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RECEIVED
September 26, 2017
**Commission on
State Mandates**

September 25, 2017

VIA CSM DROPBOX

Heather Halsey, Esq.
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: **City of Dublin's Revised Test Claim in Response to April 19, 2017 Notice of Incomplete Test Claim**
California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074 Consolidated 10-TC-01, 10-TC-02, 10-TC-03 and 10-TC-05

Dear Ms. Halsey:

The City of Dublin submits the enclosed documents in response to the Commission's April 19, 2017 Notice of Incomplete Joint Test Claim, submitted to cure Dublin's test claim 01-TC-05:

1. Withdrawal of Claims/City of Dublin Lead Claimant for Alameda and San Mateo Counties
2. Revised Narrative Statement (to replace Narrative Statement)
3. Declaration of Shannan Young from the City of Dublin and Exhibits A through L thereto (to replace Declaration of Mark Lander)
4. Amended Declaration of Jim Scanlin from the Alameda Countywide Clean Water Program, and Exhibits A through D thereto (to replace Declaration of James Scanlin and its Exhibits A through D)

The City understands that the Commission will substitute these documents for the specified documents of the City's original October 2010 filing.

Heather Halsey, Esq.
September 25, 2017
Page 2

If you have any questions or need any additional information to process the Test Claims, please contact Gregory Newmark at 510.808.2000. Thank you for your consideration and attention to this matter.

Very truly yours



Lindsey F. Zwicker
Attorney at Law

for

Gregory J. Newmark
Meyers Nave Riback Silver & Wilson
Counsel for Claimant

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

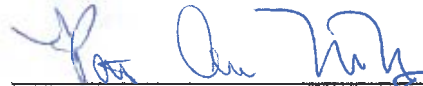
I am a resident of the County of Los Angeles and I am over the age of 18 years, and not a party to the within action. My place of employment is 707 Wilshire Boulevard, 24th Floor, Los Angeles, California 90017.

On September 25, 2017, I served the:

1. City of Dublin's response to April 19, 2017 Notice of Incomplete Test Claim

by electronically filing it on the Commission's website, which provides notice of how to locate it to the email addresses provided on the test claim 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 September 25, 2017, at Los Angeles, California.



Patricia Anne McNulty

**COMMISSION ON STATE MANDATES
TEST CLAIM AND TEST CLAIM AMENDMENT FORM**

Authorized by Government Code sections 17553 and 17557(e)

GENERAL INSTRUCTIONS

- Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. "Within 12 months of incurring increased costs" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant. The statute of limitations above may be tolled if a joint request for a legislatively determined mandate is filed with the Legislature pursuant to Government Code section 17574.
- Complete sections 1 through 8, as indicated. Type all responses. *Failure to complete any of these sections will result in this test claim being returned as incomplete. Pursuant to Government Code section 17553 and Title 2, California Code of Regulations section 1183, the Commission will not exercise jurisdiction over statutes and executive orders which are not properly pled. Proper pleading requires that all code sections (including the relevant statute, chapter and bill number), regulations (including the register number and effective date), and executive orders (including the effective date) that impose the alleged mandate are listed in section 4 of the test claim form. Please carefully review your pleading before filing. Test claims may not be amended after the draft staff analysis is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired, (Gov. Code, § 17557(e); Cal. Code Regs., tit. 2, § 1183.)*
- Please submit the test claim filing by either of the following methods:
 1. **E-filing.** The claimant shall electronically file the completed form and any accompanying documents in PDF format to the e-filing system on the Commission's website (<http://www.csm.ca.gov>), consistent with the Commission's regulations (CCR, tit.2, § 1181.2). The claimant is responsible for maintaining the paper documents with original signature(s) for the duration of the test claim process, including any period of appeal. **No additional copies are required when e-filing the request.**
 2. **By hard copy.** Original test claim submissions shall be unbound, double-sided, and without tabs. Mail, or hand-deliver, **one original and seven (7) copies** of your test claim submission to: Commission on State Mandates, 980 9th Street, Suite 300, Sacramento, CA 95814

Within 10 days of receipt of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may be accepted on the same statute or executive order alleged to impose a mandate.

You may download this form from our website at www.csm.ca.gov.

If you have questions, please contact us:

Website: www.csm.ca.gov

Telephone: (916) 323-3562

E-Mail: csminfo@csm.ca.gov

(continued on page 2)

Test claim filing requirements on statutes or executive orders that are subject of legislatively determined mandate.

A local agency or school district may file on the same statute or executive order as a legislatively determined mandate if one of the following applies:

- A) The Legislature amends the reimbursement methodology and the local agency or school district rejects reimbursement.
- B) The term of the legislatively determined mandate, as defined in 17573(e) has expired.
- C) The term of the legislatively determined mandate, as defined in 17573(e) is amended and the local agency or school district rejects reimbursement under the new term.
- D) The mandate is subject to Article XIII B, section 6(b) and the Legislature does both of the following:
 - i. Fails to appropriate in the Budget Act funds to reimburse local agencies for the full payable amount that has not been previously paid based on the reimbursement methodology enacted by the Legislature.
 - ii. Does not repeal or suspend the mandate pursuant to Section 17581.

A test claim filed pursuant to Government Code section 17574(c) shall be filed within six months of the date an action described in subparagraph (A), (B), (C), or (D) of paragraph (1) occurs.

1. TEST CLAIM TITLE

Municipal Regional Stormwater Permit

2. CLAIMANT INFORMATION

City of Dublin
Name of Local Agency or School District
Colleen Tribby
Claimant Contact
Finance Director
Title
100 Civic Plaza
Street Address
Dublin, CA 94568
City, State, Zip
(925) 833-6640
Telephone Number
(925) 833-8741
Fax Number
chris.foss@dublin.ca.gov
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Gregory Newmark
Claimant Representative Name
Principal
Title
Meyers, Ave, Riback, Silver & Wilson
Organization
555 12th Street, Suite 1500
Street Address
Oakland, CA 94607
City, State, Zip
(510) 808-2000
Telephone Number
Fax Number
gnewmark@meyersnave.com
E-Mail Address

For CSM Use Only
Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

Municipal Regional Stormwater Permit No. CAS612008, issued by the Regional Water Quality Control Board, San Francisco Region as Order No. R2-2009-0074 on October 14, 2009, effective December 1, 2009

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:
5. Written Narrative: pages 6 to 50.
6. Declarations: pages 51 to 140.
7. Documentation: pages _____ to _____.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading “5. Written Narrative,” please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (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.
- (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.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency’s general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading “6. Declarations,” support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe 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);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant’s personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading “7. Documentation,” support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Colleen Tribby

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

Finance Director, City of Dublin

Print or Type Title

9/22/2017

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

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NARRATIVE STATEMENT IN SUPPORT OF TEST CLAIM

I. INTRODUCTION

The Cities of Dublin (hereinafter, “Claimant”), lead Claimant for Alameda and San Mateo Counties, seeks the Commission’s approval of claims to recover costs associated with obligations mandated by several provisions of the Municipal Regional Stormwater Permit issued on October 14, 2009 (“MRP”) by the California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”).¹ The MRP regulates the discharge of storm water runoff from the municipal separate storm sewer systems (“MS4s”) maintained by a total of 76 cities, counties, and flood control districts within the jurisdiction of six Bay Area regional stormwater programs.

The issues presented by this Test Claim are, by now, familiar to the Commission. Twice in the last year, the Commission found that similar permit provisions constituted unfunded mandates. First, in September 2009, the Commission approved a test claim concerning costs associated with new trash collection obligations imposed in a municipal regional stormwater permit issued by the Los Angeles Regional Water Board.² Second, in March 2010, the Commission approved an additional test claim concerning several new requirements of a municipal regional stormwater permit issued by the San Diego Regional Water Board, including street sweeping, reporting requirements, education and public outreach obligations, and mandatory collaboration with other dischargers in the same watershed.³

The Commission determined that these obligations constituted unfunded mandates because they (1) were state mandates that exceeded the requirements of

¹ A copy of the MRP, NPDES No. CAS612008, issued as Order No. R2-2009-0074 (October 14, 2009), is attached hereto as Exhibit 1. The MRP has since been superseded by Order No. R2-2015-0049, adopted November 19, 2015.

² In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-182, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (September 3, 2009) (“Los Angeles Decision”).

³ In re Test Claim on: San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Case No.: 07-TC-09 (March 26, 2010) (“San Diego Decision”). On July 20, 2010, the State Finance Department, the State Water Resources Control Board, and the Regional Water Quality Control Board, San Diego Region filed a petition in the Sacramento Superior Court seeking a writ of mandate ordering the Commission to set aside the San Diego Decision.

the federal Clean Water Act and its implementing regulations; (2) created new programs or otherwise required an increase in the level of stormwater pollution controls delivered by the permittees; and (3) imposed more than \$1,000 in costs that the permittees had insufficient authority to recover through the imposition of fees.

Now, Claimant asks the Commission to apply the same rationale to several new obligations imposed by the MRP. While the new provisions are not all identical to those considered in the San Diego and Los Angeles Decisions, the principles animating the Commission's conclusions in those cases are similar and compel the same results here.

Specifically, the MRP creates new programs or higher levels of service with regard to three categories of activities: Monitoring, Trash Load Reduction, and stormwater Diversion Studies. Each of these requirements represents an obligation Claimant did not have under its prior permit. Each represents the Regional Water Board's imposition of state law requirements, which are both stricter and more specific than is required under federal law. These new mandates have imposed or will impose significant financial burdens on Claimant that Claimant have no authority to recover through the imposition of fees.

To be clear, this Test Claim does not question the wisdom of these requirements or challenge the Regional Water Board's authority to impose them under state law. However, as set forth in more detail below, these new requirements constitute unfunded state mandates for which the permittees participating in the MRP (the "Permittees") are entitled to reimbursement pursuant to Article XIII B section 6 of the State's Constitution. This Test Claim identifies the activities that are unfunded mandates and seeks to establish a basis for reimbursement for such activities.

II. LEGAL AND PROCEDURAL BACKGROUND

A. Regional Stormwater Permits

When a Regional Water Board issues a stormwater permit, it is implementing both federal and state law:

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra*, 503 U.S. at 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved

water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

City of Burbank v. State Water Res. Control Bd. (2005) 35 Cal.4th 613 at 619-621. Section 402(p) of the federal Clean Water Act establishes that an MS4 permit:

- (i) may be issued on a system or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

33 U.S.C. § 1342(p)(3)(B).⁴

California is among the states that are authorized to implement the NPDES permit program. 33 U.S.C. § 1342(b). Permits issued by the Regional Water Board under this authority must impose conditions that are at least as stringent as those required under the federal act. 33 U.S.C. § 1371; Cal. Water Code § 13377.

However, relying on its state law authority or discretion, the Regional Water Board is free to issue permits that impose limits or conditions in excess of those required under the federal law where necessary to achieve higher water quality standards and objectives established under state law:

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. Its goal is “to attain the highest water quality which is reasonable, considering

⁴ The relevant provisions of the Clean Water Act are set forth in Appendix A to this Test Claim.

all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise “the principal state agencies with primary responsibility for the coordination and control of water quality.”

Whereas the State Board establishes statewide policy for water quality control, the regional boards “formulate and adopt water quality control plans for all areas within [a] region”. The regional boards’ water quality plans, called “basin plans,” must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. Basin plans must be consistent with “state policy for water quality control.”

City of Burbank v. State Water Res. Control Bd. (2005) 35 Cal.4th 613 at 619 (internal citations omitted). The California Water Code expressly anticipates that the uses and objectives set forth in basin plans and the need to prevent nuisance will require permits issued by Regional Water Boards to impose more stringent regulatory controls than would otherwise result from federal law:

Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.

Cal. Water Code § 13377.

B. The MRP and the Prior Permit

The MRP was issued by the Regional Water Board, an executive agency of the State of California. It succeeded individual permits issued to Permittees participating in six different areawide stormwater programs: the Alameda Countywide Clean Water Program; the Contra Costa Clean Water Program; the San Mateo Countywide Water Pollution Prevention Program; the Santa Clara Valley Urban Runoff Pollution Prevention Program; the Fairfield-Suisun Urban Runoff Management Program; and the City of Vallejo and the Vallejo Sanitary District, and governs stormwater discharges in some 76 different municipal entities (e.g., cities, counties, and flood control and water conservation districts). (Ex. 1 at 3-4.) Claimant is among the Permittees participating in the Alameda Countywide Clean Water Program (the “Alameda Countywide Program”).

