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June 28, 2024
*Commission on
State Mandates*

**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 Jose'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 Jose'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. XIIB §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 XIIB 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 XIIB 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 XIIB 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 that reads "Colleen D. Winchester". The signature is cursive and somewhat stylized.

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 that reads "Colleen Winchester". The signature is fluid and cursive, with the first name "Colleen" and the last name "Winchester" clearly legible.

By: Colleen D. Winchester
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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.)

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Declaration of Colleen D. Winchester
In Support of Appeal of Director's Decision

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.



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),

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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). MPR 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 BPMs 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,



Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

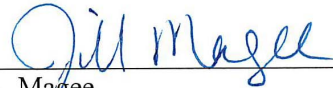
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

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).

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- 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(l): 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(l)	\$1,253.85	834.03
CI7.a.i(2)	\$26,923.39	\$16,519.85
C17.a.ii(l)	\$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(l)	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(l) 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(l): 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 Program1	\$42,003	\$25,000	\$67,003
Contra Costa Clean Water Program2	\$120,000	\$30,600	\$150,600
San Mateo Countywide Water Pollution Prevention Program3	\$45,937	\$24,582	\$70,519
Santa Clara Valley Urban Runoff Pollution Prevention Program4	\$75,000	\$46,800	\$121,800
Solano Stormwater Alliance5	\$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 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

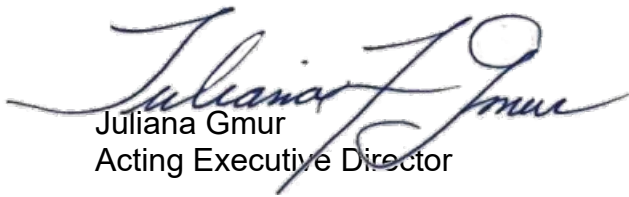
To retain the original filing date of June 30, 2023, please revise the required elements and refile the Test Claim within 30 days of the date of this letter by **5:00 p.m. on March 25, 2024**. If a complete test claim is not received within 30 calendar days from the date of this letter, the executive 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

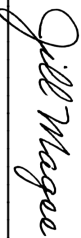
I, the undersigned, declare as follows:

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.Maquire@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

1 DECLARATION OF SANDRA MATHEWS IN SUPPORT OF TEST CLAIM

2 I, SANDRA MATHEWS, declare as follows:

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

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

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

19 4. The Alameda Countywide Program is a consortium made up of the
20 Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward,
21 Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union
22 City; the County of Alameda; the District, and the Zone 7 Water Agency
23 (collectively, the “Consortium”). The Program was created in 1991 through a
24 Memorandum of Agreement (“MOA”). Among other things, the MOA
25 established a General Program, which carries out activities in common on
26 behalf of the Consortium. The MOA also established a management structure
27 and funding mechanism to carry out general Program activities. I am aware
28 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)

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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

1 or higher levels of service for the MRP3 Provisions pled in this Test Claim
 2 (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),
 3 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,
 4 C.15.b.iii, C.17.a, C.20.b and C.21.b) is \$30,648. As set forth in paragraph 10
 5 above and in the Azim Declaration at paragraph 8, the total amount of Union
 6 City’s actual increased costs for fiscal year 22/23 for the new programs and
 7 higher levels of service for the MRP3 Provisions pled in this Test Claim
 8 (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,
 9 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,
 10 C.17.a, C.20.b and C.21.b) **\$51,619.**

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

15 13. The costs for implementation of MRP3 will continue in FY 23/24.
 16 The Program has approved a budget for FY 23/24 and this budget was used to
 17 extrapolate test claim costs. Similar assumptions were made regarding
 18 apportioning non-specific costs as are described in paragraph 9 above. The
 19 Union City share of the estimated FY 23/24 new and continuing Program costs
 20 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

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

1	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%)
2						
3						
4	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
5						
6	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
7						
8	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
9						
10	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
11						
12	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
13						
14	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
15						
16	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
17						
18	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
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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.

1 DECLARATION OF FAROOQ AZIM IN SUPPORT OF TEST CLAIM

2 I, FAROOQ AZIM, declare as follows:

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

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

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

28 ///

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)	FY23/34 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

1 be four 2-hour quarterly meetings in FY 23/24, with approximately 1/8 of the
 2 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

7 (b) Green Stormwater Infrastructure (GSI)

8 i. Modified Higher Levels of Service Requirements.

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

17 **FY22/23 Actual Costs:** I contacted HDR Consultants in June 2023 requesting
 18 it provide a quote to update the Green Infrastructure Plan that HDR had
 19 prepared in 2019. We discussed the need and scope for the Plan and
 20 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

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

1 provide a proposal for this task. I do not anticipate this activity to occur in
 2 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

7 ii. Modified Higher Level of Service Requirements.

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

19 **FY 22/23 Actual Costs:** The City has attended meetings with the Program
 20 regarding these Provision C.3.j.ii.(2)(a)-(j) requirements, including municipal
 21 staff training, and incurred the following costs implementing C.3.j.ii.(2)(a)-(j)
 22 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
24 Additionally, the Program recently initiated an Alternative Compliance
25 and Numeric GSI Target workgroup to develop approaches for Permittees to
26 meet the C.3.j numeric targets. In addition to the costs below, the City may
27 incur additional costs is FY 23/24 participating in these meetings.

28 ///

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

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.

