided).

⁷⁹ Filing, page 36 (Declaration of Rajani Nair). See additional description for C.21 below (no activities or fiscal years provided).

⁸⁰ Filing, page 36 (Declaration of Rajani Nair). It is unclear which provisions or which new or modified existing activities are pled, however, \$2,789,517 is not the total of the figures referenced (\$387,114+\$296,000+\$133,871+\$459,646=\$1,276,631).

⁸¹ Filing, page 37 (Declaration of Rajani Nair). It is unclear which provisions are being pled as mandating new activities and which are being pled as mandating modified existing activities, and no costs or fiscal years are provided, as required. In the event "higher level of service" is meant to indicate modified existing activities and not new activities, please specify which are new and which are modified existing activities, as required.

- Sidewalk/Plaza Maintenance and Pavement Washing;
- Bridge and Structure Maintenance and Graffiti Removal;
- Corporation Yard SWPPPs and BMPs; and
- Spill and discharge response and notification procedures and contacts.

It is estimated that additional staff training and reporting will exceed \$1,000.00 for the permit term.⁸²

11. For Provision C.3, comparing MRP 2.0 with MRP 3.0, there are several new requirements. The costs for the reduced threshold requirements for private development will be borne by the project applicants are not included in this test claim. However, Provision C.3.b.ii(4) also reduced the threshold requirements (down from 10,000 square feet to 5,000 square feet of impervious surface) for road construction for public development, including pavement maintenance repair practices. Low Impact Development (LID) is now required for these projects, including those that involve the reconstruction of existing streets or roads which create and/or replace greater than or equal to one contiguous acre of impervious surface and that are public road projects and/or fall under the building and planning authority of a Permittee, including sidewalks and bicycle lanes that are built or rebuilt as part of the existing streets or roads. The prior permit (MRP 2.0) only required for new or widen of roadway. In addition, MRP 3.0 adds a new category of Road Reconstruction Projects [C.3.b.ii(5)] that includes utility trenching projects which average ≥ 8 feet wide over length of project. The prior permit (MRP 2.0) did not include a similar provision, this is new to MRP 3.0.⁸³

12. For Provision C.5, comparing MRP 2.0 with MRP 3.0, the investigation into an illicit discharge requires SAN JOSE to respond in 3 business days, instead of the 5 business days in the prior permit. However, SAN JOSE is also required to identify all missing information from the current MS4 maps and develop a plan to compile additional system, size or specifications , as well as materials of construction, and submit a plan to update the map.⁸⁴

13 . For Provision C.8 , comparing MRP 2.0 with MRP 3.0 , the new permit contains increased requirements. Test claims associated with those challenges are pending. However, MRP 3.0, MRP 2.0, " Creek Status

⁸² Filing, page 37 (Declaration of Rajani Nair). It is unclear if Provision C.2 is being pled or if only Provision C.2.h is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸³ Filing, page 37-38 (Declaration of Rajani Nair). For Provision C.3, it is unclear if C.3 is being pled or if only C.3.b.ii(4) and C.3.b.ii(5) are being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸⁴ Filing, page 38 (Declaration of Rajani Nair). For Provision C.5, it is unclear whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

Monitoring" has been replaced with " Low Impact Development (LID) Monitoring " which is intended to measure compliance and effectiveness of LID controls to improve the understanding of LID implementation, in particular green stormwater infrastructure. Summarizing , MRP 3.0 mandates regional cooperation, methods, parameters and intensities , implementation levels, and reporting . It also requires the development of a countywide plan including detailed mandatory provisions and implementation. The monitoring includes PFAS, and, for Santa Clara County, at least 25 monitoring sample events during the permit term , with an annual minimum of three events per year. Moreover, Provision C.8.d.iv of the MRP specifies that all composite samples must be analyzed for total mercury, total polychlorinated biphenyls (PCBs), total suspended solids (TSS), per- and polyfluoroalkyl substances (PFAS), total petroleum hydrocarbons (TPH), total and dissolved copper, total hardness, and pH. In addition, flow must be measured at both influent and effluent sampling locations.⁸⁵

14. For Provision C.10, comparing MRP 2.0 with MRP 3.0, the trash management provisions follow the trash reductions in the prior permits. Test claims associated with those challenges are pending. However , MRP 3.0 contains additional requirements, including the revised Trash Generation Map that includes private land drainage areas that will be retrofitted with full trash capture devices. (See Provision C.10.a.ii.b) In addition, SAN JOSE must ensure that private lands that are moderate, high, or very high trash generating, and that drain to storm drain inlets that Permittees do not own or operate (private), but that are plumbed to SAN JOSE's storm drain systems are equipped with full trash capture systems or are managed with trash discharge control actions equivalent to or better than full trash capture systems by July 1, 2025. MRP 2.0 did not include these requirements. MRP 3.0 also contains updated requirements for SAN JOSE to be eligible for trash load credit, including a revised and updated Direct Discharge Plan. However, that Direct Discharge Plan is optional, and part of the test claim as it relates to C.17, discussed below. The optional credits will expire by June, 2025. San Jose anticipates having a more detailed cost estimate within the next Fiscal Year.⁸⁶

15. For Provision C.15, comparing MRP 2.0 with MRP 3.0, there are increased requirements regarding the Conditionally exempt Emergency Discharges of Firefighting Water and Foam (C.15.b.iii). MRP 3.0 requires

⁸⁵ Filing, page 38 (Declaration of Rajani Nair). For Provision C.8, it is unclear if C.8 is being pled or if only C.8.d.iv. is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸⁶ Filing, page 38-39 (Declaration of Rajani Nair). For Provision C.10, it is unclear if C.10 is being pled or if only C.10.a.ii.b is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

regional coordination to evaluate opportunities to reduce the impacts of firefighting activity, and submit a Firefighting Discharges Report of the Working Group. It requires preparation of outreach materials on containment and BMPs and SOPs for contractors, and coordination with Cal Fire, Cal Department of Toxic Substance Control and United States Forest Service. This coordination and outreach were not required under the prior permit.⁸⁷

16. For Provision C.17 , this is a completely new provision related to Discharges Associated with Unsheltered Homeless Populations. C.17 is to "identify and ensure implementation of appropriate control measures, to address nonstormwater discharges associated with unsheltered homeless and includes numerous components:

- Provide a biennial point-in-time census, locations of unsheltered residents, discharges and water quality related impacts and sanitation-related needs
- Collectively with other Permittees develop Best Management Practices
- Describe BMPS including those already implemented to address discharges with homelessness that impact water quality
- Identify regional efforts to address discharges associated with homelessness, including recommendations for engagement efforts
- Identify actions during COYID-19 pandemic to reduce the spread of virus in homeless population, including hotel housing, and long term practicality of approaches
- Provide mapping of unsheltered populations, including relation to storm drain inlets, streams, rivers, flood control channels, and surface water bodies
- Report on programmatic efforts to address discharges related to homelessness, including service programs, coordination with social services, efforts to provide housing, jobs, and related services
- Identify and implement BMPs to address discharges associated with homelessness that impact public health, and reporting approximate location of portion of the homeless and location of where they are served , actions that may be implemented include " Safe parking areas", provision of mobile pump-out services, voucher for property RV sanitary sewage disposal, updating sidewalk/street plaza cleaning of human waste, clean or pickup programs
- Review biannual point in time census to update services
- Reporting Requirements

17. Although SAN JOSE provided many of these programs and services, including those identified in the Direct Discharge Plan submitted to the

⁸⁷ Filing, page 39 (Declaration of Rajani Nair). For Provision C.15, it is unclear if C.15 is being pled or if only C.15.b.iii. is being pled, whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

Regional Board, this is the first mandate on the unsheltered populations within a MRP.⁸⁸

18. Provisions C.20 and C.21 are also completely new provisions to MRP 3.0. Provision C.20 requires a fiscal analysis of the capital and operation and maintenance costs to comply with the requirements of the MRP. In addition, the analysis must demonstrate the source of the funds and identify any funding for the upcoming permit year. Provision C.21, requires an update to the Asset Management Plan to ensure the satisfactory condition of all hard assets constructed during the this and MRP 2.0. Asset Management Plant must include a description of all of the categories of assets, and a plan to evaluate a strategy for prioritizing and scheduling maintenance, rehabilitation and replacement of inventories assets , and implementation of the Plan by July 1, 2025. In addition, SAN JOSE must prepare a Climate Change Adaptation Report to identify potential climate change threats to assets.⁸⁹

19. In addition to the SAN JOSE's percentage of the Santa Clara Valley Program Costs identified above , and the costs in the Declaration of Mathew Nguyen filed in support of this test claim, SAN JOSE anticipates increased costs related to MRP 3.0's new or increased requirements as follows:

(a) For Provision C.15, San Jose Fire in cooperation with other Departments, and with the assistance of members of City employees that I supervise, has been participating in regional collaborative meetings. It is estimated that SAN JOSE will incur more than \$1,000.00 in staff time participating in these collaborative meetings. Moreover, implementation of any future Best Management Practices (BMPS) cannot be calculated yet and is not included in this estimate.

(b) City staff responsible for the Beautify San Jose project provided a budget of \$4,232 ,979 for FY 2023- 2024 itemized as follows: the Recreational Vehicle Pollution Prevention Program regarding biowaste (\$1,065,019); Cash 4 Trash (\$1,430,346); Waterway Encampment trash routes/ garbage (\$1,437,014) and Creek Cleanups (\$300,000). These annual costs are not expected to decrease during the permit term resulting in a total cost of at least \$21 million.

(c) In addition, City Housing Staff responsible for the Department of Housing and Urban Development provided the prior point in time housing count conducted by a City Contractor, Applied Survey Research for

⁸⁸ Filing, page 40 (Declaration of Rajani Nair). For Provision C.17, it is unclear whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

⁸⁹ Filing, page 41 (Declaration of Rajani Nair). For Provision C.20 and C.21, it is unclear whether the activities are new or are modified existing activities, and no costs or fiscal years are provided.

\$172,292.00. This cost for the count does not include additional mapping or other requirements of C.17, SAN JOSE will provide an updated estimate when it is complete.⁹⁰

Finally, the following sixteen sections of the Order pled are listed in this *Declaration*, however, no sections of the Order are pled in *Section 4* of the Test Claim Form:⁹¹ C.2, C.2.h;⁹² C.3, C.3.b.ii(4) and C.3.b.ii(5);⁹³ C.5;⁹⁴ C.8 and C.8.d.iv;⁹⁵ C.10 and C.10.a.ii.b;⁹⁶ C.12;⁹⁷ C.15 and C.15.b.iii;⁹⁸ C.17;⁹⁹ C.20;¹⁰⁰ and C.21.¹⁰¹ With respect to funding, Mr. Nair states:

20. SAN JOSE diligently pursues other avenues of funding for the MRP requirements. For example, SAN JOSE received grants from CalTrans for large trash capture devices. However, such grants do not include the operation of maintenance of the devices. SAN JOSE also appreciates the state grants it has received which helped fund the Martha Garden Green Streets Ally Projects. Such grants do not cover the entire costs of projects, nor operation and maintenance and require matching funds.

21 . Although SAN JOSE has a stormwater fee in existence prior to the adoption of Proposition 218, funds from that fee are inadequate to meet

⁹⁰ Filing, page 41-42 (Declaration of Rajani Nair). For Provision C.15, it is unclear whether the activities are new or are modified existing activities, only fiscal year 2023-2024 is provided, and the costs appear to be associated with budgets or projects instead of with new activities or modified existing activities alleged to be mandated by the section of the Order pled. Where costs are zero, please state zero costs and associated fiscal year and where costs are unknown, estimates of costs and associated fiscal years must be provided.

⁹¹ Filing, page 2 (Test Claim Form).

⁹² Filing, page 37 (Declaration of Rajani Nair).

⁹³ Filing, page 37-38 (Declaration of Rajani Nair).

⁹⁴ Filing, page 38 (Declaration of Rajani Nair).

⁹⁵ Filing, page 36, 37, 38 (Declaration of Rajani Nair).

⁹⁶ Filing, page 37 and 38-39 (Declaration of Rajani Nair).

⁹⁷ Filing, page 37 (Declaration of Rajani Nair). No further discussion is included regarding provision C.12.

⁹⁸ Filing, pages 39, 41 (Declaration of Rajani Nair).

⁹⁹ Filing, pages 36, 37, 39, 40, 42 (Declaration of Rajani Nair).

¹⁰⁰ Filing, pages 36, 37, 41 (Declaration of Rajani Nair).

¹⁰¹ Filing, pages 36, 37, 41 (Declaration of Rajani Nair).

ongoing existing operation and maintenance requirements of the storm sewer system and are inadequate to meet increased mandates.¹⁰²

However, no funding is listed in *Section 5* of the Test Claim Form, which indicates instead "As described in the narrative."¹⁰³

Also in *Declarations*, Mr. Mathew Nguyen provides a general overview of costs associated with several of San Jose's green street and regional stormwater improvement projects.¹⁰⁴ However, Mr. Nguyen associates no fiscal years with any of the costs and states "These are merely known examples of the unfunded cost of green streets; others are anticipated to rise, given the revised permit language."¹⁰⁵ In addition, Mr. Nguyen provides information regarding four sections of the Order pled, descriptions of activities, and some costs, but does not clearly state: (1) each section of the Order pled alleged to mandate each activity; (2) which activities are new; (3) which activities are modified existing activities; (4) the costs of each activity for the claimant for the full fiscal year the Test Claim is filed; and (5) the costs of each activity for the claimant for the full fiscal year following the fiscal year for which the Test Claim is filed, as required, and as follows:¹⁰⁶

7. SAN JOSE is also required to have GSI low impact development in utility trenching projects that are - on average - over the entire length of the project, larger than 8 feet wide and disturbed over 1 acre of impervious surface. SAN JOSE currently does not have a project planned that would trigger this requirement. However, it is a new permit condition C.3.b.ii.5. Unless the trenching project is required by development , I am not aware of any funding source for this work.¹⁰⁷

8. SAN JOSE must also identify " information missing from MS4 maps and develop a plan to update the maps to include " locations, size or specifications , materials of construction and condition." [C.5.f.ii(1).] SAN JOSE believes it would cost an initial \$2 million to locate and update any gaps in the existing GIS data, and \$2.0 million per year to video the line. It may take approximately 12 years to completely video the system,

¹⁰² Filing, pages 41-42 (Declaration of Rajani Nair).

¹⁰³ Filing, page 2 (Test Claim Form).

¹⁰⁴ Filing, pages 45-48 (Declaration of Mathew Nguyen).

¹⁰⁵ Filing, page 46 (Declaration of Mathew Nguyen).

¹⁰⁶ Filing, pages 45-48 (Declaration of Mathew Nguyen). It is unclear throughout whether the provisions pled are alleged to be new or whether the activities alleged to be mandated by each section of the Order pled are new or are modified existing activities, as required.

¹⁰⁷ Filing, page 46 (Declaration of Mathew Nguyen).

assuming the SAN JOSE can utilize an existing data base system. This estimate does not include any costs of repair or rehabilitation.¹⁰⁸

9. SAN JOSE is required to meet trash load reduction requirements "full trash capture systems or equivalent" by June 30, 2025. The City must also provide an updated Trash Generation Map that includes private land drainage that will include "GIS layers and appropriate metadata" that identifies locations and drainage areas of trash capture devices (C.10.a.ii). I am responsible for estimating the costs of trash capture devices for the City. SAN JOSE is working on estimating the costs of increased mapping requirements. For large trash capture devices, CALTRANS reimbursed construction costs of the devices that also serve its right of way. However, SAN JOSE maintains these devices. SAN JOSE estimates the cost to inspect and maintain the existing trash capture devices is \$2,396,819 annually. This includes the necessary personnel and equipment. SAN JOSE will provide an updated estimate for future installation of trash capture devices, however, CALTRANS will only share costs for trash capture devices that also serve its right of way. SAN JOSE's obligation under C.10 is much broader than that.¹⁰⁹

The following four provisions are listed in Mr. Nguyen's *Declaration*, however, no sections of the executive order are pled in *Section 4* of the Test Claim Form:¹¹⁰ C.3.b.ii.5;¹¹¹ C.5.f.ii(1);¹¹² C.10 and C.10.a.ii.¹¹³ Section C.3.b.ii.5¹¹⁴ and section C.10¹¹⁵ appear in both *Declarations*, and section C.5¹¹⁶ appears in Mr. Nair's *Declaration*, but section C.5.f.ii(1) and C.10.a.ii¹¹⁷ appear only in Mr. Nguyen's *Declaration*.

Therefore, none of the *Declarations* make the connection between which activities performed by the City of San Jose are new and which are modified existing activities, the amount of associated costs of each by full fiscal years, and

¹⁰⁸ Filing, pages 46-47 (Declaration of Mathew Nguyen).

¹⁰⁹ Filing, page 47 (Declaration of Mathew Nguyen).

¹¹⁰ Filing, page 2 (Test Claim Form).

¹¹¹ Filing, page 46 (Declaration of Mathew Nguyen).

¹¹² Filing, pages 46-47 (Declaration of Mathew Nguyen).

¹¹³ Filing, page 47 (Declaration of Mathew Nguyen).

¹¹⁴ Filing, pages 37-38 (Declaration of Rajani Nair) and page 46 (Declaration of Mathew Nguyen).

¹¹⁵ Filing pages 38-39 (Declaration of Rajani Nair) and page 47 (Declaration of Mathew Nguyen).

¹¹⁶ Filing, pages 38 (Declaration of Rajani Nair).

¹¹⁷ Filing, pages 46-47 (Declaration of Rajani Nair).

the specific sections of the executive order pled are alleged to impose a reimbursable state-mandated program in this Test Claim, as required. Although over thirty sections are listed in the *Narrative*, only twenty are supported by the *Declarations*. In fact, the following sections are specified only in the *Narrative* and are not specified in either *Declaration*: C.3.b; C.3.j;¹¹⁸ C.5.f.ii;¹¹⁹ C.8.d;¹²⁰ C.8.d.i.1 and C.8.d.ii – vi;¹²¹ C.10.a.ii; C.10.b.v;¹²² C.11;¹²³ C.11.c; C.12.c; C.12.d; C.12.e;¹²⁴ C.11.f; C.12.f;¹²⁵ C.15.a.iii;¹²⁶ C.15.b.iii.(2)- (5);¹²⁷ C.10.f.ii;¹²⁸ C.17.a.2; C.17.a.ii;¹²⁹ C.17.ii(3);¹³⁰ C.17.ii.2;¹³¹ C.20.b; C.20.b.i;¹³² C.21.b.(3); C.21-1.¹³³ Finally, the following sections are specified in *Declarations*, but are not specified in the *Narrative*: C.2.h;¹³⁴ C.3.b.ii(4)¹³⁵ C.10.a.ii.b.¹³⁶

Government Code section 17553(b)(2)(A) requires *declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate*. Government Code section 17553(b)(2)(B) requires *declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs*. Government Code section 17553(b)(2)(C) requires *declarations*

¹¹⁸ Filing, page 20 (Narrative).

¹¹⁹ Filing, page 22 (Narrative).

¹²⁰ Filing, page 23 (Narrative).

¹²¹ Filing, page 23 (Narrative). See Filing, page 38 (Declaration of Rajani Nair). Mr. Nair identifies only Provision C.8.d.iv.

¹²² Filing, page 24 (Narrative).

¹²³ Filing, page 26 (Narrative).

¹²⁴ Filing, page 26 (Narrative).

¹²⁵ Filing, page 27 (Narrative).

¹²⁶ Filing, page 27 (Narrative).

¹²⁷ Filing, page 27 (Narrative).

¹²⁸ Filing, page 28 (Narrative).

¹²⁹ Filing, page 28 (Narrative).

¹³⁰ Filing, page 29 (Narrative).

¹³¹ Filing, page 30 (Narrative).

¹³² Filing, page 31 (Narrative).

¹³³ Filing, page 31 (Narrative).

¹³⁴ Filing, page 37 (Declaration of Rajani Nair).

¹³⁵ Filing, page 37 (Declaration of Rajani Nair).

¹³⁶ Filing, page 39 (Declaration of Rajani Nair).

describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify the costs associated with each new activity and modified existing activity by full fiscal year that are alleged to be mandated by each specific section of the executive order pled, and where costs are unknown, please provide estimated cost amounts.

Curing This Test Claim

Please verify that the information provided in all of the following documents is consistent across the test claim form, narrative, and declarations, and revise the test claim form(s), the narrative, and declaration(s) as follows:

(1) Revise the Test Claim Forms as follows:

- a. Please complete, electronically sign, and file the revised claim on the new, electronic Test Claim Form by requesting a form from the following link:

<https://csm.ca.gov/request-form.php>

Once a form is requested via the link, the request will be sent to Commission staff, who will log in to Adobe Sign and send the electronic claim form to the first Form Filler listed on the request form. Please note that Commission staff will respond Monday-Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays, only. Therefore, please plan to request the form as soon as you know you will need it and do not wait for your filing deadline to request the form.

Upon receipt, this digital claim form link is unique to your claim and will allow saving of your progress automatically. Once the first Form Filler completes their work, they may click Submit to send the form to the next Form Filler (if any). Once "Submit" is clicked, the Form Filler may not return to the form and the final person to receive it will be the Form Signer, which must be the person authorized to file a test claim pursuant to section 1183.1 of the Commission's regulations. Once it is digitally signed, the form will become locked and not able to be further edited, and a PDF version will be sent to the Form Filler(s) and the Signer. In addition, the names and email addresses of all Form Fillers and Form Signers will be included in the form as part of the digital signature technology and authentication process. The Form Filler (usually the claimant representative) shall then separately upload the digitally signed PDF and any supporting materials to the Commission's Dropbox to complete the filing.

- b. In *Section 3*, two names are listed on the Name and Title of Claimant Representative line. Pursuant to the Commission's regulations in section 1183.1, only one representative may be designated by the claimant to act

as its sole representative in this Test Claim, as is indicated in the directions for this section.

- c. In *Section 4* Order. No. R2-2022-0018 has been pled, although specific sections of the Order pled are not listed on the Test Claim Form they are listed in the *Narrative* and *Declarations* making it unclear which sections of the Order and associated activities whether new or modified existing, and the full fiscal years' costs of each are being pled in this Test Claim. In addition, the issue date of May 11, 2022 is listed where the effective date is required, as is indicated in the directions for this section. The *Narrative* indicates "On May 11, 2022, the California Regional Water Quality Control Board (Regional Board), San Francisco Bay Region issued an updated Municipal Regional Stormwater Permit (MRP 3.0)." The *Declaration* indicates "SAN JOSE is a permittee under the Municipal Regional Stormwater NPDES Permit, issued on May 11, 2022 by the California Regional Water Quality Control Board ('Regional Water Board'), San Francisco Bay Region, Order No. R2-2022-0018 (NPDES Permit No. CAS612008) (the 'MRP 3.0')." Therefore, it is unclear if May 11, 2022 is simply the issue date or is also the effective date of the Order.
- d. In *Section 5* although the box is checked, the line for identifying the following fiscal year and the statewide cost estimate of increased costs that all local agencies or school district will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is blank. All sections of the Test Claim Form are required to be completed.
- e. In *Section 5* the box is checked indicating all dedicated funding sources for this program are identified but each of the lines below are left blank. All sections of the Test Claim Form are required to be completed.

(2) Revise the *Narrative* to identify:

- a. The specific sections of statutes or executive orders alleged to contain a mandate, as required by Government Code section 17553(b)(1). Please link the specific sections of the executive order to the activities and costs alleged to be mandated by full fiscal year.
- b. The detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A). Please specify which provisions of the executive order pled allegedly mandate which new activities and costs by full fiscal year. Where costs are unknown, provide estimated amounts for the full fiscal year.
- c. A detailed description of the existing activities and costs that are modified by the mandate, as required by Government Code section 17553(b)(1)(B). Please specify which provisions of the executive order pled allegedly mandate which modified existing activities and costs by full fiscal year. Where costs are unknown, provide estimated amounts for the full fiscal year.

- d. The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate, as required by Government Code section 17553(b)(1)(C). Where costs are unknown, please provide estimated amounts by full fiscal year.
- e. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D). Where costs are unknown, please provide estimated amounts by full fiscal year.
- f. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- g. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by Government Code section 17553(b)(1)(H). In the event that there is no legislatively determined mandate, please state that.

(3) Revise the *Declaration(s)* to include:

- a. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A). Where costs are unknown, please provide estimates, as required.
- b. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Retaining Your Original Filing Date

To retain the original filing date of June 30, 2023, please revise the required elements and refile the Test Claim within 30 days of the date of this letter by **5:00 p.m. on November 10, 2023**. If a complete test claim is not received within 30 calendar days from the date of this letter, the executive director may disallow the original test claim filing date. (Cal. Code Regs., tit. 2, § 1183.1(f).)

As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

You are advised that the revised Test Claim is required to be filed on a form prescribed by the Commission and shall be digitally signed, using the digital signature technology and authentication process contained within the Commission forms. The completed form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single PDF file in accordance with subdivision

(c)(1)(C) of this section, and shall not exceed 500 megabytes. Accompanying documents exceeding 500 megabytes shall also comply with subdivision (c)(1)(D) of this section. (Cal. Code Regs., tit. 2, § 1181.3(c)(1)(B).)

You are further advised that the revised accompanying documents to the Test Claim are required to be electronically filed (e-filed) in an unlocked legible and searchable format using a “true-PDF” (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary, using the Commission’s Dropbox. Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission’s website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3(c)(1) and § 1181.3(c)(1)(A).) If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 11, 2023, I served via email to: Jennifer.Maguire@sanjoseca.gov and Colleen.Winchester@sanjoseca.gov the:

Notice of Duplicate and Incomplete Test Claim

Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 11, 2023 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

Sent via email to: Jennifer.Maguire@sanjoseca.gov and
Colleen.Winchester@sanjoseca.gov

Exhibit C

February 23, 2024

Jennifer Maguire
City of San Jose
200 E. Santa Clara Street, 17th Floor
San Jose, CA 95113

Colleen Winchester
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

RE: Second Notice of Duplicate and Incomplete Test Claim
*Test Claim for Unfunded Mandates Relating to the California Water Quality
Control Board, San Francisco Region*

Dear Ms. Maguire and Ms. Winchester:

On June 30, 2023, you filed a test claim filing with the Commission on State Mandates (Commission), on behalf of the City of San Jose, on the above-named matter. The City of Union City, however, filed the first test claim filing on same executive order before yours was filed, on June 30, 2023, which has been found to be incomplete. The first claim filed on a statute or executive order is the test claim under the governing statutes and regulations. Upon initial review, Commission staff found and notified you on October 11, 2023 that your filing was duplicative and incomplete. But if the City of Union does not timely cure its filing, then it would not be the test claim and the City of San Jose's claim could be accepted as the test claim if it is timely cured. The two cities could also choose to file jointly, if desired, but must still meet the statute of limitations requirements for filing new or amended claims. Therefore, the way to file jointly if the statute has already run for filing new or amended claims, is to add a new claimant to a claim already on file, which, pursuant to section 1181.2 of the Commission's regulations would not be an amendment to the test claim. Note, however, that the pleading of additional provisions, statutes, or executive orders would constitute a new test claim or an amendment to an existing test claim.

On January 9, 2024, both the City of Union City and the City of San Jose filed responses to each Notice of Duplicate and Incomplete Test Claim filing. Upon initial review, Commission staff finds that your Test Claim is incomplete for the following reasons:

- (1) Your filing is a duplicate test claim filing since a Test Claim was filed by the City of Union City (claimant) on the above-named executive order before this Test Claim on the same day, June 30, 2023.
- (2) The revised, digitally signed *Test Claim Form* was not filed in the Commission's dropbox with your response, as required by the Commission's regulations in section 1181.3(c)(1)(B).
- (3) The *Narrative* does not provide:
 - a. The specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, as required by Government Code section 17553(b)(1).

- b. A detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A)
- c. A detailed description of the existing activities and costs that are modified by the mandate, as required by Government Code section 17553(b)(1)(B).
- d. The actual increased costs that will be incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate, as required by Government Code section 17553(b)(1)(C).
- e. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D).
- f. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- g. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by Government Code section 17553(b)(1)(H).

(4) The *Declaration(s)* do not provide:

- a. Evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.
- b. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A).
- c. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Duplicate Test Claims Will Not Be Accepted

On June 30, 2023, the City of Union City (claimant) filed a Test Claim prior to this test claim filing on the above-named executive order. A “test claim” is the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. (Gov. Code §17521.) Though multiple claimants may join together in pursuing a single test claim, the Commission will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies. (See Cal. Code Regs., tit. 2, §1183.1; *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, page 872, fn. 10.) Thus, the test claim “functions similarly to a class action and has been established to expeditiously resolve disputes affecting multiple agencies.” (Cal. Code Regs., tit. 2, §1181.2(s).)

Although the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission, other similarly situated affected agencies may participate in the process by submitting comments in writing on any agenda item as provided in section 1181.10 of the Commission's regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.

The Commission's regulations also provide that test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.

Otherwise, the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently. (Cal. Code Regs., tit. 2, §1183.1(b)(1-3).)

In addition, although all new test claims and amendments thereto are required to meet the statute of limitations, pursuant to section 1181.2 of the Commission's regulations adding a new claimant to a claim already on file is not an amendment to the test claim.

Finally, if the City of Union City's filing is not timely cured, your test claim filing may become the Test Claim on this Order if it is timely cured.

The Digitally Signed Test Claim Form Must Be Filed in the Commission's Dropbox Separately from the Attachments

The Commission's regulations in section 1181.3(c)(1) require the following:

(c) Filing and Service. New filings and written materials may be filed as described in this subdivision.

(1) E-Filing. Except as provided in subdivision (c)(2) of this section, all new filings and written materials shall be electronically filed (or e-filed) with the Commission.

(A) All new filings and written materials shall be filed via the Commission's e-filing system, available on the Commission's website. Documents e-filed with the Commission shall be in a legible and searchable format using a "true PDF" (i.e., documents digitally created in PDF, converted to PDF or

printed to PDF) or optical character recognition (OCR) function, as necessary.

(B) Any new filing required to be filed on a form prescribed by the Commission shall be digitally signed, using the digital signature technology and authentication process contained within the Commission forms. The completed form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single file in accordance with subdivision (c)(1)(C) of this section, and shall not exceed 500 megabytes. Accompanying documents exceeding 500 megabytes shall also comply with subdivision (c)(1)(D) of this section.

Although the digitally signed *Test Claim Form* was filed with the original filing, the *Test Claim Form* that was filed with the first response was filed as a PDF/A copy and the actual, revised digitally signed *Test Claim Form* was not filed in the Commission's dropbox as required and as was specified in the Notice of Duplicate and Incomplete Test Claim as follows:

The Form Filler (usually the claimant representative) shall then separately upload the digitally signed PDF and any supporting materials to the Commission's Dropbox to complete the filing.¹

Please file the revised, digitally signed *Test Claim Form* that includes the chain of custody page(s) at the end of the form and make any needed edits resulting from changes associated with this Second Notice of Duplicate and Incomplete Test Claim in addition to those already noted in the Notice of Duplicate and Incomplete Test Claim that are not repeated in this letter.

The Identification of Specific Sections of Statutes or Executive Orders Allegedly Mandating Activities and Costs Is Required in the Narrative.

In the *Narrative*, the revised list of permit sections and a description of their associated activities is provided as follows:

Provision CI7.a.i(1): Gather and Utilize Data on Unsheltered Homeless Residents, Discharges, and Water Quality Impacts associated with Homelessness and Sanitation-Related Needs

Provision CI7.a.i(2): Coordinate and Prepare a Regional Best Management Practices Report that Identifies Effective Practices to Address NonStormwater Discharges Related to Homelessness

Provision CI7.a.ii(1): Submit a Map Identifying the approximate locations of Unsheltered Homeless Populations and their Locations to Storm Drain Inlets, Rivers, Flood Control Channels and Other Surface Water Bodies

Provision CI7.a.ii(2): Report on Programmatic Efforts to Address MS4 Discharges Associated with Homelessness

¹ Notice of Duplicate and Incomplete Test Claim issued October 11, 2023, page 24.

Provision C17.a.ii(3): Identify and Implement Best Management Practices to Address MS4 Discharges Associated with Homelessness that Impact Water Quality; Evaluate and Assess Effectiveness of BMPs, Portion of Unsheltered Served by BMPs, Approximate Locations of those Not Reached, or not fully Reached

Provision C17.a.ii(4): Review and Update Implementation Practices with data from biennial Point-In-Time Census and Regional Coordination
Provision C17.a.iii(1): Submit a Best Management Report with the 2023 Annual Report

Provision C17.a.iii(2): Submit a Map with the 2023 and 2025 Annual Reports; and Report on the BMPs and Effectiveness in 2023 and 2025 Annual Reports²

Also, in the *Narrative*, in the section titled “5. SAN JOSE Will Incur Significant Costs as the Result of Provision C.17.a.ii(1): Submit a Map Identifying the approximate Location of Unsheltered Homeless Populations and their Locations to Storm Drain Inlets, Rivers, Flood Control channels and Other Surface Water Bodies”³ provides a description of activities and costs amounts for fiscal year 2022-2023 as follows:

This provision requires two things a survey of the unhoused and mapping of their locations. SAN JOSE is required to do a point in time survey related to the unsheltered for Federal Housing and Urban Development (HUD). 12 SAN JOSE contracts with the County of Santa Clara for the survey, which cost \$125,000.00 for Fiscal Year 2022-2023 (Henninger Dec. ¶18.)

Moreover, the HUD point in time survey is significantly less intensive than the mapping required under MRP 3.0. Under the new requirement, maps must show the unsheltered "in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies." (C.17a.ii.2.) SAN JOSE incurred additional costs through SCVURPP for this additional mapping, which is included in the FY 2022-2023 amounts above (\$22,575.00).⁴

However, no cost amount is provided for the fiscal year following the fiscal year for which the test claim is filed (fiscal year 2023-2024) and the table provided at the end of the section indicates “n/a”⁵ which is incorrect. In the event that the costs alleged for this activity in fiscal year 2023-2024 are zero, please specify that.

² Test Claim, Volume 1, page 14 (Narrative).

³ Test Claim, Volume 1, page 27 (Narrative).

⁴ Test Claim, Volume 1, page 27 (Narrative).

⁵ Test Claim, Volume 1, page 34 (Narrative).

In addition, the *Narrative* includes the following table that purports to provide the amount of costs alleged to be mandated by the state:

The costs for this work are summarized in the table below. SAN JOSE diligently pursues grants and other support for this work. However, as shown, many of the programs are funded by one-time grants. Noteworthy is SAN JOSE's \$16,206,750 investment of voter approved Measure E funds available for general purposes.

HOMELESS PREVENTION, SUPPORT AND MANAGEMENT PROGRAMS, FY 22-23		
Housing Outreach teams	Engagement, case management and connection to social services for individuals experiencing homelessness at 15 SOAR sites, 10 along waterways C.17.a.ii(2), C.17.a.ii(3), C.10.f.iii(b)(i)	28 FTE Citywide teams; \$8.7M from State Homeless Housing Assistance, and Prevention ["HHAP" (one-time)], State, Emergency Solutions Grant "ESG" (ongoing), and Community Block Development Grants "CDBG" (ongoing)
Homeless Street Outreach Valley Water Flood Control Project Area	Engagement, case management and connection to social services along Coyote Creek in Valley Water Flood Project area C.17.a.ii(2), C.10.f.ii(b)(i)	7.0 FTE; \$1.8 M from Valley Water for Coyote Creek (one-time funded)
Safe Encampment Resolution (State Encampment Resolution funds)	Restore and activate a section of the trail through use outreach, housing placement, abatement, beautification and activation; and designing a program model to scale	7.0 FTE; \$2M from State Encampment Resolution program (one-time)

HOMELESS PREVENTION, SUPPORT AND MANAGEMENT PROGRAMS, FY 22-23		
	C.17.a.ii(3), C.10.f.ii(b)(i)	
Emergency Interim Shelter Beds	Provides case management, employment assistance and connection to other services (benefits, healthcare, etc.). C.17.a.ii(3)	Contracted Services; \$19M from Measure E (on-going), State HHAP (one-time) and State Permanent Local Housing Allocation Program "PLHA" (on-going)
Supportive Parking for lived in Recreational Vehicles	Designated parking lot with 42 spaces. Program offers onsite supportive services for individuals living in recreational vehicles. C.17.a.ii(3)	Contracted Services; \$1,516,500 from State HHAP (one-time), Federal American Rescue Plan Act "ARP A" (one-time), Local Housing Trust Fund "HTF" (one-time)
Portable Restrooms	Portable restrooms located at 6 encampment Locations within waterways.	\$2,000,000 from Emergency Solutions Grant "ESG-CV" (one-time)
Mobile Shower and Laundry	Provides mobile shower and laundry services six days a week C.17 .a.ii(3), C.10.f.ii(b)(i)	\$1,000,000 in local HTF (onetime) and State HHAP3 (onetime)
TOTAL for FY 22/23		Total: \$36,016,500 City funded (Voter-approved Measure E) \$16,206,750.