The permit that formerly governed the Alameda Countywide Program was Permit No. CAS0029831 issued by Order No. R2-2003-0021 on February 19, 2003, amended by Order No. R2-2007-0025 on March 14, 2007 (the “Prior Permit”). (Ex. 1 at 3-4; Ex. 2.)⁵ For purposes of establishing that the provisions of the MRP constitute new requirements or a higher level of service, the MRP’s provisions are compared to the Prior Permit.

C. 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

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*

⁵ The amendment to the Prior Permit described above relates to permit provisions not at issue here and is not included in the materials submitted with this test claim. The document is available at the Regional Water Board’s website, at http://waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2007/R2-2007-0025.pdf. Alternatively, Claimant can provide hard copies to the Commission upon request.

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”].)

Government Code section 17556 identifies seven exceptions to the rule requiring reimbursement for state mandated costs. The exceptions are as follows:

- (a) The claim is submitted by a local agency . . . that requested legislative authority for that local agency . . . to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. . . .
- (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
- (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.
- (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies . . . that result in no net costs to the local agencies or . . . , or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
- (f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Cal. Gov't Code § 17556.

1. The Test

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 costs cannot be recoverable by the local agency through the imposition of a fee. Only where all three are satisfied does a mandated cost fall within the subvention requirement of article XIII B section 6.

(a) New Program or Higher Level of Service

In order to trigger the state mandate law, the obligations imposed by the state must represent a "new program" or "higher level of service." Determining whether a municipal stormwater permit imposes a new program or higher level of service is largely a factual question involving the comparison of the terms of the current and former permits. However, the San Diego Decision addresses a very important general principle on this point that is of great interest here:

All stormwater permits are required to "reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii). This means that all permit parameters are implementing the same standard. In the proceedings leading to the San Diego Decision, the Finance Department argued that the new permit did not constitute a "new program" or a "higher level of service" because each incremental increase in best management practices or other permit requirement was necessary to assure continued compliance with the maximum extent practicable (or "MEP" standard). The Commission correctly rejected this argument (San Diego Decision at 49), and should do the same again if it is raised here.

(b) State Mandates

"Costs mandated by the state" include "any increased costs which a local agency ... is required to incur after July 1, 1980, as a result of any statute enacted

on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Gov’t Code § 17514.) Orders issued by any Regional Water Board pursuant to Division 7 of the California Water Code (commencing at section 13000) come within the definition of “executive order.” *County of Los Angeles v. Comm’n on State Mandates* (2007) 150 Cal.App.4th 898, 920.

Section 17556 of the Government Code exempts costs mandated solely by federal law or regulation, except where the state “statute or executive order mandates costs that exceed the mandate in that federal law or regulation. . . .” Cal. Gov’t Code § 17556(c). Courts have interpreted this provision to mean that an obligation imposed by the state in the implementation of a federal mandate should still be considered a “state mandate” as long as the state has a say about the manner in which that mandate is passed on to local agencies:

When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies’ taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no “true choice” in the manner of implementation of the federal mandate.

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state.

Hayes v. Comm’n on State Mandates (1992) 11 Cal. App. 4th 1564, 1593 (emphasis added). Thus, where the Regional Water Board chooses to impose specific measures of compliance as a means of implementing the more general requirements of the federal Clean Water Act, those measures are considered state mandates:

In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency

as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

Id. The Commission relied on *Hayes* in both the San Diego and Los Angeles Decisions in determining that the Regional Water Quality Control Boards issuing the stormwater permits at issue “freely chose” to exercise discretion and impose conditions beyond those required by federal law, thereby constituting a state mandate. (San Diego Decision at 37; Los Angeles Decision at 23.)

(c) Fee Authority

In the San Diego Decision, the Commission conducted an extensive analysis of the issue of whether the local agencies charged with implementing the municipal regional stormwater permit in that matter had adequate fee authority to recover the costs mandated upon them by the San Diego Regional Water Board. (San Diego Decision at 100-120.) Mandates are exempted from the subvention requirements of article XIII B, section 6 of the California Constitution where 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(d).

However, Article XIII D of the California Constitution requires that 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. As explained by the Commission in the San Diego Decision, the necessity for voter approval (and the attendant possibility of voter rejection) of a fee renders the permittees’ fee authority inadequate to satisfy the exemption of section 17556. (San Diego Decision at 102-103.) Indeed, in the San Diego Decision, the Commission determined that fee authority is inadequate where the imposition of such fees is subject to voter protest that could invalidate them. (San Diego Decision at 115.)

Article XIII D section 6, subdivision (c) provides an exception to Proposition 218’s vote requirements for property-related fees for sewer, water, or refuse collection services (Cal. Const., art. XIII D, § 6, subd. (c)). As explained by the Commission in the San Diego Decision, fees for these services are subject to different requirements:

To impose or increase refuse collection fees, the local agency must provide mailed written notice to each parcel owner on which the fee will be imposed, and conduct a public hearing not less than 45 days after mailing the notice. If written protests against the

proposed fee are presented by a majority of the parcel owners, the local agency may not impose or increase the fee (article XIII D, § 6, subd. (a)(2)).

(San Diego Decision at 115.) In the San Diego Decision, the Commission concluded that this process precludes a finding that the permittees in question had sufficient fee authority within the meaning of section 17556(d):

Under Proposition 218, the local agency has no authority to impose the fee if it is protested by a majority of parcel owners. Additionally, it is possible that a majority of land owners in the local agency may never allow the proposed fee, but the local agency would still be required to comply with the state mandate. This would violate the purpose of article XIII B, section 6, which is to “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.”

(San Diego Decision at 115.)

Moreover, the exception for refuse collection applies only to fees that can be carefully calibrated to the costs incurred by the local agency and to the level of services provided to ratepayers:

In addition, revenues are: (1) not to exceed the funds required to provide the service, (2) shall not be used for any other purpose than to provide the property related service, and the amount of the fee on a parcel shall not exceed the proportional cost of the service attributable to the parcel. And the service must be actually used by or immediately available to the property owner.

Article XIII D, § 6, subd. (b).

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. In view of these appellate court decisions, this Commission determined in the San Diego Decision that stormwater provisions do not fall within the exceptions provided where the costs and benefits of such provisions do not sufficiently align with the activities or interests of an identifiable group of businesses or property owners to create the nexus required under the *Sinclair Paint* and *Tahoe Keys* cases. (San Diego Decision at 107.)

In the San Diego Decision, the Commission also discussed the impact of a newly enacted provision of section 16103 of the Water Code, which went into effect in January 2010. As the Commission explained, this new law may provide a source of fee authority under some circumstances in the future, but is of no help to permittees in the near term. (San Diego Decision at 120.) Section 16103 authorizes fees for implementation of watershed improvement plans, and, in a tacit acknowledgement that such fees would otherwise fall within the scope of Proposition 218 as described above, expressly provides that such fees are “not imposed solely as an incident of property ownership.” Cal. Water Code § 16103.

However, the watershed improvement plans envisioned under section 16103 are comprehensive in scope, may be adopted only after extensive public process, and require approval by the Regional Water Board. *Id.* § 16103(b), (d). Moreover, adoption of an improvement plan is voluntary. *Id.* § 16101(a). Thus, section 16103 provides fee authority only to permittees who are voluntarily participating in the development of a watershed improvement plan. (*See* San Diego Decision at 120.) Claimant is unaware of the submission or consideration of any such plan that could provide a source of funding for the costs associated with complying with the new requirements in the MRP.

III. THE UNFUNDED MANDATES AT ISSUE IN THIS TEST CLAIM

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

- Provision C.8—Monitoring
- Provision C.10—Trash Load Reduction
- Provision C.11 and C.12—Mercury and PCB Diversion Studies

As set forth in more detail below, each of these provisions imposes a new program or expanded level of service over the Prior Permit. 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 what Claimant is authorized to recover through the imposition of fees.

A. Monitoring

Provision C.8 of the MRP requires Permittees to implement a number of water quality monitoring programs that were not required by the Prior Permit. The ways in which each of these specific monitoring requirements represents a new program or higher level of service—and the costs associated with each—are set forth in section A.1 directly below. (For convenience, the principles under which all of these monitoring provisions constitute a state mandate and the reasons that Claimant has inadequate fee authority to recover the associated costs, are discussed together in sections III.A.2-4.)

1. Provision C.8 Constitutes a New Program or Higher Level of Service.

Each of the monitoring provisions discussed below represent a new program or higher level of service compared to the requirements in the Prior Permit.

(a) Provision C.8.b—Regional Monitoring Program for Water Quality in the San Francisco Bay Estuary.

Provision C.8.b requires Claimant and other Permittees to participate in a cooperative effort among “stakeholder” entities that discharge into the San Francisco Bay Estuary to answer several questions about the conditions in the Estuary, including current, past, and projected future levels of contamination; sources, pathways, loadings, and processes causing or contributing to the contamination; and current and future impacts of contamination. (Ex. 1 at 65.) Permittees are required to participate in this monitoring program by paying their “fair share” of monitoring costs.

(i) Provision C.8.b Imposes a Higher Level of Service

The Fact Sheet to the MRP characterizes the requirements of Provision C.8.b as a mere continuation of activities required under the Prior Permit. (Ex. 1 at 65 n.20; I-59.) However, the Prior Permit required only submission of a multi-year monitoring plan that includes participation in the San Francisco Estuary Regional Monitoring Program (“RMP”) *or an acceptable alternative* monitoring program. (Ex. 2, Provision C.8.b, at 38.) By contrast, the MRP mandates that Claimant financially supports the RMP and participate in the development of a monitoring program designed to obtain the answers to the specific questions described above. (Ex. 1 at 65 n.20.)

In addition to the financial contribution required by the MRP, these new requirements for the RMP will require the Alameda Countywide Program in which Claimant participates to devote additional resources to the RMP.

(b) Provision C.8.c—Status Monitoring

Provision C.8.c of the MRP imposes substantially increased levels of monitoring relative to the Prior Permit. Specifically, and as set forth below, the MRP requires a specific monitoring protocol to analyze dozens of samples for at least eleven different parameters, measuring at least 33 different components. It also establishes “triggers” requiring further monitoring. (Ex. 1 at 65-71.)

(i) Provision C.8.c Imposes a Higher Level of Service.

This provision of the MRP imposes new, specific and detailed obligations on Claimant with respect to creek monitoring. Provision C.8.c of the MRP greatly expands the number of monitoring sites and parameters, including:

- Algae bioassessment including expanded physical habitat measurements (20 sites/yr)
- Chlorine (23 sites/yr)
- General Water Quality logger (6 sites/yr)
- Toxicity – Water Column (6 sites/yr)
- Toxicity – Bedded Sediments (3 sites/yr)
- Pollutants – Bedded Sediments (3 sites/yr)
- Stream Surveys (9 miles/yr)
- Total Phosphorus (20 sites/yr)
- Dissolved Orthophosphate (20 sites/yr)
- Total Nitrogen (20 sites/yr)

- Nitrate (20 sites/yr)
- Ammonia (20 sites/yr)
- Silica (20 sites/yr)
- Chloride (20 sites/yr)
- Dissolved Organic Carbon (DOC) (20 sites/yr)

(Ex. 1 at 65-71, Tbls 8.1 & 8.2, Attachment H) None of these specific requirements were included in the Prior Permit. (Ex. 2 at 37-38.)

(c) Provision C.8.d—New Monitoring Studies and Projects

Provision C.8.d of the MRP requires Claimant and other Permittees to undertake three types of projects within their watersheds. (Ex. 1 at 71-73.)

Identifying Stressors and Sources. Provision C.8.d.i provides that, when status monitoring reveals a potential source of stress to the water bodies identified in Table 8.1, the Permittees are required to conduct a site-specific study to identify the stressor or source. (Ex. 1 at 71.) The study sets forth very specific protocols for these studies:

This study should follow guidance for Toxicity Reduction Evaluations (TRE) or Toxicity Identification Evaluations (TIE). A TRE, as adapted for urban stormwater data, allows Permittees to use other sources of information (such as industrial facility stormwater monitoring reports) in attempting to determine the trigger cause, potentially eliminating the need for a TIE. If a TRE does not result in identification of the stressor/source, Permittees shall conduct a TIE.