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

3 **FY 22/23 Actual Costs:** City staff attended the Program’s Trash
4 Subcommittee meetings in FY 22/23. There were four 2-hour quarterly
5 meetings in FY 22/23, with approximately 12.5% of time spent on Provision
6 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

12 **FY 23/24 Estimated Costs:** To date in FY 23/24, Union City has not attended
13 the Program’s Trash Subcommittee meetings, but I anticipate there will be
14 two additional 2-hour quarterly meetings in FY 23/24, with approximately
15 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

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

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

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

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

1 There were four 2-hour quarterly meetings in FY 22/23, with approximately
 2 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

8 **FY 23/24 Estimated Costs:** To date in FY 23/24, Union City has not attended
 9 the Program’s Trash Subcommittee meetings, but I anticipate there will be
 10 two additional 2-hour quarterly meetings in FY 23/24, with approximately
 11 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

17 (e) Mercury Controls

18 i. Modified Higher Levels of Service Requirements.

19 Provision C.11.c of the MRP3 requires Permittees to implement or cause to be
 20 implemented treatment control measures to treat old industrial land use at
 21 70% efficiency, or by demonstrating an equivalent mercury load reduction.

22 (f) PCB Controls

23 i. Modified Higher Levels of Service Requirements.

24 Provision C.12.a of the MRP3 requires Permittees to quantify the PCBs load
 25 reductions achieved through all the pollution prevention, source control, green
 26 stormwater infrastructure, and other treatment control measures and submit
 27 documentation annually confirming that all control measures effectuated
 28 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

1 data indicate that this strategy of focusing on PCBs will yield mercury load
2 reductions in many circumstances.” (MRP3 at A-255 [Section 7 p. S7-0514].)
3 Thus, as planning was conducted concurrently on these requirements, the time
4 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

9
10 (g) Discharges Associated with Unsheltered Homeless
11 Populations (see Mathews Declaration).

12 i. New Requirements. Provision C.17.a of the MRP3
13 requires Permittees to collectively develop and submit a best management
14 practice report that identifies practices to address non-storm water discharges
15 associated with unsheltered homeless populations into MS4s that impact
16 water quality and specific milestones for reducing such discharges. Permittees
17 are required to develop and submit a regional best management practice
18 report to identify control measures to address non-stormwater discharges
19 associated with unsheltered homeless populations and identify milestones to
20 reduce such discharges. To meet this new MRP3 requirement, the Program
21 collaborated with the other four countywide programs on a regional project to
22 develop the required best management practice report, which was submitted
23 with each Permittee’s Fiscal Year 22/23 annual report. (See Mathews Decl.,
24 ¶9.j.) Additionally, each Permittee is required to submit a map identifying,
25 the approximate locations of unsheltered homeless populations, including
26 encampments and other areas where other unsheltered homeless people live
27 relative to storm drains, creeks, and flood control channels. To support its
28 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)	FY22/33 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.”

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

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

25 (d) Provision C.11.c. required Permittees to implement green
 26 infrastructure projects during the term of the permit to achieve mercury load
 27 reductions of 48 g/year by June 30, 2020. (MRP2 at C.11.c [Section 7 p. S7-
 28 1103 – S7-1105].) Provision C.11.e of the MRP3 requires Permittees to

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

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

11 Continuing costs associated with requirements C.11.c and C.12.c include
12 maintenance of the Green Street Infrastructure (“GSI”) in the following table.
13 Rates were provided to me by Jesus Banuelos, Public Works Streets
14 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.

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

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

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

SECTION 5: NARRATIVE

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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 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. 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)

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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

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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)

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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	\$6,051,784.57	\$13,938,162.57
total minus external funding		

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.

(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:

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)

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.

J:\MANDATES\2022\TC\Incomplete (Unfunded Mandates Relating to CAWQCB)\Duplicate Letter.docx

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.

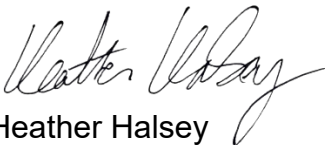
The claim filed by Union City does plead C.17.a. in its entirety and alleges costs mandated by the state related to both the joint preparation of the plan as well as for reporting and implementation requirements. Commission staff finds the filing of City of San Jose duplicative and is therefore rejecting 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,



Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

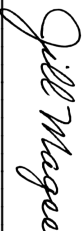
I, the undersigned, declare as follows:

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.Maquire@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

Jurisdiction	2019				2022			
	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
 Claimant: CITY OF SAN JOSE (Second Revised)
 Section 7. Henninger Declaration

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
 Claimant: CITY OF SAN JOSE (Second Revised)
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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:

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

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)
 Section 7. Henninger Declaration

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)
 Section 7. Henninger Declaration

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
<i>Safe or Alternative Sleeping Sites</i>		\$10,000,000		\$10,000,000
<i>Outreach, Sanitation and Other Support Services</i>		\$3,600,000		\$3,600,000
<i>Recreational Vehicle Pollution Prevention Program</i>		\$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

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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
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.

Ragan Henninger
Ragan Henninger (May 23, 2024 16:06 PDT)
RAGAN HENNINGER

2118700_2

Final Audit Report

2024-05-23

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-  Document created by Colleen Winchester (colleen.winchester@sanjoseca.gov)
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EXHIBIT “H”

Test Claim: Municipal Regional Stormwater Permit
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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 unhoued 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


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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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