Similarly, for Fiscal Year 23/24, SAN JOSE proposes to spend \$47.5 million in Measure E funds for this housing work. (Henninger Dec., ¶13.)

In addition to SAN JOSE's Housing Department's significant work, SAN JOSE's BEAUTIFY SJ Initiative focuses on cleaning up and restoring public and open space within the city. SAN JOSE piloted several programs identified in the permit, including "cash for trash" which provides vouchers for bags of trash from those living along the waterways and weekly trash pickups from those living along the waterways. (Rufino Dec., ¶¶5-11.)

These programs come at significant expense, the total (\$3,266,320.06) is the percentage of the citywide program for those living along the waterways. SAN JOSE received grant funds in the amount of \$180,000.00 from Valley Water and has a contract with the County of Santa Clara for

unhoused encampment cleaning, routine garbage, debris, biowaste, hazardous materials from encampments within County Roads and Parks.⁶

However, this series of amounts includes sections other than those pled in this Test Claim and does not appear to agree with any of the total amounts provided elsewhere in the *Narrative*.

Further, the following tables are provided in the *Narrative* that do not associate costs with any sections at all:⁷

Program	FY 2022-2023 Expenses
Cash for Trash	\$154,877.06
Coyote Creek Flood Protection Project	\$45,519.64
Creek Partners	\$155,631.43
Encampment Abatements*	\$634,989.22
Encampment Routes*	\$1,047,394.57
Interagency (interjurisdictional partners)*	\$177,278.72
RV Pollution Prevention Program	\$354,895.73
Winter Storm Debris Cleanup	\$596,143.92
Total	\$3,266,320.06
Total program Budget	\$17,873,229.00
Less External Funding Sources	
Valley Water	(\$180,000.00)
County of Santa Clara County, primarily on-land	(\$219,518.00)

(Rufino Dec. ¶ 15)

For Fiscal Year 2023-24, SAN JOSE added a Waterways Encampment Team and increased the budget related to those along the waterways to \$6,411,784, excluding on land routes and abatements. The Valley Water funds were exhausted in FY22-23 are no longer available, but the County of Santa Clara extended its contract through 2027.

Program	FY 2023-2024 Expenses
Cash for Trash	\$1,931,722.00

⁶ Test Claim, Volume 1, pages 29-30 (Narrative).

⁷ Test Claim, Volume 1, page 31 (Narrative).

Program	FY 2023-2024 Expenses
Creek Partners	\$300,000.00
Encampment Routes and Abatements (on-land)	\$13,447,167.00
Interagency	\$1,811,000.00
RV Pollution Prevention Program	\$893,062.57
Waterways Encampment Team	\$1,476,000.00
Total (excluding on land)	\$6,411,784.57
Program Total	\$19,858,951.57
County of Santa Clara (County Parks/lands primarily onland)	(\$360,000.00)

In addition, staff of the Environmental Services Division (ESD) will incur staff time related to coordination on structural barriers, managing contractor clean ups, implementing creek clean ups, preparing, attending and managing clean ups, and assessing trash levels.

FY: 22-23 \$144,284.32 less \$95,489.53 Environmental Protection Agency Grant, "Clean Creeks Healthy Watersheds"

FY: 23-24 \$214,816.01 (less \$147,927.82) Environmental Protection Agency Grant, "Clean Creeks Healthy Watersheds"

(Nair, Dec. ¶14.)⁸

In addition, in the *Narrative*, the section titled "8. SAN JOSE Will Incur Significant Costs as the Result Provision C.17a.ii(4): Review and Update Implementation Practices with Data From the Biennial Point-In-Time Census and Regional Coordination"⁹ provides a description of activities alleged to be mandated by the state and some costs as follows:

Provision C.17.a.ii.(4) requires shall use the information generated through the biennial point- in-time census surveys and related information, and the regional coordination tasks (as described above) to review and update their implementation practices.

BEAUTIFYSJ staff anticipates requiring additional staffing needs to meet the ongoing reporting and coordination as required by the Permit. This is anticipated to be a fulltime Graphic Information Systems Specialist

⁸ Test Claim, Volume 1, page 31-32 (Narrative).

⁹ Test Claim, Volume 1, page 32 (Narrative).

(\$77,121.00 salary) and ½ an analyst position (.5 FTE, \$70,564 salary), and 1.0 FTE Senior Analyst (\$132,765 salary). (Rufino Dec, ¶17.)¹⁰

However, no cost amount is provided for the fiscal year for which the test claim is filed (fiscal year 2022-2023) and the table provided at the end of the section indicates “n/a”¹¹ which is incorrect. In the event that the costs alleged for this activity in fiscal year 2022-2023 are zero, please specify that.

Further, a table is provided near the end of the *Narrative* that appears to track some of the cost amounts provided in the *Narrative* but does not clearly agree with all of the cost amounts already provided:

Provision	FY 22-23	FY23-24 (estimated)
C.17.a.i(I)	\$1,253.85	834.03
CI7.a.i(2)	\$26,923.39	\$16,519.85
C17.a.ii(I)	\$125,000.00	n/a
CI7.a.ii(2)	\$9,242.09	\$5,277.43
CI7.a.ii(3)	\$16,206,750.00	\$47,500,000.00
	\$2,866,802.00	\$6,051,784.67
	\$48,794.50	\$66,888.19
CI7.a.ii(4)	n/a	\$233,407.00
C17.a.iii(I)	Incorporated above	Incorporated above
C.17.a.iii(2)	\$1,917.99	\$2,325.30
Total	\$19,286,683.82	53,877,036.47
TOTAL General Fund, including Measure E	\$19,247,346	\$53,852,081

Of this total number, SAN JOSE has used its storm sewer fee for these programs with the exception of C.17.a.ii(I) and (3). However, SAN JOSE's storm sewer fee predates Proposition 218, cannot be raised without voter approval or notice and an opportunity to protest. As a result, SAN JOSE's fee is inadequate to meet this and future operation and maintenance obligations. Provision C.17.a.ii(3) is only funded with general funds, including funds from Measure E (a voter-approved, general revenue ballot initiative.)¹²

Also, the *Narrative* provides information regarding funding for the activities and costs alleged to be mandated by the state which does not agree with the varied discussions of funding throughout the *Narrative* and *Declarations*.¹³

¹⁰ Test Claim, Volume 1, page 32-33 (Narrative).

¹¹ Test Claim, Volume 1, page 34 (Narrative).

¹² Test Claim, Volume 1, pages 35-35 (Narrative).

¹³ Test Claim, Volume 1, page 36 (Narrative). Please note that the PDF/A copy of the revised *Test Claim Form* lists several dedicated funding sources for this program and lists amounts of the Local Agency's general purpose funds and fee authority to offset

VI. FUNDING SOURCES

As discussed in more detail above, SAN JOSE does not have fee authority to offset these costs. SAN JOSE diligently pursues grants or other alternative funding, but as explained with the various provisions, the work is only partially funded. SAN JOSE is not aware of any state, federal or non-local agency funds that are or will be available to completely fund these new programs and increased levels of service.¹⁴

Finally, there is no mention in the *Narrative*, as required, of whether or not there is a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order. If the response is “none” please specify that in the *Narrative*.

Government Code section 17553(b)(1) requires *a written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate*. Government Code section 17553(b)(1)(A) requires *a detailed description of the new activities and costs that arise from the mandate*. Government Code section 17553(b)(1)(B) requires *a detailed description of the existing activities and costs that are modified by the mandate*. Government Code section 17553(b)(1)(C) requires *the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate*. Government Code section 17553(b)(1)(D) requires *the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. Government Code section 17553(b)(1)(H) requires *identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order*. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify which sections of executive orders are pled; identify which are alleged to mandate a new activity and which are alleged to mandate a modified existing activity; and provide the associated total costs of each in full fiscal years. Please provide total estimated amounts of costs where actual costs are unknown for the full fiscal year; and please verify that that the information provided in the filing is consistent across the *Test Claim Form*, *Narrative*, *Declaration(s)*, and *Documentation*. In addition, if no legislatively determined mandate that may be related to the same statute or executive order has been identified, please state that fact both on the *Test Claim Form* and in the *Narrative*, as required.

The Identification of a Statewide Cost Estimate Is Required in the Narrative.

In addition, the *Narrative* states:

To estimate the statewide costs for the fiscal year following the effective date of the requirements (FY 23-24), SAN JOSE relies on the January 2023 Annual Homeless Assessment Report from the U.S. Department of Housing

costs that are listed as dedicated funding sources for this program that do not appear to be included in the revised *Narrative*.

¹⁴ Test Claim, Volume 1, page 36 (Narrative).

and Urban Development (HUD) **2023 Annual Homeless Assessment Report: Part 1: Point-in-Time Estimates**, for January, 2023 (HUD PIT survey), which provides an annual snapshot of the number of individuals in shelters, temporary housing, and in unsheltered settings, for January, 2023 (report released December, 2023).

In California overall homeless is estimated at 181,399. Of those, 9,903 are located within Santa Clara County, with approximately 6,200 individuals experiencing homelessness, of which approximately 70% are unsheltered. (Henninger Dec.116.) Assuming SAN JOSE's cost per homeless person is extrapolated to all homeless within California, the Statewide Estimate is \$1.08 billion, roughly 30 times SAN JOSE's costs of \$36 million for Fiscal Year 2022-2023. SAN JOSE significantly increased its budget for FY 23-24, which is not used as an estimate because it is unrealistic to assume this level of investment. Assuming that the jurisdictions received the same level of support from outside agencies, the Statewide estimates for these provisions would be:

Provision	FY 22-23	Statewide
C.17.a.i(I)	\$1,253.85	\$25,020.90
CI7.a.i(2)	\$26,923.39	\$807,701.70
C17.a.ii(I)	\$125,000.00	\$3,750,000.00
CI7.a.ii(2)	\$9,242.09	\$277,262.70
CI7.a.ii(3)	\$16,206,750.00	\$486,202,500.00
	\$2,866,802.00	\$86,004,060.00
	\$48,794.50	\$1,463,835.00
CI7.a.ii(4)	n/a	\$7,002,210.00
C17.a.iii(I)	Incorporated above	Incorporated above
C.17.a.iii(2)	\$1,917.99	\$57,539.70
Total	\$19,286,683.82	\$585,590,130.00

HUD PIT survey estimates homeless as 25,029 for the areas governed by the Permit, roughly 4 times the number in SAN JOSE. As a result, assuming permittees implemented all of SAN JOSE's practices, the costs could be \$144 million, based upon SAN JOSE's costs for Fiscal Year 2022-2023.¹⁵

However, it appears at least two different statewide cost estimates have been provided in this Test Claim. The *Narrative* indicates both “1.08 billion”¹⁶ and “\$144 million.”¹⁷ As

¹⁵ Test Claim, pages 35-36 (Narrative).

¹⁶ Test Claim, page 35 (Narrative). Please note that 1.08 billion in numbers is 1,080,000,000 not 1,800,000,000.

¹⁷ Test Claim, page 36 (Narrative).

the Test Claim Narrative states “However, this permit is region-wide, not statewide.”¹⁸ Therefore, in the *Narrative*, no single statewide cost estimate is provided, as required.

Government Code section 17553(b)(1)(E) requires a *statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed*. This is a statutory requirement to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please provide the total amount of the statewide cost estimate; and please verify that that the information provided in the filing is consistent across the *Test Claim Form, Narrative, Declaration(s)*, and *Documentation*.

The Identification of Specific Sections of Executive Orders Alleged to Contain Mandated Activities and Associated Actual or Estimated Costs Are Required In the Declarations.

In *Declarations*, Mr. Ragan Henninger provides information regarding funding as follows:

5. Where appropriate, grant-funding, the source of the funding, and whether these are one-time grant funds are listed in the table below. Attached are documents which are generated at or near the time of the dates on the documents for the services rendered and are prepared by those familiar with the work performed. They are kept in the ordinary course and scope of the SAN JOSE's business and are verifiable through accessing SAN JOSE's system. Contracts supporting these services are attached as Exhibit "A".

6. A portion of this work is funded by Measure E, a voter-approved measure approved on March 3, 2020. Measure E is a real property transfer tax imposed on property transfers of \$2million or more. The revenue provides funding for general city services, including affordable housing for seniors, veterans, the disabled, and low-income families. It is also used to help families who are homeless move into shelters. Measure E is not a dedicated funding source for homeless work. The Fiscal Year 2022-2023 Measure E Proposed Spending Plan (May, 2022) included \$6.17 million for Homeless Prevention and Rental Assistance and \$9 .2625 million for Homeless Support Programs, for a total of \$15.435 million (plus 5% of administrative costs equals \$16.20675 million). A copy of the Memorandum is attached as Exhibit "B", the relevant chart is as follows:¹⁹

However, no specific sections of the test claim permit are included in these descriptions of funding. In addition, Mr. Henniger provides a series of descriptions of programs that are not associated with any of the sections pled.²⁰

¹⁸ Test Claim, page 35 (Narrative).

¹⁹ Test Claim, Volume 1, pages 39-40 (Declaration of Ragan Henninger).

²⁰ Test Claim, Volume 1, pages 40-41 (Declaration of Ragan Henninger).

Further, Mr. Henninger provides the same chart cited above that appears in the *Narrative* that includes some sections pled and costs and section C.10.f.ii(b)(i)²¹ that was not pled in this Test Claim, plus additional charts that also appear to include spending plans that are not associated with any costs or sections pled.²² As was noted above, the *Narrative* states that no funding is available to fund these programs.²³ In addition, Mr. Henniger provides two different statewide cost estimates “\$1.08 billion”²⁴ and “\$144 million”²⁵ therefore it is unclear what is the statewide cost estimate for this Test Claim.

Also in *Declarations*, Mr. Neil Ruffino provides a series of descriptions of programs that are not associated with any of the sections pled.²⁶ In addition, Mr. Rufino states:

4. Under the Municipal Regional Stormwater Permit, effective July 1, 2022, Provision C.17a.ii(3), SAN JOSE must identify and implement Best Management Practices (BMPs) to address discharges associated with homelessness that impact public health, and reporting approximate location of portion of the homeless and location of where they are served. The Permit identified actions that may be implemented include "Safe parking areas", provision of mobile pump-out services, voucher for property RV sanitary sewage disposal, updating sidewalk/street plaza cleaning of human waste, clean or pickup programs.

5. SAN JOSE has piloted several of the potential BMPs identified in Provision C.17 both as part of its Direct Discharge Plan, as well as by Council direction to address the needs of this vulnerable community. SAN JOSE provides the cost of these programs to inform and estimate the amount of the costs necessary to comply with the new Permit Provision C.17 a, but also recognizes that this work and estimates exceeds mandatory requirements, as this work toward eliminating homelessness is a SAN JOSE priority.²⁷

However, it is unclear if these costs apply only to section C.17a.ii(3), the entirety of section C.17 which was not pled in this Test Claim, or C.17a, which also was not pled in its entirety in this Test Claim. In addition, Mr. Ruffino provides the same charts²⁸ that

²¹ Test Claim, Volume 1, pages 29-30 (Narrative) and pages 41-42 (Declaration of Ragan Henninger).

²² Test Claim, Volume 1, pages 43-44 (Declaration of Ragan Henninger).

²³ Test Claim, Volume 1, page 36 (Narrative).

²⁴ Test Claim, Volume 1, page 44 (Declaration of Ragan Henninger).

²⁵ Test Claim, Volume 1, page 45 (Declaration of Ragan Henninger).

²⁶ Test Claim, Volume 1, page 631 (Declaration of Neil Ruffino).

²⁷ Test Claim, Volume 1, page 630-631 (Declaration of Neil Rufino).

²⁸ Test Claim, Volume 1, page 632-633 (Declaration of Neil Rufino).

were provided in the *Narrative*²⁹ and cited above that does not associate the fiscal year 2022-2023 or fiscal year 2023-2024 costs with any of the sections pled in this Test Claim. Further, Mr. Ruffino provides some information regarding funding that is also not associated with any of the sections pled.³⁰ Finally, Mr. Ruffino states:

18. The costs for the relevant programs are anticipated to increase because SAN JOSE implemented a dedicated trash management team. The grant funding from Valley Water noted for Fiscal Year 22-23 was depleted and is not anticipated for Fiscal Year 23-24. However, the County of Santa Clara extended its agreement through 2027 for total cost contract of \$2,025,000.00. The contract does not segregate contract funds based upon year, but for purposes of estimating outside revenue for services, I assume that there will be equal distribution of funds for each year of the contract term, or \$360,000.00 per year. In addition, BEAUTIFYSJ anticipates requiring additional staffing needs to meet the ongoing reporting and coordination as required by the Permit. This is anticipated to be a fulltime Graphic Information Systems Specialist (\$77,121.00 salary) and¹/₂ an analyst position (.5 FTE, \$70,564 salary), and 1.0 FTE Senior Analyst (\$132,765 salary).³¹

Therefore, it is unclear if these additional amounts are in addition to the amounts provided above, which section of the permit pled is associated with these activities and costs that are allegedly mandated by the state.

Further, in *Declarations*, Mr. Rajani Nair provides a list of activities alleged to be mandated by the state and associates them with the sections pled³² and describes the actual activities performed as follows:

14. In addition to the BEAUTIFY SJ and the Housing Department Costs, as stated in the Declarations of Neil Rufino and Ragan Henninger it is estimated that SAN JOSE incurred or will incur additional costs in its Environmental Services Department (ESD).

(a) For Provision C.17.a.i.(1): ESD staff wrote content for, reviewed, and collaborated on the report.

(b) For Provision C.17.a.i.(2): ESD staff attendee regional meetings, edited and contributed to the Best Management Practices Report/

(c) For Provision C.17.a.ii(I): ESD staff has no additional work on the mapping work.

(d) For Provision C.17.a.ii(2): ESD staff works and coordinates with other

²⁹ Test Claim, Volume 1, pages 31-32 (Narrative).

³⁰ Test Claim, Volume 1, pages 632-633 (Declaration of Neil Rufino).

³¹ Test Claim, Volume 1, page 633 (Declaration of Neil Rufino).

³² Test Claim, Volume 2, page 5 (Declaration of Rajani Nair).

partners on the Direct Discharge Progress Report, which is submitted with the Stormwater Annual Report

(e) For Provision C.17.a.ii(3): ESD staff worked with other departments to coordinate work on structural barriers, managing contractor cleanups, implementing creek clean ups, preparing, attending and leading volunteer creek cleanups, assessing and characterizing trash levels, and coordinating with other agencies.

(f) For Provision C.17.a.ii(4): ESD staff has no additional work on the updating biannual point in time census.

(g) For Provision C.17.a.iii(l): ESD staff time is incorporated into other tasks mentioned above

(h) For Provision C.17.a.iii(2): ESD staff attended regional meetings reviewed versions of the mapping, and coordinated with partners
This staff time is summarized in the table below:³³

Provision	FY 22-23	FY 23-24 (estimated)
C.17.a.i(l)	\$1,253.84 ³⁴	\$843.03
Cl7.a.i(2)	\$3,094.55	\$2,966.02
C17.a.ii(l)	n/a	n/a
Cl7.a.ii(2)	\$9,242.09	\$5,277.43
Cl7.a.ii(3)	\$144,284.32 (\$95,489.53 grant from EPA "Clean Creeks Healthy Watersheds")	\$214,816.01 (\$147,927.82 grant from EPA "Clean Creeks Healthy Watersheds")
Cl7.a.ii(4)	n/a	n/a
C17.a.iii(l)	Incorporated above	Incorporated above
C.17.a.iii(2)	\$1,917.99	n/a
Total	\$161,046.63 (95,489.53) Grant \$48,794.79	\$255,699.82 (147,927.82) Grant \$77,772.00

However, as is noted above these costs appear to apply only to the Environmental Services Department and does not appear to represent the total amount of costs alleged to be mandated by the state.

Also in *Declarations*, Mr. Christopher Sommers provides the following cost amounts for section C.17:

11. I have estimated the costs to all Program Permittees during the first two fiscal years of the term of the MRP 3.0 for projects and tasks

³³ Test Claim, Volume 2, pages 6-7 (Declaration of Rajani Nair).

³⁴ Note that in the charts included in the *Narrative* above, this amount is provided as \$1,253.85.

conducted by the Program related to provision C17. These costs are summarized below:

Fiscal Year 2022-2023, \$75,000

Fiscal Year 2023- 2034 - \$46,800

SAN JOSE pays 30.1 % of these costs, and the remaining Program Permittees pay the balance. These costs include contributions to a regional *BMPs Report for Addressing Non-stormwater Discharges Associated with Unsheltered Homeless Populations* ("BMPs Report") submitted to the Regional Water Board in September 2023 in compliance MRP 3.0 provision C.17.a., mapping developed for Program Permittees as required by MRP 3.0 provision C.17, and guidance developed for Program Permittees on documenting BMPs and conducting an effectiveness evaluation of BMPs as required by MRP 3.0 provision C.17.³⁵

However, it is unclear what the amounts for the City of San Jose are, since they do not appear to be stated and the entirety of section C.17 has not been pled in this Test Claim. In addition, Mr. Sommers provides the following cost amounts for section C.17:³⁶

	FY 2022-23	FY2023-24	Total
Alameda Countywide Clean Water Program ¹	\$42,003	\$25,000	\$67,003
Contra Costa Clean Water Program ²	\$120,000	\$30,600	\$150,600
San Mateo Countywide Water Pollution Prevention Program ³	\$45,937	\$24,582	\$70,519
Santa Clara Valley Urban Runoff Pollution Prevention Program ⁴	\$75,000	\$46,800	\$121,800
Solano Stormwater Alliance ⁵	\$22,000	\$18,000	\$40,000
Totals	\$304,940	\$144,982	\$449,922

However, it is not clear that the City of San Jose is included in any of these total amounts and the entirety of section C.17 has not been pled in this Test Claim.

Finally, none of the four *Declarations* provides evidence of the date of first incurred costs, as required³⁷ and as is indicated on the *Test Claim Form* in *Section 4* as follows:

³⁵ Test Claim, Volume 2, page 984 (Declaration of Christopher Sommers).

³⁶ Test Claim, Volume 2, page 985 (Declaration of Christopher Sommers).

³⁷ Please note that the PDF/A copy of the revised *Test Claim Form* indicates both that the effective date of the permit and the date of first incurred costs is July 1, 2022. The originally filed digitally signed *Test Claim Form* did not indicate both.

*This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*³⁸

Therefore, none of the *Declarations* make the connection between the specific sections of the executive order pled, the activities performed by the City of San Jose, the amount of associated costs of each by full fiscal years that are alleged to impose a reimbursable state-mandated program in this Test Claim, as required. In addition, where the *Narrative* indicates that there is no dedicated funding for this program the *Declarations* appear to provide evidence of dedicated funding for this program, which is unclear.

Government Code section 17553(b)(2)(A) requires *declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate*. Government Code section 17553(b)(2)(B) requires *declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs*. Government Code section 17553(b)(2)(C) requires *declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program*. These are statutory requirements to file a test claim, which the filing submitted has failed to comply with, and are not optional. Please specify the costs associated with each new activity and modified existing activity by full fiscal year that are alleged to be mandated by each specific section of the executive order pled, and where costs are unknown, please provide estimated cost amounts. Please specify all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

A Finding of Costs Mandated by the State May Not Be Based on Hearsay Evidence Alone.

Section 1187.5(a) of the Commission's regulations provides that "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions." Government Code section 17559(b) provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record. This requires that each finding of fact that the Commission makes (including whether there are costs mandated by the state, which is a mixed issue of law and fact) must meet the *Topanga* standard. In *Topanga* the court explained:

Section 1094.5 clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the

³⁸ Test Claim Form, page 2.

agency's decision. Subdivision (b) of Code of Civil Procedure section 1094.5 prescribes that when petitioned for a writ of mandamus, a court's inquiry should extend, among other issues, to whether 'there was any prejudicial abuse of discretion.' Subdivision (b) then defines "abuse of discretion" to include instances in which the administrative order or decision 'is not supported by the findings, or the findings are not supported by the evidence.' (Emphasis added.) Subdivision (c) declares that 'in all . . . cases' (emphasis added) other than those in which the reviewing court is authorized by law to judge the evidence independently, 'abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.' . . .

A finding of increased costs mandated by the state is often a mixed question of law and fact under Government Code sections 17514 and 17556. Thus, any costs alleged, for which you seek a favorable finding of increased costs mandated by the state, must be supported by evidence in the record in accordance with section 1187.5 of the Commission's regulations.

Thus, the claimant must submit either declarations that include all of the required elements described above based on the declarant's own personal knowledge or the declarant's information and belief along with other non-hearsay evidence to support a finding of costs mandated by the state. The claimant must submit evidence of the date of first incurred costs that would be admissible over an objection in civil actions with regard to the issue of costs mandated by the state at this time since this issue is jurisdictional. Additionally, proof of costs of at least \$1000 is required and is jurisdictional. All statements of fact, including alleged actual costs incurred, shall be supported with documentary or testimonial evidence submitted in accordance with section 1187.5 of the Commission's regulations. Estimated costs not yet incurred are not held to the same evidentiary standard, however, as they are only estimates. To approve a test claim, the Commission must make a finding of both a state-mandated new program or higher level of service and costs mandated by the state and this evidence is critical to supporting that finding.

Curing This Test Claim

Please verify that the information provided in all of the following documents is consistent across the test claim form, narrative, and declarations, and revise the test claim form(s), the narrative, and declaration(s) as follows:

(1) Revise the *Test Claim Form* as follows:

- a. Please complete, electronically sign, and file the revised claim on the new, electronic Test Claim Form by requesting a form from the following link:

<https://csm.ca.gov/request-form.php>

Once a form is requested via the link, the request will be sent to Commission staff, who will log in to Adobe Sign and send the electronic claim form to the first Form Filler listed on the request form. Please note that Commission staff will respond Monday-Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays, only. Therefore, please plan to request the

form as soon as you know you will need it and do not wait for your filing deadline to request the form.

Upon receipt, this digital claim form link is unique to your claim and will allow saving of your progress automatically. Once the first Form Filler completes their work, they may click Submit to send the form to the next Form Filler (if any). Once “Submit” is clicked, the Form Filler may not return to the form and the final person to receive it will be the Form Signer, which must be the person authorized to file a test claim pursuant to section 1183.1 of the Commission’s regulations. Once it is digitally signed, the form will become locked and not able to be further edited, and a PDF version will be sent to the Form Filler(s) and the Signer. In addition, the names and email addresses of all Form Fillers and Form Signers will be included in the form as part of the digital signature technology and authentication process. The Form Filler (usually the claimant representative) shall then separately upload the digitally signed PDF and any supporting materials to the Commission’s Dropbox to complete the filing.

(2) Revise the *Narrative* to identify:

- a. The specific sections of statutes or executive orders alleged to contain a mandate, as required by Government Code section 17553(b)(1). Please link the specific sections of the executive order to the activities and costs alleged to be mandated by full fiscal year.
- b. The detailed description of the new activities and costs that arise from the mandate, as required by Government Code section 17553(b)(1)(A). Please specify which provisions of the executive order pled allegedly mandate which new activities and costs by full fiscal year. Where costs are unknown, provide estimated amounts for the full fiscal year.
- c. The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate, as required by Government Code section 17553(b)(1)(C). Where costs are unknown, please provide estimated amounts by full fiscal year.
- d. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(D). Where costs are unknown, please provide estimated amounts by full fiscal year.
- e. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, as required by Government Code section 17553(b)(1)(E).
- f. Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order, as required by

Government Code section 17553(b)(1)(H). In the event that there is no legislatively determined mandate, please state that.

(3) Revise the *Declaration(s)* to include:

- a. Evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.
- b. Actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate, as required by Government Code section 17553(b)(2)(A). Where costs are unknown, please provide estimates, as required.
- c. A description of new activities performed to implement the specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program, as required by Government Code section 17553(b)(2)(C).

Retaining Your Original Filing Date

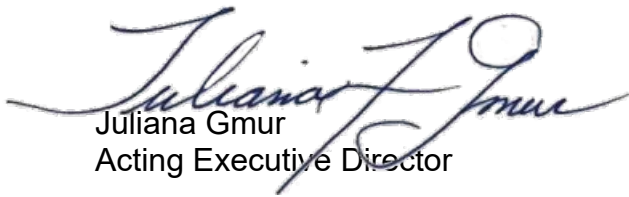
To retain the original filing date of June 30, 2023, please revise the required elements and refile the Test Claim within 30 days of the date of this letter by **5:00 p.m. on March 25, 2024**. If a complete test claim is not received within 30 calendar days from the date of this letter, the executive director may disallow the original test claim filing date. (Cal. Code Regs., tit. 2, § 1183.1(f).)

As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

You are advised that the revised Test Claim is required to be filed on a form prescribed by the Commission and shall be digitally signed, using the digital signature technology and authentication process contained within the Commission forms. The completed form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single PDF file in accordance with subdivision (c)(1)(C) of this section, and shall not exceed 500 megabytes. Accompanying documents exceeding 500 megabytes shall also comply with subdivision (c)(1)(D) of this section. (Cal. Code Regs., tit. 2, § 1181.3(c)(1)(B).)

You are further advised that the revised accompanying documents to the Test Claim are required to be electronically filed (e-filed) in an unlocked legible and searchable format using a "true-PDF" (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary, using the Commission's Dropbox. Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3(c)(1) and § 1181.3(c)(1)(A).) If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

Sincerely,



Juliana Gmur
Acting Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 23, 2024, I served via email to: Jennifer.Maguire@sanjoseca.gov and Colleen.Winchester@sanjoseca.gov the:

Second Notice of Duplicate and Incomplete Test Claim

Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 23, 2024 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

STATE of CALIFORNIA
**COMMISSION ON STATE
MANDATES**



<i>For CSM Use Only</i>	
Filing Date:	<div style="border: 2px solid blue; border-radius: 15px; padding: 10px; text-align: center;"> RECEIVED June 30, 2023 Commission on State Mandates </div>
TC #:	22-TC-07

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

Municipal Regional Stormwater Permit

Section 2

Local Government (Local Agency/School District) Name:

City of Union City

Name and Title of Claimant's Authorized Official pursuant to [CCR, tit.2, § 1183.1\(a\)\(1-5\)](#):

Joan Malloy, City Manager

Street Address, City, State, and Zip:

34009 Alvarado-Niles Road, Union City, CA 94587

Telephone Number

(510) 675-5344

Email Address

joanm@unioncity.org

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. ([CCR, tit.2, § 1183.1\(b\)\(1-5\)](#).)

Name and Title of Claimant Representative:

Gregory J. Newmark

Organization: **Meyers Nave**

Street Address, City, State, Zip:

707 Wilshire Blvd., 24th Floor, Los Angeles, CA 90017

Telephone Number

(213) 626-2906

Email Address

gnewmark@meyersnave.com

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to [Government Code section 17553](#) and check for amendments to the section or regulations adopted to implement it:

California Regional Water Quality Control Board, San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit; Order No. R2-2022-0018, as modified by Order No. R2-2023-0019; NPDES Permit No. CAS612008; issued May 11, 2022; effective date July 1, 2022; MRP3 Provisions C.3.b.ii.(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b

- ☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 30 / 2023
- ☒ A: Which is not later than 12 months (365 days) following [insert effective date] 07 / 01 / 2022, the effective date of the statute(s) or executive order(s) pled; or
- ☐ B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] / / , which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

([Gov. Code § 17551\(c\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\)](#) and [1187.5.](#))

Section 5 – Written Narrative:

- ☒ Includes a statement that actual or estimated costs exceed one thousand dollars (\$1,000). ([Gov. Code § 17564.](#))
- ☒ Includes all of the following elements for each statute or executive order alleged **pursuant to [Government Code section 17553\(b\)\(1\)](#)**:
- ☒ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;
- ☒ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;
- ☒ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;
- ☒ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2023 - 2024 Total Costs: \$68,200,880

☒ Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: General Fund and Clean Water Fund

Other nonlocal agency funds: None

Fee authority to offset costs: None

☒ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: _____

7/31/09 Statement of Decision in Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21; 3/26/10 Statement of Decision in Test Claim No. 07-TC-09; and the Commission's 3/24/23 adoption of the proposed decision regarding Test Claim 09-TC-03

☒ Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order: None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to [Government Code Section 17553\(b\)\(2\)](#) and [California Code of Regulations, title 2, section 1187.5](#), as follows:

☒ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☒ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☒ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to [Government Code section 17573](#), and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of [Government Code section 17574](#).

☒ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to [Government Code section 17553\(b\)\(3\)](#) and [California Code of Regulations, title 2, § 1187.5](#):

☒ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.
Pages PDF 536 to PDF 1524 (all pages below are to PDF).

☒ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 2166 to 2282.

- ☒ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 2284 to 2383.
- ☐ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.)* Pages 39 to 533.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to [Government Code section 17553](#)

- ☒ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to [California Code of Regulations, title 2, section 1183.1\(a\)\(1-5\)](#) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in [section 1183.1\(a\)\(1-5\)](#) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of [article XIII B, section 6 of the California Constitution](#) and [Government Code section 17514](#). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. ([Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.](#))

Joan Malloy

City Manager

Name of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Print or Type Title

Joan Malloy
Joan Malloy (May 22, 2024 12:47 PDT)

Signature of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)










Test Claim Form

Final Audit Report

2024-05-22

Created:	2024-05-21
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAcRJuoHlsZynSbCfGDhAQpXuWRetr1pZ8

"Test Claim Form" History

-  Document created by CSM Sign (csmsign@csm.ca.gov)
2024-05-21 - 11:55:00 PM GMT
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UNION CITY TEST CLAIM

IN RE

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
MUNICIPAL REGIONAL STORMWATER NPDES PERMIT**

**ORDER NO. R2-2022-0018
AS MODIFIED BY ORDER NO. R2-2023-0019
NPDES PERMIT NO. CAS612008
MAY 11, 2022**

5. WRITTEN NARRATIVE

IN SUPPORT OF UNION CITY TEST CLAIM

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NARRATIVE STATEMENT IN SUPPORT OF TEST CLAIM

I. INTRODUCTION

The City of Union City (“City” or “Union City”) seeks the Commission on State Mandate’s (“Commission”) approval of claims to recover costs associated with obligations mandated by several provisions of the Municipal Regional Stormwater Permit issued on May 11, 2022, (“MRP3”) by the California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”), effective July 1, 2022, and amended in October 2023 by Order No. R2-2023-0019.¹ The MRP3 regulates the discharge of stormwater runoff from the municipal separate storm sewer systems (“MS4s”) maintained by a total of 79 cities, counties, and flood control districts within the jurisdiction of six Bay Area regional stormwater programs.

The Test Claim cures the Test Claim filed by Union City on June 30, 2023 and is responsive to the Commission’s February 23 , 2024, Second Notice of Duplicate and Incomplete Test Claim.

This Test Claim addresses several broad categories of new mandates imposed by the MRP3:

- Union City seeks reimbursement for costly MRP3 requirements to achieve greater levels of trash load reduction than previously required. Under the MRP3, the state mandates that the City achieve a 100% trash load reduction or no adverse impact to receiving waters from trash by June 30, 2025. Also, for the first time, the state requires control of trash from private lands.

¹ A copy of the MRP3 is attached to Section 7 as Exhibit 1; an “unofficial version” of the MRP3, as modified, is attached to Section 7 as Exhibit 2. This version states: “**Important Note:** The current permit, MRP 3, comprises Order Nos. R2-2022-0018 and R2-2023-0019. The following is an unofficial version of MRP 3 (without the Fact Sheet and other Attachments) that incorporates amendments to MRP 3 adopted in October 2023, and that has been compiled for convenience purposes only. Please refer to the adopted orders for a complete and accurate copy of MRP 3. In the event of a conflict between the adopted orders and this unofficial version of MRP 3, the adopted orders shall control.” (Section 7, Ex. 2 at S7-0727) None of the provisions of the MRP3 at issue in this Test Claim are affected by the October 2023 modifications.