(*Id.* at 71.) If a source is identified, the MRP requires implementation of “one or more controls” and continued monitoring to assess whether those controls are reducing the cause or causes of the trigger stressor or source. (*Id.*) If Claimant and other Permittees conduct these studies through the Alameda Countywide Program, they may be required to conduct up to five such projects within the five-year permit term. (*Id.* at 71-72.)

Geomorphic Studies. Provision C.8.d.iii requires all permittees governed by the MRP to select one water body within each county, and complete one of three types of studies:

- (1) Gather geomorphic data to support the efforts of a local watershed partnership to improve creek conditions; or
- (2) Inventory locations for potential retrofit projects in which decentralized, landscape-based stormwater retention units can be installed; or
- (3) Conduct a geomorphic study which will help in development of regional curves which help estimate equilibrium channel conditions for different- sized drainages.

(Id. at 72-73.)

(i) Provision C.8.d Imposes a New Program.

All three requirements of Provision C.8.d are completely new to the Claimant. There is nothing comparable in the Prior Permit. This entire provision constitutes a “new program or higher level of service” within the meaning of the mandate law.

(d) Provision C.8.e.i—Pollutants of Concern Monitoring

Provision C.8.e.i requires Claimant and other Permittees to establish and maintain fixed monitoring stations on specified waterbodies, or approved alternatives for purposes of monitoring pollutants of concern. (Ex. 1 at 73-74.) The monitoring mandated under these provisions is to be directed toward:

- (1) identifying which Bay tributaries (including stormwater conveyances) contribute most to Bay impairment from pollutants of concern;
- (2) quantifying annual loads or concentrations of pollutants of concern from tributaries to the Bay;
- (3) quantifying the decadal-scale loading or concentration trends of pollutants of concern from small tributaries to the Bay; and
- (4) quantifying the projected impacts of management actions (including control measures) on tributaries and identifying where these management actions should be implemented to have the greatest beneficial impact.

(Id. at 73.)

Provisions C.8.e.iii, iv, and v defines the parameters and frequencies, protocols, and methods required for monitoring pollutants of concern. For example:

Parameters and Frequencies – Permittees shall conduct Pollutants of Concern sampling pursuant to Table 8.4, Categories 1 and 2. In Table 8.4, Category 1 pollutants are those for which the Water Board has active water quality attainment strategies (WQAS), such as TMDL or site-specific objective projects. Category 2 pollutants are those for which WQAS are in development. The lower monitoring frequency for Category 2 pollutants is sufficient to develop preliminary loading estimates for these pollutants.

(Id. at 74.)

Table 8.4 sets forth explicit requirements for sampling years, minimum sampling occurrences, and sampling intervals for three categories of pollutants. *(Id.)*

(i) Provision C.8.e.i Imposes a Higher Level of Service.

The Prior Permit characterizes the identification of pollutants of concern in stormwater discharge as both an objective and control programs for the required monitoring program. The Prior Permit required the development of a multi-year receiving water monitoring program designed to achieve the following objectives with relation to pollutants of concern:

- Assessment of existing or potential adverse impacts on beneficial uses caused by pollutants of concern in stormwater discharges, including an evaluation of representative receiving waters;
- Identification of potential sources of pollutants of concern found in stormwater discharges; and,
- Evaluation of effectiveness of representative stormwater pollution prevention or control measures.

To obtain those objectives, the monitoring program was required to include the following measures:

- Provision for conducting and reporting the results of special studies conducted by the Permittees which are designed to determine effectiveness of BMPs or control measures, define a Performance Standard or assess the adverse impacts of a pollutant or pollutants on beneficial uses.
- Provisions for conducting watershed monitoring activities including: identification of major sources of pollutants of concern; evaluation of the effectiveness of control measures and BMPs; and use of physical, chemical and biological parameters and indicators as appropriate.
- Identification and justification of representative sampling locations, frequencies and methods, suite of pollutants to be analyzed, analytical methods, and quality assurance procedures. Alternative monitoring methods in place of these (special projects, financial participation in regional, state, or national special projects or research, literature review, visual observations, use of indicator parameters, recognition and reliance on special studies conducted by other programs, etc.) may be proposed with justification.

(Ex. 2 at 37.) However, the Prior Permit itself imposed no specific requirements for these activities.

In addition, Provisions C.10.b and C.10.d of the Prior Permit required Permittees to take measures to control the discharge of mercury and PCBs into stormwater. (Ex. 2 at pp. 39-40, 41-42.) These measures largely consisted of identification of potential sources of mercury and PCBs in stormwater (e.g., mercury-containing products, contaminated sediments, and polluted urban runoff) and the development of control mechanisms to reduce or eliminate them. (*Id.*)

By contrast, the MRP requires significant additional specific steps for Co-Permittees to monitor for these pollutants in the receiving waters that are included in the following list and within the jurisdiction of the Alameda Countywide Program:⁶

Permittees shall conduct Pollutants of Concern monitoring at stations listed below. Permittees may install these stations in two phases providing at least

⁶ Not all of the stations identified in the MRP fall within the jurisdiction of the Alameda Countywide Program. Only the first and third are within Alameda County.

half of the stations are monitored in the water year beginning October 2010, and all the stations are monitored in the water year beginning October 2012. Upon approval by the Executive Officer, Permittees may use alternate POC monitoring locations.

- (1) Castro Valley Creek S3 at USGS gauging station in Castro Valley
- (2) Guadalupe River
- (3) Zone 4 Line A at Chabot Road in Hayward
- (4) Rheem Creek at Giant Road in Richmond
- (5) Walnut Creek at a downstream location
- (6) Calabazas Creek at Lakeside Drive in Sunnyvale, at border with Santa Clara
- (7) San Mateo Creek at downstream location
- (8) Laurel Creek at Laurie Meadows park, off Casanova Drive in City of San Mateo.

(Ex. 1 at 73-74.) These new requirements represent a significant increase of what was required under the Prior Permit. Specifically:

- Claimant and other Permittees in the Alameda Countywide Program are required to monitor two stations instead of one, involving new costs for development and maintenance of the second stations;
- Due to numerous pollutants to be sampled, both the new and existing station will require additional setup (purchasing equipment, installation, calibration of equipment) of monitoring equipment prior to beginning to monitor annually at one station in October 2011 and another beginning in October 2012;
- A minimum of four storms have to be sampled per year at each station. While previous monitoring sampled an average of seven storms per year, there will be increased costs for each event, for mobilizing larger field crews, setup and preparation of sampling equipment, and post-storm sample collection, and transport to laboratory. This increased effort would more than double the annual

average cost at just one station compared to the previous 5-year period.

- Numerous new pollutants or analytes are required to be monitored.
- Specialized protocols or extra field visits will also be required for some pollutants.

(Declaration of Shannan Young (“Young Decl.” ¶).)

(e) Provision C.8.e.ii—Long-Term Monitoring

Provision C.8.e.ii requires Long-Term monitoring at specified stations. Alternate locations are permissible only after consulting with the Regional Water Board Surface Water Ambient Monitoring Program (“SWAMP”) and approval by the Regional Water Board’s executive officer. (Ex. 1. at 74.) Claimant and other Permittees in the Alameda Countywide Program are responsible for monitoring at either Alameda Creek or the Lower San Leandro Creek. The MRP suggests locations for where such monitoring should occur for either water body. (*Id.*)

Provision C.8.e.iii requires “Long-Term monitoring pursuant to Table 8.4, Category 3.” (*Id.*) Table 8.4 describes Category 3 as requiring testing for toxicity of “Bedded Sediment, fine-grained,” to be coordinated with SWAMP’s scheduled collection of Category 3 data at the Long-Term monitoring locations. (Ex. 1 at 75-76.)

(i) Provision C.8.e.ii Imposes a New Program.

The Prior Permit makes no provision for monitoring designed to detect long-term trends. (Ex. 2. at 37-38) This is a new requirement.

(f) Provision C.8.e.vi—Sediment Delivery Estimate/Budget

Provision C.8.e.vi requires Permittees, by July 1, 2011, to develop “a design for a robust sediment delivery estimate/sediment budget in local tributaries and urban drainages.” (Ex. 1 at 76). The study itself must be implemented by July 1, 2012.

(i) Provision C.8.e.vi Imposes a New Program.

The Prior Permit contained no requirement to design or implement sediment delivery studies. This is an entirely new program under the MRP.

(g) Provision C.8.f—Citizen Monitoring and Participation

Provision C.8.f requires permittees to encourage “citizen monitoring,” although it does not define this term. Instead, it merely directs that

- i. Permittees shall encourage Citizen Monitoring.
- ii. In developing Monitoring Projects and evaluating Status & Trends data, Permittees shall make reasonable efforts to seek out citizen and stakeholder information and comment regarding waterbody function and quality.
- iii. Permittees shall demonstrate annually that they have encouraged citizen and stakeholder observations and reporting of waterbody conditions. Permittees shall report on these outreach efforts in the annual Urban Creeks Monitoring Report.

(Ex. 1 at 76.)

The Fact Sheet provides no additional description or specification of what is required, but says that:

Provision C.8.f. is intended to do the following:

- Support current and future creek stewardship efforts by providing a framework for citizens and Permittees to share their collective knowledge of creek conditions; and
- Encourage Permittees to use and report data collected by creek groups and other third-parties when the data are of acceptable quality.

(*Id.* at App. I 64-65.)

(i) Provision C.8.f Imposes a New Program.

Provision C.8.f is an entirely new requirement. There is no similar provision in the Prior Permit.

(h) Provision C.8.g—Reporting

Provision C.8.g.ii requires submission of “an Electronic Status Monitoring Data Report no later than January 15 of each year, reporting on all data collected during the foregoing October 1–September 30 period. Electronic Status

Monitoring Data Reports shall be in a format compatible with the SWAMP database. Water Quality Objective exceedences shall be highlighted in the Report.” (Ex. 1 at 77.)

Provision C.8.g.iii requires submission of

a comprehensive Urban Creeks Monitoring Report no later than March 15 of each year, reporting on all data collected during the foregoing October 1–September 30 period, with the initial report due March 15, 2012, unless the Permittees choose to monitor through a regional collaborative, in which case the due date is March 15, 2013.

(*Id.* at 77.) Each Urban Creeks Monitoring Report shall contain summaries of Status, Long- Term, Monitoring Projects, and Pollutants of Concern Monitoring. (*Id.*) The materials required for this submission are extensive, and include maps, data tables, descriptions of data quality, analyses of the data, identification of any “long-term trends in stormwater or receiving water quality,” and a discussion of the data relative to beneficial uses identified in the basin plan. (*Id.* at 77-78.)

Finally, Provision C.8.g.vi requires that electronic reports be made available through a regional data center, and optionally through their web sites. Claimant and other Permittees are required to notify stakeholders and members of the general public about the availability of electronic and paper monitoring reports through notices distributed through appropriate means, such as an electronic mailing list. (*Id.* at 79.)

(i) Provision C.8.g Imposes a New Program or Higher Level of Service.

The Prior Permit required Claimant to prepare a single annual report, which included a description of data collected over the previous fiscal year, and general interpretation of the results. (Ex. 2 at 33-36.) The Prior Permit also required Claimant to submit workplans, annual updates and one-off reports on illicit discharges and industrial discharge controls. The format of these reports was unspecified. (*Id.*)

The MRP requires electronic reporting and requires that the data be maintained in a database accessible by the public. (Ex. 1 p. 77.) In addition, the requirement for submission of a separate annual Urban Creeks Monitoring Report is new. This submission prescribes roughly similar report contents, but due to the increased number of data parameters and programs, the total level of reporting effort will increase.

(i) Provision C.8.h— Monitoring Protocols and Data Quality

Provision C.8.h requires that

Where applicable, monitoring data must be SWAMP comparable. Minimum data quality shall be consistent with the latest version of the SWAMP Quality Assurance Project Plan (QAPP) for applicable parameters, including data quality objectives, field and laboratory blanks, field duplicates, laboratory spikes, and clean techniques, using the most recent Standard Operating Procedures. A Regional Monitoring Collaborative may adapt the SWAMP QAPP for use in conducting monitoring in the San Francisco Bay Region, and may use such QAPP if acceptable to the Executive Officer.

(Ex. 1 at 79.)

(i) Provision C.8.h Imposes a Higher Level of Service.

The Prior Permit makes no mention of the SWAMP program. By contrast, Provision C.8.h of the MRP requires the Alameda Countywide Program to develop significant updates or additions to existing field standard operating procedures and train field staff to allow for monitoring data to be collected by the Permittees using “SWAMP comparable” methods defined by the State Water Resources Control Board’s Surface Water Ambient Monitoring Program.

Additionally, new data management systems must be developed and managed at significant costs, as the MRP requires data to be reported electronically to the Regional Water Board in “SWAMP comparable” formats. Monitoring data quality assurance procedures (also SWAMP comparable) will also have to be developed, documented and adhered to by the Alameda Countywide Program at all times, which requires an additional level of effort (staff time) compared to previous quality assurance procedures conducted by Alameda Countywide Program under the Prior Permit.

2. The New Requirements of Provision C.8 Constitute State Mandates.

The Fact Sheet prepared by Regional Water Board staff in conjunction with the MRP cites to both federal and state law as providing “broad legal authority” for all of the monitoring requirements imposed therein:

Broad Legal Authority: [Federal Clean Water Act] sections 402(p)(3)(B)(ii-iii); [California Water Code] section 13377; Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)

(Ex. 1 at App I-57.) However, for authority specific to the monitoring requirements in Provision C.8, the Fact Sheet cites only to federal regulations:

Specific Legal Authority: Permittees must conduct a comprehensive monitoring program as required under Federal NPDES regulations 40 CFR 122.48, 40 CFR 122.44(i), 40 CFR 122.26.(d)(1)(iv)(D), and 40 CFR 122.26(d)(2)(ii)-(iv).

(*Id.* at App I-57.)⁷

Section 122.48 of the federal regulations implementing the Clean Water Act requires all NPDES permits to contain certain monitoring provisions, including those establishing “type, intervals, and frequency sufficient to yield data which are representative of the monitored activity” 40 C.F.R. § 122.48. Section 122.44(i) requires certain types of monitoring “to assure compliance with permit limitations.” 40 C.F.R. § 122.44(i). The requirements described under this provision apply largely to parameters governing an individual permittee’s discharge. *Id.*⁸ Similarly, the monitoring requirements specific to stormwater permits under section 122.26 of the federal regulation are largely aimed at identifying sources and characterizing pollution arising from outflows within each MS4’s jurisdiction. 40 C.F.R. §§ 122.26(d)(1)(iv)(D); (2)(ii)-(iv).

Stormwater management programs “*may* impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.” *Id.* § 122.26(d)(2)(iv). However, while cooperative agreements may be required, “each copermitttee is only responsible for their own systems.” 40 C.F.R. § 122.26(d)(2)(i)(D). Similarly, consistent with the scope of the monitoring provisions discussed above, even where a programmatic approach is taken, federal

⁷ The text of the referenced sections is set forth in Appendix “A” to this Narrative Statement.

⁸ Section 122.44(i)(iii)-(iv) applies to specific types of discharges other than stormwater.

regulations say that “Copermittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they operate.” (40 C.F.R. § 122.26(a)(3)(vi).) In the San Diego and Los Angeles Decisions, the Commission correctly read these regulatory provisions to mean that, while the Regional Water Board may impose collaborative approaches to monitor and control pollutants on a watershed basis, such requirements exceed the mandate in federal law or regulations and are state law mandates. (San Diego Decision at 74; Los Angeles Decision at 30-31.)

(a) Requirements for Collaborative or Watershed Monitoring.

Virtually all of the provisions discussed above require Claimant to engage in some degree of collaborative or watershed-wide monitoring programs. As described above, federal regulations require a stormwater permit to contain provisions aimed at characterizing and controlling pollutants in a permittee’s own discharges. Nothing in the plain language of federal statute and regulations requires participation or contributions to the sort of specific collaborative monitoring program mandated by Provision C.8 of the MRP.

Rather, the Regional Water Board freely chose to impose these particular and specific requirements on Claimant. As the Court of Appeal in *Hayes v. Comm’n on State Mandates* explained only those mandates forced on the state by the federal government may truly be considered “federal” for purposes of Article XIII B section 6 of the State’s Constitution:

In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

Hayes v. Comm’n on State Mandates (1992) 11 Cal. App. 4th 1564, 1593-94.

Just as the Commission correctly determined in the San Diego and Los Angeles Decisions, collaborative watershed-level activities as required under the MRP may be *authorized*, but are *not required* by federal law. Therefore, Regional Water Board freely chose to include them the MRP permit, rendering these

provisions state mandates. (San Diego Decision at 59, 74; Los Angeles Decision at 30-31.)

(b) New Requirements for Characterization of MS4 Discharges.

Requirements of the MRP, such as those set forth in provision C.8.c and C.8.h, impose new requirements to measure specific constituents in stormwater. The level of specificity in these provisions goes far beyond the very general monitoring requirements established under the federal Clean Water Act or its implementing regulations. 40 C.F.R. §§ 122.44(i); 122.48; 122.26(d)(1)(iv)(D); (2)(ii)-(iii). The federal regulations simply require permittees to develop monitoring plans that are sufficient to demonstrate compliance with permit limits and assess impacts of a permittee’s discharges.

While outfall monitoring requirements are more directed at the type of information anticipated under the federal regulations than the watershed monitoring discussed above, again the requirements of the MRP are far more specific than is required by the Clean Water Act. While the federal regulations require monitoring sufficient to yield data which are representative of the MS4’s own discharges, the means and manner in which these requirements are implemented and specified in the MRP is an exercise of discretion by the Regional Water Board, which freely chose the specific parameters, testing locations, and sampling frequencies as part of the MRP. Under the test articulated in *Hayes*, this choice as indicated in the MRP renders the requirements in Provision C.8.c a state—rather than a federal—mandate. *Hayes v. Comm’n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593-94 (defining as state mandates requirements “where the manner of implementation of the federal program was left to the true discretion of the state.”).

Indeed, with regard to the provisions in Provision C.8.h, which require the Claimant to conform the format and quality assurance methods to those set by SWAMP, the Regional Water Board provides no specific legal authority—state or federal. And, unquestionably, there is no federal statute or regulation that would require compatibility with SWAMP methods, formats, or quality assurance procedures. The Regional Water Board “freely chose” to impose the SWAMP compatibility requirement of its own accord. *Hayes v. Comm’n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593.

(c) Citizen Monitoring Requirements.

The Fact Sheet for the MRP describes the legal authority for Provision C.8.f as follows: “CWA section 101(e) and 40 CFR Part 25 broadly require public participation in all programs established pursuant to the CWA, to foster public awareness of environmental issues and decision-making processes.” (Ex. 1 at App. I-64.)

Section 101(e) of the Clean Water Act says: “Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or and State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.” 33 U.S.C. § 1251(e). Part 25 of the Code of Federal Regulations sets the “minimum” standards to encourage public participation. 40 C.F.R. § 25.1. The application of Part 25 appears to be focused on public participation in U.S. EPA or equivalent state-level agency decision-making with regard to water quality regulatory activities such as regulations and the adoption of NPDES permits.

While these provisions could be read to authorize or even encourage the Regional Water Board to impose additional measures to bring the public into other proceedings or other aspects of the permitting process, nothing in the Clean Water Act or its implementing regulations comes close to requiring the measures identified in Provision C.8.f. of the MRP. As with many other requirements in the MRP, the federal regulations may authorize, but do not require, the specific requirements imposed by Provision C.8.f. Thus, as the Commission correctly determined when considering specific public outreach requirements in the San Diego Decision, this provision constitutes a state mandate. (San Diego Decision at 63, citing *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155.)

(d) Electronic Reporting.

There is no federal requirement that reports be submitted electronically. Indeed, the Fact Sheet cites only state authority as support for these requirements:

[California Water Code] section 13267 provides authority for the Water Board to require technical water quality reports. Provision C.8.g. requires Permittees to submit electronic and comprehensive reports on their water quality monitoring activities to (1) determine compliance with monitoring requirements; (2) provide information useful in evaluating compliance with all Permit requirements; (3) enhance public awareness of the water quality in local streams and the Bay; and (4) standardize

reporting to better facilitate analyses of the data, including for the CWA section 303(d) listing process.

(Ex. 1 at App I-165.) This is a requirement freely chosen by the Regional Water Board and is a state mandate.

3. Claimant Has Incurred Significant Costs as a Result of the Increased Monitoring Requirements Imposed Under Provision C.8 of the MRP.

Claimant has incurred significant costs as a result of all the specified increased monitoring requirements imposed under Provision C.8 of the MRP. Claimant has calculated the costs they incurred in implementing these requirements for fiscal years 2010 and 2011. These calculations are reflected in and described in more detail in the Declaration submitted on behalf of the City of Dublin (Declaration of Shannan Young (“Young Decl.”) ¶ 9) and the Amended Declaration submitted on behalf of the Alameda Countywide Program in support of this Test Claim. (Declaration of James Scanlin (“Scanlin Decl.”) ¶9-11)

4. Claimant Has Inadequate Fee Authority to Recover Monitoring Costs.

Claimant does not have adequate authority to impose a regulatory fee to recoup the costs of implementing the requirements of Provision C.8 of the MRP. No statutory authority exists for imposing fees to recover the costs of water quality monitoring.

There is no sufficient nexus between either the cause of stormwater pollution or the benefits to be derived from the monitoring requirements imposed by and any specific businesses or individuals to allow a targeted fee. Outside of a general finding that municipal stormwater discharges may be contributing to pollution of various receiving waters, there is no finding in the MRP or its Fact Sheet tying stormwater pollutants to specific businesses or individuals. In fact, many of the ongoing monitoring requirements set forth in the MRP are geared toward identifying potential pollutant contributing sources. (Ex. 1 at 71.) This is insufficient to allow the identification of the cause or benefit nexus discussed in the *Sinclair Paint* and *Tahoe Keys* cases described above. The only fee that would suffice would have to be a broad-based property fee, which would trigger Proposition 218’s voter approval requirement. For this reason, Provision C.8.b does not fall within the exception of section 17556(d) of the Government Code.

Moreover, even if an appropriate group of businesses or individuals could be identified, there is no way that such a fee could be precisely calibrated to assure that it would sufficiently reimburse Claimant for monitoring costs without

exceeding those costs, as is required under Article XIII D, § 6, subd. (b). For all of these reasons, Claimant cannot recover the state mandated costs of Provision C.8 through the imposition of a fee.

B. Trash Load Reduction

Provision C.10 of the MRP requires population Claimant to develop short- and long-term plans for reducing the amount of trash entering receiving waters from their stormwater systems and to create a baseline against which future reduction achievements may be measured. Each Claimant must also take immediate steps to identify “trash hot spots” within its jurisdiction and to perform and document cleanup actions in those areas. Finally, Claimant must install trash capture devices to prevent trash from being discharged from storm drains.

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

(a) Provision C.10.a.i—Short Term Trash Load Reduction Plan

Provision C.10.a.i requires Claimant to submit a Short-Term Trash Load Reduction Plan, including an implementation schedule, to the Water Board by February 1, 2012. (Ex. 1 at 84.) The Plan:

shall describe control measures and best management practices, including any trash reduction ordinances, that are currently being implemented and the current level of implementation and additional control measures and best management practices that will be implemented, and/or an increased level of implementation designed to attain a 40% trash load reduction from its MS4 by July 1, 2014.

(Id.) In addition, the Plan “shall account for required mandatory minimum Full Trash Capture devices called for in Provision C.10.a.iii and Trash Hot Spot Cleanup called for in Provision C.10.b.” *(Id.)*

(b) Provision C. 10.a.ii—Baseline Trash Load and Trash Load Reduction Tracking Method

Provision C.10.a.ii requires population Claimant to document the amount of trash currently being discharged from their stormwater systems:

Each Permittee, working collaboratively or individually, shall determine the baseline trash load from its MS4 to establish the basis for trash load reductions and submit the determined load level to the Water Board by February 1, 2012, along with documentation of methodology used to determine the load level.

(Ex. 1 at 84.). Claimant is also required to develop a mechanism to track the reductions in trash loads achieved through the measures imposed by the MRP:

The submittal shall also include a description of the trash load reduction tracking method that will be used to account for trash load reduction actions and to demonstrate progress and attainment of trash load reduction levels. The submittal shall account for the drainage areas of a Permittee's jurisdiction that are associated with the baseline trash load from its MS4, and the baseline trash load level per unit area by land use type and drainage area characteristics used to derive the total baseline trash load level for each Permittee.

(Id.)

Finally, Provision C.10.a.ii requires Claimant to report their progress on these obligations by February 2011, and disclose whether they are working alone or in conjunction with other Permittees:

Each Permittee shall submit a progress report by February 1, 2011, that indicates whether it is determining its baseline trash load and trash load reduction method individually or collaboratively with other Permittees and a summary of the approach being used. The report shall also include the types and examples of documentation that will be used to propose exclusion areas, and the land use characteristics and estimated area of potentially excluded areas.