- The City seeks reimbursement for costly mercury and PCB control programs, including the implementation of treatment control measures to treat old industrial land use at 70% efficiency. The MRP3 also now requires Permittees to quantify the PCBs load reductions achieved through all the pollution prevention, source control, green stormwater infrastructure, and other treatment control measures.
- Permittees are required to implement low impact development (“LID”) source control, site design, and stormwater treatment onsite or at a joint stormwater treatment facility for certain road projects.
- The permit requires additional “green infrastructure” retrofits and requires Permittees to update their Green Infrastructure Plans as needed to ensure that municipal processes and ordinances allow and appropriately encourage implementation of green infrastructure.
- The MRP3 requires Permittees to collectively convene a regionwide Firefighting Discharges Working Group to reduce the impacts of emergency discharges to the MS4 associated with firefighting.
- The MRP3 requires Permittees to develop and submit a best management practice report that identifies effective practices to address discharges associated with unsheltered homeless populations.
- Permittees must develop a cost reporting framework and methodology to perform an annual fiscal analysis and develop an asset management plan.
- Additional costly water monitoring requirements, including the collection and analysis of the amount of trash discharged from MS4 outfalls and the implementation of a trash monitoring pilot program, monitoring of low impact development (“LID”) controls and monitoring pollutants of concern.
- Finally, and as a precaution, Union City seeks reimbursement for trash control, green infrastructure and monitoring requirement costs the MRP3 continues from the prior permits. These requirements were initially imposed in the prior permits, MRP2 and MRP1,² and are pending before the Commission in Test Claim 16-

² Prior to the effective date of the MRP3, Permittees were regulated by NPDES No. CAS612008, issued as Order No. R2-2015-0049 (November 19, 2015) (“MRP2”), which is attached to Section 7 as Exhibit 3. Prior to the effective date of the MRP2, Union City was regulated by Permit No. CAS612008 issued by Order No. R2-2009-0074 on October 14, 2009,

TC-03 and Consolidated Test Claims 10-TC-02, 10-TC-03 and 10-TC-05. The City does not believe it is or should be required to raise those same issues in this Test Claim, but does so in an abundance of caution.

On March 24, 2023, the Commission heard a municipal stormwater Test Claim 09-TC-03 involving Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, and on that date adopted a decision finding the permit terms in the MS4 permit at issue were not federal mandates. This is in line with the California Supreme Court in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 (“*Dep’t of Finance I*”). The High Court upheld the Commission’s determination that the challenged storm water provisions are state mandates rather than federal mandates. In addition, the Supreme Court clarified that opponents of the test claim, not the claimant, bear the burden of proving the applicability of any exceptions to the “general rule requiring reimbursement of all state-mandated costs.” (*Id.* at 769.)

Further, under existing law and Supreme Court authority, the new activities and increased services Union City must undertake to comply with the MRP3 are state mandates subject to subvention. The City respectfully requests that the Commission approve this Test Claim so that the MRP3 mandates are effectively funded and the City can continue its cooperation and collaboration with the Regional Water Board to improve water quality in the San Francisco Bay region with the necessary funding. Union City is committed to the improvement and maintenance of the quality of waters of the Bay and its tributaries, and will comply with the MRP3 to the best of its ability. Further, the City supports the objectives that the MRP3 is intended to achieve. The City submits this Test Claim only to address the fundamental issue of the limited financial ability of the City and its taxpayers to pay for the necessary activities to accomplish the objectives of the MRP3.

amended by Order No. R2-2011-0083 on November 28, 2011 (“MRP1”), a copy of which is attached to Section 7 as Exhibit 4.

II. LEGAL AND PROCEDURAL BACKGROUND

A. Regional Stormwater Permits

When a Regional Water Board issues a stormwater permit, it is implementing both federal and state law:

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), “[t]he primary means” for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra*, 503 U.S. at 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

(*City of Burbank v. State Water Res. Control Bd.* (2005) 35 Cal.4th 613 at 619-621.) Section 402(p) of the federal Clean Water Act establishes that an MS4 permit:

- (i) may be issued on a system or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(33 U.S.C. § 1342(p)(3)(B).)³

California is among the states that are authorized to implement the NPDES permit program. (33 U.S.C. § 1342(b).) Permits issued by the regional water boards under this authority must impose conditions that are at least as stringent as those required under the federal act. (33 U.S.C. § 1371; Cal. Water Code § 13377.)

However, relying on its state law authority or discretion, the regional water boards are free to issue permits that impose limits or conditions in excess of those required under the federal law where necessary to achieve higher water quality standards and objectives established under state law:

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. Its goal is “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise “the principal state agencies with primary responsibility for the coordination and control of water quality.”

Whereas the State Board establishes statewide policy for water quality control, the regional boards “formulate and adopt water quality control plans for all areas within [a] region.” The regional boards’ water quality plans, called “basin plans,” must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. Basin plans must be consistent with “state policy for water quality control.”

(*City of Burbank v. State Water Res. Control Bd.* (2005) 35 Cal.4th 613 at 619 (internal citations omitted).) The California Water Code

³ The relevant provisions of the Clean Water Act are included with the documentation in Section 7, Exhibit 4, of this Test Claim.

expressly anticipates that the uses and objectives set forth in basin plans and the need to prevent nuisance will require permits issued by regional water boards to impose more stringent regulatory controls than would otherwise result from federal law:

Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.

(Cal. Water Code § 13377.)

B. MRP3 and the MRP2 (the Prior Permit)

The MRP3 was issued by the Regional Water Board, an executive agency of the State of California. It governs stormwater discharges in some 79 different municipal entities (e.g., cities, counties, and flood control and water conservation districts). (Section 7, Ex. 1 at S7-00002.) Union City is one of the Permittees participating in the Alameda Countywide Clean Water Program (the “Alameda Countywide Program” or “Program”). Union City was formerly governed by the MRP2. (Section 7, Ex. 3.) For purposes of establishing that the provisions of the MRP3 constitute new programs, the MRP3’s provisions are compared to the MRP2.

Additionally, this Test Claim also includes the continuation of MRP3 Provisions C.8 (water monitoring), C.10.b (trash reduction) and C.11.a, C.11.e, C.12.f and C.12.h (green infrastructure) that were first imposed in the MRP1 and MRP2 and maintained as requirements in the MRP3. These provisions are pending before the Commission in Consolidated Test Claims 10-TC-02, 10-TC-03 and 10-TC-05 and Test Claim 16-TC-03, respectively.

C. State Mandate Law

The Commission is familiar with the basic legal framework that governs its consideration of test claims. Union City will, therefore, provide only a brief summary of the major legal principles. Article XIII B section 6 of the California Constitution provides in relevant part:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of the program or increased level of service....

The purpose of section 6 “is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) The section “was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” (*County of Fresno, supra*, at 487; *Redevelopment Agency v. Comm’n on State Mandates* (1997) 55 Cal.App.4th 976, 984-85.) The Legislature implemented section 6 by enacting a comprehensive administrative scheme to establish and pay mandate claims. (Cal. Gov’t Code §§ 17500 *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333 [statute establishes “procedure by which to implement and enforce section 6”].)

The California Supreme Court in *Dep’t of Finance I* summarized the basic principle that governs the issues raised in this Test Claim: “Under our state Constitution, if the Legislature or a state agency requires a local government to provide a new program or higher level of service, the local government is entitled to reimbursement from the state for the associated costs.” (1 Cal.5th at 754.)

1. Parties Opposing Union City Bear the Burden of Proving Exceptions to the General Constitutional Subvention Requirement

For the purposes of future test claim proceedings, one of the most important aspects of *Dep’t of Finance I* is the Court’s discussion of the

burdens of proof of the parties before the Commission. Under *Dep't of Finance I*, once claimants demonstrate new programs or increased levels of service are being imposed, the burden of proof shifts to test claim opponents (such as the Regional Water Board), if any appear, to prove that the requirements at issue are excepted from the general subvention requirement:

Section 6 establishes a **general rule requiring reimbursement** of all state-mandated costs. Government Code section 17556, subdivision (c), codifies an exception to that rule. Typically, **the party claiming the applicability of an exception bears the burden of demonstrating that it applies.** [Citations.] Here, the State must explain why federal law mandated these requirements, rather than forcing the Operators to prove the opposite.

(*Dep't of Finance I*, 1 Cal.5th at 769, citing *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 23 and *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67, emphasis added.) Thus, for Union City's test claim, the City must establish that the MRP3 requires new programs and/or higher levels of service, but the applicability of any exceptions to the "general rule requirement reimbursement" must be proven, if at all, by a test claim opponent.

Moreover, the Supreme Court's reasoning regarding the federal mandates exception must apply with equal force to all the "exception[s] to that [general] rule" listed in Government Code section 17556, not just the federal mandates exception in subdivision (c). For example, to the extent the Regional Water Board contends that the fee authority exception in section 17556, subdivision (d), is applicable to Union City's test claim, the Regional Water Board bears the burden of proving the exception applies and Union City cannot be forced to "prove the opposite."

2. **Statutory Exceptions to the General Rule Requiring Subvention Must Be Construed Narrowly and the Constitution Must Be Construed Broadly**

Furthermore, in evaluating the applicability of statutory exceptions to the constitutional "general rule," the Commission must

construe the exceptions narrowly. (*National City v. Fritz* (1949) 33 Cal.2d 635, 636–37 (applying “the rule that exceptions in a statute are to be strictly construed ... [citations].”); *Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2017) 7 Cal.App.5th 628, 641 (applying the “well-established rule that [a]n exception to a statute is to be narrowly construed,” internal quotations and citations omitted); *Corey v. Knight* (1957) 150 Cal.App.2d 671, 680 (statutory “exceptions are to be narrowly, not broadly, construed”).) Accordingly, when considering anticipated arguments from the Regional Water Board about the applicability of section 17556 exceptions, only narrow interpretations of the exceptions are permissible and appropriate.

The rule requiring narrow construction of statutory exceptions dovetails with the principle that ballot initiatives amending the Constitution must be interpreted broadly to implement the will of the voters. The exceptions listed in section 17556 do not appear anywhere in Article XIII B, section 6. As the court in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564 observed, “[t]he constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate.” (*Id.* at p. 1593.)⁴ Rather, these exceptions were developed by the legislature and the courts rather than the voters.

In interpreting the scope of exceptions to the general rule requiring subvention, the corollary rule is that the Constitution “is not to be interpreted according to narrow or supertechnical principles, but liberally and on broad general lines, so that it may accomplish in full measure the objects of its establishment and so carry out the great principles of government.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 244-45, quoting *Stephens v. Chambers* (1917) 34 Cal.App. 660, 663-664.) In light of the objectives of Proposition 4, the plain language of the Constitution

⁴ Article XIII B, section 9, mentions federal mandates as excluded from definition of “appropriations subject to limitation,” but they are not mentioned in section 6. The Supreme Court declined to address the “question whether ‘federal’ and ‘state’ mandates are mutually exclusive for purposes of state subvention” in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 71, fn. 16.

requiring subvention whenever the state imposes new programs or higher levels of service must be broadly construed.

3. **The Federal Mandates Exception Does Not Apply to the Challenged Requirements Because the Regional Water Board Exercised its Discretion by Virtue of a “True Choice”**

In *Dep’t of Finance I*, the Supreme Court also confirmed that application of the federal mandates exception turns on whether a state requirement was imposed because it was compelled by federal law, or whether it was “imposed as a result of the state’s discretionary action.” (1 Cal.5th at 754.) If it is compelled by federal law, the state must implement a federal mandate and no reimbursement is required. On the other hand, if the requirement is imposed as a result of the state’s discretionary action, reimbursement is required.

The Supreme Court summarized applicable case law on the matter, and opined that, “if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a ‘true choice,’ the requirement is not federally mandated” and reimbursement is required. (*Dep’t of Finance I*, 1 Cal.5th at 765.) In applying this rule to the County of Los Angeles claims in that case, the Court analyzed the Clean Water Act, the Porter-Cologne Act, and related regulations. The Court found that the regional board in that case was given discretionary power to fashion requirements which it determined would meet the Clean Water Act’s maximum extent practicable (“MEP”) standard. (*Id.* at 767-68.) Federal law did not compel these requirements, because the State’s NPDES program is undertaken on a voluntary basis. (*Id.* at 767.) As the Court noted, the State was not compelled to operate its own permitting system. (*Id.*) The Supreme Court further found that the federal regulations gave the regional board discretion to develop and issue municipal storm water permits and determine which specific controls would be required. (*Id.* at 767-68.) Accordingly, the regional board’s exercise of a “true choice” in developing the County of Los Angeles permit conditions at issue constituted a state mandate with respect to the contested permit provisions. (*Id.* at 769, 770-72 [analyzing whether inspection and trash receptacle conditions were mandated by CWA].) Accordingly, none of the four permit conditions at issue in *Dept. of Finance I* were found to be federal mandates.

The Third Appellate District’s subsequent 2017 decision in *Dept. of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661 (*Dept. of Finance II*), involved ten permit requirements in San Diego County’s MS4 permit stemming from the federal CWA’s MEP and water quality standard requirements relating to street sweeping and cleaning stormwater conveyances, a hydromodification plan, low impact development practices, education programs, urban runoff management programs, effectiveness assessments and permittee collaboration. The court “follow[ed] the analytical regime established by [the Supreme Court in *Dept. of Finance I*],” and found that “[n]o federal law, regulation, or administrative [or] case authority expressly required” any of these ten permit requirements:

Under the test announced in [*Dept. of Finance I*], we conclude federal law did not compel imposition of the permit requirements, and they are subject to subvention under section 6. This is because the requirement to reduce pollutants to the “maximum extent practicable” was not a federal mandate for purposes of section 6. Rather, it vested the San Diego Regional Board with discretion to choose how the permittees must meet that standard, and the exercise of that discretion resulted in imposing a state mandate. We also find no federal law, regulation, or administrative [or] case authority that, under the test provided by [*Dept. of Finance I*], expressly required the conditions the San Diego Regional Board imposed.

(18 Cal.App.5th at 676; see also *id.* at 667.) Describing the Supreme Court’s decision, the court states that the MEP standard “by its nature is discretionary and does not by itself impose a federal mandate for purposes of section 6.” (*Id.* at 681.) Furthermore, “[t]he high court stated that, to be a federal mandate for purposes of section 6, the federal law or regulation must ‘expressly’ or ‘explicitly’ require the specific condition imposed in the permit.” (*Id.* at 682.)

On March 24, 2023, the Commission heard a municipal stormwater Test Claim 09-TC-03 involving *Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030*, and on that date adopted a decision finding that none of the conditions at issue in that test claim are federal mandates.

Thus, **none** of the MS4 permit provisions at issue in *Dept. of Finance I*, *Dept. of Finance II* or the Commission's decision regarding Test Claim 09-TC-03 were found to be federal mandates. The same conclusion must be made here because the Regional Water Board exercised its discretion to impose each of the MRP3 requirements at issue in this Test Claim by virtue of a "true choice" and the Clean Water Act does not expressly or explicitly require the specific conditions imposed in the MRP3 conditions at issue.

III. STATEMENT THAT MANDATED COSTS EXCEED \$1,000

Union City states that the actual and/or estimated costs resulting from the mandates imposed by the MRP3 exceed one thousand dollars (\$1,000), as set forth in this Written Narrative and in the declarations included in Section 6 of this Test Claim.

IV. THE UNFUNDED MANDATES AT ISSUE IN THIS TEST CLAIM AND FISCAL YEAR 2022/2023 COSTS

The MRP3 establishes the prohibitions, limitations, and obligations of Claimants and other Permittees. This Test Claim pertains to the following mandates: MRP3 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b.

In addition, and in an abundance of caution, this Test Claim also includes the continuation of MRP3 Provisions C.8 (water monitoring), C.10.b (trash reduction) and C.11.a, C.11.e, C.12.f and C.12.h (green infrastructure) requirements that were first imposed in the MRP1 and MRP2 and maintained as requirements in the MRP3. These provisions are pending before the Commission in Consolidated Test Claims 10-TC-02, 10-TC-03 and 10-TC-05 and Test Claim 16-TC-03, respectively. Union City does not believe it is or should be required to reassert these requirements in this Test Claim, but does so in an abundance of caution. Union City would be willing to withdraw these pending issues from this Test Claim with assurances from the Commission that no waiver, forfeiture, or abandonment of rights to subvention would result.

The requirements addressed in this Test Claim, as explained in more detail below, are "programs" within the meaning of Article XIII B, section 6, in that they require Union City to provide certain specified

services to the public. The requirements in this Test Claim are unique to public entities like Union City because they arise from the operation of a municipal separate storm sewer system under NPDES permits issued only to municipalities and which require activities that are not required of private non-governmental dischargers. These requirements include the development and amendment of government planning documents, the development and construction of public works projects and other purely governmental functions.⁵

A test claim must be filed with the Commission “not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order, whichever is later.” (Cal. Code Regs., tit. 2, § 1183.1, subd. (c).)

Union City first incurred costs to comply with the MRP3 on July 1, 2022, the effective date of the MRP3, during fiscal year (“Fiscal Year” or “FY”) 2022-2023 which ended on June 30, 2023. (Section 6 Declaration of Farooq Azim (“Azim Decl.”), ¶ 12; Declaration of Sandra Mathews (“Mathews Decl.”), ¶ 16; Section 7 at S7-0009.) As such, this Test Claim is timely filed.

A. MRP3 New Programs and/or Higher Levels of Service

As the Third District of the Court of Appeal has recently confirmed in *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559, which involved San Diego County’s stormwater permit:

[T]he application of Section 6 ... does not turn on whether the underlying obligation to abate pollution remains the same.... To determine whether a program imposed by the permit is new, we compare the legal requirements imposed

⁵ Orders issued by the Regional Water Board such as the MRP are “executive orders” within the meaning of Government Code section 17516 and thus properly subject to test claim proceedings. (*County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 920.)

by the new permit with those in effect before the new permit became effective.

1. New Development and Redevelopment

(a) Road Projects

New Requirements. Provision C.3.b of the MRP3 requires Permittees to implement LID source control, site design, and stormwater treatment onsite or at a joint stormwater treatment facility for certain “regulated projects,” including the following:

- (1) New or widening roads (Provision C.3.b.ii.(4)).
- (2) Road reconstruction projects (Provision C.3.b.ii.(5)).

(MRP3 at C.3-8 – 10, Section 7 at S7-0029-0031.)

As the Fact Sheet to the MRP3 concedes, “[w]hile substantial portions of Provision C.3 are the same as during MRP2, the provision includes updated expectations for Regulated Projects, including roads, that are expected to result in additional municipal costs. Those include changes to Regulated Project definitions, including roads.” (MRP3 Fact Sheet at A-30, Section 7 at S7-0289.) For new or widening roads, under the MRP3, these requirements apply to “road projects that create 5,000 square feet or more of newly constructed contiguous impervious surface, that are both public and private road projects.” (MPR3 at C.3-8, Section 7 at S7-0029.) Under the MRP2, the requirement applied only to “road projects that create 10,000 square feet or more of newly constructed contiguous impervious surface.” (MRP2 at C.3.b.ii.(4), Section 7 at S7-1010-1011.) “Road reconstruction projects” was not a regulated category under the MRP2 and, therefore, this is a new program.

The Program’s expenditures for complying with new requirements under Provisions C.3.b.ii.(4) and (5) for Fiscal Year 22/23 was \$41,419, of which Union City’s share was \$2,199. These efforts included revising the C.3 Technical Guidance Manual, the preparation of informational factsheets on the changes to regulated projects, a training workshop, and preparing and provision of guidance to member agencies on the new and higher levels of services required by Provisions C.3.b.ii.(4) and C.3.b.ii.(5)). (Mathews Decl., ¶ 9.a.) In addition, the

City attended the Program's New Development Subcommittee meetings in Fiscal Year 22/23 related, in part, to these new requirements for costs that totaled \$440. (Azim Decl., ¶ 8.a.) The total Union City Fiscal Year 22/23 costs for complying with new requirements under Provisions C.3.b.ii.(4) and (5) were **\$2,639**. (Azim Decl., ¶ 8.a; Mathews Decl., ¶ 10.)

(b) Green Stormwater Infrastructure (GSI)

Modified Higher Levels of Service Requirement. Provision C.3.j.ii.(1)(a)-(g) of the MRP3 requires Permittees to re-evaluate, update and/or supplement their Green Infrastructure Plans (completed under the MRP2) as needed to ensure that municipal processes and ordinances allow and appropriately encourage implementation of green infrastructure, and incorporate lessons learned. This includes revising implementation mechanisms; continuing to update related municipal plans; developing funding mechanisms; updating guidance, details and specifications as appropriate; implementing tracking/mapping tools; adopting/amending legal mechanisms as necessary; and conducting outreach and education. (MRP3 at C.3-45 – 47, Section 7 at S7-0066-0068.) To support its member agencies implementing the increased requirements under Provision C.3.j.ii.(1)(a)-(g), in Fiscal Year 22/23 the Program updated and maintained a GIS platform that allows members to track their green infrastructure projects in order to comply with this new requirement. (Mathews Decl., ¶ 9.i.) In Fiscal Year 22/23, the City commenced the process of updating its Green Infrastructure Plan. (Azim. Decl., ¶ 8.b.)

New Requirement. Provision C.3.j.ii.(4) of the MRP3 requires Permittees to form a regional Technical Working Group to discuss long term GSI goals and recommend long term percentage reductions. (MRP3 at C.3-49, Section 7 at S7-0070.) These are new requirements not included in the MRP2. To support its member agencies implementing the increased requirements under Provision C.3.j.ii.(4), in Fiscal Year 22/23 the Program updated and maintained a GIS platform that allows members to track their green infrastructure projects in order to comply with this new requirement. (Mathews Decl., ¶ 9.i.)

Modified Higher Levels of Service Requirement. Provision C.3.j.ii.(2)(a)-(j) of the MRP3 requires Permittees to implement, or cause to be implemented, green infrastructure projects within their

jurisdictions which are not already defined as Regulated Projects such that impervious surface numeric retrofits are achieved. (MRP3 at C.3-47 – 49, Section 7 at S7-0068-0070.) These numeric targets were not in the MRP2 and therefore were not required in the .Green Infrastructure Plans completed under the MRP2. The imposition of the numeric targets is new and will require Permittees to implement more retrofit projects in the MRP3 term than would have been required in the MRP2. The Permittees may meet the numeric retrofit requirements on a countywide basis. Though Permittees may meet their total individual numeric retrofit requirements on a countywide basis, each Permittee shall implement, or cause to be implemented, a green infrastructure project or projects treating no less than 0.2 acres of impervious surface within its jurisdiction, where that project is not already defined as a regulated project. (*Id.* at C.3-47, Section 7 at S7-0068.) Alternatively, a Permittee may contribute substantially to such a green infrastructure project(s) outside of its jurisdiction and within its County. (*Id.*) The Fact Sheet acknowledges that these new requirements could cost Permittees up to \$181 million of additional costs. (MRP3 Fact Sheet at A-28, Section 7 at S7-0287.) To support its member agencies implementing the increased requirements under Provision C.3.j.ii.(2)(a)-(j), in Fiscal Year 22/23 the Program updated and maintained a GIS platform that allows members to track their green infrastructure projects in order to comply with new requirement. (Mathews Decl., ¶ 9.i.) In Fiscal Year 22/23, the City attended meetings with the Program regarding these Provision C.3 requirements, including municipal staff training. (Azim. Decl., ¶ 8.b.) In Fiscal Year 23/24, the City expects to expend approximately \$520,000 in implementing bioretention treatment areas in compliance with this increased requirement which would not have been required under the MRP2. (*Id.*)

The Program's expenditures for complying with the new and higher levels of service requirements under Provisions C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j) for Fiscal Year 22/23 was \$5,522, of which Union City's share was \$293. (Mathews Decl., ¶ 10.) The City's expenditures for complying with the higher levels of service requirements under Provisions C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j) for Fiscal Year 22/23 was \$1,245. (Azim Decl., ¶ 8.b.) The total Union City Fiscal Year 22/23 costs for all the increased programs under Provisions C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j) was **\$1,538**. (Azim Decl., ¶ 8.b; Mathews Decl., ¶ 10.)

2. Illicit Discharge Detection and Elimination

New Requirement. Provision C.5.f of the MRP3 requires Permittees to identify information missing from the current MS4 Maps and develop a plan and schedule to compile additional storm sewer system information, considering the potential to identify component locations, size or specifications, materials of construction and condition. (MRP3 at C.5-7, Section 7 at S7-0090.) These are new requirements not included in the MRP2.

The total Union City Fiscal Year 22/23 Union City costs for new Provision C.5 programs was **\$117**, which included consulting with the Program regarding this new requirement. (Azim Decl., ¶ 8.c.)

3. Water Quality Monitoring

Modified Higher Levels of Service Requirements. The MRP3 includes the following new water quality monitoring requirements that were not included in the MRP2. The MRP2 included a monitoring program that included creek status monitoring intended to assess the chemical, physical, and biological impacts of urban runoff on receiving waters (MRP2 at Section 7 at S7-1065 *et seq.*); however, the MRP2 did not include the new requirements described below.

Provision C.8.d of the MRP3 now requires Permittees to conduct LID monitoring to measure compliance and effectiveness of LID controls. “The Permittees shall, at the regional or countywide level, develop LID Monitoring Plans to implement the requirements in Provision C.8.d.iii-iv.” (MRP3 at C.8-2, Section 7 at S7-0104.) Further, “Permittees shall implement no later than ... the approved or conditionally approved LID Monitoring Plans.” (*Id.* at C.8-3, Section 7 at S7-0105.) Permittees are required to implement a monitoring program to measure compliance and the effectiveness of LID facilities. This is a wholly new type of monitoring than what was required under the MRP2 which was limited to creek status monitoring. To support this new MRP3 requirement, in Fiscal Year 22/23 the Program collaborated with the other four countywide programs to form and fund the MRP3-required Technical Advisory Group (“TAG”) with the necessary expertise related to LID monitoring, developed a regional quality assurance plan, identified monitoring locations, developed a monitoring plan for LID facilities in Alameda County, revised the monitoring and quality assurance plans based on feedback from the

TAG, and submitted the plans to the Regional Water Board. (Mathews Decl., ¶ 9.c.)

Provision C.8.e requires Permittees to collect and analyze the amount of trash discharged from MS4 outfalls to answer the questions of whether (1) Permittees' trash management actions effectively prevented trash from their jurisdictions from discharging to receiving waters, and (2) are discharges of trash from within Trash Management Areas controlled to a low trash generation level causing and/or contributing to adverse trash impacts in receiving waters. Specifically, Permittees must:

- (1) [C]ollect and analyze the amount of trash discharged from MS4 outfalls that drain tributary drainage areas controlled to the Low trash generation level, during storm events that will (or that Permittees estimate are likely to) result in discharges of trash through the MS4 system (Provision C.8.e.ii.(1)).
- (2) [I]mplement a pilot program to directly (in-stream) sample sections of receiving waters that receive runoff primarily from MS4 outfalls that drain tributary drainage areas controlled to the Low trash generation level, during storm events that will (or that Permittees estimate are likely to) result in discharges of trash through the MS4 system (Provision C.8.e.ii.(2)).

(MRP3 at C.8-7 – 13, Section 7 at S7-0109-0115.) Trash monitoring was not included in the Provision C.8 water monitoring program under the MRP2. Thus, this is a wholly new type of monitoring than what was required under the MRP2. Permittees now are required to implement a monitoring program to assess the effectiveness of trash control actions and, evaluate whether areas determined to be controlled are contributing to trash impacts. To support this effort, in Fiscal Year 22/23 the Program collaborated with the other four countywide programs to form and fund a separate MRP3-required TAG (with wholly different expertise than the MRP3-required TAG for the new LID monitoring program described above), developed a regional quality assurance plan, identified trash monitoring locations and developed a monitoring plan for the selected sites in Alameda County, revised the monitoring and quality assurance plans based on feedback from the TAG, and submitted the plans to the Regional Water Board. (Mathews Decl., ¶ 9.c.)

Provision C.8.f requires Permittees to conduct Pollutants of Concern (“POC”) monitoring to “assess inputs of select POCs to the Bay from local tributaries and urban runoff, provide information to assess compliance with receiving water limitations, support implementation of TMDLs and other pollutant control strategies, assess progress toward achieving wasteload allocations for TMDLs and help resolve uncertainties associated with loading estimates and impairments associated with these pollutants.” (MRP3 at C.8-13 – 21, Section 7 at S7-0115-0123.) POC monitoring with receiving water limitations was not included in the Provision C.8 water monitoring program under the MRP2. Thus, this is additional monitoring than what was required under the MRP2 (see Table 8-1 in the MRP3 which describes the onerous new requirements [MRP3 at Section 7 at S7-0117]). Under this higher level of service requirement, Permittees now are required to implement a monitoring program to assess inputs of select POCs to the Bay from local tributaries and urban runoff. To support its member agencies in complying with this new requirement, in Fiscal Year 22/23 the Program developed and submitted a POC monitoring plan and initiated the required monitoring. (Mathews Decl., ¶ 9.d.)

The total Union City Fiscal Year 22/23 Union City costs for these increased Provision C.8 programs was **\$15,374**. (Mathews Decl., ¶ 10.)

4. Trash Load Reduction

(a) Trash Load Reduction Levels

Modified Higher Levels of Service Requirement. The MRP3 requires higher levels of trash load reduction than the MRP2. Permittees are required to implement trash load reduction control actions and demonstrate attainment of trash discharge reduction requirements of 90% by June 30, 2023; and 100% trash load reduction or no adverse impact to receiving waters from trash by June 30, 2025 (Provision C.10.a.i). (MRP3 at C.10-1, Section 7 at S7-0141.) If the 90% benchmark is not attained by June 30, 2023, Permittees must submit revised trash load reduction plan and an implementation schedule of additional trash load reduction control actions to achieve 90% and 100% benchmarks by September 30, 2023. This is a higher level of service than required by the MRP2 which required 70% by July 1, 2017 and 80% by July 1, 2019. (MRP2 at C.10.a(i), Section 7 at S7-1091.) According to the MRP3 Fact Sheet, “Permittees will incur additional costs to proceed from MRP2’s required 80 percent reduction

in trash discharges to the Permit's required 100 percent reduction, to be achieved using a combination of measures determined by each Permittee, and consisting of full trash capture, or implementation of a range of controls equivalent to full trash capture.... Statewide, the economic analysis estimates that between \$2.93 and \$7.77 more per resident might need to be spent each year for the next ten years to implement the proposed Trash Amendments." (MRP3 Fact Sheet at A-31, Section 7 at S7-0290.) To support this higher level of service requirement, in Fiscal Year 22/23 the Program held subcommittee meetings and prepared guidance for members on the new requirements, updates and modifications were made to GIS maps to support members, and GIS-based inspection applications were developed. (Mathews Decl., ¶ 9.e.) The City expended costs on pre-design and planning in Fiscal Year 22/23 associated with this higher level of service requirements. (Azim Decl., ¶ 8.d.)

(b) Private Lands and Trash Generation Map

Modified Higher Levels of Service Requirements. Provision C.10.a.ii of the MRP3 requires that Permittees ensure that private lands that are moderate, high, or very high trash generating, and that drain to storm drain inlets that Permittees do not own or operate (private), but that are plumbed to Permittees' storm drain systems are equipped with full trash capture systems or are managed with trash discharge control actions equivalent to or better than full trash capture systems by July 1, 2025. (MRP3 at C.10-3, Section 7 at S7-0143.) This is a very significant new undertaking for Permittees that was not required under the MRP2. Provision C.10.a.ii of the MRP3 also requires Permittees to submit a revised Trash Generation Area Map by September 30, 2024 that includes trash management areas and private land drainage areas that will be retrofitted with full trash capture devices, or equivalent, by the June 30, 2025 compliance date. (MRP3 at C.10-2, Section 7 at S7-0142.) The MRP2 did require a Trash Generation Map but under the MRP3 those Maps have to be completely redone to depict private land areas that generate trash.

To support these Provision C.10.a.ii higher levels of service requirements, in Fiscal Year 22/23 the Program held subcommittee meetings and prepared guidance for members on the new requirements, updates and modifications were made to GIS maps to support members, and GIS-based inspection applications were developed. (Mathews Decl., ¶ 9.e.) In addition, in Fiscal Year 22/23,

the City attended the Program's Trash Subcommittee meetings and used a consultant to update its Trash Generation Area Map, an activity that continued into Fiscal Year 23/24. (Azim Decl., ¶ 8.d.)

(c) Impracticability Report

New Requirement. Provision C.10.e of the MRP3 requires Permittees to collectively develop a Trash Impracticability Report that includes a process for both evaluating impracticability and implementing partial benefit actions to the maximum extent practicable by March 31, 2023. (MRP3 at C.10-9-10, Section 7 at S7-0149-0150.) The Report was submitted to the Regional Water Board on March 27, 2023. (Mathews Decl., ¶ 9.f.) Further, Provisions C.10.d and C.10.e.iv require Permittees to use an approved Trash Impracticability Report in developing updated Trash Load Reduction Work Plans. (MRP3 at C.10-10, Section 7 at S7-0150.) These are new requirements for which the State acknowledges "Permittees would incur costs to prepare an impracticability report." (MRP3 Fact Sheet at A-32, Section 7 at S7-0291.) The Program worked collaboratively with the four other countywide programs to fund the development of the Trash Impracticability Report. The Trash Impracticability Report was submitted to the Regional Water Board on March 27, 2023. (Mathews Decl., ¶ 9.f.)

For Fiscal Year 22/23, the Program's expenditures for complying with the new and higher levels of service requirements under Provisions C.10.a. as described above was \$52,362, of which Union City's share was \$2,780. (Mathews Decl., ¶ 10.) For Fiscal Year 22/23, the Program's expenditures for complying with the new requirements under Provisions C.10.e. as described above was \$11,977, of which Union City's share was \$636. (*Id.*) For Fiscal Year 22/23, the City's expenditures for complying with the new and higher levels of service requirements under Provisions C.10.a. as described above was \$18,348. (Azim Decl., ¶ 8.e.) The total Union City Fiscal Year 22/23 costs for all the increased programs under Provisions C.10.e was \$265. (Azim Decl., ¶ 8.e.; Mathews Decl., ¶ 10.) The total Union City Fiscal Year 22/23 costs for new Provision C.10.a and C.10.e programs was **\$22,029**. (Azim Decl., ¶ 8.d; Mathews Decl., ¶ 10.)

5. Mercury and PCBs Controls

(a) Old Industrial Land

Modified Higher Levels of Service Requirements. Provision C.11.c of the MRP3 requires Permittees to implement or cause to be implemented stormwater control measures to treat old industrial land use at 70% efficiency, or by demonstrating an equivalent mercury load reduction. (MRP3 at C.11-4 – 6, Section 7 at S7-0159-0161.) Additionally, Provision C.12.c of the MRP3 requires Permittees to implement or cause to be implemented treatment control measures to treat old industrial land use at 70% efficiency, or by demonstrating an equivalent PCBs load reduction. These are new requirements than required by the MRP2 which did not require implement stormwater control measures to treat old industrial land. The Fact Sheet for the MRP3 notes that Permittees implement GSI retrofit to achieve mercury and PCBs reductions and the increased cost of achieving such reductions may be up to \$2 billion. (MRP3 Fact Sheet at A-34 – 35, Section 7 at S7-0293-0294.) To support these increased requirements, in Fiscal Year 22/23 the Program developed the Old Industrial Area Control Measure Plan that included plans and schedules for implementing the required control measures. The Plan was submitted in March 2023. Subsequent to submittal, the Program members and consultants met with Regional Water Board staff and planned revisions to the plan, which are due in March 2024. (Mathews Decl., ¶ 9.g.) Additionally, in Fiscal Year 22/23, the City engaged in planning activities with the Program regarding these increased Provision C.11.c and C.12.c requirements. (Azim Decl., ¶ 8.e.)

For Fiscal Year 22/23, the Program's expenditures for complying with the higher levels of service requirements under Provisions C.11.c and C.12.c. as described above was \$59,430, of which Union City's share was \$3,156. (Mathews Decl., ¶ 10.) For Fiscal Year 22/23, the City's expenditures for complying with the higher levels of service requirements under Provisions C.11.c and C.12.c. as described above was \$331. (Azim Decl., ¶ 8.e.) The total Union City Fiscal Year 22/23 costs for the higher levels of service requirements under Provisions C.11.c and C.12.c. as described above was **\$3,487**. (Azim Decl., ¶ 8.e; Mathews Decl., ¶ 10.))

(b) Quantify and Report PCBs Load Reductions

Modified Higher Levels of Service Requirement. Provision C.12.a of the MRP3 requires Permittees to quantify and report the PCBs load reductions achieved through all the pollution prevention, source control, green stormwater infrastructure, and other treatment control measures and submit documentation annually confirming that all control measures effectuated during the previous Permit term for which PCB load reduction credit was recognized continue to be implemented at an intensity sufficient to maintain the credited load reduction. The MRP3 requires annual assessment of loads reduced with documentation of the implementation level to justify the method (credits). This is a higher level of effort than MRP2 requirements which did not have this requirement and results in additional costs. Further, two additional requirements in this provision are new: a cumulative report loads reduced and refinements to the assessment methodology. To support member agencies' compliance with this increased requirement, the Program consultants tracked and analyzed data on control measure implementation to calculate loads reduced. (Mathews Decl., ¶ 9.h.)

The Union City Fiscal Year 22/23 costs for increased requirements under Provision C.12.a program were **\$351** (Mathews Decl., ¶ 10.)