(Id.)

(c) Provision C.10.a.iii—Minimum Full Trash Capture

Provision 10.a.iii requires Claimant to install a “mandatory minimum number of full trash capture devices by July 1, 2014, to treat runoff from an area equivalent to 30% of Retail/Wholesale Land that drains to MS4s within their jurisdictions (see Table 10.1 in Attachment J).” (Ex. 1 at 85.) Non-population-based Claimant ACFCD and Zone 7 are required to install and maintain a minimum number of trash capture devices as specified in MRP Attachment J. (*Id.*)

Provision 10.a.iii defines “a full trash capture device” for Claimant as “any single device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour, storm in the sub-drainage area.” (*Id.*)

(d) Provision C.10.b.i—Trash Hot Spot Cleanup and Definition

Provision C.10.b introduces a number of cleanup and reporting activities for Claimant. Claimant must identify and clean “Trash Hot Spots” within their jurisdiction: “Trash Hot Spots in receiving waters shall be cleaned annually to achieve the multiple benefits of beginning abatement of these impacts as mitigation and to learn more about the sources and patterns of trash loading.” (*Id.* at 85.)

No express definition of Trash Hot Spot is provided. Provision C.10.b.i describes them in terms of minimum size: “Trash Hot Spots shall be at least 100 yards of creek length or 200 yards of shoreline length.” (*Id.* at 86.) Provision C.10.b.ii suggests that they are “high trash-impacted locations on State waters.” (*Id.*)

(e) Provision C.10.b.ii—Trash Hot Spot Selection and Cleanup

Provision C.10.b.ii provides that Claimant must designate “at least one Trash Hot Spot per 30,000 population, or one per 100 acres of Retail/Wholesale Commercial Land Area, within their jurisdictions based on Association of Bay Area Governments (ABAG) 2005 data, whichever is greater.” (*Id.*) Provision C.10.b.ii also requires Claimant to select at least one Trash Hot Spot, and to submit information, including “photo documentation (one photo per 50 feet)” and initial assessment results for the proposed hot spots to the Regional Water Board by July 1, 2010. (*Id.*) The minimum number of Trash Hot Spots per Permittee is set forth in Attachment J of the MRP

(f) Provision C.10.b.iii—Trash Hot Spot Assessment

Provision C.10.b.iii requires Claimant to “quantify the volume of material removed from each Trash Hot Spot cleanup, and identify the dominant types of trash (e.g., glass, plastics, paper) removed and their sources to the extent possible” and to provide before-and-after photographic documentation of the cleanup. (*Id.*)

(g) Provision C.10.c—Long-Term Trash Load Reduction Plan

Provision C.10.c requires each population-based Permittee to create and submit a plan describing trash reduction measures being implemented and for achieving the reduction goals beyond the five-year MRP term:

Each Permittee shall submit a Long-Term Trash Load Reduction Plan, including an implementation schedule, to the Water Board by February 1, 2014. The Plan shall describe control measures and best management practices, including any trash reduction ordinances, that are being implemented and the level of implementation and additional control measures and best management practices that will be implemented, and/or an increased level of implementation designed to attain a 70% trash load reduction from its MS4 by July 1, 2017, and 100% by July 1, 2022.

(Ex. 1 at 86.)

(h) Provision C.10.d—Reporting

Provision C.10.d requires Claimant to report annually on their trash load reduction efforts and maintain records documenting these actions and their effects. Provision C.10.d.i requires a summary of

trash load reduction actions (control measures and best management practices) including the types of actions and levels of implementation, the total trash loads and dominant types of trash removed by its actions, and the total trash loads and dominant types of trash for each type of action. The latter shall include each Trash Hot Spot selected pursuant to C.10.b. Beginning with the 2012 Report, each [population-based] Permittee shall also report its percent annual trash load reduction relative to its Baseline Trash Load.

(*Id.* at 86-87.) Provision C.10.d.ii requires Claimant to retain records and documentation of trash load reduction efforts “for review,” and requires that the preserved records for Claimant “ha[s] the specificity required for the trash load reduction tracking method established pursuant to Provision [C.10.a.ii].” (*Id.* at 87.)

(i) Provision C.10 is a New Program.

The Prior Permit contained no comparable provisions. Provision C.10 clearly is a new program and each of its provisions requires a higher level of service from Claimant.

2. The Requirements of Provision C.10 Constitute State Mandates.

The Fact Sheet prepared by Regional Water Board staff in connection with the MRP contains the following narrative recitation of federal statutory and regulatory authority specific to the Trash Load Reduction Provisions found in Provision C.10 of the MRP:

Specific Legal Authority: Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B) requires, “shall be based on a description of a program, including a schedule, to detect and remove (or require the discharger to the municipal storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(2) requires, “a description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(3) requires, “a description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(4) requires, “a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer.”

(Ex. 1 at 71.)

The Fact Sheet also describes authority provided under the Regional Water Board’s Basin Plan for the San Francisco Bay:

San Francisco Bay Basin Plan, Chapter 4 – Implementation, Table 4-1 Prohibitions, Prohibition 7, which is consistent with the State Water Board’s Enclosed Bays and Estuaries Policy, Resolution 95-84, ***prohibits the discharge of rubbish, refuse, bark, sawdust, or other solid wastes into surface waters*** or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas. This prohibition was adopted by the Water Board in the 1975 Basin Plan, primarily to protect recreational uses such as boating.

(*Id.* (emphasis added).)

The Regional Water Board’s adoption of this prohibition and other provisions of the Basin Plan represent the exercise of discretion in choosing the means and manner that the federal Clean Water Act will be applied to receiving waters within its jurisdiction. The Trash Load Reduction measures in C.10 of the MRP represent a second and additional level of discretion by the Regional Water Board, which chose the means and manner by which this prohibition of the Basin Plan is applied to the Co-Permittees under the MRP. The requirements of Provision C.10 are therefore at least two steps removed from and exceed the general provisions of federal law cited in the Fact Sheet. Because the Regional Water Board freely chose to impose the obligations under Provision C.10, this renders section C.10 a state, not a federal, mandate. *Hayes v. Comm’n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593. In the Los Angeles Decision, the Commission applied a similar rationale, and concluded that street-sweeping requirements designed to reduce trash in stormwater were far more specific than what was required under federal law. (Los Angeles Decision at p. 55.) The same logic applies and compels the same result with respect to the trash load reduction provisions in the MRP.

3. **Claimant Will Incur Significant Costs as the Result of the New Trash Load Reduction Requirements Imposed Under Provision C.10 of the MRP.**

Claimant will incur significant costs as a result of the new trash load reduction requirements imposed under Provision C.10 of the MRP. Claimant have calculated costs they will incur in implementing these requirements for fiscal years 2010 and 2011. These calculations are reflected in and described in more detail in the declaration submitted on behalf of the City of Dublin in support of this Test Claim. (Young Decl. ¶ 9.)

4. **Claimant Has Inadequate Fee Authority to Recover the Costs of Implementing Provision C.10.**

For all of the reasons discussed above with regard to the monitoring provisions of the MRP, Claimant does not have adequate authority to impose a regulatory fee to recoup the costs of complying with the Trash Load Reduction requirements of Provision C.10. No statutory authority exists for imposing fees to recover for such costs.

Public Resources Code section 40059 provides local governments with authority over the collection and handling of solid waste, and allows for the collection of fees related to these activities:

Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

Cal. Pub. Resources Code § 40059(a).

In the Los Angeles Decision, the Commission concluded that the cost of placing trash receptacles at public transit locations could not be recovered through the imposition of a fee under this provision because such a fee would not be reasonably related to “providing services necessary to activity for which fee is charged.” (Los Angeles Decision at 60.). In that case, the Commission concluded that even if the Los Angeles permittees had proper jurisdiction to impose a fee on transit riders, this group would gain no particular benefit over that provided to the general public. (*Id.*)

Here, the installation of trash capture devices mandated by the MRP is similarly beyond the fee authority of Claimant. The Commission in the Los Angeles Decision concluded that there were no businesses and private property owners that could be singled out to pay fees for placement of trash receptacles in transit stops. (Los Angeles Decision at 60 (“Because the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks) or transit district property (for bus or metro or subway stations), there are no entities on which the claimant would have authority to impose the fees.”)) Similarly, here, there are no businesses or individuals whose activities are sufficiently connected to either the benefits of Provision C.10 or the pollution it seeks to address to justify the imposition of fees.

The same is true for the “Hot-Spot” cleanup activities required under Provision C.10. In the San Diego Decision, the Commission concluded that the opt-out vote required for the imposition of fees in conjunction with the collection and handling of refuse was too contingent to place street sweeping or other refuse collection activities outside the scope of the unfunded mandate provision. (San Diego Decision at 115-17.) The costs of developing the short- and long-term trash load reduction plans and the development of a baseline under the MRP are even more attenuated from the causes of those costs or the benefits to be delivered by the activities.

For the same reasons, no authority exists for the imposition of a regulatory fee under the general police powers enjoyed by local authorities. There is no nexus between either the cause of stormwater pollution or the benefits to be derived from the requirements of Provision C.10 and any specific businesses or individuals to allow a targeted fee, as required in the *Sinclair Paint* and *Tahoe Keys* cases. The only fee that would suffice would have to be a broad-based property fee that would trigger Proposition 218’s voter approval requirement. For this reason, Provision C.10 does not fall within the exception of section 17556(d) of the Government Code.

C. Mercury and PCB Diversion Studies

Provisions C.11.f and C.12.f of the MRP require Claimant and other Permittees to implement pilot programs to evaluate the reduction in mercury and PCB levels attainable by diverting dry weather and first-flush stormwater flows to sanitary sewers, where they may be treated for these contaminants by Publicly Owned Treatment Works (“POTWs”). (Ex. 1 at 91, 99.) The Permittees are also required to quantify and report the reductions achieved during the pilot program. (*Id.*)

Claimant and other Permittees are required to implement these requirements by collectively “evaluating drainage characteristics and the feasibility of diverting flows to the sanitary sewer.” (*Id.*) Provision C.11.f.ii says:

Permittees should work with local POTWs, on a watershed, county, or regional level to evaluate feasibility and to establish cost sharing agreements. The feasibility evaluation shall include, but not be limited to, costs, benefits, and impacts on the stormwater and wastewater agencies and the receiving waters relevant to the diversion and treatment of the dry weather and first flush flows.

(*Id.* at 91.) Provision C.12.f contains a virtually identical provision. (*Id.* at 99.) The results of the feasibility studies are to be used by Permittees to collectively select five pump stations and five alternates for pilot diversion studies. At least one diversion pilot program must be implemented in each county within the jurisdiction of the MRP. (*Id.* at 91, 100.) Sections C.11.f.ii and C.12.f.ii further direct that the pilot studies be conducted “in industrially- dominated catchments where elevated PCB concentrations are documented. (*Id.* at 91, 99). The Permittees are then required to report the outcome of the studies. (*Id.*)

1. Sections C.11.f and C.12.f Constitute New Programs.

The Prior Permit contained no provisions requiring the diversion studies and pilot programs for mercury and PCBs required under the MRP. The studies and pilot projects required under sections C.11.f and C.12.f are new programs.

2. Sections C.11.f and C.11.f are State Mandates.

For purposes of establishing legal authority, the Fact Sheet lumps Provisions C.11 and C.12 in a group that covers Provisions C.9 through C.14, and asserts that these requirements are generally authorized by sections 402(p)(3)(B)(ii-iii) of the Clean Water Act, section 13377 of the California Water Code, and sections 122.26(d)(2)(i)(B, C, E, and F) and 122.26(d)(2)(iv) of the federal NPDES regulations. (Ex. 1 at App I-66.) The Fact sheet also identifies the Regional Water Board’s basin plan as a source of authority, and uses permit conditions based on the adoption of a Total Maximum Daily Load as an example of provisions that may be imposed under this authority (“TMDL”). (*Id.*)

The Fact Sheet goes on to state that the mercury control measures in the MRP are intended to “implement the urban runoff requirements stemming from” the TMDL for this pollutant. (*Id.*) It also relates PCB control measures to a TMDL: “The control measures required for PCBs are intended to implement

those that are consistent with control measures in the PCBs TMDL implementation plan that has been approved by the Water Board and is pending approval by the State Board, the Office of Administrative Law, and U.S. EPA.” (*Id.* at App I-66-67.)

None of the federal provisions cited in the Fact Sheet requires the specific measures imposed by the MRP. The federal statute requires that NPDES permits be “consistent with” TMDLs, nothing more. 40 C.F.R. § 122.44(d)(1)(vii). It does not require the Regional Water Board to implement those TMDLs through any specific permit limit, let alone the studies and pilot projects entailed in MRP Provisions C.11.f and C.12.f. Rather, the Regional Water Board has “freely chosen” these measures as the method and manner of implementing this general “consistency” requirement of federal law. The exercise of discretion in the MRP indicates that these Provisions are state, not a federal, mandates. *Hayes v. Comm’n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593.

3. **Claimant Has Incurred Significant Costs as the Result of the Diversion Studies Required Under Provisions C.11.f and C.12.f of the MRP.**

Claimant has incurred significant costs as a result of the new requirements for Diversion Studies relating to mercury and PCB discharges imposed under Provisions C.11.f and C.12.f of the MRP. Claimant has calculated costs it has incurred in implementing these requirements for the second half of fiscal year 2009/2010 and the entire fiscal year 2010/2011. These calculations are described in more detail in the declaration submitted on behalf of the Alameda Countywide Program in support of this Test Claim. (Scanlin Decl. ¶ 10 & Ex. C).

4. **Claimant 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.**

For many of the same reasons discussed above with regard to the MRP’s monitoring and trash requirements, Claimant does not have adequate authority to impose a regulatory fee to recoup the costs of implementing Provisions C.11.f and C.12.f of the MRP. No statutory authority exists for imposing fees to recover the costs of such projects.

There is no nexus between either the cause of stormwater pollution or the benefits to be derived from the diversion study requirements and any specific businesses or individuals to allow a targeted fee. This is insufficient to allow the identification of the cause or benefit nexus discussed in the *Sinclair Paint* and *Tahoe Keys* cases. The only fee that would suffice would have to be a broad-based property fee that would trigger Proposition 218’s voter approval

requirement. For this reason, Provisions C.11.f and C.12.f do not fall within the exception of section 17556(d) of the Government Code.

IV. COSTS TO IMPLEMENT MANDATED ACTIVITIES

A. Basis for Cost Figures

The City of Dublin (“City”) incurred actual costs relating to the MRP, and the specific requirements that are the subject of its Test Claim, directly and by funding its share of costs incurred by the Alameda County Clean Water Program.

Invoices, which reflect the costs and expenses actually incurred for the accomplishment of specified permit-imposed tasks and requirements, were prepared for the Alameda Countywide Program by Applied Marine Sciences throughout the term of the MRP. (Scanlin Decl. ¶ 9). These invoices were approved for payment by the Program’s fiscal agent with funds previously collected from each of the Permittees, based on their proportional cost-sharing allocation as set under a formula set forth in the Program’s constituting Memorandum of Agreement. (Scanlin Decl. ¶ 9). Pursuant to this funding formula, **the City of Dublin was allocated 2.5% of costs for shared Program responsibilities.** (Young Decl. ¶ 9).

The MRP was in effect from January 1, 2010 through December 31, 2015. This permit term overlapped with a six month period of fiscal year (“FY”) 2009-10 (i.e., January 2010 through June 2010) and a six month period of FY 2015-16 (i.e., July 2015 through December 2015).

For purposes of the discussion below, based on the Commission staff’s recent direction, *actual* costs were reviewed by James Scanlin of the Alameda Countywide Program, Inc. and Shannan Young of the City of Dublin and summarized in their sworn testimony for FY 2009-10 (January through June 2010), as the first partial fiscal period subject to the MRP requirements (Year 1) and for FY 2010- 11, the first full fiscal year during which the MRP was effective (“Year 2”). (Scanlin Decl. ¶¶9-11).

B. New Costs Arising from the MRP—City of Dublin

The aggregate actual costs for Years 1 and 2 for the Alameda Countywide Program’s implementation of monitoring, trash, and mercury and PCB diversion activities mandated by the MRP totaled \$39,398.⁹ The City’s aggregate actual costs for the implementation of monitoring, trash, and mercury and PCB diversion

⁹ All costs stated herein have been attested to under penalty of perjury in the Scanlin Declaration; these have been rounded to the nearest dollar figure.

activities mandated by the MRP in Years 1 and 2 totaled \$13,631. These are discussed in more detail immediately below.¹⁰

1. Provision C.8.c.

Actual costs for implementing monitoring activities mandated by MRP Provision C.8.c as conducted by the Alameda Countywide Program were \$13,606 during Year 2 (twelve-month period). (Scanlin Decl. ¶ 9).

2. Provision C.10.

Actual costs for implementing monitoring activities mandated by MRP Provision C.10 as conducted by the Alameda Countywide Program were \$5,806 during Year 1 (six-month period) and \$12,652 during Year 2 (twelve-month period). (Scanlin Decl. ¶ 9). The City paid a share of \$145 and \$316 during each respective year.

Additionally, Dublin \$12,647 for trash-related costs during Year 1 (six-month period) and Year 2. These costs consist of payments to Revel Environmental Manufacturing (REM), Inc. for the, installation, inspection, and maintenance of storm drain filter systems. (Young Decl. ¶ 9)

3. Provision C.11.f/C12.f.

Actual costs for implementing monitoring activities mandated by MRP Provisions C.11.f/C.12.f as conducted by the Alameda Countywide Program were \$7,334 during Year 2 (twelve-month period). (Scanlin Decl. ¶ 9). Dublin paid its share of \$183. (Young Decl. ¶ 9).

C. Actual Costs Incurred by the City of Dublin During the Fiscal Year for Which the Claim Was Filed to Implement the Mandate

Based on the information presented above and a review of relevant invoices and financial records, during Year 1 (six-month period), increased actual costs to implement the challenged monitoring and trash-related activities conducted by the Alameda Countywide Program totaled \$5,806. (Scanlin Decl. ¶ 9). Accordingly, and pursuant to the established funding formula, under which the City paid 2.5% of the Alameda Countywide Program's incurred costs, the City incurred and paid increased actual costs of \$8,238 during Year 1 (six month period). (Young Decl. ¶ 9).

¹⁰ All costs stated herein have been attested to under penalty of perjury in the Young Declaration; these have been rounded to the nearest dollar figure.

D. Actual Increased Costs Incurred by the City of Dublin During the Fiscal Year Immediately Following the Fiscal Year for Which the Claim Was Filed to Implement the Mandate

Based on the cost information presented above and a review of relevant invoices and financial records, during Year 2, aggregate increased actual costs to implement the challenged monitoring and trash-related activities conducted by the Alameda Countywide Program totaled \$33,592. (Scanlin Decl. ¶¶ 9-11). Accordingly, and pursuant to the established funding formula, under which the City paid 2.5% of the Alameda Countywide Program’s incurred costs, the City incurred and paid increased actual costs of \$5,393 during Year 2 (twelve-month period). (Young Decl. ¶9)

V. STATEWIDE COST ESTIMATE

The MRP relates only to 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 Claimant directly or indirectly in the form of contributions to work that will be performed jointly with other Permittees within the Alameda Countywide Program or in other collaborative efforts, compared to the Prior Permit. Therefore, the cost estimates provided relate only to Claimant and other Permittees participating in the Alameda Countywide Program. These costs are detailed in the declaration submitted on behalf of the Alameda Countywide Program in support of this Test Claim (Scanlin Decl. ¶).

VI. FUNDING SOURCES

As discussed in more detail above, Claimant does not have fee authority to offset these costs. With the exception of the partial potential funding sources set forth below, Claimant is not aware of any state, federal or non-local agency funds that are or will be available to fund these new activities.

The Association of Bay Area Governments (ABAG) obtained grant funding in the amount of \$5 Million from the State Water Resources Control Board (SWRCB) for the Bay Area Trash Capture Demonstration Project. The funds are from the American Recovery and Reinvestment Act of 2009 (ARRA) provided through the United States Environmental Protection Agency to the SWRCB, for distribution through the Clean Water State Revolving Fund. The Project was intended as a pilot project to install and assess various types of trash capture equipment in storm drain systems throughout the Bay Area, which will assist local governments in meeting trash capture requirements under the MRP. ABAG apportioned the funds to participating agencies based on an average of each agency’s relative trash-capture requirements and population. Under this formula, the City of Dublin received grant funding in the amount of \$56,156. The City had previously entered into an agreement with ABAG in October 2009 to receive \$5,000

for a pilot project to install 16 inlet filter inserts on Village Parkway. (Young Declaration). In addition, the City was allocated \$56,156 from this grant for the installation of two trash capture devices, costing a total of \$59,722.24. (Young Declaration).

VII. PRIOR MANDATE DETERMINATIONS

Claimant is unaware of any prior mandate determinations relating to the MRP. However, Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21, which resulted in the Los Angeles Decision, and Test Claim No. 07-TC-09, which resulted in the San Diego Decision, challenged waste discharge requirements for municipal regional storm water and urban runoff discharges that involved many of the same issues described in this Test Claim. The provisions of the MRP discussed above are analogous to several provisions in the Los Angeles and San Diego municipal stormwater permits that the Commission determined were unfunded mandates within the meaning of section 6 of Article XIII D.

VIII. CONCLUSION

Through the MRP, 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 Claimant deliver new programs or a higher levels of services than what was required under the Prior Permit. As detailed above, their development and implementation imposes substantial costs. Claimant believes that 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 provisions, programs and activities set forth herein.

2867236.1

1 by Order No. R2-2011-0083, adopted November 28, 2011 (MRP).¹ I have reviewed the MRP and
2 know and understand its requirements.

3 6. I have also reviewed and know and understand the requirements of NPDES Permit
4 No. CAS029718, issued by Regional Water Board Order No. 01-024 on April 21, 2001, amended
5 by Order No 01-119 on October 17, 2001 and Order No. R2-2005-0035 on July 20, 2005 (Prior
6 Permit), under which Dublin was a permittee.

7 7. Based on my understanding of the Prior Permit and the MRP, I believe the MRP
8 required Permittees to perform new activities that were unique to local governmental entities and
9 that were not required by the Prior Permit.

10 8. The MRP's new activities included those associated with the following new or
11 enhanced MRP requirements:

12 (a) Monitoring. Section C.8 of the MRP requires the Permittees to implement a
13 number of water quality monitoring programs that were not required by the Prior Permit.

14 (i) Provision C.8.b requires an increased level of participation in the
15 Regional Monitoring Program for water quality in the San Francisco Bay Estuary (RMP). In
16 addition to increased direct contributions to the RMP, costs for staff participation are expected to
17 increase by roughly 2% per year in order to provide greater coordination between RMP and MRP
18 objectives for this provision. (MRP at 65).

19 (ii) Provision C.8.c requires a substantially increased level of
20 monitoring effort relative to the Prior Permit by greatly expanding both the number of sites that
21 must be monitored per year and the number of monitoring parameters. (MRP at 65-71). These
22 parameters and sites include:

- 23
- Algae bioassessment (20 sites/yr)
 - Chlorine (23 sites/yr)
 - Temperature (8 sites/yr)
 - Stream Surveys (9 miles/yr)
- 24
25
26

27 ¹ The MRP has since been superseded by Order No. R2-2015-0049, adopted November 19, 2015.
28

1 Additionally, Provision C.8.c increases the number of creek sites that must be sampled annually
2 for the following parameters (site increases are in parentheses):

- 3 • Total Phosphorus (7 sites/year)
- 4 • Dissolved Orthophosphate (7 sites/yr)
- 5 • Total Nitrogen (7 sites/yr)
- 6 • Nitrate (7 sites/yr)
- 7 • Ammonia (7 sites/yr)
- 8 • Silica (7 sites/yr)
- 9 • Chloride (7 sites/yr)
- 10 • Dissolved Organic Carbon (DOC) (7 sites/yr)

11 (iii) Provision C.8.d requires three new types of projects that were
12 previously not required under the Prior Permit (Source Identification, BMP Effectiveness, and
13 Geomorphic Projects). These projects will require project design, field work, sampling and
14 laboratory analysis, interpretation and reporting. (MRP at 71-73).

15 (iv) Provision C.8.e requires substantially increased levels of effort for
16 (1) pollutants of concern monitoring, and (2) long-term monitoring. It also imposes a new
17 requirement to conduct a sediment delivery estimate/budget study. (MRP at 73-75).