6. Exempted and Conditionally Exempted Discharges

New Requirement. Provision C.15.b.iii. of the MRP3 requires Permittees to collectively convene a regionwide Firefighting Discharges Working Group with Water Board staff and other stakeholders to identify and evaluate opportunities to reduce the impacts of emergency discharges to the MS4 associated with firefighting water and foam. (MRP3 at C.15-6 – 7, Section 7 at S7-0209-0210.) This is a new requirement that was not in the MRP2, which only required Permittees to implement or require firefighting personnel to implement BMPs for emergency discharges of potable water. (MRP2 at C.15.b.iii, Section 7 at S7-1131-1132.)

The Union City Fiscal Year 22/23 Union City costs for new Provision C.15.b.iii. programs were **\$280**. (Mathews Decl., ¶ 10.)

7. Discharges Associated with Unsheltered Homeless Populations

New Requirement. Provision C.17.a of the MRP3 requires Permittees to collectively develop and submit a best management practice report that identifies practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges. (MRP3 at C.17-1 – 3, Section 7 at S7-0218-0220.) Provision C.17.a of the MRP3 also requires Permittees to report on the programmatic efforts being implemented within Permittee’s jurisdiction, or at the countywide or regional level, to address MS4 discharges associated with homelessness. (*Id.*) The MRP3 Fact Sheet acknowledges these are new programs. (MRP3 Fact Sheet at A-38, Section 7 at S7-0297.)

Permittees are required to develop and submit a regional best management practice report to identify control measures to address non-stormwater discharges associated with unsheltered homeless populations and identify milestones to reduce such discharges. To meet this new MRP3 requirement, the Program collaborated with the other four countywide programs on a regional project to develop the required best management practice report, which was submitted with each Permittee’s Fiscal Year 22/23 annual report. (Mathews Decl., ¶9.j.) Additionally, each Permittee is required to submit a map identifying, the approximate locations of unsheltered homeless populations, including encampments and other areas where other unsheltered homeless people live relative to storm drains, creeks, and flood control channels. To support its members, the Program worked with County officials to obtain the required geo-located point in time count data, developed an approach for creating the maps, and updated its GIS system to produce the required maps for each of its members. (*Id.*) The City submitted the maps with its Fiscal Year 22/23 annual report.

The Union City Fiscal Year 22/23 Union City costs for new Provision C.17 programs were **\$2,455**. (Mathews Decl., ¶ 10; Azim Decl., ¶ 8.g.)

8. Cost Reporting

New Requirement. Provision C.20.b of the MRP3 requires Permittees to develop a cost reporting framework and methodology to perform an annual fiscal analysis. Permittees are encouraged to

collaboratively develop the framework and methodology for purposes of efficiency, cost-savings, and regionwide consistency and comparability. The framework shall consider identification of costs incurred solely to comply with the Permit's requirements as listed in Provision C.20.b.(iii) as compared to costs shared with other programs or regulatory requirements, provide meaningful data to assess costs of different program areas, and allow for comparisons and to identify trends over time. (MRP3 at C.20-1 – 2, Section 7 at S7-0238-0239.) The MRP3 Fact Sheet acknowledges these are wholly new programs and Permittees "are expected to incur costs to collectively develop the methodology and then to implement it." (MRP3 Fact Sheet at A-38 – 39, Section 7 at S7-0297-0298.) To meet this new requirement, the Program collaborated with the other four countywide programs on a regional project to develop the cost reporting framework and methodology, which was submitted on June 26, 2023. (Mathews Decl., ¶ 9.k.) Updates to the cost reporting framework and methodology based on Regional Water Board comments are in process. The Program will additionally provide training for its members on the use of the cost reporting framework and methodology. (*Id.*)

The Union City Fiscal Year 22/23 Union City costs for new Provision C.20 programs were **\$2,878**. (Mathews Decl., ¶ 10.)

9. Asset Management

New Requirement. Provision C.21.b of the MRP3 requires Permittees to Complete a Climate Change Adaptation Report to identify potential climate change-related threats to assets and appropriate adaptation strategies. The report shall assess existing, new, and increasing threats from climate change to the condition of Permittees' inventoried hard assets over the next 50 years, and identify approaches that Permittees may implement to address those threats, such as the modification of design standards and countywide technical guidance documents. The Climate Change Adaptation Report may be developed on an all-Permittee (regional) scale or countywide scale. (MRP3 at C.21-1 – 2, Section 7 at S7-0240-0241.) The MRP3 Fact Sheet acknowledges these are wholly new programs and that will result in additional costs. (MRP3 Fact Sheet at A-38, 40, Section 7 at S7-0297, 0299.) Permittees are required to develop and implement an asset management plan to ensure the satisfactory condition of all hard assets constructed during MRP3 and the previous permit terms pursuant to provisions C.2, C.3, C.10, C.11, C.12, C.13, and C.17.

Mathews Decl., ¶9.1.) Additionally, Permittees are required to develop and submit a climate change adaptation report to identify potential climate change-related threats to assets and appropriate adaptation strategies. To help Permittees meet these new requirements the Program initiated work on a framework to guide the development of the asset management plans by individual members. (*Id.*)

The Union City Fiscal Year 22/23 Union City costs for new Provision C.21.b programs were **\$469**. (Mathews Decl., ¶ 10.)

10. Total Amount of Increased Costs for New Programs or Higher Levels of Service in MP3 for Fiscal Year 22/23

As set forth in the Azim Declaration at Paragraph 8 and in the Mathews Declaration at Paragraph 10, the total amount of Union City's increased costs for Fiscal Year 22/23 for the new programs or higher levels of service for MRP3 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b was **\$51,619**.

B. Continuing MRP1 and MRP2 Test Claim Programs

The following are programs in the pending MRP1 and MRP2 Test Claims which are continuing in the MRP3 term and for which Permittees have incurred costs in the MRP3 term. As explained above, out of an abundance of caution, the City is seeking reimbursement in this Test Claim for the continuation of costs that are already before the Commission in Consolidated Test Claims 10-TC-02, 10-TC-03, regarding the MRP1, and Test Claim 16-TC-03, regarding the MRP2. To avoid unnecessary duplication, Union City hereby incorporates by this reference all of the portions of the record in these MRP1 and MRP2 proceedings regarding these continuing mandates in the MRP3. As noted above, these proceedings are pending before the Commission.

1. Continuing Water Quality Monitoring

Permittees were required to implement a number of water quality monitoring programs under Provision C.8. These requirements are discussed in Claimant's MRP1 Test Claim, which is currently pending. Permittees continue to incur costs necessary to comply with

these provisions. The Program's expenditures for complying with the continuing Provision C.8 programs in Fiscal Year 22/23 were \$203,255, and Union City's share of those costs was **\$11,107**. (Mathews Decl., ¶ 10.)

2. Continuing Trash Capture Maintenance

Provision C.10.b. of the MRP2 required Permittees to "maintain, and provide for inspection and review upon request, documentation of the design, operation, and maintenance of each of their full trash capture systems, including the mapped location and drainage area served by each system." (MRP2 at C.10.b, Section 7 at S7-1093-1096.) This provision specified detailed full trash capture system installation and maintenance instructions. Provision C.10.b. in the MRP2 required increased activities by Union City that are best characterized as a higher level of service in comparison to the MRP1. The MRP3 continues these requirements. (MRP3 at C.10-3 *et seq.*, Section 7 at S7-0143–0148.) These requirements were first raised in the Test Claim for the MRP1 (Consolidated Test Claims 10-TC-02, 10-TC-03 and 10-TC-05, which are pending before the Commission) and were continued or increased in the MRP2 Permit Term (Test Claim 16-TC-03, which is pending before the Commission).

For Fiscal Year 22/23, the total Union City Costs for these continuing programs were **\$217,017**. (Mathews Decl., ¶ 10; Azim Decl., ¶ 9.)

3. Mercury and PCBs Control

Provision C.11.b. of the MRP2 required Permittees to "develop and implement an assessment methodology and data collection program to quantify in a technically sound manner mercury loads reduced through implementation of pollution prevention, source control and treatment control measures" required by the provisions of the Permit or load reductions achieved through other relevant efforts. (MRP2 at C.11.b, Section 7 at S7-1102-1103.) This program is continuing under Provision C.11.a. of the MRP3. (MRP3 at C.11-1 – 2, Section 7 at S7-0156-0157.) These requirements were first raised in the Test Claim for the MRP2 (Test Claim 16-TC-03, which is pending before the Commission).

Provision C.11.c. of the MRP2 required Permittees to implement green infrastructure projects during the term of the permit to achieve mercury load reductions of 48 g/year by June 30, 2020. (MRP2 at C.11.c, Section 7 at S7-1103-1105.) Provision C.11.e of the MRP3 requires Permittees to “implement green stormwater infrastructure (GSI) projects during the term of the Permit consistent with implementing requirements in Provision C.3.j.” (MRP3 at C.11-6 – 7, Section 7 at S7-0161-0162.) These requirements were first raised in the Test Claim for the MRP2 (Test Claim 16-TC-03, which is pending before the Commission).

Provision C.12.c. of the MRP2 required Permittees to “implement green infrastructure projects during the term of the Permit to achieve PCBs load reductions” of 120 g/year by June 30, 2020. (MRP2 at C.12.c, Section 7 at S7-1110-1112.) Provision C.12.f of the MRP3 requires Permittees to “implement green stormwater infrastructure (GSI) projects during the term of the Permit consistent with implementing requirements in Provision C.3.j.” (MRP3 at C.12-8, Section 7 at S7-0172.) These requirements were first raised in the Test Claim for the MRP2 (Test Claim 16-TC-03, which is pending before the Commission).

Provision C.12.d. of the MRP2 required Permittees to “prepare a plan and schedule for PCBs control measure implementation and reasonable assurance analysis demonstrating that sufficient control measures will be implemented to attain the PCBs TMDL wasteload allocations by 2030.” (MRP2 at C.12.d, Section 7 at S7-1113.) In 2020, Permittees submitted a Reasonable Assurance Analysis and plan (“RAA”) demonstrating that sufficient control measures will be implemented to attain the PCBs TMDL wasteload allocations by 2030. Provision C.12.h of the MRP3 requires Permittees to “update, as necessary, their PCBs control measures implementation plan and RAA.” (MRP3 at C.12-11 – 12, Section 7 at S7-0175-0176.) These requirements were first raised in the Test Claim for the MRP2 (Test Claim 16-TC-03, which is pending before the Commission).

For Fiscal Year 22/23, the total Union City Costs for these continuing programs was **\$66,489**. (Mathews Decl., ¶ 10; Azim Decl., ¶ 9.)

V. CLAIMANT COST ESTIMATE OF INCREASED COSTS FOR FISCAL YEAR 2023/2024

Government Code section 17553, subdivision (b)(1)(D), requires the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed. For Fiscal Year 2023/2024,⁶ the total estimated Union City costs for new or increased programs under MRP3 Provisions C.3.b.ii.(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b are as follows:⁷

Task	Estimated Union City FY 23/24 Costs	Union City Share of FY 23/24 Program Costs (5.31%)	Total Estimated Union City FY 23/24 Costs
MPR3 New or Increased Programs	\$803,415	\$49,334	\$852,749

(Azim Decl., ¶ 8; Mathews Decl., ¶ 13.)

VI. STATEWIDE COST ESTIMATE OF INCREASED COSTS FOR FISCAL YEAR 2023/2024

Government Code section 17553, subdivision (b)(1)(E), requires a statewide cost estimate of increased costs that all local agencies incurred or will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed. Since this Test Claim is based on the MRP3, the statewide impact of the permit is limited to those Bay Area jurisdictions that are subject to the MRP3. Neither Union City nor the Program has access

⁶ Fiscal Year 22/23 is the fiscal year for which the claim was filed. Fiscal Year 23/24 is the fiscal year immediately following the fiscal year for which the claim was filed.

⁷ As Fiscal Year 23/24 is ongoing through June 30, 2024, the costs provided are estimates.

to detailed cost information for each jurisdiction subject to the MRP3. As explained in the attached Mathews Declaration, the City has used its own cost information and population size, combined with information available to the Program, to project estimated cost impacts for all jurisdictions subject to the MRP3. For Fiscal year 2023/2024, the estimated statewide costs are as follows:

	Total Estimated FY 23/24 Union City Costs	Estimated FY 23/24 Statewide Costs (80 x Union City)
MPR3 New or Increased Programs	\$852,749	\$68,200,880

(Mathews Decl., ¶ 15.) Thus, in compliance with Government Code section 17553(b)(1)(E), the total estimated amount of statewide costs (i.e., the statewide cost estimate of increased costs that all local agencies will incur to implement the new programs and higher levels of service) for Fiscal Year 23/24 for the new programs and higher levels of service in the MRP3 is **\$68,200,880**.

VII. DATES ON WHICH COSTS WERE FIRST INCURRED AFTER THE EFFECTIVE PERIOD

All costs were incurred after July 1, 2022, the effective date of the MRP3. (Azim Decl., ¶ 12; Mathews Decl., ¶ 16; Section 7 at S7-0009.) The start of MRP3 coincided with the start of the Program's fiscal year, July 1, 2022, which is the same date that consultant invoices indicate incurred costs as a result of implementing the new activities and modified existing activities mandated by MRP3. (Mathews Decl., ¶ 16.)

VIII. IDENTIFICATION OF FUNDING SOURCES

Government Code section 17553, subdivision (b)(1)(F), requires the City to identify available funding sources for these MRP3 programs. Union City is not aware of any dedicated state, federal or non-local agency funds that are or will be available to fund the MRP3 new activities at issue in this Test Claim. The City has a Clean Water Fund, which obtains revenue from property tax assessments, and is supplanted by the General Funds. The salaries and benefits identified in the Azim Declaration in Section 6 are paid from general funds which include the City's General Fund and the Clean Water Fund. The other

costs identified in the Azim Declaration in Section 6 are funded by the City's General Fund and the Clean Water Fund. The City's share of the Program's costs identified in the Mathews Declaration in Section 6 are funded by the Clean Water Fund. The City has no fee authority to increase these revenue sources without seeking voter approval under Proposition 218. Thus, the City does not have authority to increase these fees – only the voters have that authority.⁸ Further, the City is not confident that it will be able to avail itself of future grant opportunities. The City has no grant applications pending for the stormwater program. Furthermore, multiple jurisdictions must compete for limited funding sources, creating stiff competition among municipalities. (See Azim Decl., ¶¶ 12-14.)

IX. PRIOR MANDATE DETERMINATIONS

Government Code section 17553, subdivision (b)(1)(G), requires Test Claimants to identify prior mandate determinations that may be related to the mandates at issue. The Commission's July 31, 2009, Statement of Decision in Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21 (*Los Angeles Regional Water Quality Control Board Order No. 01-182*), the Commission's March 26, 2010, Statement of Decision in Test Claim No. 07-TC-09 (*San Diego Regional Water Quality Control Board Order No. R9-2007-0001*) and the Commission's March 24, 2023, adoption of the proposed decision regarding Test Claim 09-TC-03 (*Santa Ana Regional Water Quality Control Board Order No. R8-2009-0030*), include analyses that are related to the mandates at issue in Union City's Test Claim.

X. NO LEGISLATIVELY DETERMINED MANDATE APPLICABLE TO THE MRP3

Under Government Code section 17573, the Department of Finance and a local agency association may jointly request of the chairpersons of the committees in each house of the Legislature that consider appropriations, and the chairpersons of the committees and appropriate subcommittees in each house of the Legislature that

⁸ See *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, holding that a stormwater fee was a property related fee governed by Article XIII D of the California Constitution and that such a fee could not be imposed unless it was approved by the voters.

consider the State Budget, that the Legislature determine that a statute or executive order, or portion thereof, mandates a new program or higher level of service requiring reimbursement of local governments. There is no legislatively determined mandate applicable to the MRP3 and this Test Claim.

XI. NO DUPLICATE TEST CLAIM

This Test Claim is the first filed test claim for the following MRP3 Provisions as set forth herein: Provisions C.3.b.ii.(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b. (Govt. Code § 17521.) According to the Commission's October 11, 2023, Notice of Duplicate and Incomplete Test Claim ("Notice"), Union City's Test Claim is the first filed Test Claim related to these MRP3 provisions and therefore nothing additional needs to be included herein related to this aspect of the Notice.

XII. CONCLUSION

For the reasons set forth in this Test Claim package, Union City respectfully requests that the Commission approve the City's Test Claim.

5720994.1

6. DECLARATIONS

IN SUPPORT OF UNION CITY TEST CLAIM

IN RE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
MUNICIPAL REGIONAL STORMWATER NPDES PERMIT

ORDER NO. R2-2022-0018
AS MODIFIED BY ORDER NO. R2-2023-0019
NPDES PERMIT NO. CAS612008
MAY 11, 2022

DECLARATION OF FAROOQ AZIM IN SUPPORT OF TEST CLAIM

I, FAROOQ AZIM, declare as follows:

1. I make this declaration in support of the Test Claim submitted by the City of Union City (“Union City” or “City”) to the Commission on State Mandates. Except where otherwise indicated, the facts set forth below are of my own personal knowledge and, if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I have received the following credentials: In 1981, I received a Bachelor of Science degree in Civil Engineering from the Mapua Institute of Technology, Manila, Philippines. In 1982, I received a Bachelor of Science degree in Engineering (BSE), with concentration in Civil Engineering from Indiana Institute of Technology, Fort Wayne, IN. In 1985, I received a Master of Science in Civil Engineering (MSCE), specializing in Geotechnical (Soils and Foundation) Engineering. In 2005, I received a Master of Business Administration (MBA), with concentration in Finance from California State University, East Bay. In 1995, I received a Professional Engineer License from the California Board for Professional Engineers, Land Surveyors, and Geologists.

3. I am employed by the City as the City Engineer. I was appointed by the City Manager and have held this position since 2018. I supervise a staff of six, consisting of three Inspectors and three Engineers. I am responsible for designing, managing, and implementing all aspects (e.g., sampling, design, field work, analytical analysis, quality control, data management, O&M reports, interpretation and reporting) of water quality monitoring and other compliance actions required by regional municipal stormwater National Pollutant Discharge Elimination System (“NPDES”) permits issued to the City.

///

1 4. I have a total of 34 years of experience as a civil engineer. I
2 started my civil engineering career with W.H. Gordon Associates in Reston,
3 VA, a suburb of Washington DC, where I designed and reviewed new
4 development projects, including housing tract developments. My second job
5 was with a private Geotechnical Engineering firm in Pleasanton, CA. I joined
6 the City in 1991 as a junior engineer (Engineer I) and was introduced to
7 municipal engineering. I have been promoted since then and have been the
8 City Engineer since 2018. I have been involved with various aspects of
9 municipal engineering including the capital improvement program (“CIP”) and
10 the Land Development aspect of municipal engineering, which includes the
11 review and approval of all new private developments in the City, including the
12 storm water aspects of new development. I have also been attending a variety
13 of Alameda Countywide Clean Water Program (“Program”) meetings,
14 including representing the City at various quarterly meetings which are
15 attended by all member agencies of the Program, for more than 10 years.

16 5. Union City is subject to the Municipal Regional Stormwater
17 (“MRP”) NPDES Permit, issued by the California Regional Water Quality
18 Control Board, San Francisco Bay Region (“Regional Board”), Order No. R2-
19 2022-0018 (NPDES Permit No. CAS612008), issued by the Regional Board on
20 May 11, 2022 (“MRP3” [Section. 7 p. S7-0002]) with an effective date of July 1,
21 2022, and amended on October 11, 2023. I have reviewed the MRP3 and am
22 familiar with its requirements.

23 6. I have also reviewed and am familiar with the requirements of
24 Order No. R2-2015-0049 (NPDES Permit No. CAS612008), issued by the
25 Regional Board on November 19, 2015 (“MRP2” [Section 7 p. S7-0992]), under
26 which the City was a Permittee, and with Order No. R2-2009-0074 (NPDES
27 Permit No. CAS612008) issued by the Regional Board on October 14, 2009,
28

1 amended by Order No. R2-2011-0083 on November 28, 2011 (“MRP1” [Section
2 7 p. S7-1352]), under which the City was a Permittee.

3 7. Based on my understanding of the MRP2 and the MRP3, I believe
4 the MRP3 requires Permittees, including Union City, to perform new activities
5 that are unique to local governmental entities that were not required by the
6 MRP2.

7 8. The MRP3’s new activities and higher levels of service include the
8 following. The City’s actual costs for FY 22/23 are identified herein; the City’s
9 actual share of Program costs for FY 22/23 are identified in the Declaration of
10 Sandra Mathews in support of this Test Claim (“Mathews Declaration). The
11 costs herein for FY 22/23 are actual for the entire FY 22/23. The estimated
12 costs for FY 23/34 herein, which ends on June 30, 2024, and therefore is
13 ongoing, are estimated based on activities to-date and anticipated activities.
14 Unless otherwise noted, the employee rates provided below are rounded to the
15 nearest dollar and are based on my discussions with Jackie Acosta, Finance
16 Director for Union City, which were developed based on salaries plus benefits.

17 (a) New Development and Redevelopment.

18 i. New Requirements. Provision C.3.b of the MRP3
19 requires Permittees to implement low impact development (“LID”) source
20 control, site design, and stormwater treatment onsite or at a joint stormwater
21 treatment facility for certain “regulated projects,” including the following:

22 (1) New or widening roads (Provision C.3.b.ii.(4)).

23 **FY 22/23 Actual Costs:** Applicable Regulated Projects are unknown at this
24 time. Union City attended the Program’s New Development Subcommittee
25 meetings in FY 22/23. There were four 2-hour quarterly meetings in FY 22/23,
26 with approximately 1/8 of the time spent on Provision C.3.b.ii.(4).

27 ///

28 ///

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Azim)

FY22/23 Provision C.3.b.ii.(4) Actual Costs			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$117	\$117
Tommy Cho (Principal Civil Engineer)	1	\$103	\$103
TOTAL			\$220

FY 23/24 Estimated Costs: Applicable Regulated Projects are unknown at this time. Union City has attended and will attend the Program's New Development Subcommittee meetings in FY 23/24. It is anticipated there will be four 2-hour quarterly meetings in FY 23/24, with approximately 1/8 of the time spent on Provision C.3.b.ii.(4).

FY23/24 Provision C.3.b.ii.(4) Estimated Costs			
Person	Time (Hours)	FY23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$129	\$129
Tommy Cho (Principal Civil Engineer)	1	\$111	\$111
TOTAL			\$240

(2) Road reconstruction projects (Provision C.3.b.ii.(5)).

FY 22/23 Actual Costs: Applicable Regulated Projects are unknown at this time. Union City attended the Program's New Development Subcommittee meetings in FY 22/23. There were four 2-hour quarterly meetings in FY 22/23, with approximately 1/8 of the time spent on Provision C.3.b.ii.(5).

FY22/23 C.3.b.ii.(5) Actual Costs			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$117	\$117
Tommy Cho (Principal Civil Engineer)	1	\$103	\$103
TOTAL			\$220

FY 23/24 Estimated Costs: Applicable Regulated Projects are unknown at this time. Union City has attended and will attend the Program's New Development Subcommittee meetings in FY 23/24. It is anticipated there will

be four 2-hour quarterly meetings in FY 23/24, with approximately 1/8 of the time spent on Provision C.3.b.ii.(5).

FY23/24 C.3.b.ii.(5) Estimated Costs			
Person	Time (Hours)	FY 23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	1	\$129	\$129
Tommy Cho (Principal Civil Engineer)	1	\$111	\$111
TOTAL			\$240

(b) Green Stormwater Infrastructure (GSI)

i. Modified Higher Levels of Service Requirements.

Provision C.3.j.ii.(1)(a)-(g) of the MRP3 requires Permittees to update and/or supplement their Green Infrastructure Plans as needed to ensure that municipal processes and ordinances allow and appropriately encourage implementation of green infrastructure, and incorporate lessons learned. This includes revising implementation mechanisms; continuing to update related municipal plans; developing funding mechanisms; updating guidance, details and specifications as appropriate; implementing tracking/mapping tools; and adopting/amending legal mechanisms as necessary.

FY22/23 Actual Costs: I contacted HDR Consultants in June 2023 requesting it provide a quote to update the Green Infrastructure Plan that HDR had prepared in 2019. We discussed the need and scope for the Plan and exchanged emails and engaged in telephone conversations.

FY22/23 Provision C.3.j.ii.(1)(a)-(g) Actual Costs			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	2	\$117	\$234
TOTAL			\$234

FY 23/24 Estimated Costs: The HDR proposal was received in July 2023 and was reviewed by me. Given the relatively large amount of the HDR proposal, it was determined that the City would have to go through the request for proposal (RFP) process which would allow other prospective consultants to

provide a proposal for this task. I do not anticipate this activity to occur in FY 23/24, however.

FY23/24 Provision C.3.j.ii.(1)(a)-(g) Costs		
Activity: Update and/or supplement their Green Infrastructure Plans		
Person	Hours x FY23/24 Rate	Rate/Hour
Farooq Azim (City Engineer)	18 x 129	\$2,222
TOTAL		\$2,322

ii. Modified Higher Level of Service Requirements.

Provision C.3.j.ii.(2)(a)-(j) of the MRP3 requires Permittees to implement, or cause to be implemented, green infrastructure projects within their jurisdictions which are not already defined as Regulated Projects. The Permittees may meet the numeric retrofit requirements on a countywide basis. Though Permittees may meet their total individual numeric retrofit requirements on a countywide basis, each Permittee shall implement, or cause to be implemented, a green infrastructure project or projects treating no less than 0.2 acres of impervious surface within its jurisdiction, where that project is not already defined as a Regulated Project. Alternatively, a Permittee may contribute substantially to such a green infrastructure project(s) outside of its jurisdiction and within its County.

FY 22/23 Actual Costs: The City has attended meetings with the Program regarding these Provision C.3.j.ii.(2)(a)-(j) requirements, including municipal staff training, and incurred the following costs implementing C.3.j.ii.(2)(a)-(j) programs in FY 22/23.

FY 22/23 Actual Costs C.3.j.ii.(2)(a)-(j)			
Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	6	\$117	\$702
Tommy Cho (Principal Civil Engineer)	3	\$103	\$309
TOTAL			\$1,011

1 Although the Second Incomplete Letter states “no fiscal year 2023-2024 costs
2 are provided” (p. 10), those estimate costs are provided in the next table.

3 **FY 23/24 Estimated Costs:** Union City has attended and will attend the
4 Program’s New Development Subcommittee meetings in FY 23/24. It is
5 anticipated there will be four 2-hour quarterly meetings in FY 23/24, with
6 approximately 1/4 of the time spent on Provision C.3.j.ii.(2)(a)-(j) .

7 Additionally, the Union City Bike Lane Improvement Project includes
8 approximately 2.5 miles of improvements on Union City Blvd. from Smith
9 Street to the southern City limits. Union City Blvd., a major arterial, has two
10 traffic lanes in each direction. The project involves widening the roadway by
11 reducing the existing median to accommodate the installation of bicycle lanes
12 alongside the existing two traffic lanes. The MRP3 mandates municipalities to
13 meet the numeric retrofit requirements listed in Table H-1 of Attachment H in
14 the MRP3. Union City, in compliance with this, is required to implement
15 green infrastructure to treat a total of 4.45 acres throughout the City. The
16 City has chosen to incorporate stormwater treatment into the Bike Lane
17 Improvement Project to meet the numeric retrofit requirements. A total of 12
18 landscaping areas were identified for bioretention installation in the project,
19 providing a total of 6,970 square feet to treat roughly 4.16 acres of impervious
20 area. The estimated total cost for implementing these bioretention treatment
21 areas is approximately \$520,000 which includes the design and construction
22 management. These costs are expected to be incurred in FY23/24.

23 Additionally, the Program recently initiated an Alternative Compliance
24 and Numeric GSI Target workgroup to develop approaches for Permittees to
25 meet the C.3.j numeric targets. In addition to the costs below, the City may
26 incur additional costs is FY 23/24 participating in these meetings.

27 ///

Y23/24 Provisions C.3.j.ii.(2)(a)-(j) Estimated Costs			
Program Meeting Attendance			
Person	Time (Hours)	FY23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	2	\$129	\$258
Tommy Cho (Principal Civil Engineer)	2	\$111	\$222
Provision C.3.j.ii.(2)(a)-(j) Retrofits			520,000
TOTAL			\$520,480

(c) Illicit Discharge Detection and Elimination.

i. New Requirements. Provision C.5.f of the MRP3 requires Permittees to identify information missing from the current municipal separate storm sewer systems ("MS4") maps and develop a plan and schedule to compile additional storm sewer system information, considering the potential to identify component locations, size or specifications, materials of construction, and condition. I have analyzed and coordinated with Sandra Mathews, consultant for the Program, to discuss the implementation of this requirement. In FY22/23, I spent a total of one hour for such coordination at a cost of \$117 per hour; therefore, these are the actual costs for Provision C.5.f for FY 22/23. For FY23/24, I estimate spending additional time to identify what maps are available, what information is missing and work to fill in gaps in information.

FY23/24 Provision C.5.f Estimated Costs			
Person	Time (Hours)	FY 23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	10	\$117	\$1,170
Eddie Yu (Principal Civil Engineer)	70	\$78	\$5,460
TOTAL			\$6,630

(d) Trash Load Reduction

i. Modified Higher Levels of Service Requirements.

(1) The MRP3 requires Permittees to implement trash load reduction control actions and demonstrate attainment of trash discharge reduction requirements of 90% by June 30, 2023; and 100% trash load reduction or no adverse impact to receiving waters from trash by June 30, 2025 (Provision C.10.a.i.).

FY 22/23 Actual Costs: The City expended the following costs on pre-design and planning in FY 22/23 associated with these higher level of service requirements:

FY 22/23 Provision C.10.a.i. Actual Costs			
Person/Activity	Time (Hours)	FY 22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	10	\$117	\$1,170
Eddie Yu (Civil Engineer II)	15	\$78	\$1,170
TOTAL			\$2,340

FY 23/24 Estimated Costs: Union City anticipates expending costs to develop a bid package to install trash capture devices (“TCDs”) to meet the increased trash load reduction benchmarks. Additionally, the engineer’s estimate for installation of the TCDs is \$250,000 for FY 23/24 (this is 1/4 of estimated costs for purchase and installation of new TCDs to comply with this requirement which the City anticipates will take four years to complete). Additionally, I anticipate staff costs to include working with a consultant to finalize a report regarding the effort needed to achieve 100% load reduction, staff support for installation of TCDs and work with City attorney office to explore ability to install TCDs on private property (see Provision C.10.a.ii, discussed below).

FY23/24 Provision C.10.a.i. Estimated Costs			
Develop Bid Package			
Staff Costs	Time (Hours)	FY23/24 Rate/Hour	Cost
Eddie Yu (Civil Engineer II)	80	78	\$6,240

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Azim)

Install TCDs			
Install TCDs to meet new benchmarks under Provision C.10.a.i.			\$250,000
TOTAL			\$256,240

(2) If 90% benchmark is not attained by June 30, 2023, submit revised trash load reduction plan and implementation schedule of additional trash load reduction control actions to achieve 90% and 100% benchmarks by June 30, 2023 and June 30, 2025 (Provision C.10.a.i.).

FY 22/23 Actual Costs: The City used consultant Schaaf & Wheeler to perform this activity as the benchmark was not achieved. The following costs in FY 22/23 are associated with this requirement.

FY 22/23 Provision C.10.a.i. Actual Costs			
Consultant/Person	Time (Hours)	FY22/23 Rate/Hour	Cost
Schaaf & Wheeler (Exhibit 1)	n/a	n/a	\$13,458 ¹
Farooq Azim (City Engineer)	10	\$117	\$1,170
Eddie Yu (Civil Engineer II)	15	\$78	\$1,170
TOTAL			\$15,798

FY 23/24 Costs: The City paid the remainder of the Schaaf & Wheeler contract in FY 23/24.

FY Provision C.10.a.i. 23/24 Costs			
Consultant			Cost
Schaaf & Wheeler (Exhibit 1)	n/a	n/a	\$16,452
TOTAL			\$16,452

(3) New Requirements. Provision C.10.a.ii requires that Permittees ensure that private lands that are moderate, high, or very high trash generating, and that drain to storm drain inlets that Permittees do not own or operate (private), but that are plumbed to Permittees' storm drain systems are equipped with full trash capture systems or are managed with

¹ The Schaaf & Wheeler contract amount is for \$29,910. The remainder was paid in FY 23/24.

trash discharge control actions equivalent to or better than full trash capture systems by July 1, 2025.

FY 22/23 Actual Costs: City staff attended the Program's Trash Subcommittee meetings in FY 22/23. There were four 2-hour quarterly meetings in FY 22/23, with approximately 12.5% of time spent on Provision C.10.a (or 1 hour).

FY22/23 Provision C.10.a.ii Actual Costs			
Person	Time (Hours)	FY 22/23 Rate/Hour	Cost
Mark Camfield (Public Works Superintendent)	1	\$117	\$117
Paul Roman (Streets Supervisor)	1	\$93	\$93
TOTAL			\$210

FY 23/24 Estimated Costs: To date in FY 23/24, Union City has not attended the Program's Trash Subcommittee meetings, but I anticipate there will be two additional 2-hour quarterly meetings in FY 23/24, with approximately 12.5% of the time spent on Provision C.10.a.ii.

FY23/24 Provision C.10.a.ii Estimated Costs			
Person	Time (Hours)	FY 23/24 Rate/Hour	Cost
Public Works Superintendent	0.5	\$117	\$59
Paul Roman (Streets Supervisor)	0.5	\$93	\$47
TOTAL			\$106

ii. New Requirements. Provision C.10.e of the MRP3 requires Permittees to:

(1) Use an approved Trash Impracticability Report in developing updated Trash Load Reduction Work Plans (Provisions C.10.d, C.10.e.iv).

FY 22/23 Actual Costs: The City engaged in planning activities with the Program regarding the new Provision C.10.e requirements. Additionally, City staff attended the Program's Trash Subcommittee meetings in FY 22/23.

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Azim)

There were four 2-hour quarterly meetings in FY 22/23, with approximately 12.5% of time spent on Provision C.10.e (or 1 hour).

FY 22/23 Provision C.10.e Actual Costs			
Person	Time (Hours)	Fy22/23 Rate/Hour	Cost
Farooq Azim (City Engineer)	0.25	\$117	\$29
Tommy Cho (Principal Civil Engineer)	0.25	\$103	\$26
Mark Camfield (Meeting Attendance)	1	\$117	\$117
Paul Roman (Meeting Attendance)	1	\$93	\$93
TOTAL			\$265

FY 23/24 Estimated Costs: To date in FY 23/24, Union City has not attended the Program's Trash Subcommittee meetings, but I anticipate there will be two additional 2-hour quarterly meetings in FY 23/24, with approximately 12.5% of the time spent on Provision C.10.e.

FY23/24 Provision C.10.e Estimated Costs			
Person	Time (Hours)	FY23/24 Rate/Hour	Cost
Public Works Superintendent	0.5	\$117	\$59
Paul Roman (Streets Supervisor)	0.5	\$93	\$47
TOTAL			\$106

(e) Mercury Controls

i. Modified Higher Levels of Service Requirements.

Provision C.11.c of the MRP3 requires Permittees to implement or cause to be implemented treatment control measures to treat old industrial land use at 70% efficiency, or by demonstrating an equivalent mercury load reduction.

(f) PCB Controls

i. Modified Higher Levels of Service Requirements.

Provision C.12.a of the MRP3 requires Permittees to quantify the PCBs load reductions achieved through all the pollution prevention, source control, green stormwater infrastructure, and other treatment control measures and submit documentation annually confirming that all control measures effectuated during the previous Permit term for which PCB load reduction credit was

recognized continue to be implemented at an intensity sufficient to maintain the credited load reduction.

ii. Modified Higher Levels of Service Requirements.

Provision C.12.c of the MRP3 requires Permittees to implement or cause to be implemented treatment control measures to treat old industrial land use at 70% efficiency, or by demonstrating an equivalent PCBs load reduction.

FY 22/23 Actual Costs: The City engaged in planning activities with the Program regarding the new Provision C.11 and C.12 requirements described above as follows. According to the MRP3 Fact Sheet, “Because PCBs are more concentrated in some locations, the choice of where to implement control measures may be more influenced by known areas of PCBs contamination. However, the mercury removal benefit can be an important contribution to overall mercury load reductions, and available data indicate that this strategy of focusing on PCBs will yield mercury load reductions in many circumstances.” (MRP3 at A-255 [Section 7 p. S7-0514].) Thus, as planning was conducted concurrently on these requirements, the time cannot be separated by provision.

FY 22/23 Provisions C.11., C.12.a C.12.c Actual Costs			
Person/Activity	Time (Hours)	FY22/33 Rate/Hour	Cost
Farooq Azim (City Engineer)	1.5	\$117	\$176
Tommy Cho (Principal Civil Engineer)	1.5	\$103	\$155
TOTAL			\$331

FY 22/23 Estimated Costs: The City anticipates engaging in planning activities with the Program regarding the new Provision C.11 and C.12 requirements described above as follows in FY 23/24. According to the MRP3 Fact Sheet, “Because PCBs are more concentrated in some locations, the choice of where to implement control measures may be more influenced by known areas of PCBs contamination. However, the mercury removal benefit can be an important contribution to overall mercury load reductions, and available

data indicate that this strategy of focusing on PCBs will yield mercury load reductions in many circumstances.” (MRP3 at A-255 [Section 7 p. S7-0514].) Thus, as planning was conducted concurrently on these requirements, the time cannot be separated by provision.