18 (1) *Pollutants of Concern Monitoring*: The MRP, in Provision
19 C.8.e.i, requires the Permittees to undertake the following new monitoring efforts for pollutants of
20 concern, relative to the Prior Permit.

21 a. Two new stations are required to be monitored by the
22 Alameda County Clean Water Program (none were previously required), involving costs
23 for development and maintenance of the stations;

24 b. Due to numerous pollutants to be sampled, both
25 stations will require additional setup (e.g., purchasing equipment, installation, calibration
26 of equipment) of monitoring equipment prior to beginning to monitor annually at one
27 station in October 2011 and another beginning in October 2012;

28 c. A minimum of four storms have to be sampled per
year at each station. This will require watching and predicting which storms to sample,

1 mobilization of field crews, sample preparation and collection, and transport of samples to
2 laboratory.

3 d. Numerous pollutants or analytes are required to be
4 monitored (see MRP at 73-75). For completely new analytes, the costs of analysis along
5 with costs associated with specialized protocols or extra field visits for some pollutants
6 significantly increases the annual average cost.

7 (2) *Long-Term Monitoring.* Provision C.8.e.ii requires long-
8 term monitoring at specific stations, pursuant to specific protocols. (MRP at 74). The
9 Program’s monitoring program under the Prior Permit did not require monitoring designed
10 to detect long-term trends. Therefore, existing creek monitoring will need to be redesigned
11 to include trends monitoring as described in C.8.e.ii. This will include an increase in the
12 number of samples collected and analyzed for sediment toxicity and sediment chemistry,
13 including new sediment chemistry parameters.

14 (3) *Sediment Delivery Estimate/Budget.* Provision C.8.e.vi
15 requires the Permittees, by July 1, 2011, to develop “a design for a robust sediment
16 delivery estimate/sediment budget in local tributaries and urban drainages.” (MRP at 76).
17 The study itself must be implemented by July 1, 2012. As the Prior Permit contained no
18 requirement to design or implement sediment delivery studies, this is an entirely new
19 program under the MRP.

20 (v) Provision C.8.f requires the Permittees to encourage “citizen
21 monitoring,” although it does not define this term. (MRP at 76). This is an entirely new
22 requirement. Increases associated with this provision include “reasonable efforts to seek
23 out citizen and stakeholder information and comment regarding waterbody function and
24 quality,” and annually demonstrating “that they have encouraged citizen and a stakeholder
25 observations and reporting of waterbody conditions” by reporting on these outreach
26 efforts. There are no specific increases in number of monitoring sites or parameters
27 associated with this provision, but level of coordination (i.e., staff time) required is greater
28 than the existing level.

1 (vi) Provision C.8.g requires specific contents and format for reporting
2 monitoring data. (MRP at 76). Under the Prior Permit, the Alameda County Clean Water
3 Program prepared an annual report which included a description of the Permittees' data
4 collected over the previous fiscal year, and general interpretation of the results. The
5 Program is currently not required to submit data in a specified electronic format or report
6 to the extent required by provision C.8.g. Therefore, beginning in fiscal year 2011-2012,
7 new costs for electronic reporting and higher costs for developing reports for all new and
8 expanded programs will be incurred.

9 (vii) Provision C.8.h requires the Permittees to develop significant
10 updates or additions to existing field standard operating procedures and train field staff to
11 allow for monitoring data to be collected by the Alameda County Clean Water Program
12 using "SWAMP comparable" methods defined by the State Water Resources Control
13 Board's Surface Water Ambient Monitoring Program. (MRP at 77-78). Additionally, new
14 data management systems must be developed and managed at significant costs, as the
15 MRP requires data to be reported electronically to the Regional Water Board in "SWAMP
16 comparable" formats. Monitoring data quality assurance procedures (also SWAMP
17 comparable) also have to be developed, documented and adhered to by the Program at all
18 times, which requires an additional level of effort (staff time) compared to previous quality
19 assurance procedures conducted by the Program under the Prior Permit.

20 (b) Trash. Section C.10 of the MRP requires the Permittees to implement a
21 number of trash-related programs that were not required by the Prior Permit.

22 (i) Provision C.10.a requires several specified actions to reduce trash
23 loads from municipal separate storm sewer systems (MS4), including developing Short-
24 Term Trash Load Reduction Plans designed to attain 40% trash load reductions from MS4s
25 by July 1, 2014 (C.10.a.i, MRP at 84). These plans must describe, among other things,
26 new control measures and best management practices that each Permittee will increase
27 and/or implement to achieve the 40% reduction. Additionally, Permittees are required to
28 determine baseline trash loads from each MS4 and tracking methods to account for trash

1 load reductions (C.10.a.ii, MRP at 84), and installing and maintaining specified numbers of
2 full trash capture devices (C.10.a.iii, MRP at 85). Each of these requirements represent
3 new programs that were not required by the Prior Permit.

4 (ii) Provision C.10.b requires the Permittees to identify, assess, and
5 clean up specified numbers of trash “hot spots” annually based on population or acreage of
6 retail/wholesale commercial land within each jurisdiction (for population-based
7 permittees). (MRP at 85-86). This is a new requirement not required by the Prior Permit.

8 (iii) Provision C.10.c requires the Permittees to submit Long-Term Trash
9 Load Reduction Plans and implementation schedules by February 1, 2014. (MRP at 86).
10 This plan will require implementation methods and practices designed to attain a 70% trash
11 load reduction from MS4s by July 1, 2017, and a 100% reduction by July 1, 2022. This is
12 a new program as such plans were not required by the Prior Permit.

13 (iv) Provision C.10.d requires the Permittees to report annually on trash
14 load reduction efforts and maintain records documenting these actions and their effects.
15 (MRP at 86-87). These reporting requirements are new programs not required by the Prior
16 Permit.

17 (c) Mercury and PCBs. Sections C.11 and C.12 of the MRP require the
18 Permittees to implement pilot projects to divert dry weather and first flush stormwater
19 flows to publicly owned treatment works (POTWs). Collectively, the Permittees must
20 select five pump stations and five alternates for feasibility studies and pilot diversion
21 studies, must implement flow diversion at five pump stations, and must analyze results, as
22 appropriate, in annual reports. (MRP at 91, 99). The studies and pilot projects are new
23 programs that were not required by the Prior Permit.

24 9. Increased Actual Costs.

25 For purposes of the discussion below, actual costs are presented for FY 2009-10 (January
26 through June 2010), as the first *partial fiscal* period subject to the MRP requirements (“**Year 1**”)
27 and for FY 2010-11, the first *full fiscal* year during which the MRP was effective (“**Year 2**”).
28

1 (a) Provision C. 8 Costs.

2 A portion of the funds from the Alameda Countywide Clean Water Program is
3 allocated toward monitoring costs. James Scanlin's Declaration addresses the City's share of these
4 costs.

5 (b) Provision C.10 Costs.

6 (i) Prior Permit Costs. Under the Prior Permit, the City did not incur any costs
7 specifically attributable to the MRP's trash-related requirements.

8 (ii) Based on my review of the associated invoices, actual costs for
9 implementing trash-related activities mandated by MRP Provision C.10 were \$12,647 during
10 Years 1 and 2 of the MRP, including \$8,093 during Year 1 (six-month period) and \$4,554 during
11 Year 2 (twelve-month period). These costs consist of payments to Revel Environmental
12 Manufacturing (REM), Inc. for the, installation, inspection, and maintenance of storm drain filter
13 systems. A more detailed description of these costs are attached hereto as Exhibits A-H, which are
14 true and correct copies of invoices from REM, which I obtained from the City's official files. All
15 such costs have been rounded to the nearest dollar figure.

16 (c) Mercury and PCB Diversion Costs.

17 A portion of the funds from the Alameda Countywide Clean Water Program is
18 allocated toward mercury and PCB diversion costs, as required by sections C.11 and C.12. James
19 Scanlin's Declaration addresses the City's share of these costs.

20 (d) In addition to the aforementioned costs, the City has paid additional costs to the
21 Alameda Countywide Clean Water Program (ACCWP). For Year 1, the City of Dublin paid
22 \$43,645 to ACCWP to support MRP compliance actions. The invoice from this payment can be
23 found in Exhibit I. For Year 2, the City paid \$25,804 for MRP compliance actions, the invoice for
24 which can be found in Exhibit J. I have been in contact with James Scanlin, an Associate
25 Environmental Compliance Specialist working with the ACCWP. He provided the breakdown of
26 the City's share of the County's costs for the state mandated costs at issue in this Test Claim. I
27 believe this information to be true and correct. Those costs are as follows:

28

Municipal Regional Stormwater Permit, City of Dublin. 6. Declarations (Young)

Task	Year	Program Cost	City of Dublin Share (2.5%)
Status Monitoring/Rotating Watersheds required under C.8.c	1	\$0	\$0
Trash-related programs required under C.10	1	\$5,806	\$145
Mercury and PCB diversion to Publicly Owned Treatment Works (POTWs) required under C.11/12.f	1	\$0	\$0
TOTAL Year 1			\$145
Status Monitoring/Rotating Watersheds required under C.8.c	2	\$13,606	\$340
Trash-related programs required under C.10	2	\$12,652	\$316
Mercury and PCB diversion to Publicly Owned Treatment Works (POTWs) required under C.11/12.f	2	\$7,334	\$183
TOTAL Year 2			\$839

(e) Total Increased Costs.

(i) Based on the foregoing, the City's aggregate actual costs incurred for Year 1 and Year 2 in order to comply with new requirements set forth in MRP Provisions C.8, C.10, and C.11/C.12 are to be **\$13,631**.

(ii) Based on the foregoing, during Year 2, the City's increased actual costs to implement the activities mandated by MRP provisions C.8.c, C.10, and C.11.f and C.12.f were \$5,393.

10. I am confident from my own knowledge of the MRP and the City of Dublin's stormwater program that the actual costs resulting from the MRP mandates at issue in this Test Claim exceeds one thousand dollars (\$1,000).

11. With the exception of the partial funding source set forth below, I am not aware of any state or federal funds that will be available to pay for these increased costs.

(a) The Association of Bay Area Governments (ABAG) obtained grant funding in the amount of \$5 Million from the State Water Resources Control Board (SWRCB) for the Bay Area Trash Capture Demonstration Project. The funds are from the American Recovery and Reinvestment Act of 2009 (ARRA) provided through the United States Environmental Protection

1 Agency to the SWRCB, for distribution through the Clean Water State Revolving Fund. The
2 Project was intended as a pilot project to install and assess various types of trash capture
3 equipment in storm drain systems throughout the Bay Area, which will assist local governments in
4 meeting trash capture requirements under the MRP. ABAG apportioned the funds to participating
5 agencies based on an average of each agency's relative trash-capture requirements and population.
6 Under this formula, the City of Dublin received grant funding in the amount of \$56,156. This
7 grant funding was applied toward the purchase of two trash capture devices, the total cost of which
8 amounted to \$59,722. The costs and order details for these two trash capture devices can be found
9 in the order agreement between the City and Contech Construction Products Inc., attached as
10 Exhibit K. The City had previously entered into an agreement with ABAG in October 2009 to
11 receive \$5,000 for a pilot project to install 16 inlet filter inserts on Village Parkway. The invoice
12 for \$4,938.75 for this installation can be found in Exhibit A and the resolution approving the
13 contract for services and \$5,000 payment for the pilot project can be found in Exhibit L.

14 12. I am not aware of any other local or non-local agency funds that are or will be
15 available to pay for these increased costs.

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

18 ///

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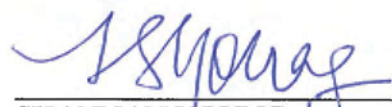
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I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on September 22, 2017, at Dublin, California.



SHANNAN YOUNG

EXHIBIT A



**CITY OF DUBLIN
CLAIM FORM**

CITY OF DUBLIN

JAN 14 2010

PAYEE:
 Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 concord Ca 94518

VENDOR #:

RECEIVED
 FINANCE DEPT.