FY 23/24 Provisions C.11.a, C.12.a C.12.c Estimated Costs			
Person/Activity	Time (Hours)	FY23/24 Rate/Hour	Cost
Farooq Azim (City Engineer)	1.5	\$129	\$194
Tommy Cho (Principal Civil Engineer)	1.5	\$111	\$167
TOTAL			\$361

(g) Discharges Associated with Unsheltered Homeless Populations (see Mathews Declaration).

i. New Requirements. Provision C.17.a of the MRP3 requires Permittees to collectively develop and submit a best management practice report that identifies practices to address non-storm water discharges associated with unsheltered homeless populations into MS4s that impact water quality and specific milestones for reducing such discharges. Permittees are required to develop and submit a regional best management practice report to identify control measures to address non-stormwater discharges associated with unsheltered homeless populations and identify milestones to reduce such discharges. To meet this new MRP3 requirement, the Program collaborated with the other four countywide programs on a regional project to develop the required best management practice report, which was submitted with each Permittee’s Fiscal Year 22/23 annual report. (See Mathews Decl., ¶9.j.) Additionally, each Permittee is required to submit a map identifying, the approximate locations of unsheltered homeless populations, including encampments and other areas where other unsheltered homeless people live relative to storm drains, creeks, and flood control channels. To support its members, the Program worked with County officials to obtain the required

1 geo-located point in time count data, developed an approach for creating the
2 maps, and updated its GIS system to produce the required maps for each of its
3 members. (See *id.*) The City submitted the maps identifying, the approximate
4 locations of unsheltered homeless populations, including encampments and
5 other areas where other unsheltered homeless people live relative to storm
6 drains, creeks, and flood control channels, with its FY 22/23 annual report.

FY 22/23 Provision C.17.a Actual Costs			
Person/Activity	Time (Hours)	FY22/23 Rate/Hour	Cost
Jesus Garcia (Homeless Prog. Coordinator)	3	\$75	\$225
TOTAL			\$225

11 ii. The City will incur additional costs throughout the
12 MRP3 term to implement the best management practices.

13 (h) Cost Reporting (see Mathews Declaration).

14 i. New Requirements. Provision C.20.b of the MRP3
15 requires Permittees to develop a cost reporting framework and methodology to
16 perform an annual fiscal analysis. Permittees are encouraged to
17 collaboratively develop the framework and methodology for purposes of
18 efficiency, cost-savings, and regionwide consistency and comparability. The
19 framework shall consider identification of costs incurred solely to comply with
20 the Permit's requirements as listed in Provision C.20.b.(iii) as compared to
21 costs shared with other programs or regulatory requirements, provide
22 meaningful data to assess costs of different program areas, and allow for
23 comparisons and to identify trends over time. The City had no actual costs for
24 FY22/23 but the Program did have actual costs inn FY22/23. As set forth in
25 paragraph 10 the Mathews Declaration, the City's share of these costs
26 \$2,877.86. In FY 23/24, I anticipate attending the Program's training for
27
28

Provision C.20.b for two hours at a \$119 per hour for a total of \$238; therefore, these are estimated costs FY for 23/24.

(i) Asset Management (see Mathews Declaration).

i. Requirements. Under C.21.b, Permittees must develop and implement an asset management plan to ensure the satisfactory condition of all hard assets constructed during this and Previous Permit terms pursuant to Provisions C.2, C.3, C.10, C.11, C.12, C.13, C.14, C.17, C.18, and C.19. In addition to the City's share of Program costs in the Mathews Declaration, in FY 23-24 the Program is convening an Asset Management Workgroup to develop framework outline and draft asset management framework methodology. Four Program workgroup meetings, likely one hour each, and three regional meetings to discuss consistent approaches for aspects of the plans are anticipated. The City may participate in these meetings.

9. Continuing Requirements from the MRP1 and MRP2 Test Claims

The requirements below were raised in our MRP1 and MRP2 test claims, which are currently pending before the Commission, and are continuing in the MRP3.

(a) Permittees were required to implement a number of water quality monitoring programs under Provision C.8. These requirements are discussed in our MRP1 test claim, which is currently pending before the Commission. Permittees continue to incur costs necessary to comply with this Provision, as discussed in the Declaration of Sandra Mathews in support of this Test Claim. Costs associated with these continuing activities are contained in the Mathews Declaration in support of this Test Claim.

(b) Provision C.10.b. required Permittees to "maintain, and provide for inspection and review upon request, documentation of the design, operation, and maintenance of each of their full trash capture systems, including the mapped location and drainage area served by each system."

(MRP2 at C.10.b [Section 7 p. S7-1093.]) This provision specified detailed full trash capture system installation and maintenance instructions. Provision C.10.b. in the MRP2 required increased activities by Union City that are best characterized as a higher level of service in comparison to the MRP1. MRP3 continues these requirements. Additionally, Provision C.10.a of the MRP2 required 70% trash load reduction by July 1, 2017, and 80% by July 1, 2019. (MRP2 at C.10.a [Section 7 p. S7-1091].) Continuing costs associated with these requirements include maintenance of trash capture devices and maintenance and parts associated with the City's existing three sweepers as summarized as follows:

FY22/23 Continuing Costs			
Activity	Rate x Est. Hours/Year	Hours x Cost per Hour	Costs (Exhibit 1)
Trash Capture Device Maintenance			
Maintenance Crew 1	\$45 x 17		\$765
Maintenance Crew 2	\$40 x 37		\$1,480
Vacuum Truck		182 x \$237.50	\$43,255
Sweeper Maintenance			\$162,833
Sweeper Parts			\$7,076
TOTAL			\$215,409

(c) Provision C.11.b. required Permittees "to develop and implement an assessment methodology and data collection program to quantify mercury loads reduced through implementation of any and all pollution prevention, source control and treatment control efforts required by the provisions of this Permit or load reductions achieved through other relevant efforts." (MRP2 at C.11.b [Section 7 p. S7-1259.]) This program is continuing under Provision C.11.a. of the MRP3.

(d) Provision C.11.c. required Permittees to implement green infrastructure projects during the term of the permit to achieve mercury load reductions of 48 g/year by June 30, 2020. (MRP2 at C.11.c [Section 7 p. S7-1103 – S7-1105].) Provision C.11.e of the MRP3 requires Permittees to

“implement green stormwater infrastructure (GSI) projects during the term of the Permit consistent with implementing requirements in Provision C.3.j.” (MRP3 C.11-6 [Section 7 p. S7-0161].)

(e) Provision C.12.c. required Permittees to “implement green infrastructure projects during the term of the Permit to achieve PCBs load reductions of 120 g/year by June 30, 2020.” (MRP2 at C.12.c [Section 7 p. S7-1273].) Provision C.12.f of the MRP3 requires Permittees to “implement green stormwater infrastructure (GSI) projects during the term of the Permit consistent with implementing requirements in Provision C.3.j.” (MRP3 at C.12-8 [Section 7 p. S7-0172].)

Continuing costs associated with requirements C.11.c and C.12.c include maintenance of the Green Street Infrastructure (“GSI”) in the following table. Rates were provided to me by Jesus Banuelos, Public Works Streets Supervisor.

FY22/23 Continuing Costs		
GSI Maintenance by City Maintenance Crews	FY22/23 Rate x Hours/Year	Costs (Indirect)
Maintenance 1 Crew	\$45 x 400	\$18,000
Maintenance 2 Crew	\$40 x 1,200	\$48,000
TOTAL		\$66,000

1 (f) Provision C.12.d. required Permittees to “prepare a plan and
2 schedule for PCBs control measure implementation and corresponding
3 reasonable assurance analysis to quantitatively demonstrate that sufficient
4 control measures will be implemented to attain the PCBs TMDL wasteload
5 allocations.” (MRP2 at C.12.d [Section 7 p. S7-1273.] In 2020, Permittees
6 submitted a Reasonable Assurance Analysis and plan (“RAA”) demonstrating
7 that sufficient control measures will be implemented to attain the PCBs
8 TMDL wasteload allocations by 2030. Provision C.12.h of the MRP3 requires
9 Permittees to “update, as necessary, their PCBs control measures
10 implementation plan and RAA.” (MRP3 at C.12-11 [Section 7 p. S7-0175].)

11 10. As set forth in paragraph 8 above, the total amount of Union City’s
12 actual increased costs for Fiscal Year 22/23 for the new programs or higher
13 levels of service for MRP3 Provisions as set forth in this this Declaration is
14 \$20,971 As set forth in paragraph 8 above and in the Mathews Declaration at
15 paragraph 10, the total amount of Union City’s actual increased costs for
16 Fiscal Year 22/23 for the new programs or higher levels of service for MRP3
17 Provisions MRP3 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4),
18 C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c,
19 C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b. **\$51,619.**

20 11. As set forth in paragraph 8 above, the total amount of Union City’s
21 estimated costs for Fiscal Year 23/24 for the new programs or higher levels of
22 service for MRP3 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4),
23 C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c,
24 C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b is \$803,415. As set forth in
25 paragraph 8 above and in the Mathews Declaration at paragraph 13, the total
26 amount of Union City’s estimated increased costs for Fiscal Year 23/24 for the
27 new programs or higher levels of service for MRP3 Provisions MRP3
28 Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j),

1 C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c,
2 C.15.b.iii, C.17.a, C.20.b and C.21.b is **\$852,511**.

3 12. I am confident from my own knowledge of the MRP3, MRP2 and
4 MRP1 and the City's stormwater program that the actual and/or estimated
5 costs resulting from the MRP3 mandates at issue in this Test Claim will
6 exceed one thousand dollars (\$1,000). All costs identified in this Declaration
7 as incurring in FY 22/23 were incurred after the effective date of the MRP3
8 (July 1, 2022).

9 13. I am not aware of any state or federal funds that will be available
10 to pay for these increased costs.

11 14. I am not aware of any other local or non-local agency funds that
12 are or will be available to pay for these increased costs. The City has a Clean
13 Water Fund, which obtains revenue from property tax assessments, and is
14 supplanted by the General Funds. The salaries and benefits identified in this
15 Declaration are paid from general funds, which include the City's General
16 Fund and the Clean Water Fund. The other costs identified in this
17 Declaration are funded by the City's General Fund and the Clean Water Fund.
18 The City's share of the Program's costs as identified in the Declaration of
19 Sandra Mathews are funded by the Clean Water Fund. The City has no
20 authority to increase these revenue sources without complying with
21 Proposition 218. Thus, the City does not have authority to increase these fees
22 – only the voters have that authority. Furthermore, the money from the Clean
23 Water Fund is already consumed by existing stormwater compliance costs and
24 is insufficient to cover increased activities required by the MRP3.

25 15. The City is not confident that it will be able to avail itself of future
26 grant opportunities. The City has no grant applications pending for the
27 stormwater program. Furthermore, multiple jurisdictions must compete for
28 limited funding sources, creating stiff competition among municipalities.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.


Farooq Azim

6.1.21 DECLARATION OF FAROOQ AZIM

EXHIBIT 1
to Section 6.1
(Azim Dec)

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF UNION CITY
AND
SCHAAF AND WHEELER
FOR
UNION CITY TRASH CAPTURE FEASIBILITY STUDY, CITY PROJECT NO. 23-22**

This Agreement for consulting services is made by and between the City of Union City, a municipal corporation, (“City”) and **Schaaf & Wheeler** a California corporation, with offices located at 4699 Old Ironside Dr., Suite 350 Santa Clara, CA 95054 (“Consultant”), (together referred to as the “Parties”) as of March 24, 2023 (the “Effective Date”).

Section 1. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on March 24, 2024, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time is of the Essence. Time is of the essence. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

1.5 Public Works Requirements. Because the services described in Exhibit A constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit B. Consultant shall waive, indemnify, hold harmless, and defend City concerning any liability arising out of Labor Code Section 1720 *et seq.*

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Twenty-Nine Thousand Nine Hundred and Ten Dollars (\$29,910), notwithstanding any contrary indications that may be contained in Consultant’s proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s proposal, attached as Exhibit A, regarding the amount of compensation, the

Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- Project name & number if applicable;
- Purchase Order number to expedite payment;
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. N/A

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred

by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Rate/Fees. Unless the services provided are for a lump sum or flat fee, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation cost proposal attached hereto as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit A, attached hereto and incorporated herein. Reimbursable expenses not listed in Exhibit A are not chargeable to City. Reimbursable expenses shall not include a mark-up and are billed as a direct costs. In no event shall expenses be advanced by the City to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

2.10. Business License. The Consultant is not authorized to perform services or incur costs whatsoever under the terms of this Agreement until Consultant applies for and has been issued a business license from the City pursuant to Title 5 of the Union City Municipal Code.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 Required Coverage. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>COVERAGE</u>	<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
A	Commercial Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	General \$1,000,000 per occurrence; Bodily Injury and Property Damage \$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Consultant may rely on a self-insurance program to meet

		those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$150,000 per claim

4.2 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement

b. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: City of Union City, its City Council, and all City officers, agents, employees, volunteers and representatives.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

e. **Certificates of Insurance:** Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to City, evidencing that all required insurance coverage is in effect. The City reserves the rights to require the Consultant to provide complete, certified copies of all required insurance policies.

f. **Subcontractors:** Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

g. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

i. The retroactive date of the policy must be shown and must be before the date of the Agreement.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.

iv. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3 All Policies Requirements.

a. **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the City. Acceptance of Consultant's insurance by City shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

b. **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

d. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

4.4 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the City Manager, or his designee, identified as **Marilou Ayupan** ("Contract Administrator"). All correspondence, meeting documentation, invoices and project deliverables shall be directed to or through the Contract Administrator.

Marilou Ayupan, P.E.
Public Works Director
City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
MarilouA@unioncity.org

10.10 Notices. Any written notice to Consultant shall be sent to:

Caitlin Tharp, PE
 Vice President
 Schaaf and Wheeler Consulting Civil Engineers
 10232 Donner Pass Road #4, Truckee, CA 96161
CTharp@swsv.com

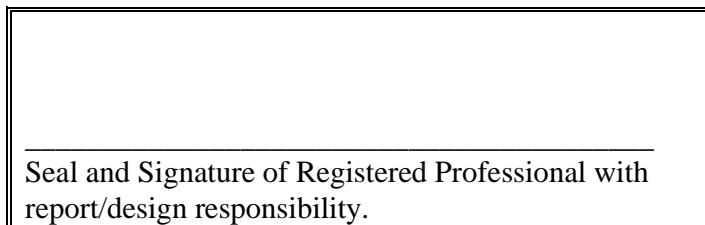
All other written notices to City shall be sent to:

Joan M. Malloy
 City Manager
 City of Union City
 34009 Alvarado Niles Rd.
 Union City, CA 94587

with a copy to

Kristopher J. Kokotaylo,
 City Attorney
 City of Union City
 34009 Alvarado Niles Rd.
 Union City, CA 94587

10.12 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.13 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A
Exhibit B

Schaaf and Wheeler Proposal
 Public Works Requirements

10.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date.

CITY OF UNION CITY

DocuSigned by:

City Manager- Joan Malloy

6A883797FA684C9...

JOAN MALLOY, CITY MANAGER

SCHAAF AND WHEELER

Caitlin Tharp

CAITLIN THARP, VICE PRESIDENT

ATTEST:

DocuSigned by:

Anna Brown

48AF7211F71E45C...

ANNA M. BROWN, CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

Kristopher J. Kokotaylo

4A33379A6B054E1

KRISTOPHER J. KOKOTAYLO
CITY ATTORNEY

3695229.2

Version 3.2.21

EXHIBIT A

SCHAAF AND WHEELER PROPOSAL



10232 Donner Pass Road, Unit #4
Truckee, CA 96161
(415) 823-4964
ctharp@sww.com

PROPOSAL MEMO

VIA EMAIL

DATE: March 17, 2023
TO: Eddie Yu, City of Union City
FROM: Caitlin Tharp, PE
SUBJECT: Union City Trash Capture Feasibility Study Proposal

Schaaf & Wheeler is providing you with this scope and fee to perform a full trash capture feasibility study for Union City.

Our work will provide the City with a road map to meet the MRP trash capture requirements of 90% by June 30, 2023 and 100% by June 30, 2025. Or, if not feasible, a strategic plan to meet 90% as required by the Water Board.

Schaaf & Wheeler will review the City's existing trash capture devices and identify potential new small-scale and large-scale opportunities utilizing State Approved full trash capture devices.

We understand that the city currently has approximately 72% trash credit through 562 City owned small trash capture device and privately owned treatment devices. The city is currently utilizing offset credits of 10% which will no longer be allowed. Schaaf & Wheeler will prioritize additional small scale trash capture installations to meet the 90% deadline with full capture devices only. Large scale devices will be considered where economically preferable for the 100% goal, or where funding may be available from Caltrans for their installation.

Task 1: Data Collection/Review

Schaaf & Wheeler will review the City's GIS database (assumed to be provided by the City or County) for existing trash devices, storm drain system, storm drain catchments, and trash generation areas.

Task 2: Identify Small and Large Trash Capture Device Opportunities

Schaaf & Wheeler will identify small trash capture device locations to obtain 90% and 100% full trash capture. Large trash capture device alternatives will be reviewed for watersheds which cannot be treated with small devices alone, where Caltrans ROW may be treated and therefore possibly obtain Caltrans construction funding, or where a large device may be more cost effective. Drainage areas to each TCD will be delineated, based on larger storm drain catchments provided by the city. Note, some devices may be identified for private properties in order to obtain the trash capture goals. It may not be feasible to obtain 90% or 100% with trash capture devices on city property alone. This scope assumes a desktop analysis only. It is recommended that the preferred device locations be reviewed in the field for additional feasibility confirmation.

Task 3: Feasibility Study Report

Schaaf & Wheeler will summarize the results of Tasks 1 and 2 in a report. The report will include figures and tables of the recommended device installation locations. Engineer's cost estimates will be included. A schedule for implementation will be included. This assumes one draft and one final version of the report.

Task 4: Strategic Plan to Meet 90% Goal

If the City is unable to meet the 90% goal by June 30th 2023, Schaaf & Wheeler will create a Strategic Plan to meet the 90% trash capture reduction goal for submission to the Water Board. This will be a memorandum taken from data provided within the Feasibility Report which provides specific actions and a schedule for completion.

Task 5: Coordination and Project Management

Schaaf & Wheeler will be made available to the city throughout this project via email and telephone. Face-to-face meetings will not be necessary.

Schedule and Fee

After notice to proceed and receipt of GIS data, this study is estimated to take 4 weeks to complete following notice to proceed.

Table 1 – Project Fee

Union City Trash Feasibility Schaaf & Wheeler (3/17/23)		Schedule of Hours and Rates by Task			
		Schaaf & Wheeler			Schaaf & Wheeler Total
		Principal Project Manager	Assistant Engineer	GIS Analyst	
Task	Hourly Rate	\$275	\$195	\$195	
TASK 1	DATA COLLECTION/REVIEW	2	8	8	\$ 3,670
TASK 2	IDENTIFY TRASH DEVICE OPPORTUNITIES	4	60	8	\$ 14,360
TASK 3	FEASIBILITY STUDY REPORT	4	24	8	\$ 7,340
TASK 4	STRATEGIC PLAN	2	12		\$ 2,890
TASK 5	COORDINATION AND PROJECT MANAGEMENT	6			\$ 1,650
	TOTAL	18	104	24	\$ 29,910

Schaaf & Wheeler proposes to complete this work on a time and materials basis for a fee not to exceed \$29,910. Work will be billed in accordance with our 2023 charge rate (attached). Standard provisions dated April, 2017 (attached) apply. If you have any questions regarding this scope and budget, do not hesitate to contact me at (415) 823-4964 or ctharp@swsv.com.

Best regards,

SCHAAF & WHEELER



\Caitlin Tharp, PE
CPSWQ, LEED AP, QSD/QSP
Vice President
RCE 76810

I DO HEREBY AUTHORIZE SCHAAF & WHEELER TO PROCEED FORWARD WITH THE EXECUTION OF THIS SCOPE OF WORK AS DESCRIBED HEREIN.

Name, Title

Date

Schaaf & Wheeler

CONSULTING CIVIL ENGINEERS

4699 Old Ironsides Dr., Suite 350
Santa Clara, CA 95054-1860
408-246-4848

Hourly Charge Rate Schedule

Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Current rates by classification are listed below:

<u>Classification</u>	<u>Rate/Hr</u>	<u>Classification</u>	<u>Rate/Hr</u>
Principal Project Manager	\$275	Construction Manager	\$250
Senior Project Manager	\$250	Senior Resident Engineer	\$235
Senior Engineer	\$235	Resident Engineer	\$210
Associate Engineer	\$210	Assistant Resident Engineer	\$190
Assistant Engineer	\$195		
Junior Engineer	\$185		
Designer	\$175		
GIS Analyst	\$175		
Technician	\$160		
Engineering Trainee	\$135		

Litigation Charges

Work done in preparation for litigation and other very high level-of-expertise assignments is charged at \$400 per hour. Court or deposition time as an expert witness is charged at \$500 per hour.

Materials and Services

Subcontractors, special equipment, outside reproduction, data processing, computer services, etc., will be charged at 1.10 times cost.

Effective 1/1/23

Schaaf & Wheeler **CONSULTING CIVIL ENGINEERS**

4699 Old Ironsides Dr., Suite 350

Santa Clara, CA 95054-1860

408-246-4848

Fax 408-246-5624

Standard Provisions

April 2017

Conditions set forth below are incorporated as part of this Agreement. These Standard Provisions and the accompanying proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Standard Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Standard Provisions shall govern.

1. **PROFESSIONAL STANDARDS OF CARE** - Schaaf & Wheeler, its employees, subconsultants, and subcontractors (hereinafter referred to as "CONSULTANT") shall perform its services under this Agreement in accordance with the degree of care and skill ordinarily practiced at the same point in time and under similar circumstances by professionals providing similar services. No other warranty, express or implied, shall apply to the services performed by CONSULTANT.
2. **INDEMNITY** – CONSULTANT shall indemnify and hold harmless CLIENT (including its officers and employees) against claims, losses, damages, liabilities (including the reimbursement of reasonable attorney's fees), and liability for injury or harm to persons or property to the extent caused by the negligence, recklessness, or willful misconduct of CONSULTANT for professional services performed under this Agreement. The duty to defend obligation of the CONSULTANT shall be limited to the proportionate percentage of any claim arising directly from the services performed by the CONSULTANT under this Agreement.
3. **FORCE MAJEURE** – Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.
4. **DISPUTE RESOLUTION** – CLIENT and CONSULTANT agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this agreement. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.
5. **APPLICABLE LAWS** – CONSULTANT shall perform its services in accordance with the laws, rules, regulations, and codes that are applicable to the project and in force at the time of the completion of the documents.
6. **HAZARDOUS MATERIALS** - The scope of CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.

7. **RIGHT OF ENTRY** - When entry to property is required for the CONSULTANT to perform its services, the CLIENT agrees to obtain legal right-of-entry on the property.
8. **RELIANCE ON INFORMATION PROVIDED BY OTHERS** – CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by CLIENT, CLIENT’s consultants and contractors, and information from public records, without the need for independent verification.
9. **THIRD PARTIES** - Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the CLIENT or CONSULTANT. CONSULTANT’s services hereunder are being performed solely for the benefit of the CLIENT, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANT’s performance of services hereunder.
10. **OWNERSHIP OF DOCUMENTS** - The CLIENT agrees not to use CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without CONSULTANT’s express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the CLIENT’s sole risk and without liability to CONSULTANT or its employees, independent professional associates, subconsultants, and subcontractors. CLIENT shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.
11. **SUSPENSION OR TERMINATION OF CONTRACT** – CLIENT may suspend or terminate this Agreement with seven days prior written notice to CONSULTANT for convenience or cause. CONSULTANT may terminate this Agreement for cause with seven days prior written notice to CLIENT. Failure of CLIENT to make payments when due shall be cause for suspension of services, or, ultimately, termination, unless and until CONSULTANT has been paid in full all amounts due for services, expenses, and other related charges.
12. **SITE VISITS** - In the event that CONSULTANT’s scope of services shall include site visits during the construction phase, CONSULTANT shall be serving only in the capacity as a consultant to advise CLIENT on issues involving progress and general design compliance. CONSULTANT does not assume any responsibility for the quality, sequences, techniques, or timeliness of any contractor’s work, job site safety, continuous onsite inspections, or any issues that fall outside of the CONSULTANT’s scope of services as defined herein.
13. **GOVERNING LAWS** - The laws of the state of California shall govern the validity and interpretation of the Agreement.
14. **INSURANCE** - During the performance of work covered by this Agreement, CONSULTANT shall maintain the following insurance coverage:

a) Workers' Compensation	Statutory
b) Commercial General Liability (includes Products & Completed Operations)	\$2,000,000 each occurrence; \$4,000,000 aggregate
c) Automobile Liability	\$1,000,000 combined single limit each accident
d) Professional Liability	\$5,000,000 each claim; \$5,000,000 aggregate

15. PREVAILING WAGE OBLIGATIONS - The Client shall notify Schaaf & Wheeler in writing if the Work contemplated by this Agreement constitutes a “public work” under any and all federal, state and/or local prevailing wage laws, and/or living wage laws, including but not limited to the Davis-Bacon Act and the provisions of California Labor Code §§ 1720 et seq. In the event that Schaaf & Wheeler must adhere to federal, state and/or local prevailing wage obligations for the Work performed, the Client shall notify and provide Schaaf & Wheeler with any and all applicable prevailing wage determinations prior to the Work to being performed under this Agreement. Any prevailing wage obligations might affect the payment terms contemplated by this Agreement and thus constitute a changed condition mandating renegotiation and/or termination of this Agreement. The Client understands and agrees that Schaaf & Wheeler will rely on the representations made by the Client with regard to prevailing wage obligations and the Client agrees to indemnify Schaaf & Wheeler, its officers, directors, employees, agents and/or subcontractors against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney’s fees and legal costs, arising from Schaaf & Wheeler’s reliance upon the Client’s representations regarding prevailing wage obligations.

EXHIBIT B

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the

difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.
- The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.
- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

DIR REGISTRATION

Consultant shall be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as set forth in Labor Code section 1771.1. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code Section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Schaaf & Wheeler

CONSULTING CIVIL ENGINEERS

4699 Old Ironsides Drive, Suite 350
 Santa Clara, CA 95054
 Tel: 408-246-4848

Offices
 Santa Clara
 San Francisco
 Salinas
 Santa Rosa
 Truckee

Invoice

City of Union City Attn:
 Finance Department
 34009 Alvarado - Niles Road
 Union City, CA 94587

Invoice Date: Apr 30, 2023**Invoice Num:** 37464**Billing Through:** Apr 30, 2023

Trash Capture Feasibility Study-City Project No. 23-22 (CUCX.01.23:001) - PO#: 1050375 - Managed by (CJT)

Contract Amount: \$29,910.00**Amount Billed:** \$13,457.50**Amount Remaining:** \$16,452.50**Professional Services:****Classification**

SENIOR Project MANAGER
 ASSISTANT ENGINEER

Hours	Rate	Amount
16.00	\$250.00	\$4,000.00
48.50	\$195.00	\$9,457.50

Total Services: \$13,457.50**Project (CUCX.01.23:001) Total Amount Due:** \$13,457.50**Amount Due This Invoice:** \$13,457.50*This invoice is due upon receipt***PO 1050375****Approved to pay:**

DocuSigned by:

Eddie Yu

5/31/2023

B7690B069591409...

DocuSigned by:

Farooq Azim

5/31/2023

F3B858078E234AF...

Approved by:**Farooq Azim, City Engineer**

Union City Trash Feasibility April 2023 Invoice		Contract Total	Current Invoice	Previously Invoiced	Remaining in Contract
	Task				
TASK 1	DATA COLLECTION/REVIEW	\$ 3,670	\$ 3,670.00		\$ -
TASK 2	IDENTIFY TRASH DEVICE OPPORTUNITIES	\$ 14,360	\$ 9,137.50		\$ 5,222.50
TASK 3	FEASIBILITY STUDY REPORT	\$ 7,340			\$ 7,340.00
TASK 4	STRATEGIC PLAN	\$ 2,890			\$ 2,890.00
TASK 5	COORDINATION AND PROJECT MANAGEMENT	\$ 1,650	\$ 650.00		\$ 1,000.00
	TOTAL	\$ 29,910	\$13,457.50	\$ -	\$16,452.50

Item	Range	Life	Acquired	3/2017	Unit Number	472
Miles Run	5,454.0	38,997.0	Book Value	29882.23	Category	STREETS
Fuel Used	2,699.9	18,886.6	Condition	New	Start Miles	80
Fuel Cons MPG	2.02	2.06	Fuel Type	Diesel	Current Miles	39077
Oil Used	0	0	License	1495633	Serial Number	516M1DB22GH221707
Oil Cons MPQ	0	0	Year	2016	Vehicle Make	AUTOCAR
Operating Cost Analysis			Vehicle Model			
Accident Damage	0%	6%	Vehicle Type			
Breakdown	2%	1%	Body Type			
Campaign	0%	0%	Location Garaged			
Fuel Cost	17%	14%	Engine Make			
Meeting	0%	0%	Engine Model			
New Vehicle Prep	0%	0%	Engine Oil			
PM Services	0%	1%	Transmission Make			
Service Call	1%	1%				
Verbal Report	34%	25%				
Warranty	0%	0%				
Other	47%	53%				

Maintenance	Range				Life Cost			
VMRS System	Parts	Labor	Total	CPM	Parts	Labor	Total	CPM
001 - Air Conditioning, Heating & Ventilating	0	0	0	0.00	0	1,260	1,260	0.03
002 - Cab & Sheet Metal	0	0	0	0.00	0	0	0	0.00
003 - Instruments, Gauges, Warning &	0	0	0	0.00	0	0	0	0.00
013 - Brakes	0	0	0	0.00	0	1,050	1,050	0.03
015 - Steering	0	0	0	0.00	46	210	256	0.01
016 - Suspension	0	0	0	0.00	0	0	0	0.00
017 - Tires, Tubes, Liners & Valves	1,007	105	1,112	0.20	8,278	945	9,223	0.24
019 - Automatic/Manual Chassis Lubricator	0	0	0	0.00	0	0	0	0.00
022 - Axles - Driven, Rear	0	0	0	0.00	0	0	0	0.00
025 - Transfer Case	0	0	0	0.00	0	0	0	0.00
038 - Electric Power Management - Electric	0	0	0	0.00	0	0	0	0.00
039 - Electric Drive Components - Electric	0	0	0	0.00	0	0	0	0.00
042 - Cooling System	0	0	0	0.00	3	105	108	0.00
043 - Exhaust System	0	0	0	0.00	0	0	0	0.00
049 - Power Train - Hydraulic, Hybrid	0	0	0	0.00	0	0	0	0.00
053 - Expendable Items	0	0	0	0.00	0	0	0	0.00
055 - Cargo Handling, Restraints, & Lift	0	0	0	0.00	0	0	0	0.00
065 - Hydraulic Systems - Multi-Function	0	0	0	0.00	0	0	0	0.00
121 - Final Drive	0	0	0	0.00	0	0	0	0.00
142 - LNG Engine Fuel System	0	0	0	0.00	0	0	0	0.00
143 - CNG Engine Fuel System	0	0	0	0.00	0	0	0	0.00
154 - Medical Devices	0	0	0	0.00	0	0	0	0.00
176 - Chassis Shipping Unit	0	0	0	0.00	0	0	0	0.00
178 - Roll-Off & Lugger Bodies	0	0	0	0.00	0	0	0	0.00
199 - Processing Screens	0	0	0	0.00	0	0	0	0.00
292 - Concrete Pumping Equipment	0	0	0	0.00	0	0	0	0.00
293 - Oil Shaker Box	0	0	0	0.00	0	0	0	0.00
294 - Fuel Metering	0	0	0	0.00	0	0	0	0.00
368 - Milling	0	0	0	0.00	0	0	0	0.00
369 - Crushing	0	0	0	0.00	0	0	0	0.00
462 - Insulating Lift Equipment	0	0	0	0.00	0	0	0	0.00
463 - Insulating Drilling and Boring Equipment	0	0	0	0.00	0	0	0	0.00
464 - Digging	0	0	0	0.00	0	0	0	0.00
465 - Compacting	0	0	0	0.00	0	0	0	0.00
90A - Sublet	0	15,683	15,683	2.88	0	110,614	110,614	2.84
INV - INVOICING	0	0	0	0.00	0	210	210	0.01

Cost Data Summary - RD

6/13/2023 9:11:58 PM

Unit Cost Summary as of 6/13/2023

Coordinated Universal Time

Maintenance	Range				Life Cost			
VMRS System	Parts	Labor	Total	CPM	Parts	Labor	Total	CPM
MTR - Meeting & Training	0	0	0	0.00	0	315	315	0.01
OFC - Other Fixed Cost	0	0	0	0.00	0	0	0	0.00
PMS - Preventative Maintenance	0	0	0	0.00	439	1,680	2,119	0.05
TOW - TOWING	0	0	0	0.00	0	0	0	0.00
WAS - Wash & Appearance	0	0	0	0.00	0	0	0	0.00
Other Operational	9,177	5,198	14,375	2.64	38,230	26,685	64,915	1.66
Sub-Total	10,184	20,986	31,170	5.72	46,995	143,074	190,069	4.87
DE0 - Depreciation	34,213	0	34,213	6.27	236,381	0	236,381	6.06
INS - Insurance	0	0	0	0.00	0	0	0	0.00
LIC - Licenses	0	0	0	0.00	941	105	1,046	0.03
Other Fixed	0	0	0	0.00	0	0	0	0.00
Sub-Total	34,213	0	34,213	6.27	237,322	105	237,427	6.09
FL0 - Fuel	13,468	0	13,468	2.47	66,937	0	66,937	1.72
Sub-Total	13,468	0	13,468	2.47	66,937	0	66,937	1.72
Total	57,866	20,986	78,851	14.46	351,254	143,179	494,433	12.68

Cost Data Summary - RD

6/13/2023 9:11:58 PM

Unit Cost Summary as of 6/13/2023

Coordinated Universal Time

Item	Range	Life
Miles Run	6,430.0	77,993.0
Fuel Used	3,726.6	39,802.8
Fuel Cons MPG	1.73	1.96
Oil Used	0	0
Oil Cons MPQ	0	0

Acquired 1/2013
 Book Value 5000.00
 Condition New
 Fuel Type Diesel
 License 1409701
 Year 2012

Unit Number 475
 Category STREETS
 Start Miles 185
 Current Miles 78178
 Serial Number 1FVACXDT4CHBP0741
 Vehicle Make Freightliner
 Vehicle Model Business Class M2
 Vehicle Type Elgin Crosswind
 Body Type Street Sweeper
 Location Garaged Corp Yard
 Engine Make Cummins
 Engine Model ISB 6.7
 Engine Oil 15W40
 Transmission Make Allison

Operating Cost Analysis

Breakdown	0%	4%
Campaign	0%	0%
Fuel Cost	34%	18%
Meeting	0%	0%
New Vehicle Prep	0%	0%
PM Follow-up	0%	1%
PM Services	0%	1%
Service Call	0%	0%
Verbal Report	62%	38%
Warranty	0%	0%
Other	5%	38%

Maintenance	Range				Life Cost			
VMRS System	Parts	Labor	Total	CPM	Parts	Labor	Total	CPM
001 - Air Conditioning, Heating & Ventilating	0	0	0	0.00	37	1,628	1,665	0.02
002 - Cab & Sheet Metal	0	0	0	0.00	0	0	0	0.00
003 - Instruments, Gauges, Warning &	0	0	0	0.00	0	525	525	0.01
013 - Brakes	0	0	0	0.00	1,302	3,675	4,977	0.06
015 - Steering	0	0	0	0.00	32	210	242	0.00
016 - Suspension	0	0	0	0.00	0	420	420	0.01
017 - Tires, Tubes, Liners & Valves	0	0	0	0.00	6,151	1,313	7,463	0.10
019 - Automatic/Manual Chassis Lubricator	0	0	0	0.00	0	0	0	0.00
022 - Axles - Driven, Rear	0	0	0	0.00	0	0	0	0.00
025 - Transfer Case	0	0	0	0.00	0	0	0	0.00
038 - Electric Power Management - Electric	0	0	0	0.00	0	0	0	0.00
039 - Electric Drive Components - Electric	0	0	0	0.00	0	0	0	0.00
042 - Cooling System	0	0	0	0.00	147	1,155	1,302	0.02
043 - Exhaust System	0	0	0	0.00	207	735	942	0.01
049 - Power Train - Hydraulic, Hybrid	0	0	0	0.00	0	0	0	0.00
053 - Expendable Items	0	0	0	0.00	0	0	0	0.00
055 - Cargo Handling, Restraints, & Lift	0	0	0	0.00	0	0	0	0.00
065 - Hydraulic Systems - Multi-Function	0	0	0	0.00	50	105	155	0.00
121 - Final Drive	0	0	0	0.00	0	0	0	0.00
142 - LNG Engine Fuel System	0	0	0	0.00	0	0	0	0.00
143 - CNG Engine Fuel System	0	0	0	0.00	0	0	0	0.00
154 - Medical Devices	0	0	0	0.00	0	0	0	0.00
176 - Chassis Shipping Unit	0	0	0	0.00	0	0	0	0.00
178 - Roll-Off & Lugger Bodies	0	0	0	0.00	0	0	0	0.00
199 - Processing Screens	0	0	0	0.00	0	0	0	0.00
292 - Concrete Pumping Equipment	0	0	0	0.00	0	0	0	0.00
293 - Oil Shaker Box	0	0	0	0.00	0	0	0	0.00
294 - Fuel Metering	0	0	0	0.00	0	0	0	0.00
368 - Milling	0	0	0	0.00	0	0	0	0.00
369 - Crushing	0	0	0	0.00	0	0	0	0.00
462 - Insulating Lift Equipment	0	0	0	0.00	0	0	0	0.00
463 - Insulating Drilling and Boring Equipment	0	0	0	0.00	0	0	0	0.00
464 - Digging	0	0	0	0.00	0	0	0	0.00
465 - Compacting	0	0	0	0.00	0	0	0	0.00
90A - Sublet	0	22,125	22,125	3.44	717	154,493	155,210	1.99
INV - INVOICING	0	0	0	0.00	0	0	0	0.00

Cost Data Summary - RD

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Unit Cost Summary as of 6/13/2023

Coordinated Universal Time

Maintenance	Range				Life Cost			
VMRS System	Parts	Labor	Total	CPM	Parts	Labor	Total	CPM
MTR - Meeting & Training	0	0	0	0.00	0	735	735	0.01
OFC - Other Fixed Cost	0	0	0	0.00	0	0	0	0.00
PMS - Preventative Maintenance	0	0	0	0.00	3,472	7,035	10,507	0.13
TOW - TOWING	0	0	0	0.00	0	0	0	0.00
WAS - Wash & Appearance	0	0	0	0.00	0	0	0	0.00
Other Operational	10,908	4,725	15,633	2.43	102,981	80,865	183,846	2.36
Sub-Total	10,908	26,850	37,757	5.87	115,095	252,893	367,988	4.72
DE0 - Depreciation	0	0	0	0.00	231,563	0	231,563	2.97
INS - Insurance	0	0	0	0.00	0	0	0	0.00
LIC - Licenses	0	0	0	0.00	0	0	0	0.00
Other Fixed	0	0	0	0.00	0	0	0	0.00
Sub-Total	0	0	0	0.00	231,563	0	231,563	2.97
FL0 - Fuel	18,887	0	18,887	2.94	128,557	105	128,662	1.65
Sub-Total	18,887	0	18,887	2.94	128,556	105	128,661	1.65
Total	29,794	26,850	56,644	8.81	475,214	252,998	728,212	9.34

Item	Range	Life
Miles Run	5,137.0	86,250.0
Fuel Used	2,150.1	38,163.8
Fuel Cons MPG	2.39	2.26
Oil Used	0	0
Oil Cons MPQ	0	0

Operating Cost Analysis

Accident Damage	0%	0%
Breakdown	0%	2%
Campaign	0%	0%
Fuel Cost	41%	18%
New Vehicle Prep	0%	0%
PM Follow-up	0%	2%
PM Services	0%	2%
Service Call	0%	1%
Verbal Report	48%	34%
Other	11%	42%

Acquired	4/2011
Book Value	5000.00
Condition	Used
Fuel Type	Diesel
License	1309043
Year	2010

Unit Number	476
Category	STREETS
Start Miles	2826
Current Miles	89076
Serial Number	JNAPC81L1AAAF80048
Vehicle Make	NISSAN UD
Vehicle Model	3300
Vehicle Type	Elgin Crosswind "J"
Body Type	Street Sweeper
Location Garaged	Corp Yard
Engine Make	NISSAN
Engine Model	J08E-UJ
Engine HP	230
Engine Oil	15W40

Maintenance	Range				Life Cost			
VMRS System	Parts	Labor	Total	CPM	Parts	Labor	Total	CPM
001 - Air Conditioning, Heating & Ventilating	536	105	641	0.12	544	315	859	0.01
002 - Cab & Sheet Metal	0	0	0	0.00	0	0	0	0.00
003 - Instruments, Gauges, Warning &	0	0	0	0.00	2	525	527	0.01
013 - Brakes	0	0	0	0.00	1,273	2,678	3,950	0.05
015 - Steering	0	0	0	0.00	0	210	210	0.00
016 - Suspension	0	0	0	0.00	0	0	0	0.00
017 - Tires, Tubes, Liners & Valves	0	0	0	0.00	11,165	1,711	12,876	0.15
019 - Automatic/Manual Chassis Lubricator	0	0	0	0.00	0	0	0	0.00
022 - Axles - Driven, Rear	0	0	0	0.00	0	0	0	0.00
025 - Transfer Case	0	0	0	0.00	0	0	0	0.00
038 - Electric Power Management - Electric	0	0	0	0.00	0	0	0	0.00
039 - Electric Drive Components - Electric	0	0	0	0.00	0	0	0	0.00
042 - Cooling System	0	0	0	0.00	35	1,155	1,190	0.01
043 - Exhaust System	0	0	0	0.00	0	0	0	0.00
049 - Power Train - Hydraulic, Hybrid	0	0	0	0.00	0	0	0	0.00
053 - Expendable Items	0	0	0	0.00	0	0	0	0.00
055 - Cargo Handling, Restraints, & Lift	0	0	0	0.00	0	0	0	0.00
065 - Hydraulic Systems - Multi-Function	0	0	0	0.00	311	2,468	2,778	0.03
121 - Final Drive	0	0	0	0.00	0	0	0	0.00
142 - LNG Engine Fuel System	0	0	0	0.00	0	0	0	0.00
143 - CNG Engine Fuel System	0	0	0	0.00	0	0	0	0.00
154 - Medical Devices	0	0	0	0.00	0	0	0	0.00
176 - Chassis Shipping Unit	0	0	0	0.00	0	0	0	0.00
178 - Roll-Off & Luger Bodies	0	0	0	0.00	0	0	0	0.00
199 - Processing Screens	0	0	0	0.00	0	0	0	0.00
292 - Concrete Pumping Equipment	0	0	0	0.00	0	0	0	0.00
293 - Oil Shaker Box	0	0	0	0.00	0	0	0	0.00
294 - Fuel Metering	0	0	0	0.00	0	0	0	0.00
368 - Milling	0	0	0	0.00	0	0	0	0.00
369 - Crushing	0	0	0	0.00	0	0	0	0.00
462 - Insulating Lift Equipment	0	0	0	0.00	0	0	0	0.00
463 - Insulating Drilling and Boring Equipment	0	0	0	0.00	0	0	0	0.00
464 - Digging	0	0	0	0.00	0	0	0	0.00
465 - Compacting	0	0	0	0.00	0	0	0	0.00
90A - Sublet	0	7,787	7,787	1.52	0	129,753	129,753	1.50
INV - INVOICING	0	0	0	0.00	0	0	0	0.00
MTR - Meeting & Training	0	0	0	0.00	0	0	0	0.00

Cost Data Summary - RD

6/13/2023 9:11:58 PM

Unit Cost Summary as of 6/13/2023

Coordinated Universal Time

Maintenance	Range				Life Cost			
VMRS System	Parts	Labor	Total	CPM	Parts	Labor	Total	CPM
OFC - Other Fixed Cost	0	0	0	0.00	0	0	0	0.00
PMS - Preventative Maintenance	0	0	0	0.00	3,719	9,574	13,293	0.15
TOW - TOWING	0	0	0	0.00	0	0	0	0.00
WAS - Wash & Appearance	0	0	0	0.00	68	210	278	0.00
Other Operational	4,417	3,360	7,777	1.51	107,397	82,602	189,998	2.20
Sub-Total	4,953	11,252	16,206	3.15	124,513	231,199	355,711	4.12
DE0 - Depreciation	0	0	0	0.00	212,435	0	212,435	2.46
INS - Insurance	0	0	0	0.00	0	0	0	0.00
LIC - Licenses	0	0	0	0.00	0	0	0	0.00
Other Fixed	0	0	0	0.00	0	0	0	0.00
Sub-Total	0	0	0	0.00	212,435	0	212,435	2.46
FL0 - Fuel	11,132	0	11,132	2.17	124,229	0	124,229	1.44
Sub-Total	11,132	0	11,132	2.17	124,229	0	124,229	1.44
Total	16,086	11,252	27,338	5.32	461,176	231,199	692,375	8.03



ENVIRONMENTAL SALES • SERVICE • PARTS • RENTALS

Please Remit Payment to:

Owen Equipment Sales
PO Box 515458
Los Angeles, CA 90051 - 6758
Federal ID No: 27-0306529
(800) 992-3656

Account#	Order #	Brc	Sls
C10132	56705	12	370

I N V O I C E

Date	Invoice #	Page
10-24-22	00058045	1

Sold To: 001
CITY OF UNION CITY
34009 ALVARADO NILES ROAD
ATTN: AP - 510.487.9361
UNION CITY CA 94587

Ship To:
CITY OF UNION CITY
34650 SEVENTH ST
ATTN: AP - 510.487.9361

UNION CITY CA 94587
Ship Via GROUND FREIGHT

Entered By	Customer Purchase Order	Customer Contact	Ord Date
Miller	350	PAUL ROMAN	10-21-22
	Equip ID	Customer Job #	Customer Phone #
			510.675.5444

Ord	Ship	B/O Part Number	Description	Unit Price	UM	Extended
-----	------	-----------------	-------------	------------	----	----------

20	20	7873222	SB SEGMENT SET	150.00Ea		3,000.00
	1		CALIFORNIA FREIGHT (NON-TAXABLE)	222.87		222.87
			GLS FREIGHT TRACKING# 308476170			

Sub Total 3,222.87

CA California Sales Tax 322.50

ENTERED
NOV 08 2022
BY: 1048334

PLEASE NOTE OUR NEW REMITTANCE ADDRESS
PO BOX 515458
LOS ANGELES, CA 90051-6758

Total Invoice
Due By: 11/23/22
3,545.37

SELLER EXPRESSLY DISCLAIMS ALL EXPRESS
WARRANTIES ON PRODUCTS IT SELLS. ANY
WARRANTY IS THAT OF THE MANUFACTURER
ONLY AND NOT OF OWEN EQUIPMENT.

NO GOODS RETURNED WITHOUT RETURNED GOODS
AUTHORIZATION. A RESTOCKING CHARGE OF 15%
(20% FOR SPECIAL ORDERS) WILL BE APPLIED ON ITEMS
ORDERED IN ERROR AND RETURNED WITHIN 30 DAYS.

PAYMENT TERMS:
PARTS INVOICES - NET 30 DAYS FROM DATE OF INVOICE
EQUIPMENT SALES & RENTAL INVOICES - NET 10 DAYS FROM DATE
OF INVOICE. 1.5% FINANCE CHARGE PER MONTH (18% ANNUAL RATE).



ENVIRONMENTAL SALES • SERVICE • PARTS • RENTALS

Please Remit Payment to:
Owen Equipment Sales
 PO Box 515458
 Los Angeles, CA 90051 - 6758
 Federal ID No: 27-0306529
(800) 992-3656

Account#	Order #	Brc	Sls
C10132	58669	12	370

I N V O I C E

Date	Invoice #	Page
04-06-23	00059609	1

Sold To: 001
 CITY OF UNION CITY
 34009 ALVARADO NILES ROAD
 ATTN: AP - 510.487.9361
 UNION CITY CA 94587

Ship To:
 CITY OF UNION CITY
 34650 SEVENTH ST
 ATTN: AP - 510.487.9361

UNION CITY CA 94587
 Ship Via GROUND FREIGHT

Entered By Miller	Customer Purchase Order VERBAL	Customer Contact PAUL ROMAN	Ord Date 04-06-23
	Equip ID	Customer Job #	Customer Phone # 510.675.5444

Ord	Ship	B/O Part Number	Description	Unit Price	UM	Extended
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20	20	7873222	SB SEGMENT SET	150.00EA		3,000.00
	1	SHIPPING		208.11		208.11
		CLS TRACKING				
		# 303040390				

Sub Total 3,208.11

CA California Sales Tax 322.50



NEW REMITTANCE ADDRESS EFFECTIVE IMMEDIATELY!

PO BOX 30640
 LOS ANGELES, CA 90030-0640

Total Invoice

Due By:
 05/06/23

3,530.61

SELLER EXPRESSLY DISCLAIMS ALL EXPRESS
 WARRANTIES ON PRODUCTS IT SELLS. ANY
 WARRANTY IS THAT OF THE MANUFACTURER
 ONLY AND NOT OF OWEN EQUIPMENT.

NO GOODS RETURNED WITHOUT RETURNED GOODS
 AUTHORIZATION. A RESTOCKING CHARGE OF 15%
 (20% FOR SPECIAL ORDERS) WILL BE APPLIED ON ITEMS
 ORDERED IN ERROR AND RETURNED WITHIN 30 DAYS.

PAYMENT TERMS:
 PARTS INVOICES - NET 30 DAYS FROM DATE OF INVOICE
 EQUIPMENT SALES & RENTAL INVOICES - NET 10 DAYS FROM DATE
 OF INVOICE. 1.5% FINANCE CHARGE PER MONTH (18% ANNUAL RATE)

Parts Receipt History

6/13/2023 9:02:03 PM

By Part - 6/21/2022 to 6/13/2023

Coordinated Universal Time

Part Number: 7873222 (Main Shop)

Description: SEGMENT SET

Date Received	PO Number	Invoice Number	Notes	Quantity	Per Unit Cost	Total Cost	Vendor Name	Receipt Notes
4/6/2023		00059609		20	\$150.0000	\$3000.00	Owen Equipment Company	
10/24/2022		00058045		20	\$150.0000	\$3000.00	Owen Equipment Company	
6/30/2022		00056859		20	\$145.0000	\$2900.00	Owen Equipment Company	
Total Quantity/Cost				60		\$8,900.00		
Total Extended Cost For All Parts						\$8,900.00		

2022 & 2023 Vac Truck Operations for Catch Basins

DATE	MAINT 2	MAINT 1	VAC TRUCK HRS	CLEAN OUT C.B.	LOADS	H2O FILLS
1/31/22	1	2	8	9	1	1
2/1/22	1	2	8	8	1	1
2/11/22	1	1	8	9	1	1
2/14/22	1	2	4	2	1	3
3/25/22	1	2	8	8	1	1
3/30/22	1	2	6	5	1	1
4/5/22	1	2	8	13	1	1
4/11/22		2	8	7	4	1
4/17/22	1	1	8	5	1	1
6/27/22	1	3	8	6	2	2
7/25/22		2	8	6	1	1
7/29/22	1	1	8	7	1	1
8/11/22		2	8	9	2	2
8/25/22	1	2	8	5	1	1
10/24/22		3	8	6	1	1
10/31/22	1	2	8	3	1	1
11/1/22	1	1	8	7	1	1
11/2/22	1	1	8	10	2	2
12/12/22	1	1	8	15	2	2
12/13/22	1	1	8	15	2	2

2022 & 2023 Vac Truck Operations for Catch Basins

DATE	MAINT 2	MAINT 1	VAC TRUCK HRS	CLEAN OUT C.B.	LOADS	H2O FILLS
1/4/23	1		4	3	1/2	1
1/5/23	1	1	8	15	4	1
1/13/23	1	1	8	15	1	1
1/18/23		2	8	12	1	1
1/19/23		2	8	10	1	1
2/14/23	1	2	8	10	1	1
2/15/23		2	8	10	1	1
3/8/23	1	1	6	4	1	1
3/10/23	1	2	8	8	1	1
3/13/23		2	4	2	1	1
3/20/23	1	1	8	9	1	1
3/28/23	1	1	8	6	1	1
4/6/23	1	2	8	20	1	2
4/7/23	1	2	8	5	1	1
DAY TOTALS	MAINT #2	MAINT #1	VAC TRUCK HRS	CLEAN OUT C.B.	LOADS	H2O FILLS
34	25	56	256 hrs	284	44 1/2	42
			102			S6.1.059

2022 & 2023 Vac Truck Operations for Catch Basins

DATE	MAINT 2	MAINT 1	VAC TRUCK HRS	CLEAN OUT C.B.	LOADS	H2O FILLS
DAY TOTALS	MAINT #2	MAINT #1	VAC TRUCK HRS	CLEAN OUT C.B.	LOADS	H2O FILLS
34	25	56	256 hrs	284	44 1/2	42
3	2	4	4hrs			
2	2	3	6hrs			
29	21	49	8hrs			
2022	15	35	154	155	28	27
2023	10	21	102	129	16 1/2	15
Street Maint. #2	\$ 46.40 Hr					
Street Maint. #1	\$ 41.92 Hr					
Vac Truck	\$ 1,900 Day					

DECLARATION OF SANDRA MATHEWS IN SUPPORT OF TEST CLAIM

I, SANDRA MATHEWS, declare as follows:

1. I make this declaration in support of the Test Claim submitted by the City of Union City ("Union City" or "City"). Except where otherwise indicated, the facts set forth below are of my own personal knowledge and, if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I have received the following degrees and credentials: Bachelor of Arts in Liberal Arts, History of Science, Technology and Society, and Linguistics, State University of New York at Stony Brook; Master's Program in Environmental and Waste Management, State University of New York at Stony Brook; Certified Professional in Erosion and Sediment Control, EnviroCert International.

3. I am employed by Larry Walker Associates as Vice President. In that position, I been the project manager for three consecutive five-year contracts supporting the Alameda Countywide Clean Water Program ("Alameda Countywide Program," or "Program"). Since January 2022, I have served as the Program's Interim Program Manager.

4. The Alameda Countywide Program is a consortium made up of the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City; the County of Alameda; the District, and the Zone 7 Water Agency (collectively, the "Consortium"). The Program was created in 1991 through a Memorandum of Agreement ("MOA"). Among other things, the MOA established a General Program, which carries out activities in common on behalf of the Consortium. The MOA also established a management structure and funding mechanism to carry out general Program activities. I am aware of these facts in my role as Interim Program Manager.

1 5. I have served as the Program's Interim Program Manager since
2 January 2022. In this role, I have primary responsibility on behalf of the
3 Program for coordination of Alameda Countywide Program activities and
4 support of its Management Committee leaders. My duties include preparing
5 and modifying annual budgets and coordinating and submitting required
6 program reports to the Regional Water Quality Control Board (San Francisco
7 Bay Region) ("Regional Water Board"), serving as liaison to region-wide
8 committees and workgroups, and advising the Consortium on compliance with
9 federal and state laws, regulations, and orders.

10 6. Union City is subject to the Municipal Regional Stormwater
11 NPDES Permit, Regional Water Board, San Francisco Bay Region, Order No.
12 R2-2022-0019 (NPDES Permit No. CAS612008), issued by the Regional Water
13 Board on May 11, 2022 ("MRP3") and effective on July 1, 2022. The MRP3
14 was amended in October 2023 by Order No. R2-2023-0019. I have reviewed
15 the MRP3, as modified, and am familiar with its requirements.

16 7. I have also reviewed and am familiar with the requirements of
17 Order No. R2-2015-0049 (NPDES Permit No. CAS612008), issued by the
18 Regional Water Board on November 19, 2015 ("MRP2"), under which the City
19 was also a Permittee. I have also reviewed and am familiar with the
20 requirements of Order No. R2-2009-0074 (NPDES Permit No. CAS612008)
21 issued by the Regional Water Board on October 14, 2009, amended by Order
22 No. R2-2011-0083 on November 28, 2011 ("MRP1")

23 8. In order to provide the information required under Government
24 Code section 17553, subdivision (b)(1)(E), I have been asked by the Program to
25 provide a statewide cost estimate of increased costs that all local agencies will
26 incur to implement the mandates of the MRP3 during the 23/24 fiscal year
27 ("fiscal year" or "FY") – the fiscal year immediately following the fiscal year for
28 which the claim was filed as required by Government Code section

1 17553(b)(1)(E). . The statewide costs are extrapolated from the Union City
2 costs as set forth below. The Union City costs include individual Permittee
3 costs (see Declaration of Farooq Azim (“Azim Declaration”) in support of this
4 Test Claim) *plus* Union City’s share of the Program Costs. I provide actual FY
5 22/23 costs Program costs and estimated FY 23/24 (which ends June 30, 2024)
6 costs and associated methodology below.

7 9. Union City Share of Program Costs. The Program incurred costs
8 on behalf of the Consortium members in order to comply with MRP3
9 mandates. In my role as Interim Program Manager, I track and coordinate
10 compliance actions taken by the Program on behalf of Consortium members. I
11 investigated the Program’s files and records, including consultant invoices,
12 and interviewed Consortium members leading Program workgroups and
13 subcommittees responsible for implementation of the MRP3, as necessary, to
14 estimate the Program costs. The Program supports compliance work through
15 subcommittees that are facilitated by a team of technical consultants. These
16 consultants also provide technical services, such as the preparation of required
17 reports and implementation of monitoring programs. Consultant invoices
18 represent a mix of specific and general tasks. To estimate the Program costs
19 associated with the specific provisions included in the Test Claim, the
20 following assumptions were made based on my knowledge of the subcommittee
21 work and/or by interviewing the Consortium members who oversee the work of
22 the subcommittees.

23 a. C.3.b.ii(4) and C.3.b.ii.(5) – Consultant invoices characterize
24 support in four general support functions: meetings; training; permittee
25 support; and technical material updates. The MRP3 changes were a
26 significant part of the effort for the permittee support and technical material
27 updates in FY 22/23. I estimate two-thirds of the cost of these subtasks were
28 related to the C.3.b.ii(4) and C.3.b.ii.(5) and are included in the summary.

1 Permittees are required to implement changes to the regulated projects in
2 their new and redevelopment programs. To support this work, the Program
3 revised the C.3 Technical Guidance Manual, prepared informational factsheets
4 on the changes to regulated projects, held a training workshop, and provided
5 technical guidance to members on the changes.

6 b. C.8.d – Consultant support for the planning and
7 implementation of LID Monitoring is separately distinguished on the invoices.
8 One of the consultants supporting this work is sub-consultant to another firm.
9 For these invoices, the sub-consultant breaks out the C.8.d costs, but the
10 prime firm roles up all the C.8 costs and applies a 10% mark-up fee (this is a
11 standard mark-up used by all the prime firms working for the Program).
12 Because sub-task costs are not distinguished on the prime firm's invoice, the
13 costs were taken from the sub-consultant invoices and the 10% mark-up was
14 added. Permittees are required to implement a monitoring program to
15 measure compliance and the effectiveness of LID facilities. To meet this
16 requirement, the Program collaborated with the other four countywide
17 programs to form and fund the MRP3 required technical advisory group
18 ("TAG"), developed a regional quality assurance plan, identified monitoring
19 locations for permittees in Alameda County, developed a monitoring plan for
20 LID facilities in Alameda County, revised the monitoring and quality
21 assurance plans based on feedback from the TAG, and submitted the plans to
22 the Regional Water Board. The plans were submitted to the Regional Water
23 Board on May 1, 2023. The Program will incur additional costs throughout the
24 MRP3 term to continue LID monitoring.

25 c. C.8.e – See the explanation for C.8.d, which also applies
26 here. Permittees are required to implement a monitoring program to assess
27 the effectiveness of trash control actions and evaluate whether areas
28 determined to be controlled are contributing to trash impacts. To meet this

1 requirement, the Program collaborated with the other four countywide
2 programs to form and fund the MRP3-required TAG, developed a regional
3 quality assurance plan, identified trash monitoring locations and developed a
4 monitoring plan for the selected sites in Alameda County, revised the
5 monitoring and quality assurance plans based on feedback from the TAG, and
6 submitted the plans to the Regional Water Board. The plans were submitted
7 to the Regional Water Board on July 31, 2023. The Program will incur
8 additional costs throughout the MRP3 term to continue trash monitoring.

9 d. C.8.f – See the explanation for C.8.d, which also applies
10 here. Permittees are required to implement a monitoring program to assess
11 inputs of select POCs to the Bay from local tributaries and urban runoff. To
12 meet this requirement, the Program developed and submitted a POC
13 monitoring plan as part of the Urban Creeks Monitoring Report on March 31,
14 2023, and initiated the required monitoring. The Program will incur
15 additional costs throughout the MRP3 term to continue POC monitoring.

16 e. C.10.a.i and C.10.a.ii – Consultant invoices characterize
17 support under one general support task. The MRP3 new requirements and
18 modified higher levels of service were a portion of the support provided in FY
19 22/23 and I estimate 25% of the cost of the general work was in support of the
20 new MRP3 C.10.a.i and C.10.a.ii Trash Reduction Requirements.
21 Additionally, the Geographical Information System (“GIS”) consultant breaks
22 out costs by technical tasks, not permit provisions. The Consortium member
23 who oversees this work estimates that 60% of the GIS support is for C.10
24 support, and in FY 22/23, 70% of that work was related to C.10.a.i and
25 C.10.a.ii . Permittees are required to implement changes to their trash control
26 programs, in particular, the addition of implementing controls for private land
27 drainage areas. To support this work, the Program held subcommittee
28 meetings and prepared guidance for members on the new requirements,

updates and modifications were made to GIS maps to support members, and GIS-based inspection applications were developed. The Program will incur additional costs throughout the MRP3 term to continue providing guidance to permittees.

f. C.10.e – Provision C.10.e of the MRP3 requires Permittees to collectively develop a Trash Impracticability Report that includes a process for both evaluating impracticability and implementing partial benefit actions to the maximum extent practicable by March 31, 2023. Consultant invoices characterize support under one general support task. The MRP3 new requirements and modified higher levels of service were a portion of the support provided and I estimate 25% of the cost of the general work was in support of the development of the C.10.e Trash Impracticability Report. The Alameda Countywide Program worked collaboratively with the four other countywide programs to fund the development of the Trash Impracticability Report. The Trash Impracticability Report was submitted to the Regional Water Board on March 27, 2023.

g. C.11.c/C.12.c – See the explanation for C.8.d, which also applies here. Permittees in Alameda County are collectively required to implement treatment controls on 664 acres of old industrial areas to reduce mercury and PCBs loads over the course of the permit term. According to the MRP3 Fact Sheet at A-255 [Section 7 p. S7-0514], “Because PCBs are more concentrated in some locations, the choice of where to implement control measures may be more influenced by known areas of PCBs contamination. However, the mercury removal benefit can be an important contribution to overall mercury load reductions, and available data indicate that this strategy of focusing on PCBs will yield mercury load reductions in many circumstances.” Thus, the Program conducted these two requirements concurrently and the costs cannot be separated by provision. To meet these

requirements, the Program developed the Old Industrial Area Control Measure Plan that included plans and schedules for implementing the required control measures to reduce PCBs and mercury. The plan was submitted in March 2023. Subsequent to submittal, the Program met with Regional Water Board staff and planned revisions to the plan, which are due in March 2024. The Program and Permittees will incur additional costs throughout the MRP3 term to implement the Old Industrial Area Control Measure Plan and to treat 664 acres of old industrial areas in Alameda County.

h. C.12.a – See the explanation for C.8.d, which also applies here. Permittees are required to quantify mercury and PCBs loads reduced through the implementation of pollution prevention, source control, green stormwater infrastructure, and other treatment control measures implemented. To meet this requirement, the Program consultants tracked and analyzed data on control measure implementation to calculate loads reduced. The Program will incur additional costs throughout the MRP3 term to track load reductions for Permittees.

i. C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j) – The Consortium member who oversees the GIS work estimates that 30% of the GIS support is for C.3 support, and in FY 22/23, 20% of that work was related to C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j). As a modified higher level of service requirement, Permittees are required to implement the Green Infrastructure Plans that they developed under MRP2. To meet this requirement, the Program updated and maintained a GIS platform that allows members to track their green infrastructure projects. The Program will incur additional costs throughout the MRP3 term to maintain the GIS system and Permittees will incur additional cost to update and implement their Green Infrastructure Plans.

1 j. C.17.a – This special project is identified individually on
2 consultant invoices. Permittees are required to develop and submit a regional
3 best management practice report to identify control measures to address non-
4 stormwater discharges associated with unsheltered homeless populations and
5 identify milestones to reduce such discharges. To meet this new MRP3
6 requirement, the Program collaborated with the other four countywide
7 programs on a regional project to develop the required best management
8 practice report, which was submitted with each Permittee’s FY 22/23 annual
9 report. Additionally, each Permittee is required to submit a map identifying,
10 the approximate locations of unsheltered homeless populations, including
11 encampments and other areas where other unsheltered homeless people live
12 relative to storm drains, creeks, and flood control channels. To support its
13 members, the Program worked with County officials to obtain the required
14 geo-located point in time count data, developed an approach for creating the
15 maps, and updated its GIS system to produce the required maps for each of its
16 members. Members submitted the maps with their FY 22/23 annual report.
17 The Permittees will incur additional costs throughout the MRP3 term to
18 implement the best management practices.

19 k. C.20.b – This special project is identified individually on
20 consultant invoices. Permittees are required to develop and submit a cost
21 reporting framework and methodology to guide the preparation of a fiscal
22 analysis of the capital and operation and maintenance costs incurred to
23 comply with MRP3. To meet this new requirement, the Program collaborated
24 with the other four countywide programs on a regional project to develop the
25 cost reporting framework and methodology, which was submitted on June 26,
26 2023. Updates to the cost reporting framework and methodology based on
27 Regional Water Board comments are in process. The Program will
28 additionally provide training for its members on the use of the cost reporting

1 framework and methodology. The Permittees will incur additional costs
2 throughout the MRP3 term to track and report permit implementation costs.

3 1. C.21.b – This special project is identified individually on
4 consultant invoices. Permittees are required to develop and implement an
5 asset management plan to ensure the satisfactory condition of all hard assets
6 constructed during MRP3 and the pervious permit terms pursuant to
7 provisions C.2, C.3, C.10, C.11, C.12, C.13, and C.17. Additionally, Permittees
8 are required to develop and submit a climate change adaptation report to
9 identify potential climate change-related threats to assets and appropriate
10 adaptation strategies. To help Permittees meet these new requirements the
11 Program initiated work on a framework to guide the development of the asset
12 management plans by individual members. The Permittees will incur
13 additional costs throughout the MRP3 term to develop and implement their
14 asset management plans. The Program and Permittees will incur additional
15 costs to develop the climate change adaptation report.

16 m. C.8 continuing costs (MRP1 Test Claim) – See the
17 explanation for C.8.d. However, for some of the subtasks, I estimated that
18 one-half of the effort for Program and Regional meetings was related to C.8 so
19 the effort for these subtasks was reduced by fifty percent. Permittees are
20 required to implement monitoring programs. To meet these requirements, the
21 Program develops and implements an area-wide monitoring program on behalf
22 of its members. The Program develops and implements the required
23 monitoring program and participates in regional monitoring planning
24 meetings and discussions on behalf of its members.

25 n. C.10.b continuing costs (MRP2 Test Claim) – Consultant
26 invoices characterize support under one general support task. The continuing
27 costs were a portion of the support provided and I estimate that 25% of the
28 general work was in support of the continuing costs. Permittees are required

1 to install and maintain full trash capture systems. To support this work, the
2 Program continued support for members by holding subcommittee meetings
3 and providing guidance on the inspection and maintenance of full trash
4 capture system, visual assessments, calculation of discharge reductions and
5 source controls.

6 o. C.11/C.12 continuing costs (MRP2 Test Claim) – There were
7 continuing costs associated with the GIS system to support compliance with
8 these provisions. The Consortium member who oversees this work estimates
9 that 10% of the GIS support is for C.11/C.12 support, and in FY 22/23 100% of
10 that work was related to C.11.e and C.12.f. Permittees are required to
11 implement green infrastructure projects to reduce mercury and PCBs loads.
12 To support its members, the Program continued to maintain a GIS platform
13 for members to track their green infrastructure projects. The GIS platform
14 provides a centralized method to track projects and calculate load reductions.

15 10. Below is summary of the Program's actual FY 22/23 costs incurred
16 regarding the MRP3 and continuing MRP1 and MRP2 mandates at issue in
17 Union City's Test Claim. These costs cover the entire FY 22/23. The
18 documentation for the Program costs is set forth in **Exhibit 1** hereto. Union
19 City's share of Program costs (5.31%) was derived from a formula based in part
20 on the relative area and population of the Program member agencies. The
21 Program sets the annual member contribution based on the MRP
22 implementation costs handled by the Program. The annual member
23 contribution level for FY 22/23 was \$2,535,000 for all Program costs regarding
24 the MRP3, for which Union City's paid 5.31% or \$134,609. Union City's share
25 of actual Program costs FY 22/23 (which is the same one-year period of the
26 first year of the MRP3 term) are as follows:

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

Task	Applicable Invoice (see Exhibit 1)	Program Costs	Union City Share of Program Costs (5.31%)
MRP3 New / Increased Programs			
C.3.b.ii(4) and C.3.b.ii.(5)(New or Widening Roads and Road Reconstruction) [New Requirements]	LWA: 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31	\$41,418.96	\$2,199.35
C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j) (Green Infrastructure Retrofits and update their Green Infrastructure Plans) [New and Modified Requirements]	Psomas: 233-187476, 233-188514, 236- 188514, 236-189563, 233-189563, 236- 189861, 236-190853, 236-192070, 236- 193162, 236-193892, 236-195324	\$5,522.16	\$293.23
C.5.f (MS4 Maps) [New Requirement]		None	\$0
C.8.d, C.8.e and C.8.f (New Water Monitoring Requirements) [Modified Higher Levels of Service Requirements]	AMS: 430-21/20, 430- 21/21, 430-21/22, 430- 21/23, 430-21/24, 430- 21/25, 430-21/26, 430- 21/27, 430-21/28, 430- 21/29, 430-21/30, 430- 21/31 LWA: 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31	\$289,528.06	\$15,373.94
C.10.a.i and C.10.a.ii (Trash Load Reduction and Trash Control on Private Lands) [Both New Requirements and Modified Higher Levels of Service Requirements]	EOA: AL22X-0123, AL22X-0223 AL22X-0323, AL22X- 0423, AL22X-0523, AL22X-0623, AL22X- 0722, AL22X-0822, AL22X-0922, AL22X- 1022, AL22X-1122, AL22X-1222 Psomas: 233-187476, 233-188514, 236-	\$52,362.35	\$2,780.44

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

Task	Applicable Invoice (see Exhibit 1)	Program Costs	Union City Share of Program Costs (5.31%)
	188514, 236-189563, 233-189563, 236- 189861, 236-190853, 236-192070, 236- 193162, 236-193892, 236-195324		
C.10.e (Impracticability Report) [New Requirement]	EOA: AL22X-0123, AL22X-0223, AL22X- 0323, AL22X-0423, AL22X-0523, AL22X- 0623, AL22X-1022, AL22X-1122, AL22X- 1222	\$11,977.25	\$635.99
C.11.c and C.12.c. (Mercury and PCBs Controls on Old Industrial Lands) [Modified Higher Levels of Service Requirements]	LWA: 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31	\$59,429.70	\$3,155.72
C.12.a (Quantify PCBs Reductions) [Modified Higher Levels of Service Requirement]	LWA: 436.14-20, 436.14-21	\$6,619.25	\$351.48
C.15.b.iii(Firefighti ng Discharges Working Group) [New Requirement]	EOA: AL22X-0223, AL22X-0323, AL22X- 0423, AL22X-0523, AL22X-0623,	\$5,275.75	\$280.14
C.17.a Homelessness) [New Requirement]	AMS: 430-21/24, 430- 21/25, 430-21/26, 430- 21/27, 430-21/28, 430- 21/29, 430-21/30, 430- 21/31	\$42,002.97	\$2,230.36
C.20.b. (Cost Reporting Framework) [New Requirement]	EOA: AL22X-0123, AL22X-0223, AL22X- 0323, AL22X-0423, AL22X-0523, AL22X- 0623, AL22X-0822, AL22X-0922, AL22X- 1022, AL22X-1122, AL22X-1222	\$54,197.00	\$2,877.86
C.21.b (Asset Management Plan) [New Requirement]	AMS: 430-21/28, 430- 21/29, 430-21/30, 430- 21/31	\$8,833.84	\$469.08

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

Task	Applicable Invoice (see Exhibit 1)	Program Costs	Union City Share of Program Costs (5.31%)
TOTAL MRP3 New/Increased FY22/23 Actual Costs			\$30,647.59
Continuing MRP1 and MRP2 Test Claims Provisions			
C.8 (Water Quality Monitoring)	LWA: 436.14-20, 436.14-21, 436.14-22, 436.14-23, 436.14-24, 436.14-25, 436.14-26, 436.14-27, 436.14-28, 436.14-29, 436.14-30, 436.14-31 AMS: 430.21/20, 430.21/21, 430.21/22, 430.21/23, 430.21/24, 430.21/25, 430.21/26, 430.21/27, 430.21/28, 430.21/29, 430.21/30, 430.21/31	\$209,164.61	\$11,106.64
C.10.b (Trash Capture Maintenance)	EOA: AL22X-0123, AL22X-0223, AL22X- 0323, AL22X-0423, AL22X-0523, AL22X- 0623, AL22X-0722, AL22X-0822, AL22X- 0922, AL22X-1022, AL22X-1122, AL22X- 1222	\$30,273.72	\$1,607.53
C.11.e, C.12.f (C.11.c, C.12.c of the MRP2) (Green Infrastructure Projects)	Psomas: 233-187476, 233-188514, 236- 188514, 236-189563, 233-189563, 236- 189861, 236-190853, 236-192070, 236- 193162, 236-193892, 236-195324, 197552, 198218	\$9,203.60	\$488.71
C.12.h (C.12.d in the MRP2) (RAA Plans)		None	\$0

11. As set forth in paragraph 10 above, the total amount of Union City's share of actual Program costs for fiscal year 22/23 for the new programs

or higher levels of service for the MRP3 Provisions pled in this Test Claim (Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b) is \$30,648. As set forth in paragraph 10 above and in the Azim Declaration at paragraph 8, the total amount of Union City's actual increased costs for fiscal year 22/23 for the new programs and higher levels of service for the MRP3 Provisions pled in this Test Claim (C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b) **\$51,619.**

12. The continuing monitoring required under Provision C.8 (i.e., monitoring requirements that are not new in the MRP3) is allocated to the countywide programs roughly based on the relative populations of the counties.

13. The costs for implementation of MRP3 will continue in FY 23/24. The Program has approved a budget for FY 23/24 and this budget was used to extrapolate test claim costs. Similar assumptions were made regarding apportioning non-specific costs as are described in paragraph 9 above. The Union City share of the estimated FY 23/24 new and continuing Program costs for MRP3 is **\$49,334.**

New or Modified Higher Levels of Service for MRP3	Estimated FY 23/24 Costs	Brief Description	Anticipated Activities FY 23/24	Basis of FY 23/24 Cost Estimates	Union City Cost Share (5.31%)
C.10.a.i and C.10.a.ii	\$67,750	Trash Reduction Support	Program member support and guidance materials on trash load reductions. GIS support for work.	Program Approved 23/24 Revised Budget	\$3,598
C.10.e	\$0	Regional Trash Impracticability Report	Report was submitted in 22/23.	Program Approved 23/24 Revised Budget	\$0.00

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

New or Modified Higher Levels of Service for MRP3	Estimated FY 23/24 Costs	Brief Description	Anticipated Activities FY 23/24	Basis of FY 23/24 Cost Estimates	Union City Cost Share (5.31%)
C.11c/C.12.c	\$41,250	Old Industrial Area Plan and Support	Annual progress accounting, revisions to the Old Industrial Area Control Measure Plan, initial planning for development of regional control projects.	Program Approved 23/24 Revised Budget	\$2,190
C/11.a/C.12.a	\$16,500	Pollutant of Concern (POC) Load Reduction Report	Annual progress accounting.	Program Approved 23/24 Revised Budget	\$876
C.15.b.iii	\$26,000	Firefighting Discharges work group	Participate in regional workgroup meetings, contribution to regional tasks, collaborating with other organizations. and Program member guidance and support.	Program Approved 23/24 Revised Budget	\$1,381
C.17.a	\$25,000	Unsheltered Homeless work group	Regional coordination and updates to final report, coordination and support for Program member mapping, annual report assistance.	Program Approved 23/24 Revised Budget	\$1,328
C.20.b	\$37,000	Cost Reporting Framework	Revise final framework, Program workgroup meetings, Program member support and training, and regional workgroup meetings.	Program Approved 23/24 Revised Budget	\$1,965
C.21.b	\$68,000	Asset Management Framework	Draft and finalize a framework, Program workgroup meetings, regional coordination, Program member support, coordination.	Program Approved 23/24 Revised Budget	\$3,611
C.3.b.ii(4) and C.3.b.ii.(5)	\$34,980	C.3 Regulated Project Support	Program member support and guidance materials on regulated projects, new factsheets, revisions to C.3 Technical Guidance Manual.	Program Approved 23/24 Revised Budget	\$1,857
C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4) and C.3.j.ii.(2)(a)-(j)	\$22,800	Green Infrastructure Planning and Implementation	Special project to evaluate options for alternative compliance programs; initiate regional project for long term green	Program Approved 23/24 Revised Budget	\$1,211

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

New or Modified Higher Levels of Service for MRP3	Estimated FY 23/24 Costs	Brief Description	Anticipated Activities FY 23/24	Basis of FY 23/24 Cost Estimates	Union City Cost Share (5.31%)
			stormwater infrastructure numeric targets and form TAG, and GIS support for Program members.		
C.8.d	\$258,800	LID Monitoring	Monitoring plan revisions, TAG meetings, equipment purchase and installation, conduct sampling events.	Program Approved 23/24 Revised Budget	\$13,742
C.8.e	\$189,000	Trash Monitoring	Monitoring plan revisions, TAG meetings, equipment purchase and installation, conduct sampling events, match for Water Quality Improvement Fund grant.	Program Approved 23/24 Revised Budget	\$10,036
C.8.f	\$142,000	POC Monitoring Support	Planning support, conduct sampling events, contribution to Regional Monitoring Program (RMP).	Program Approved 23/24 Revised Budget	\$7,540
Total	\$929,080				\$49,334

14. As set forth in paragraph 13 above, the total amount of Union City's share of estimated Program costs for fiscal year 23/24 for the new programs or higher levels of service for the MRP3 Provisions pled in this Test Claim (Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21.b) is \$49,334. As set forth in paragraph 13 above and in the Azim Declaration at paragraph 8, the total estimated amount of Union City's increased costs for fiscal year 23/24 for the new programs and higher levels of service for the MRP3 Provisions pled in this Test Claim (Provisions C.3.b.ii(4), C.3.b.ii.(5), C.3.j.ii.(1)(a)-(g), C.3.j.ii.(4), C.3.j.ii.(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b and C.21) is **\$852,749**.

1 15. Estimated Statewide Costs. MRP3 requirements apply to the 79
2 cities, counties, and flood control districts subject to MRP3. Costs for each of
3 the Permittees will vary depending on a number of factors specific to each of
4 the Permittees. However, the population of each Permittee is a primary
5 determining factor in the cost to comply with MRP3 requirements. In the
6 MRP3, for example, the required mercury and PCBs load reductions are
7 explicitly determined by each agency's population. (MRP3 Provision C.11.a.ii
8 at C.11-1 – 2 and Provision C.12.a.ii at C.12-1 – 2.) Entities with higher
9 populations will tend to have higher levels of trash reduction required to meet
10 the MRP3's required trash reductions. These higher population entities tend
11 to have higher levels of unsheltered homeless populations requiring more
12 engagement by the MS4s to implement best management practices to control
13 associated pollutants. The more extensive municipal infrastructure associated
14 with larger entities will increase costs and effort associated with other new
15 MRP provisions including asset management, cost reporting, and
16 implementing best management practices associated with emergency
17 firefighting discharges. Monitoring requirements in Provision C.8 vary
18 generally based upon the relative populations of the countywide programs. As
19 Union City is a fairly typical Bay Area city, it is reasonable to extrapolate from
20 Union City costs to the entire MRP3 area based upon the relative population
21 of Union City compared to the population of the entire area covered by MRP3.
22 According to the MRP3, Union City's population is 74,107 (MRP3 at
23 Attachment H-2). According to the MRP3, the population for the entire MRP
24 area is 5,917,090 (MRP3 at Attachment H-5). The population of the entire
25 MRP population is approximately 80 times the population of Union City.
26 Based on information obtained from Union City (see Azim Declaration) and
27 extrapolating statewide costs based on the relative population of Union City as
28 compared to the MRP area, I estimate the FY 23/24 statewide costs as follows:

Municipal Regional Stormwater Permit, City of Union City, 6. Declarations (Mathews)

Task	Estimated Union City FY 23/24 Costs ¹	Union City Share of FY 23/24 Program Costs (5.31%)	Total Union City Costs	Estimated FY 23/24 Statewide Costs (80 x Union City)
MRP3 New or Modified Higher Levels of Service Programs	\$803,415	\$49,334	\$852,749	\$68,200,880

16. I investigated the pertinent consultant invoices that were provided by the District and consulted with the Consortium members who oversee the work of the subcommittees to determine the precise date that the Program, acting on behalf of Union City and other members, first incurred increased costs as a result of the new activities and modified existing activities mandated by MRP3. The start of MRP3 coincided with the start of the Program's fiscal year, July 1, 2022, which is the same date that consultant invoices indicate incurred costs as a result of implementing the new activities and modified existing activities mandated by MRP3.

17. I have personally compiled the information in the tables above related to actual FY 22/23 Program costs for the entire fiscal year and estimates of FY 23/24 Program costs and believe that the information they contain is accurate.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge.

Executed on May 20, 2024, at Berkeley, California.


SANDRA MATHEWS

5721835.3

¹ The estimated Union City costs for FY 23/24 are set forth the Azim Declaration in support of this Test Claim.

7. DOCUMENTATION

IN SUPPORT OF UNION CITY TEST CLAIM

IN RE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
MUNICIPAL REGIONAL STORMWATER NPDES PERMIT

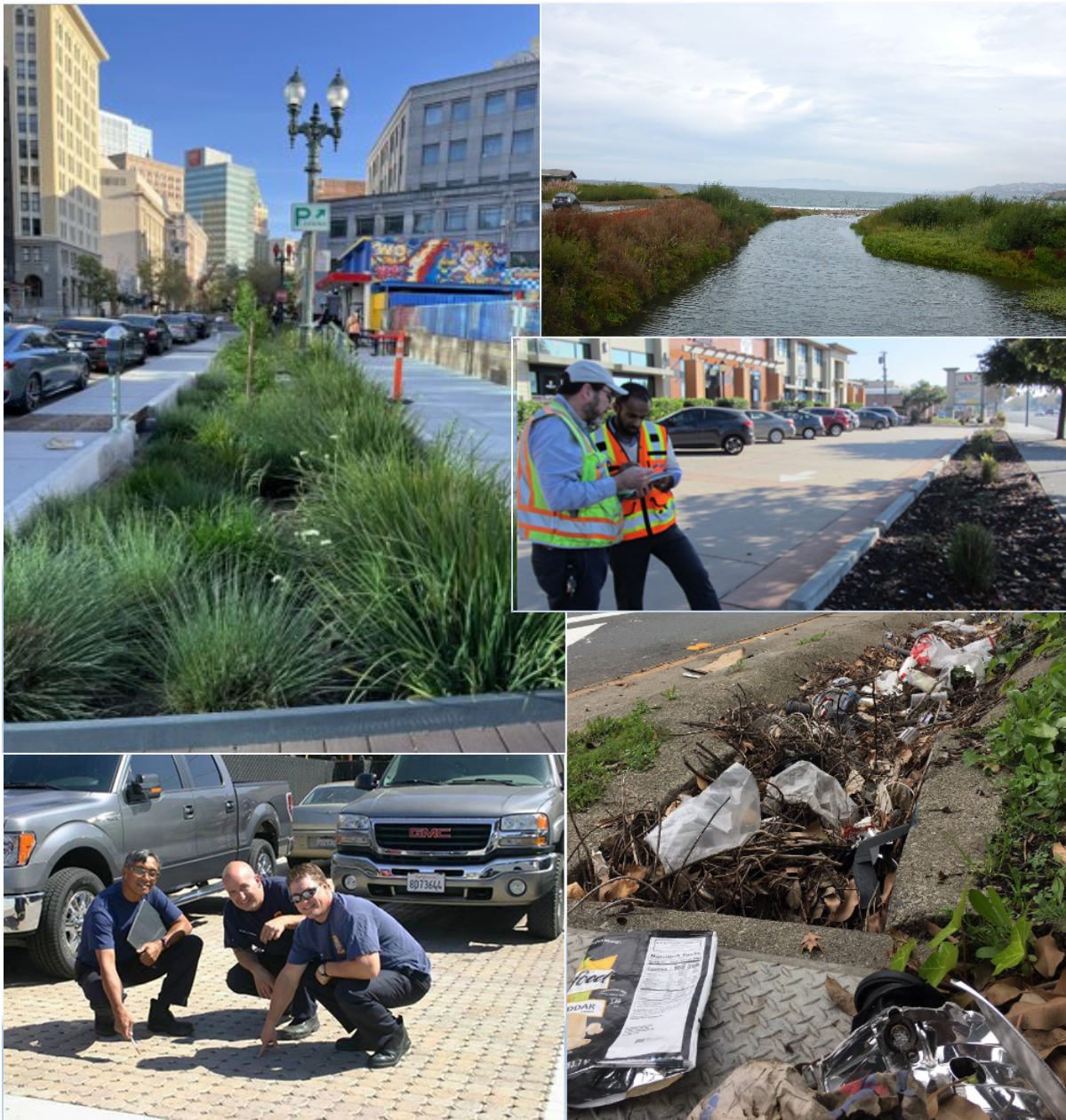
ORDER NO. R2-2022-0018
AS MODIFIED BY ORDER NO. R2-2023-0019
NPDES PERMIT NO. CAS612008
MAY 11, 2022

EXHIBIT 1

to Section 7

California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit

Order No. R2-2022-0018
NPDES Permit No. CAS612008
May 11, 2022



C.17. Discharges Associated with Unsheltered Homeless Populations

The purpose of this Provision is to identify and ensure the implementation of appropriate control measures, by all Permittees, to address non-stormwater discharges into MS4s associated with unsheltered homeless populations, including discharges from areas where unsheltered people congregate (e.g., formal and informal encampments including, but not limited to, informal tent or small cabin encampments, areas where people living in vehicles park, and safe parking areas). This Provision refers to such discharges collectively as discharges associated with homelessness.

C.17.a. Permittee Requirements

i. Task Description

- (1) Permittees shall use results from biennial point-in-time census surveys and related information, such as municipal reports, databases, complaint logs, and other efforts, to gain a better understanding of unsheltered homeless population numbers within the Permittee's jurisdiction, the locations of unsheltered homeless residents, discharges and water quality-related impacts associated with homelessness, and associated sanitation-related needs.
- (2) To encourage ongoing regional, countywide, and municipal coordination efforts, Permittees shall collectively develop a best management practice report that identifies effective practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges within a given timeframe. The report shall:
 - (a) Describe practices that may be implemented by Permittees, including those currently being implemented, to address discharges associated with homelessness that are impacting water quality;
 - (b) Identify regional and/or countywide efforts and implementation actions to address discharges associated with homelessness (including how those efforts and actions have been affected by unsheltered homeless population growth). Include recommendations for engaging in these efforts and incorporating discharge-reduction strategies that also help meet the unsheltered population's clean water needs; and
 - (c) Identify actions taken during the COVID-19 pandemic to reduce the spread of the virus in homeless populations, such as temporarily housing homeless people in hotels, that may have reduced discharges associated with homelessness. Permittees shall consider the practicability of such actions for longer-term implementation.

This task's broader goals are to recognize non-stormwater pollutant sources associated with unsheltered homeless populations, reasons for discharges, and means by which they occur, and develop useful information that can be used toward prioritizing individual Permittee and collaborative best management practices for reducing or managing such discharges, while ensuring the protection of public health. Examples of collaborative implementation programs could include collaborative efforts between Permittees, Caltrans, sanitary sewer agencies, railroads, non-governmental organizations (NGOs), social service agencies and organizations, and other agencies.

ii. Implementation Level

- (1) Each Permittee shall submit a map identifying, within its jurisdiction, the approximate location(s) of unsheltered homeless populations, including homeless encampments and other areas where other unsheltered homeless people live. The map shall identify those location(s) in relation to storm drain inlets and existing streams, rivers, flood control channels, and other surface water bodies within the Permittee's jurisdiction. The map shall be updated once during the Permit term, in 2025. Where Permittees are working collaboratively to address discharges associated with homelessness, they may collaborate to submit a joint map that covers their respective jurisdictions.
- (2) Permittees shall report on the programmatic efforts being implemented within their jurisdiction, or at the countywide or regional level, to address MS4 discharges associated with homelessness. Examples of these efforts may include, but are not limited to: funding initiatives; adoption of ordinances to implement service programs; coordination with social services departments and NGOs; efforts to establish relationships with homeless populations; and alternative actions to reduce discharges to surface waters associated with homelessness, such as efforts towards providing housing, jobs, and related services for residents experiencing homelessness.
- (3) Each Permittee shall identify and implement appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts. In addition, Permittees shall also evaluate and assess the effectiveness of those practices, specifically by reporting on the BMP control measures being implemented, the approximate portion of the Permittee's unsheltered homeless population and locations being served by those control measures, and the portion and locations of the Permittee's unsheltered homeless population not reached, or not fully reached by the implemented control measures. Examples of actions that

may be implemented include, but are not limited to, access to emergency shelters; the provision of social services and sanitation services; voucher programs for proper disposal of RV sanitary sewage; establishment of designated RV “safe parking” areas or formalized encampments with appropriate services; provision of mobile pump-out services; establishing and updating sidewalk/street/plaza cleaning standards for the cleanup and appropriate disposal of human waste; and establishing trash and waste cleanup or pickup programs within the Permittee’s jurisdiction, or at the countywide or regional level.

- (4) Permittees shall use the information generated through the biennial point-in-time census surveys and related information, and the regional coordination tasks (as described above) to review and update their implementation practices.

iii. Reporting

- (1) With the 2023 Annual Report, Permittees shall collectively submit, acceptable to the Executive Officer, a best management practice report as described in Provision C.17.a.i.(2).
- (2) With the 2023 and 2025 Annual Reports, Permittees shall submit a map as described in Provision C.17.a.ii.(1).

With the 2023 and 2025 Annual Reports, each Permittee shall report on the best management practices being implemented and include the effectiveness evaluation reporting required in Provision C.17.a.ii.(3) and additional actions or changes to existing actions that the Permittee will implement to improve existing practices.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 18, 2024, I served the:

- **Current Mailing List dated June 17, 2024**
- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued June 18, 2024**
- **Test Claim filed by Union City on June 30, 2023**

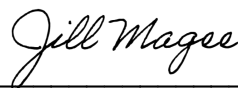
*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2022-0018, 22-TC-07*

California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2022-018, as modified by Order No. R2-2023-0019; NPDES
Permit No. CAS612008; Provisions C.3.b.ii(4), C.3.b.ii(5), C.3.j.ii(1)(a)-(g),
C.3.j.ii(4), C.3.j.ii(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e,
C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b, C.21.b, issued May 11, 2022,
effective July 1, 2022

Union City, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 18, 2024 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/17/24

Claim Number: 22-TC-07

Matter: California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2022-0018

Claimant: Union City

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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June 18, 2024

Exhibit E

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Mr. Gegory Newmark
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Los Angeles, CA 90017

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date

*California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07, as modified by Order No. R2-2023-0019; NPDES Permit No. CAS612008; Provisions C.3.b.ii(4), C.3.b.ii(5), C.3.j.ii(1)(a)-(g), C.3.j.ii(4), C.3.j.ii(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e, C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b, C.21.b, issued May 11, 2022, effective July 1, 2022
Union City, Claimant*

Dear Mr. Hill, Ms. Malloy, and Mr. Newmark:

On June 30, 2023, Union City filed the above-captioned Test Claim. Upon review, Commission on State Mandates (Commission) staff found your filing incomplete, and on October 11, 2023, notified Union City of this finding.

On October 20, 2023, Union City filed a request for extension of time to file documents to cure the Test Claim, which was granted. On January 9, 2024, both Union City filed documents to cure its filing. Upon review, Commission staff found the filing to be incomplete, and on February 23, 2024, notified Union City of this finding.

On March 7, 2024, Union City filed a request for extension of time to file documents to cure the Test Claim, which was granted. On May 22, 2024, Union City filed documents to cure the Test Claim. Upon review, Commission staff finds that this Test Claim is complete and retains the original filing date of June 30, 2023, in accordance with section 1183.1(f) of the Commission's regulations.

The Commission is now requesting parties, interested parties, and interested persons to comment on the Test Claim as specified below.

Review of Test Claim

Parties, interested parties, and interested persons receiving this letter are requested to analyze the merits of the Test Claim and to file written comments not later than **5:00 p.m. on July 18, 2024**, in accordance with sections 1183.2 and 1181.3 of the Commission's regulations. Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) If representations of fact are made, they must be supported with documentary evidence filed with the comments on the test claim. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial

evidence in the record.¹ Hearsay evidence (such as declarations not based on personal knowledge but on information and belief alone) may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.²

Claimants' Rebuttal

Written rebuttals to written comments concerning this Test Claim may be filed and served in accordance with section 1181.3 of the Commission's regulations not later than 5:00 p.m. 30 days from service of the written comments. (Cal. Code. Regs., tit. 2 § 1183.3.) Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code. Regs., tit. 2 §§ 1183.3 and 1187.5.) If new representations of fact are made, they must be supported with documentary evidence filed with the rebuttal. (Cal. Code. Regs., tit. 2 §§ 1183.3 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.³ Hearsay evidence (such as declarations not based on personal knowledge but on information and belief alone) may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.⁴

Process for Filing Comments

The Commission's regulations require that written materials filed with the Commission be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon prior approval of a written request to the executive director. (Cal. Code Regs., tit. 2, 1181.3(c)(2).)

If you would like to request an extension of time, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

² Title 2, California Code of Regulations, section 1187.5.

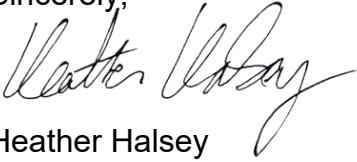
³ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

⁴ Title 2, California Code of Regulations, section 1187.5.

Tentative Hearing Date

The public hearing on this claim has been tentatively scheduled for **May 23, 2025**. The Draft Proposed Decision will be issued for comment at least eight weeks prior to the public hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 18, 2024, I served the:

- **Current Mailing List dated June 17, 2024**
- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued June 18, 2024**
- **Test Claim filed by Union City on June 30, 2023**

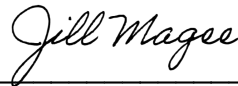
*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2022-0018, 22-TC-07*

California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2022-018, as modified by Order No. R2-2023-0019; NPDES
Permit No. CAS612008; Provisions C.3.b.ii(4), C.3.b.ii(5), C.3.j.ii(1)(a)-(g),
C.3.j.ii(4), C.3.j.ii(2)(a)-(j), C.5.f, C.8.d, C.8.e, C.8.f, C.10.a.i, C.10.a.ii, C.10.e,
C.11.c, C.12.a, C.12.c, C.15.b.iii, C.17.a, C.20.b, C.21.b, issued May 11, 2022,
effective July 1, 2022

Union City, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 18, 2024 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/17/24

Claim Number: 22-TC-07

Matter: California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2022-0018

Claimant: Union City

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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emel.wadhwani@waterboards.ca.gov

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Adam Whelen, Director of Public Works, *City of Anderson*
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awhelen@ci.anderson.ca.us

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1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2300
Eileen.White@waterboards.ca.gov

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
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Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
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elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Helmholt Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

Exhibit F

STATE of CALIFORNIA
**COMMISSION ON STATE
MANDATES**



<i>For CSM Use Only</i>	
Filing Date:	<div style="border: 2px solid blue; border-radius: 15px; padding: 10px; text-align: center;">RECEIVED May 24, 2024 <i>Commission on State Mandates</i></div>
TC #:	

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

In Re: Regional Water Quality Control Board, San Francisco Bay Region, Order R2-2022-018

Section 2

Local Government (Local Agency/School District) Name:

City of San Jose

Name and Title of Claimant's Authorized Official pursuant to [CCR, tit.2, § 1183.1\(a\)\(1-5\)](#):

Jennifer Maguire, City Manager

Street Address, City, State, and Zip:

200 E. Santa Clara Street, 16th Floor; San Jose, CA 95113

Telephone Number

(408) 535-1900

Email Address

Jennifer.Maguire@sanjoseca.gov

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. ([CCR, tit.2, § 1183.1\(b\)\(1-5\)](#).)

Name and Title of Claimant Representative:

Nora Frimann, City Attorney

Organization: City of San Jose

Street Address, City, State, Zip:

200 E. Santa Clara Street, 16th Floor; San Jose, CA 95113

(408) 535-1900

Nora.Frimann@sanjoseca.gov

Telephone Number

Email Address

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to [Government Code section 17553](#) and check for amendments to the section or regulations adopted to implement it:

California Regional Water Quality Control Board, San Francisco Bay Region, Regional Stormwater Permit, NPDES Permit number R2-2022-0018, CAS612008 (adopted May 11, 2022, effective July 1, 2022) Provisions:

Provision C17.a.i(1) Provision C17.a.i(2), C17.a.ii(1), Provision C17.a.ii(2),
Provision C17.a.ii(3), Provision C17.a.ii(4), Provision C17.a.iii(1), and
Provision C17.a.iii(2)

☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 30 / 2023

☒ A: Which is not later than 12 months (365 days) following [insert effective date] 07 / 01 / 2022, the effective date of the statute(s) or executive order(s) pled; or

☐ B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] / / , which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

([Gov. Code § 17551\(c\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\)](#) and [1187.5.](#))

Section 5 – Written Narrative:

- ☒ Includes a statement that actual or estimated costs exceed one thousand dollars (\$1,000). ([Gov. Code § 17564.](#))
- ☒ Includes all of the following elements for each statute or executive order alleged **pursuant to [Government Code section 17553\(b\)\(1\)](#)**:
- ☒ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;
- ☒ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;
- ☒ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;
- ☒ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☒ Identifies all dedicated funding sources for this program;

Federal: No dedicated ongoing funding sources, grants ARPA (Federal American Rescue Plan) Clean Creeks Healthy Watersheds

Other nonlocal agency funds: No dedicated funding sources; Grant Valley Water (\$180K); Santa Clara County Contract (\$220K)

☒ Identifies prior mandate determinations made by the Board of Control or the Commission on State Water Quality Control Board and, if related to the alleged mandate: In Re: Test Claim, Santa Ana Regional

☒ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☒ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☒ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

☒ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to [Government Code section 17573](#), and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of [Government Code section 17574](#).

☒ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

☒ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.
Pages SANJOSE-2011 to SANJOSE-2737 .

☒ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 3086 to 3128.

- ☒ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 3129 to 3196.
- ☒ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.)* Pages 40 to 2010.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to [Government Code section 17553](#)

- ☒ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to [California Code of Regulations, title 2, section 1183.1\(a\)\(1-5\)](#) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in [section 1183.1\(a\)\(1-5\)](#) of the Commission's regulations, and not by the representative.


This test claim alleges the existence of a reimbursable state-mandated program within the meaning of [article XIII B, section 6 of the California Constitution](#) and [Government Code section 17514](#). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. ([Cal. Code Regs., tit.2, §§ 1183.1](#) and [1187.5](#).)

Jennifer Maguire

City Manager

Name of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Print or Type Title


Jennifer A. Maguire (May 24, 2024 08:21 PDT)

Signature of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)










Test Claim Form

Final Audit Report

2024-05-24

Created:	2024-05-22
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYHx9dPt-4gbkFo-YCnRwgl79CyOXwn0k

"Test Claim Form" History

-  Document created by CSM Sign (csmsign@csm.ca.gov)
2024-05-22 - 6:29:23 PM GMT
-  Document emailed to Colleen Winchester (colleen.winchester@sanjoseca.gov) for filling
2024-05-22 - 6:30:32 PM GMT
-  Email viewed by Colleen Winchester (colleen.winchester@sanjoseca.gov)
2024-05-22 - 6:33:23 PM GMT
-  Form filled by Colleen Winchester (colleen.winchester@sanjoseca.gov)
Form filling Date: 2024-05-24 - 4:27:11 AM GMT - Time Source: server
-  Document emailed to jennifer.maguire@sanjoseca.gov for signature
2024-05-24 - 4:27:13 AM GMT
-  Email viewed by jennifer.maguire@sanjoseca.gov
2024-05-24 - 4:33:52 AM GMT
-  Signer jennifer.maguire@sanjoseca.gov entered name at signing as Jennifer A. Maguire
2024-05-24 - 3:21:28 PM GMT
-  Document e-signed by Jennifer A. Maguire (jennifer.maguire@sanjoseca.gov)
Signature Date: 2024-05-24 - 3:21:30 PM GMT - Time Source: server
-  Agreement completed.
2024-05-24 - 3:21:30 PM GMT

Sent via email to: Nora.Frimann@sanjoseca.gov and
Jennifer.Maguire@sanjoseca.gov

Exhibit G

June 18, 2024

Ms. Nora Frimann
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

Ms. Jennifer Maguire
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

RE: Notice of Rejection of Duplicate Test Claim

*In Re: Regional Water Quality Control Board, San Francisco Bay Region, Order
R2-2022-018*

Dear Ms. Frimann and Ms. Maguire:

On June 30, 2023, you filed a test claim filing with the Commission on State Mandates (Commission), on behalf of the City of San Jose, on the above-named matter. The City of Union City, however, filed the first test claim filing on same executive order before yours was filed, on June 30, 2023. The first claim filed on a statute or executive order is the test claim under the governing statutes and regulations. Upon initial review, Commission staff found and notified you on October 11, 2023, that your filing was duplicative and incomplete but if Union City did not timely cure its filing, then it would not be the test claim and San Jose's claim could be accepted as the test claim if it was timely cured. The two cities could also choose to file jointly, if desired, but must still meet the statute of limitations requirements for filing new or amended claims. Therefore, the way to file jointly if the statute has already run for filing new or amended claims, is to add a new claimant to a claim already on file, which, pursuant to section 1181.2 of the Commission's regulations would not be an amendment to the test claim. Note, however, that the pleading of additional provisions, statutes, or executive orders would constitute a new test claim or an amendment to an existing test claim.

On October 20, 2023, Union City filed a request for extension of time to file documents to cure the Test Claim, which was granted. On October 24, 2023, San Jose filed a request for extension of time to file documents to cure the Test Claim, which was partially granted. On January 9, 2024, both Union City and San Jose filed documents to cure their filings. Upon review, Commission staff found both filings to be duplicate and incomplete, and on February 23, 2024, notified both filers. On March 7, 2024, Union City and San Jose each filed a request for extension of time to file documents to cure the Test Claim, which were both granted.

On May 22, 2024, Union City filed documents to cure the Test Claim. Upon review, Commission staff found Union City's Test Claim complete, that it retains the original filing date of June 30, 2023, in accordance with section 1183.1(f) of the Commission's regulations (California Code of Regulations, Title 2), and issued the Test Claim for comment on June 18, 2024. On May 24, 2024, San Jose filed documents to cure its filing. Upon review, Commission staff finds that your filing is a duplicate test claim filing since a Test Claim was filed by the City of Union City (claimant) on the above-named executive order before this Test Claim on the same day, June 30, 2023.

Duplicate Test Claims Will Not Be Accepted

On June 30, 2023, the City of Union City (claimant) filed a Test Claim prior to this test claim filing on the above-named executive order. A “test claim” is the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. (Gov. Code §17521.) Though multiple claimants may join together in pursuing a single test claim, the Commission will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies. (See Cal. Code Regs., tit. 2, §1183.1; *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, page 872, fn. 10.) Thus, the test claim “functions similarly to a class action and has been established to expeditiously resolve disputes affecting multiple agencies.” (Cal. Code Regs., tit. 2, §1181.2(s).)

Although the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission, other similarly situated affected agencies may participate in the process by submitting comments in writing on any agenda item as provided in section 1181.10 of the Commission’s regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.

The Commission’s regulations also provide that test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.

Otherwise, the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently. (Cal. (Cal. Code Regs., tit. 2, §1183.1(b)(1-3).)

In addition, although all new test claims and amendments thereto are required to meet the statute of limitations, pursuant to section 1181.2 of the Commission’s regulations adding a new claimant to a claim already on file is not an amendment to the test claim.

In your second response, you provided the following explanation of how and why San Jose is affected differently than Union City by the order pled:

SAN JOSE noted that, if UNION CITY does not timely cure its test claim, SAN JOSE should be afforded the opportunity to revise its claim to include

other provisions. Moreover, if UNION CITY's revised/supplemental claim completely addresses Provision C.17.a., and the Commission determines SAN JOSE's Test Claim is therefore duplicative, SAN JOSE will revisit whether to withdraw this Revised Claim.

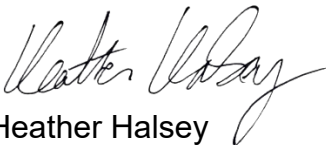
The claim filed by Union City does plead C.17.a. in its entirety and alleges costs mandated by the state related to both the joint preparation of the plan as well as for reporting and implementation requirements. Commission staff finds the filing of City of San Jose duplicative and is therefore rejecting it. Pursuant to the Commission's regulations in section 1183.1(g): Any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for any reason, including that the test claim was not filed within the period of limitation required by subdivision (c) of this section, may be rejected or dismissed by the executive director with a written notice stating the reason therefor.

Therefore, because Union City's claim was filed first and was timely cured first and although San Jose has described how and why they may have implemented the requirements of the permit differently than Union City, San Jose has not demonstrated how and why it is affected differently by the order pled and is therefore rejected. Union City's filing is the Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07* and you have been added to the mailing list, per your request.

Please note that this in no way prevents the City of San Jose or any other interested party (which includes all of the co-permittees) from participating in the test claim process by filing comments on the test claim filing which may include evidence if desired, filing comments the Draft Proposed Decision when it issues, and testifying at the hearing on the Union City test claim.

As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 18, 2024, I served via email to: Nora.Frimann@sanjoseca.gov and Jennifer.Maguire@sanjoseca.gov the:

Notice of Rejection of Duplicate Test Claim

Test Claim for Unfunded Mandates Relating to the California Water Quality Control Board, San Francisco Region

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 18, 2024, at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

July 18, 2024

Exhibit H

Ms. Nora Frimann
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

Ms. Colleen Winchester
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

And Parties, Interested Parties, and Interested Persons (See Mailing List)

**Re: Draft Proposed Appeal of Executive Director Decision, Schedule for
Comments, and Notice of Hearing**

Rejection of Duplicate Test Claim Filing, 23-AEDD-01
City of San Jose, Appellant

Dear Ms. Frimann and Ms. Winchester:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on August 8, 2024**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Hearing

This matter is set for hearing on **Friday, September 27, 2024**, at 10:00 a.m. The Proposed Decision will be issued on or about September 13, 2024.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

ITEM ____
APPEAL OF EXECUTIVE DIRECTOR DECISION
DRAFT PROPOSED DECISION

Rejection of Duplicate Test Claim Filing

23-AEDD-01

City of San Jose, Appellant

EXECUTIVE SUMMARY

Overview

This is an appeal of the Executive Director’s decision to reject a test claim filing by the City of San Jose (appellant) on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018 (test claim permit) because it duplicated the Test Claim first filed by Union City on that permit (22-TC-07).

The City of San Jose (appellant) contends its filing should be accepted and consolidated with Union City’s Test Claim because Union City did not plead Provision C.17.a.ii.3., requiring permittees to implement best management practices related to the unsheltered and homeless, and its homeless population and costs to comply with Provision C.17.a. are much higher.¹

Staff recommends the Commission adopt the Proposed Decision to uphold the Executive Director’s decision to reject the appellant’s test claim filing as duplicative and to deny the appeal.

Procedural History

On June 30, 2023, Union City filed a test claim on the test claim permit, which was deemed incomplete. Later the same day, the appellant submitted a filing on the same permit, which was also deemed incomplete on October 11, 2023.² The Commission served appellant a notice of “Duplicate and Incomplete Test Claim,” which indicated if Union City did not timely cure its test claim filing, then the appellant’s test claim filing could be accepted if it was timely cured.³ On May 22, 2024, Union City cured its Test Claim, which pled Provision C.17.a. of the test claim permit⁴ and was deemed complete,

¹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 7.

² Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

³ Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

⁴ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*.

and the Test Claim was issued for comment.⁵ On May 24, 2024, the appellant submitted a filing to cure its test claim, which also pled Provision C.17.a. of the test claim permit.⁶ On June 18, 2024, the Executive Director notified the appellant in writing that its filing was duplicative of the Test Claim filed by Union City (22-TC-07) and rejected its duplicate test claim filing.⁷ On June 28, 2024, the appellant filed its appeal.⁸ Commission staff issued the Draft Proposed Decision on July 18, 2024.⁹

Commission Responsibilities

Section 1181.1(c) of the Commission's regulations allows any real party in interest to appeal to the Commission for review of the actions and decisions of the executive director. The Commission shall determine whether to uphold the executive director's decision by a majority vote of the members present at the hearing. The Commission's decision shall be final and not subject to reconsideration. Within ten days of the Commission's decision, the executive director shall notify the appellant in writing of the decision.¹⁰

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	Description	Staff Recommendation
Was the appeal timely filed?	Section 1181.1(c)(1) of the Commission's regulations requires the appellant to file a written appeal "within 10 days of first being served written notice of the executive director's action or decision." ¹¹	<i>Timely filed</i> - the Executive Director rejected the appellant's test claim filing on June 18, 2024, which was served that same day. ¹² The appellant filed this appeal ten days later, on June 28, 2024. ¹³ Thus, the

⁵ Exhibit E, Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date, *California Regional Water Quality Control Board, San Francisco Bay Region*, Order No. R2-2022-0018, 22-TC-07, issued June 18, 2024.

⁶ Exhibit F, Appellant's Response to the Second Notice of Duplicate and Incomplete Test Claim Filing, filed May 24, 2024.

⁷ Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

⁸ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024.

⁹ Exhibit H, Draft Proposed Decision, issued July 18, 2024.

¹⁰ California Code of Regulations, title 2, section 1181.1(c).

¹¹ California Code of Regulations, title 2, section 1181.1(c)(1).

¹² Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

¹³ Exhibit A, Appeal of the Executive Director Decision, filed June 28, 2024.

Issue	Description	Staff Recommendation
		appellant filed its appeal within 10 days of the Executive Director's rejection and this appeal was timely filed.
Should the Commission Uphold Executive Director's Decision?	The appellant alleges the Commission should accept its test claim filing because Union City's Test Claim does not plead Provision C.17.a.ii.3., which requires the implementation of best management practices to control or reduce the discharge of pollutants related to the homeless and unsheltered; and its homeless population and costs to implement the BMPs are much higher than Union City's.	<p>Yes – the Executive Director's decision to reject the appellant's test claim filing is correct as matter of law.</p> <p>The governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."¹⁴ Thus, Government Code section 17521 defines a "test claim" as the <i>first claim</i> filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. The Commission's regulations further provide "<i>no duplicate test claims will be accepted by the Commission.</i>"¹⁵ If, however, a local agency or school district contends the test claim filing affects them differently than the test claimant — meaning their</p>

¹⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333. See also, *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 630-631; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 86; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, footnote 10.

¹⁵ California Code of Regulations, title 2, section 1183.1(b).

Issue	Description	Staff Recommendation
		<p>legal rights and interests are not protected by the test claim filing — then that local agency or school district may file a duplicate test claim on the same statutes or executive orders, “but must demonstrate how and why they are affected differently.”¹⁶</p> <p>Union City’s Test Claim was the first claim filed on the test claim permit, and it has been deemed complete and properly pleads <i>all of</i> Provision C.17.a. The appellant’s legal rights and interests are protected by Union City’s Test Claim, which must be determined as a matter of law.¹⁷</p> <p>Finally, the Commission’s regulations provide ample opportunity for the appellant, as a similarly situated affected agency, to participate in the Commission’s determination of Test Claim 22-TC-07 without accepting and consolidating its filing with Union City’s Test Claim.¹⁸</p>

¹⁶ California Code of Regulations, title 2, section 1183.1(b).

¹⁷ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁸ California Code of Regulations, title 2, section 1183.1(b).

Staff Analysis

A. This Appeal was Timely Filed.

Section 1181.1(c)(1) of the Commission's regulations requires the appellant to file a written appeal "within 10 days of first being served written notice of the Executive Director's action or decision."¹⁹ Here, the Executive Director rejected the appellant's test claim filing on June 18, 2024, which was served that same day.²⁰ The appellant filed this appeal ten days later, on June 28, 2024.²¹ Thus, the appellant filed its appeal within 10 days of the Executive Director's rejection. Accordingly, this appeal was timely filed.

B. The Executive Director's Rejection of Appellant's Duplicate Test Claim Filing Is Consistent with the Statutes and Regulations Governing the Mandates Process and Is Correct as a Matter of Law.

The City of San Jose (appellant) contends its filing should be accepted and consolidated with Union City's Test Claim because Union City did not plead Provision C.17.a.ii.3. of the test claim permit, requiring permittees to implement best management practices related to the unsheltered and homeless, and its homeless population and costs to comply with Provision C.17.a. are much higher and will make it more difficult to levy fees sufficient to pay for the mandate.²²

Staff recommends the Commission deny the appeal and find the Executive Director's decision to reject appellant's test claim filing is correct as a matter of law.

The process for seeking reimbursement under article XIII B, section 6 of the California Constitution is identified in Government Code sections 17500, et seq. The governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."²³ The determination whether a statute or executive order imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 is a question of law that applies to all eligible local government claimants, and the test claim process, providing for the filing of a single test claim, is intended to protect the legal rights and interests of all eligible local government

¹⁹ California Code of Regulations, title 2, section 1181.1(c)(1).

²⁰ Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

²¹ Exhibit A, Appeal of Executive Director, filed June 28, 2024.

²² Exhibit A, Appeal of Executive Director, filed June 28, 2024, pages 3, 7.

²³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333. See also, *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 630-631; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 86; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, footnote 10.

claimants to the claim.²⁴ Thus, Government Code section 17521 defines a “test claim” as the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. The Commission’s regulations further provide “*no duplicate test claims will be accepted by the Commission.*”²⁵ If, however, a local agency or school district contends the test claim statute affects them differently than the test claimant — meaning their legal rights and interests are not protected by the test claim filing — then local agency or school district may file a duplicate test claim on the same statutes or executive orders, “but must demonstrate how and why they are affected differently.”²⁶

Union City’s Test Claim (22-TC-07) was the first claim filed on the test claim permit. Test Claim 22-TC-07 was deemed complete and pleads all of Provision C.17.a., as noted on the Test Claim form (which expressly identifies Provision C.17.a.), in the narrative, and in the declarations supporting the claim.²⁷ Provision C.17.a.ii.3. requires “Each Permittee shall identify *and implement* appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts.”²⁸ And the Declarations filed by Union City expressly state “The Permittees will incur additional costs throughout the MRP3 term *to implement the best management practices.*”²⁹ Thus, Union City’s Test Claim (22-TC-07) pleads Provision C.17.a., including Provision C.17.a.ii.3., and the appellant’s test claim filing on the same provision is duplicative of Test Claim 22-TC-07.

Moreover, the appellant’s legal rights and interests are protected by Union City’s Test Claim, even if its costs to comply with Provision C.17.a. are higher. Increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution.³⁰ Rather, the Commission is required to determine as a matter of law if Provision C.17.a. imposes new requirements mandated by the state, constitute

²⁴ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

²⁵ California Code of Regulations, title 2, section 1183.1(b).

²⁶ California Code of Regulations, title 2, section 1183.1(b).

²⁷ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, pages 2, 34, 58, 111.

²⁸ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, pages 757-759.

²⁹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, pages 111, 58 (Declarations of Sandra Mathews and Farooq Azim, emphasis added).

³⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

a new program or higher level of service, and result in increased costs mandated by the state of at least \$1,000 in accordance with Government Code sections 17514, 17556, and 17564. Government Code section 17556(d) provides the Commission “shall not find costs mandated by the state, as defined in Section 17514” if “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The fee authority issue is one of law, and not one of fact, and depends only on whether local government has “authority, i.e., the right or power, to levy fees,” and other factors such as economic evidence that may make the exercise of that authority impractical or undesirable are not relevant.³¹

Finally, the Commission’s regulations provide ample opportunity for the appellant, as a similarly situated affected agency, to participate in the Commission’s determination of Test Claim 22-TC-07 without accepting and consolidating its filing with Union City’s Test Claim. Section 1183.1(b) of the Commission’s regulations expressly provides:

Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.³²

Thus, the appellant is not prevented from providing the Commission with written comments, evidence, and testimony of a larger homeless population and the higher costs it has incurred and can inform the Commission’s decision through the test claim hearing process.

If Union City’s Test Claim (22-TC-07) is approved, the appellant and other eligible local government permittees identified in the permit may file reimbursement claims with the State Controller’s Office, in accordance with parameters and guidelines, for the actual costs incurred.³³

Conclusion

Staff concludes the appellant’s test claim filing is duplicative of Union City’s Test Claim 22-TC-07; the appellant is not affected differently than any other local government permittee who may file reimbursement claims with the State Controller’s Office if the Commission approves the Test Claim; and its legal rights and interests are protected by Union City’s Test Claim. Thus, the Executive Director’s rejection of appellant’s test claim filing was correct as a matter of law.

³¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382; *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 564.

³² California Code of Regulations, title 2, section 1183.1(b).

³³ Government Code sections 17557, 17560, 17561.

Staff Recommendation

Staff recommends the Commission adopt the Proposed Decision to uphold the Executive Director's decision to reject the appellant's test claim filing as duplicative and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE APPEAL OF EXECUTIVE
DIRECTOR DECISION:

Rejection of Duplicate Test Claim Filing

Filed on June 28, 2024

City of San Jose, Appellant

Case No.: 23-AEDD-01

Appeal of Executive Director Decision

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted September 27, 2024)

DECISION

The Commission on State Mandates (Commission) heard and decided this appeal of executive director decision (AEDD) during a regularly scheduled hearing on September 27, 2024. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/deny] the AEDD by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Shannon Clark, Representative of the Director of the Office of Planning and Research	
Deborah Gallegos, Representative of the State Controller	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michelle Perrault, Representative of the Director of the Department of Finance, Chairperson	

Summary of the Findings

This is an appeal of the Executive Director's decision to reject a test claim filing by City of San Jose (appellant) on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018 because it duplicated the Test Claim

first filed and deemed complete by Union City (*California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*).

The City of San Jose (appellant) contends its filing should be accepted and consolidated with Union City's Test Claim because Union City did not plead Provision C.17.a.ii.3. of the test claim permit, requiring permittees to implement best management practices related to the unsheltered and homeless, and its homeless population and costs to comply with Provision C.17.a. are much higher and will make it more difficult to levy fees sufficient to pay for the mandate.³⁴

The Commission denies the appeal and finds the Executive Director's decision to reject appellant's test claim filing is correct as a matter of law.

The process for seeking reimbursement under article XIII B, section 6 of the California Constitution is identified in Government Code sections 17500, et seq. The governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."³⁵ The determination whether a statute or executive order imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 is a question of law that applies to all eligible local government claimants, and the test claim process, providing for the filing of a single test claim, is intended to protect the legal rights and interests of all eligible local government claimants to the claim.³⁶ Thus, Government Code section 17521 defines a "test claim" as the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. The Commission's regulations further provide "*no duplicate test claims will be accepted by the Commission.*"³⁷ If, however, a local agency or school district contends the test claim filing affects them differently than the test claimant — meaning their legal rights and interests are not protected by the test claim filing — then that local agency or school district may file a duplicate test claim on the same statutes or executive orders, "but must demonstrate how and why they are affected differently."³⁸

Union City's Test Claim (22-TC-07) was the first claim filed on the test claim permit. Test Claim 22-TC-07 was deemed complete and pleads all of Provision C.17.a., as

³⁴ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 7.

³⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333. See also, *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 630-631; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 86; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, footnote 10.

³⁶ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

³⁷ California Code of Regulations, title 2, section 1183.1(b).

³⁸ California Code of Regulations, title 2, section 1183.1(b).

noted on the Test Claim form (which expressly identifies Provision C.17.a.), in the narrative, and in the declarations supporting the claim.³⁹ Provision C.17.a.ii.3. requires “Each Permittee shall identify *and implement* appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts.”⁴⁰ And the Declarations filed by Union City expressly state ““The Permittees will incur additional costs throughout the MRP3 term *to implement the best management practices*.”⁴¹ Thus, Union City’s Test Claim (22-TC-07) pleads Provision C.17.a., including Provision C.17.a.ii.3., and the appellant’s test claim filing on the same provision is duplicative of Test Claim 22-TC-07.

Moreover, the appellant’s legal rights and interests are protected by Union City’s Test Claim, even if its costs to comply with Provision C.17.a. are higher. Increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution.⁴² Rather, the Commission is required to determine as a matter of law if Provision C.17.a. imposes new requirements mandated by the state, constitute a new program or higher level of service, and result in increased costs mandated by the state of at least \$1,000 in accordance with Government Code sections 17514, 17556, and 17564. Government Code section 17556(d) provides the Commission “shall not find costs mandated by the state, as defined in Section 17514” if “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The fee authority issue is one of law, and not one of fact, and depends only on whether local government has “authority, i.e., the right or power, to levy fees,” and other factors such as economic evidence that may make the exercise of that authority impractical or undesirable are not relevant.⁴³

Finally, the Commission’s regulations provide ample opportunity for the appellant, as a similarly situated affected agency, to participate in the Commission’s determination of

³⁹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 2, 34, 58, 111.

⁴⁰ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 757-759.

⁴¹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 111, 58 (Declarations of Sandra Mathews and Farooq Azim, emphasis added).

⁴² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

⁴³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382; *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 564.

Test Claim 22-TC-07 without accepting and consolidating its filing with Union City's Test Claim. Section 1183.1(b) of the Commission's regulations expressly provides:

Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.⁴⁴

Thus, the appellant is not prevented from providing the Commission with written comments, evidence, and testimony of a larger homeless population and the higher costs it has incurred and can inform the Commission's decision through the test claim hearing process.

If Union City's Test Claim (22-TC-07) is approved, the appellant and other eligible local government permittees identified in the permit may file reimbursement claims with the State Controller's Office, in accordance with parameters and guidelines, for the actual costs incurred.⁴⁵

Accordingly, the Commission denies this appeal.

COMMISSION FINDINGS

I. Chronology

06/30/2023	Union City filed a test claim on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, ⁴⁶ which was deemed incomplete.
06/30/2023	The appellant filed a test claim on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, which was deemed duplicative and incomplete.
10/11/2023	Commission staff sent a notice to the appellant advising the test claim filing was duplicative and incomplete, but if Union City did not timely cure its test claim filing, then the appellant's test claim could be accepted if it was timely cured. ⁴⁷
10/24/2023	The appellant filed a request for extension of time to file documents to cure its test claim filing, which was partially granted.
01/09/2024	The appellant filed documents to cure its test claim filing.

⁴⁴ California Code of Regulations, title 2, section 1183.1(b).

⁴⁵ Government Code sections 17557, 17560, 17561.

⁴⁶ Also referred to as MRP3.

⁴⁷ Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

02/23/2024	Commission staff sent a second notice to the appellant advising the test claim filing was duplicative and incomplete. ⁴⁸
03/07/2024	The appellant filed a request for extension of time to file documents to cure its test claim filing, which was granted.
05/22/2024	Union City filed documents to cure its filing. ⁴⁹ Commission staff deemed the Test Claim complete and issued Test Claim <i>California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07</i> for comment. ⁵⁰
05/24/2024	The appellant filed documents to cure its test claim filing. ⁵¹
06/18/2024	The Executive Director sent a notice to the appellant rejecting the duplicate test claim filing. ⁵²
06/28/2024	The appellant filed its Appeal of Executive Director Decision. ⁵³
07/18/2024	Commission staff issued the Draft Proposed Decision on the Appeal. ⁵⁴

II. Background

The underlying facts are not in dispute. On June 30, 2023, Union City filed a test claim on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018 (test claim permit), which was deemed incomplete. Later the same day, the appellant filed a test claim on the same permit, which was deemed duplicate and incomplete on October 11, 2023.⁵⁵ The notice informed the appellant it's filing was duplicative, but if Union City did not timely cure its test claim filing, then the appellant's test claim filing could be accepted if it was timely cured.⁵⁶ On May 22, 2024, Union City

⁴⁸ Exhibit C, Second Notice of Duplicate and Incomplete Test Claim, issued February 23, 2024.

⁴⁹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*.

⁵⁰ Exhibit E, Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, issued June 18, 2024.

⁵¹ Exhibit F, Appellant's Response to the Second Notice of Duplicate and Incomplete Test Claim Filing, filed May 24, 2024.

⁵² Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

⁵³ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024.

⁵⁴ Exhibit H, Draft Proposed Decision, issued July 18, 2024.

⁵⁵ Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

⁵⁶ Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

cured its Test Claim, which pled Provision C.17.a. of the test claim permit,⁵⁷ it was deemed complete, and the Test Claim was issued for comment.⁵⁸ On May 24, 2024, the appellant filed documents to cure its test claim filing, which also pled Provision C.17.a. of the test claim permit.⁵⁹ On June 18, 2024, the Executive Director notified the appellant in writing that its test claim was duplicative of the Test Claim filed by Union City (22-TC-07) and rejected the test claim filing.⁶⁰

The appellant appeals the Executive Director's June 18, 2024 decision.⁶¹ The basis for this appeal is limited to one section of the test claim permit (Provision C.17.a.) and whether Union City's test claim sufficiently pleads this provision or whether the provision impacts the appellant differently and thus, the appellant's test claim filing should be accepted and consolidated with Union City's Test Claim, 22-TC-07.

III. Appellant's Position

The appellant contends California Code of Regulations, title 2, section 1183.1 sets forth a two-step process for the receipt of test claim filings. "First, is the claim duplicative; and second, if so, whether the affected agencies are similarly situated. Neither of these factors are present here."⁶²

The appellant alleges its test claim filing does not duplicate Union City's Test Claim because the costs incurred by the appellant to comply with Provision C.17. *Discharges Associated with Unsheltered Homeless Populations* are much higher than those incurred by Union City:

San Jose's proposed Test Claim raises important issues related to the unhoused, the requirements of the Municipal Regional Stormwater Permit, and the permittees inability to fund this mandate. In support of the rejection, the Director cites to Union City's Test Claim for Provision C.17, seeking \$2,455.00. In sharp contrast, San Jose's claim for Provision C.17a.ii.(3) alone is \$19,022,757 for Fiscal Year 22-23. The dramatic difference in the magnitude of the claims make it apparent that San Jose's test claim does not duplicate Union City's and, in fact, Provision C.17

⁵⁷ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07.

⁵⁸ Exhibit E, Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, issued June 18, 2024.

⁵⁹ Exhibit F, Appellant's Response to the Second Notice of Duplicate and Incomplete Test Claim Filing, filed May 24, 2024.

⁶⁰ Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

⁶¹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024.

⁶² Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 5.

impacts San José differently. San Jose's claim should proceed and be consolidated with Union City's for the Commission's efficiency.⁶³

In addition to this financial disparity, the appellant asserts Union City's test claim does not address the mandate to *implement* best management practices related to the unsheltered under Provision C.17.a.ii.3, "which Union City has yet to incur or calculate" and, thus, it's Test Claim is more comprehensive than Union City's Test Claim.⁶⁴

The appellant contends even if its filing is duplicative of Union City's test claim, it is not similarly situated to Union City because the order affects the appellant differently. First, the analysis of whether a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service "can differ when considering costs less than \$3,000.00 as compared to over \$19,000.00.00."⁶⁵ Second, the appellant argues it faces different challenges with its unsheltered homeless population: Union City's estimated homeless population is 489, while appellant's homeless population is "6,200 individuals – over twelve times that of Union City's -- approximately 70% of which are unsheltered."⁶⁶ Finally, the appellant's "work on *implementation* of best management practices demonstrates the difference in the two claims."⁶⁷ The appellant has budgeted for and provided services referenced in the order including safe parking areas, mobile pump-out services, vouchers for RV sanitary sewage disposal, and cleaning of human waste or pickup programs.⁶⁸ In addition, the appellant provides Services, Outreach, Assistance and Resources (SOAR) programs and emergency interim shelter beds.⁶⁹ "In sharp contrast, Union City's claim for the entire C.17a is \$2,455.00, less than three thousand dollars. Union City's declarations demonstrate that the 'The Permittees will incur additional costs throughout the MRP3 term to implement the best management practices.'"⁷⁰

The appellant concludes the "Commission should be informed by San Jose's experience on this very important issue and its claim should proceed and be consolidated with Union City's."⁷¹

⁶³ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 2.

⁶⁴ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 5.

⁶⁵ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁶⁶ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁶⁷ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7, emphasis in original.

⁶⁸ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁶⁹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁷⁰ Exhibit A, Appeal of Executive Director, filed June 28, 2024, page 7.

⁷¹ Exhibit A, Appeal of Executive Director, filed June 28, 2024, page 8.

IV. Discussion

Section 1181.1(c) of the Commission's regulations allows any real party in interest to appeal to the Commission for review of the actions and decisions of the executive director. The Commission shall determine whether to uphold the executive director's decision by a majority vote of the members present at the hearing. The Commission's decision shall be final and not subject to reconsideration. Within ten days of the Commission's decision, the executive director shall notify the appellant in writing of the decision.⁷²

A. This Appeal Was Timely Filed.

Commission regulation section 1181.1(c)(1) addresses executive director appeals and provides: "The appellant shall file the appeal in writing within 10 days of first being served written notice of the executive director's action or decision."⁷³ Here, the Executive Director rejected the appellant's test claim filing on June 18, 2024, and provided the appellant with written notice that same day.⁷⁴ The appellant filed this appeal on June 28, 2024.⁷⁵ Thus, the appellant filed its appeal within 10 days of the Executive Director's rejection. Accordingly, this appeal was timely filed.

B. The Executive Director's Rejection of the Appellant's Duplicate Test Claim Filing Is Consistent with the Statutes and Regulations Governing the Mandates Process and Is Correct as a Matter of Law.

1. The Statutes that Govern the Mandates Process Are Designed to Avoid Multiple Proceedings Addressing the Same Claim and Protect the Legal Rights and Interests of All Eligible Claimants.

The process for seeking reimbursement under article XIII B, section 6 of the California Constitution is identified in Government Code sections 17500, et seq. The governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."⁷⁶ Government Code section 17521 defines a "test claim" as the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. The test claim is required to identify the specific sections of statutes or executive orders alleged to contain a mandate, include a detailed description of the new activities and costs that arise from the mandate, any actual increased costs incurred by the claimant, and a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the

⁷² California Code of Regulations, title 2, section 1181.1(c).

⁷³ California Code of Regulations, title 2, section 1181.1(c)(1).

⁷⁴ Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

⁷⁵ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024.

⁷⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333.

fiscal year for which the claim was filed.⁷⁷ A test claim is only required to allege reimbursable costs exceeding \$1,000 for the Commission to take jurisdiction of the test claim.⁷⁸ Following the receipt of a test claim, the process is required to “[p]rovide for presentation of evidence by the claimant, the Department of Finance, and any other affected department or agency, and any other interested person.”⁷⁹ If the Commission approves the test claim, the Commission adopts parameters and guidelines “for reimbursement of any claims relating to the statute or executive order.”⁸⁰ “The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred.”⁸¹ The adopted parameters and guidelines are sent to the State Controller’s Office, which then issues claiming instructions to assist all eligible local agencies and school districts in claiming costs to be reimbursed for the program.⁸² “Issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the commission.”⁸³ Each eligible claimant may thereafter file initial and annual claims for reimbursement with the State Controller’s Office for all costs mandated by the state, as provided in the parameters and guidelines, which are subject to the Controller’s review and audit.⁸⁴

Thus, the test claim process functions as a class action, where the Commission’s decision on the test claim “applies to all local governments and school districts in the state.”

An initial reimbursement claim filed by a local government or school district is known as a test claim. (Gov. Code, § 17521.) “The test claim process allows the claimant and other interested parties to present written evidence and testimony at a public hearing. [Citations.] Based on that evidence, the Commission must decide whether the challenged statute or executive order mandates a new program or increased level of service.” (*Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 808, 297 Cal.Rptr.3d 67, 514 P.3d 854 (CCCD).) “The Commission’s adjudication of the test claim ‘governs all subsequent claims based on the same statute.’ ” (*Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 553, fn. 4, 273 Cal.Rptr.3d 619; see also *SDUSD*, at p. 872, fn. 10, 16 Cal.Rptr.3d 466, 94 P.3d 589

⁷⁷ Government Code section 17553.

⁷⁸ Government Code section 17564.

⁷⁹ Government Code section 17553(a)(1).

⁸⁰ Government Code section 17557(a).

⁸¹ Government Code section 17557(c).

⁸² Government Code section 17558.

⁸³ Government Code section 17561(d)(1).

⁸⁴ Government Code sections 17560, 17561(d)(1).

["a 'test claim is like a class action — the Commission's decision applies to all [local governments and] school districts in the state' "].)⁸⁵

The determination whether a statute or executive order imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 is a question of law, and the test claim process, providing for the filing of a single test claim, is intended to protect the legal rights and interests of all eligible local government claimants to the claim.⁸⁶

Consistent with the governing statutes, section 1183.1(b) of the Commission's regulations provides "the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission." The regulation further explains other similarly situated affected agencies may participate in the process by filing comments on the test claim and participating in the hearing on the matter:

[T]he first claim filed on a statute or executive order by a similarly situated claimant is the test claim and *no duplicate test claims will be accepted by the Commission*. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.⁸⁷

The regulations also provide a test claim may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.⁸⁸

The Executive Director has the authority to reject a duplicate test claim filing because the Commission does not have jurisdiction to hear it: "Any test claim, or portion of a test

⁸⁵ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 630-631; see also, *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-333; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 86; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, footnote 10.

⁸⁶ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁸⁷ California Code of Regulations, title 2, section 1183.1(b), emphasis added.

⁸⁸ California Code of Regulations, title 2, section 1183.1(b).

claim, that the Commission lacks jurisdiction to hear for any reason, including that the test claim was not filed within the period of limitation required by subdivision (c) of this section, may be rejected or dismissed by the executive director with a written notice stating the reason therefor.”⁸⁹

If, however, a local agency or school district contends the test claim filing affects them differently than the test claimant – meaning their legal rights and interests are not protected by the test claim filing – then that local agency or school district may file a duplicate test claim on the same statutes or executive orders, “but must demonstrate how and why they are affected differently.”⁹⁰

2. The Appellant’s Filing Is Duplicative of Union City’s Test Claim (22-TC-07); the Appellant Is Not Affected Differently Than Any Other Local Government Permittee Who May File Reimbursement Claims with the State Controller’s Office if the Commission Approves Test Claim 22-TC-07; and the Appellant’s Legal Rights and Interests Are Fully Protected by the Processing of Test Claim 22-TC-07. Therefore, Rejection of the Appellant’s Filing Was Correct as a Matter of Law.

The appellant contends its filing on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018 is not duplicative of Union City’s test claim filing on the same executive order because:

- Union City’s Test Claim (22-TC-07) does not address the mandate to *implement* best management practices related to the unsheltered under Provision C.17.a.ii.3.⁹¹
- The costs incurred by the appellant are much higher than the costs alleged by Union City.⁹²

The appellant further contends even if its filing is duplicative of Union City’s Test Claim, the appellant is not similarly situated to Union City because Provision C.17.a. of Order No. R2-2022-0018 affects the appellant differently as follows:

- The analysis of whether a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service “can differ when considering costs less than \$3,000.00 as compared to over \$19,000,00.00.”⁹³
- The appellant faces different challenges with its unsheltered population: Union City’s estimated homeless population is 489, while appellant’s homeless

⁸⁹ California Code of Regulations, title 2, section 1183.1(g).

⁹⁰ California Code of Regulations, title 2, section 1183.1(b).

⁹¹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 7-8.

⁹² Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 7.

⁹³ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

population is “6,200 individuals – over twelve times that of Union City’s -- approximately 70% of which are unsheltered.”⁹⁴

- Appellant’s “work on *implementation* of best management practices demonstrates the difference in the two claims.”⁹⁵ The appellant has budgeted for and provided services referenced in the order including safe parking areas, mobile pump-out services, vouchers for RV sanitary sewage disposal, and cleaning of human waste or pickup programs. In addition, appellant provides Services, Outreach, Assistance and Resources (SOAR) programs and emergency interim shelter beds.⁹⁶ “In sharp contrast, Union City’s claim for the entire C.17a is \$2,455.00, less than three thousand dollars.”⁹⁷

Thus, the appellant is essentially alleging the Union City Test Claim (22-TC-07) does not request reimbursement to *implement* best management practices related to the unsheltered in accordance with Provision C.17.a.ii.3., and its homeless population and the costs incurred to comply with Provision C.17.a. including implementation are much larger than Union City’s population and costs, which will affect the appellant’s ability to levy service charges, fees, or assessments sufficient to cover the costs to comply with Provision C.17.a.

The Commission finds the Executive Director’s decision to reject the appellant’s duplicative test claim is correct as a matter of law.

Union City’s Test Claim (22-TC-07) was the first claim filed on the test claim permit, a stormwater permit issued by the San Francisco Bay Regional Water Quality Control Board to many local governments including counties, cities, and districts in the following regions: Alameda, Contra Costa, Santa Clara, San Mateo, Fairfield, and Vallejo.⁹⁸ Test Claim 22-TC-07 pleads all of Provision C.17.a., as noted on the Test Claim form (which expressly identifies Provision C.17.a.), in the narrative, and in the declarations supporting the claim.⁹⁹ Provision C.17.a. is a lengthy provision, generally addressing discharges into the MS4 associated with the homeless population, and requires the development and submission of a best management practices report and the development and submission of a map identifying approximate locations of unsheltered

⁹⁴ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁹⁵ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7, emphasis in original.

⁹⁶ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁹⁷ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁹⁸ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, page 2.

⁹⁹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 2, 34, 58, 111.

homeless populations.¹⁰⁰ Provision C.17.a. contains three groups of paragraphs identified as “task description” (C.17.a.i.), “implementation level” (C.17.a.ii.), and “reporting” (C.17.a.iii.).¹⁰¹ Provision C.17.a.ii.3. (implementation level) provides, in pertinent part: “Each Permittee shall identify *and implement* appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts.”¹⁰² Union City’s test claim narrative states the following:

7. Discharges Associated with Unsheltered Homeless Populations

New Requirement. Provision C.17.a of the MRP3 requires Permittees to collectively develop and submit a best management practice report that identifies practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges. (**MRP3 at C.17-1 – 3**, Section 7 at S7-0218-0220.) Provision C.17.a of the MRP3 also requires Permittees to report on the programmatic efforts being implemented within Permittee’s jurisdiction, or at the countywide or regional level, to address MS4 discharges associated with homelessness. (*Id.*) The MRP3 Fact Sheet acknowledges these are new programs. (MRP3 Fact Sheet at A-38, Section 7 at S7-0297.)

Permittees are required to develop and submit a regional best management practice report to identify control measures to address non-stormwater discharges associated with unsheltered homeless populations and identify milestones to reduce such discharges. To meet this new MRP3 requirement, the Program collaborated with the other four countywide programs on a regional project to develop the required best management practice report, which was submitted with each Permittee’s Fiscal Year 22/23 annual report. (Mathews Decl., ¶9.j.)

Additionally, each Permittee is required to submit a map identifying, the approximate locations of unsheltered homeless populations, including encampments and other areas where other unsheltered homeless people live relative to storm drains, creeks, and flood control channels. To support its members, the Program worked with County officials to obtain the required geo-located point in time count data, developed an approach for creating the maps, and updated its GIS system to produce the required maps for each of its members. (*Id.*)

¹⁰⁰ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region*, Order No. R2-2022-0018, 22-TC-07, pages 757-759.

¹⁰¹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region*, Order No. R2-2022-0018, 22-TC-07, pages 757-759.

¹⁰² Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region*, Order No. R2-2022-0018, 22-TC-07, page 758.

The City submitted the maps with its Fiscal Year 22/23 annual report. The Union City Fiscal Year 22/23 Union City costs for new Provision C.17 programs were \$2,455. (Mathews Decl., ¶ 10; Azim Decl., ¶ 8.g.)¹⁰³

The declaration of Sandra Mathews, Vice President of Larry Walker Associates and project manager for the Alameda Countywide Clean Water Program, filed in support of the Test Claim, adds the following: “The Permittees will incur additional costs throughout the MRP3 term *to implement the best management practices*.”¹⁰⁴ The declaration of Farooq Azim, City Engineer, includes the same statement verbatim.¹⁰⁵

Thus, all of Provision C.17.a., including Provision C.17.a.ii.3 regarding the implementation of the best management practices, are properly pled in Union City’s Test Claim (22-TC-07). The appellant’s filing, also pleading all of Provision C.17.a., is duplicative of Union City’s Test Claim.¹⁰⁶ On June 18, 2024, Commission staff issued Test Claim 22-TC-07 for comment to all parties, interested parties, and interested persons, identifying Provision C.17.a. as included in the test claim filing, and all parties, interested parties, and interested persons have the ability to participate in the hearing process for that Test Claim.¹⁰⁷ In this case, the appellant as a copermitee, is an interested party to 22-TC-07 since it will be eligible to submit reimbursement claims if that claim is approved and therefore has a pecuniary interest in the matter.

The hearing on 22-TC-07 will determine, among other things, whether Provision C.17.a. imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6, which is a question of law applicable to all eligible local government claimants (here, any copermitees with increased costs mandated by the state).¹⁰⁸ The following mandate elements must be met to require reimbursement under article XIII B, section 6 with respect to all of Provision C.17.a.:

¹⁰³ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, page 34, emphasis added.

¹⁰⁴ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, pages 104, 111, emphasis added.

¹⁰⁵ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, page 58.

¹⁰⁶ Exhibit F, Appellant’s Response to the Second Notice of Duplicate and Incomplete Test Claim, filed May 24, 2024.

¹⁰⁷ Exhibit E, Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018*, 22-TC-07, issued June 18, 2024.

¹⁰⁸ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁰⁹
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹¹⁰
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.¹¹¹
4. The mandated activity results in the local agency or school district incurring increased costs of at least \$1,000, within the meaning of sections 17514 and 17564. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹¹²

If the Commission finds Provision C.17.a. of the test claim permit imposes a reimbursable state-mandated program as a matter of law, parameters and guidelines will be adopted, and all eligible local government copermittees, including the appellant, will be able to file reimbursement claims with the State Controller’s Office for their costs mandated by the state.¹¹³

Moreover, the appellant’s legal rights and interests are protected by Union City’s Test Claim, even if its costs to comply with Provision C.17.a. are higher. The appellant asserts the test claim permit affects it differently because the appellant has a larger homeless population, has incurred significantly higher costs than Union City in implementing the test claim permit, and its ability to levy fees will be affected.¹¹⁴ The appellant concludes the “Commission should be informed by San Jose’s experience on

¹⁰⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹¹⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹¹¹ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹¹² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹¹³ Government Code sections 17557, 17560, 17561.

¹¹⁴ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 7.

this very important issue and its claim should proceed and consolidated with Union City's.”¹¹⁵

However, the size of the homeless population and higher costs experienced by the appellant are not relevant at the test claim stage of the proceedings. Increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution.¹¹⁶ Rather, as explained above, the Commission is required to determine if Provision C.17.a. imposes new requirements on local government, mandated by the state, that constitute a new program or higher level of service, and result in costs mandated by the state of at least \$1,000 in accordance with Government Code sections 17514, 17556, and 17564.

In addition, Government Code section 17556(d) provides the Commission “shall not find costs mandated by the state, as defined in Section 17514” if the Commission finds “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The fee authority issue is one of law, and not one of fact, and depends only on whether local government has “authority, i.e., the right or power, to levy fees,” and other factors such as economic evidence that may make the exercise of that authority impractical or undesirable are not relevant.¹¹⁷

Moreover, the Commission’s regulations provide ample opportunity for the appellant, as a similarly situated affected agency, to participate in the Commission’s determination of Test Claim 22-TC-07 without accepting and consolidating its filing with Union City’s Test Claim. Section 1183.1(b) of the Commission’s regulations expressly provides:

Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.¹¹⁸

Thus, the appellant is not prevented from providing the Commission with written comments, evidence, and testimony of a larger homeless population and the higher costs it has incurred and can inform the Commission’s decision through the test claim hearing process. All comments and evidence provided by interested parties are included in the administrative record for the matter.

¹¹⁵ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 8.

¹¹⁶ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

¹¹⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382; *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 564.

¹¹⁸ California Code of Regulations, title 2, section 1183.1(b).

Accordingly, the appellant has not demonstrated it is not similarly situated to Union City, nor that the test claim permit affects it differently. Thus, the Executive Director's rejection of appellant's filing is correct as a matter of law.

V. Conclusion

Based on the foregoing analysis, the Commission upholds the Executive Director's decision to reject the appellant's test claim filing as duplicative and denies the appeal.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 18, 2024, I served the:

- **Current Mailing List dated July 2, 2024**
- **Draft Proposed Appeal of Executive Director Decision, Schedule for Comments, and Notice of Hearing issued July 18, 2024**
- **Appeal of Executive Director Decision (AEDD) filed June 28, 2024**

Rejection of Duplicate Test Claim Filing, 23-AEDD-01
City of San Jose, Appellant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 18, 2024 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/2/24

Claim Number: 23-AEDD-01

Matter: Appeal of Executive Director Decision

Claimant: City of San Jose

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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