DESCRIPTION	INVOICE #	For Operations		OR		For Projects		TOTAL	
		FUND	DEPT/DIV	OBJECT	PROJECT	PHASE	TASK		SUBTASK
Storm Drain Filters for Village Parkway	13906	2311	2301	73101				\$ 4,938.75	
Per PO # 10-00039									
FINANCE: AFTER THE CHECK IS OUT AND SIGNED, COULD WE PLEASE GET A COPY OF IT. WE NEED TO SEND PROOF OF OUR PAYMENT TO ADAG TO MEET THE GRANT REQUIREMENT. TX - YMS									
								TOTAL \$	4,938.75

PREPARER
 Signature: *Michelle Brown*
 Date: 1/13/10

DEPARTMENT HEAD
 Signature: *[Signature]*
 Date: 1/13/2010

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518
 PH (888) 526-4736 FAX (925) 676-8676
 Lic. No. 857410



INVOICE

DATE 1/11/2010 INVOICE NO. 13906

BILL TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

SHIP TO:

City of Dublin
 Village Parkway Project
 Dublin, CA 94568
 Contract Number 2311,3201.73103
 Agreement #09-823-550

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.
Proj. #06-6441-110	Net 30 days	MJS	1/8/2010	Company Truck	Concord, CA
QUANTITY	ITEM CODE	DESCRIPTION		PRICE EACH	AMOUNT
8	Dublin Type "A"	TRITON Filter Configured for the standard Dublin Type "A" Catch Basin. Configured 35" x 35" TH With 14" Dia x 16" Tall Cartridge, W/Std Media Pak & 1.5" Bio-Flex (Price includes installation) CB #1,3,6,7,9,11,12 & 14		300.00	2,400.00T
4	Dublin Type "A"	TRITON Filter Configured for the standard Dublin Type "A" Catch Basin. Configured 35" x 35" TH With 14" Dia x 8" Tall Cartridge, W/Std Media Pak & 1.5" Bio-Flex (Price includes installation) CB #4,8,15 & 16		300.00	1,200.00T
2	TR-Custom	TRITON Series Catch Basin Filter Insert. Configured With 2 TRC Inlets, W/Std Media Pak & 1.5" Bio-Flex (Price includes installation) CB #5 & 13		300.00	600.00T
1	TR-Custom	TRITON Series Catch Basin Filter Insert. Configured With 1 TRC Inlet & diversion cover, W/Std Media Pak & 1.5" Bio-Flex (Price includes installation) CB #10		300.00	300.00T
		City of Dublin - Village Parkway between Amador Valley Boulevard & Brighton Drive Project Sales Tax		9.75%	438.75
It's been a pleasure working with you! Please remit to above address.				TOTAL	\$4,938.75



**STAFF REPORT
DUBLIN CITY COUNCIL**

CITY CLERK
File # 600-30

DATE: October 20, 2009

TO: Honorable Mayor and City Councilmembers

FROM:  Joni Pattillo, City Manager

SUBJECT: Approval of Contract for Services with Association of Bay Area Governments to Fund Village Parkway Storm Drain Inlet Filter Inserts, Amador Valley Boulevard to Brighton Drive
Prepared By: Mark Lander, City Engineer

EXECUTIVE SUMMARY:

The City of Dublin is eligible for funding through the Association of Bay Area Governments (ABAG) to purchase and install storm drain inlet filter inserts on Village Parkway between Amador Valley Boulevard and Brighton Drive. City Council approval of a Contract for Services with ABAG is required, along with authorization to purchase the inserts and approval of a budget change to reflect additional funding and expenditures.

FINANCIAL IMPACT:

The cost of installing the filters will be offset by a grant. ABAG will reimburse the City \$4,939 for installation of 15 storm drain inlet filter inserts. Annual maintenance costs are estimated to be \$1,755. Maintenance costs for the remainder of Fiscal Year 2009-2010 are estimated to be \$1,160 and are proposed to be offset by applying to the State of California for recycled oil block grant funds. A budget change is required in the Street Maintenance Storm Drain Maintenance Activity. The Budget Change will also recognize the anticipated receipt of grant funding offsetting the full cost of installation and maintenance.

RECOMMENDATION:

1. Adopt the Resolution Approving the Contract For Services With The Association of Bay Area Governments For The Village Parkway Storm Drain Inlet Filter Insert Project;
2. Approve a Budget Change; and
3. Authorize Staff to issue a Purchase Order in the amount of \$4,939 to Revel Environmental Manufacturing, Inc.


Submitted By
Public Works Director


Reviewed By
Assistant City Manager

DESCRIPTION:

The Association of Bay Area Governments (ABAG) has obtained grant funding in the amount of \$5 Million from the State Water Resources Control Board (SWRCB) for the Bay Area Trash Capture Demonstration Project. The funds are from the American Recovery and Reinvestment Act of 2009 (ARRA) provided through the United States Environmental Protection Agency to the SWRCB, for distribution through the Clean Water State Revolving Fund.

The Project is intended as a pilot project to install and assess various types of trash capture equipment in storm drain systems throughout the Bay Area, which will assist local governments in meeting trash capture requirements under the upcoming Municipal Regional Permit for Stormwater (MRP). ABAG, in developing the grant proposal, solicited input from Bay Area cities and counties for shovel-ready trash capture projects, and received responses from approximately 20 jurisdictions, including the City of Dublin. The City has two projects listed in the grant: 1) installation of 10 to 20 storm drain filter inserts on Village Parkway (\$12,000), and 2) installation of a hydrodynamic separator storm drain manhole at the West Dublin BART Station (\$300,000). The separator storm drain manhole project will be considered by the City Council at a future date.

ABAG is required under the grant to show early progress in implementation, and needs to complete a minor component of the project in November of this year. ABAG has requested assistance from participating municipalities in meeting this requirement.

In response to ABAG's request, Public Works Staff has requested a proposal from Revel Environmental Manufacturing, Inc. (REM), for the installation of 15 Triton storm drain inlet filter inserts in Village Parkway between Amador Valley Boulevard and Brighton Drive (locations are shown on Attachment 1). This location had been previously identified by Staff as having a high trash generation rate because of its proximity to takeout restaurants and other uses in the City's commercial core, and it would serve as a good location for a pilot demonstration project. REM has previously installed two similar filters at the Dublin Sports Grounds which have performed satisfactorily over the last year (there are also approximately 300 of these units installed in commercial and residential developments, such as Hacienda Crossings, Dublin Place Retail, the Downtown Safeway, and the Archstone Emerald Glen Apartments, with no apparent problems). A picture of an insert installed under a pilot project in another city is shown on Attachment 2.

The cost for the initial installation of 15 units is \$4,939 (Attachment 3), which is within the \$5,000 limit allowed under the California Public Contracting Code without a formal bid. Since the filters are a specialized product, Staff has not solicited three competitive bids and proposes a sole-source contract for the purchase and installation of the filters (the contract would be in the form of a purchase order). ABAG has reviewed this process and indicates that it is in conformance with ABAG, SWRCB, and ARRA guidelines.

A Budget Change in the amount of \$4,939 to Drainage Maintenance in the Streets Maintenance Operating Budget is required to reflect the additional funding and expenditures for the inserts (Attachment 4). In addition, the Budget Change will also recognize the receipt for the Federal Grant funds as a pass-through grant from ABAG.

Ongoing maintenance of the filters will be provided by REM under a separate contract. The annual cost for 15 units is \$1,755. This provides for the cleaning of inserts and the replacement of the filters three times annually. It is expected that over the remainder of the Fiscal Year, only two cleanings will occur resulting in a cost of \$1,160 for Fiscal Year 2009-2010. The City's Environmental Services Group determined that an application may be made to the State for recycled oil block grant funds to offset the maintenance cost. Therefore, the Budget Change will also address Recycled Oil Block Grant revenue and maintenance expenditure.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

Not Applicable

ATTACHMENTS:

1. Vicinity Map
2. Picture of Storm Inlet Filter Insert
3. Proposal by Revel Environmental Manufacturing, Inc. in the Amount of \$4,938.75 for Storm Inlet Filter Insert Installation
4. Budget Change
5. Resolution Approving the Contract For Services With The Association of Bay Area Governments For The Village Parkway Storm Drain Inlet Filter Insert Project

4 of 28

CITY OF DUBLIN BUDGET CHANGE FORM FY 2009 / 2010

CHANGE FORM # _____

New Appropriations (City Council Approval Required):
____ From Unappropriated Reserves (General Fund)

From New Revenues

Budget Transfers:

____ From Budgeted Contingent Reserve (1080-799.000)
____ Within Same Department Activity
____ Between Departments (City Council Approval Required)
____ Other

		Name: REVENUE: - Environmental - ARRA Fund - Intergovernmental - Federal GL Account #: 2311.0000.47101	\$ 4,939
		Name: EXPENSE: ARRA Fund - Street Maintenance - Capital- Improvements Not Buildings GL Account #: 2311.3201.73103	\$ 4,939
		Name: REVENUE: - Environmental - Measure D - State Grants Used Oil Recycling GL Account #: 2302.0000.47261	\$1,160
		Name: EXPENSE: Recycling Fund - Street Maintenance - Contract Services - Drainage Maintenance GL Account #: 2302.3201.64076	\$ 1,160

Fin Mgr/ASD: Paul J. [Signature] Date: 10/12/2009
Signature

REASON FOR BUDGET CHANGE ENTRY: At the City Council meeting on October 20, 2009 the City Council considered acceptance of a pass-through grant from the Association of Bay Area Governments (ABAG) to install 15 storm drain filters at a cost of \$4,939. This budget change will account for both the expenditure and the grant revenue. In addition the new filters will result in unbudgeted maintenance costs estimated at \$1,160 for Fiscal Year 2009-2010. This Budget Change will provide an appropriation for these costs. The proposed funding source for the maintenance costs is a California recycled oil block grant. The Budget also recognizes this special revenue source.

City Manager: _____ Date: _____
Signature

As Approved at the City Council Meeting on: Date: 10/20/2009

Mayor: _____ Date: _____
Signature

Posted By: _____ Date: _____
Signature

5928

RESOLUTION NO. - 09

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN

APPROVING CONTRACT FOR SERVICES WITH
THE ASSOCIATION OF BAY AREA GOVERNMENTS FOR THE
VILLAGE PARKWAY STORM DRAIN INLET FILTER INSERT PROJECT

WHEREAS, the Association of Bay Area Governments (ABAG) has obtained a grant in the amount of \$5,000,000 from the State Water Resources Control Board's State Clean Water Revolving Fund for the Bay Area Trash Capture Demonstration Project (Project); and

WHEREAS, the Project is intended as a pilot project to install and assess various types of trash capture equipment in storm drain systems throughout the Bay Area, and will assist local governments in meeting trash capture requirements under the upcoming Municipal Regional Permit for Stormwater to be issued by the San Francisco Bay Regional Water Quality Control Board; and

WHEREAS, the Project includes the installation of storm drain inlet filter inserts on Village Parkway from Amador Valley Boulevard to Brighton Drive, and the City of Dublin is eligible for a portion of the ABAG grant funds for use in purchasing and installing the filters; and

WHEREAS, ABAG has prepared a Contract For Services (Contract), under which the City will agree to install and maintain the filters and ABAG will agree to reimburse the City for these costs in an amount not to exceed \$5,000;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve the Contract between ABAG and the City of Dublin.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the Contract, attached hereto as Exhibit "A".

BE IT FURTHER RESOLVED that the City Clerk of the City of Dublin is hereby directed to transmit a certified copy of this Resolution, together with duplicate executed copies of the Contract, to ABAG for approval and processing.

PASSED, APPROVED AND ADOPTED this 20th day of October, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor

G:\NPDES\ABAG ARRA Tr

ATTACHMENT 5.

EXHIBIT B

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518
 PH (888) 526-4736 FAX (925) 676-8676
 Lic. No. 857410



INVOICE

DATE 4/22/2010 INVOICE NO. 14365

BILL TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

SHIP TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

P.O. NUMBER		TERMS	REP	SHIP	VIA	F.O.B.
		Net 30 days	MJS	4/22/2010	Fed Ex Freight	Concord, CA
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
5	Dublin Type "A"	TRITON Filter Configured for the standard Dublin Type "A" Catch Basin. (TR14(16")FOG/BFTG Cartridge Media System)			275.00	1,375.00T
5	Installation Chg	Furnish and Install Triton Filter Systems. Sales Tax			25.00 9.75%	125.00 134.06
Payment Approval						
Account # <u>2302 3201 64076</u>						CITY OF DUBLIN MAY 14 2010 RECEIVED FINANCE DEPT.
Project # _____						
Submitted <u>[Signature]</u>		Dept Head <u>[Signature]</u>		P. Officer _____		
Date <u>5-10-10</u>		Date <u>5-11-10</u>		Date _____		
Description <u>Five Triton filters for Dublin Type "A" Catch Basin Includes the filters and installation charge</u>						
It's been a pleasure working with you! Please remit to above address.					TOTAL	\$1,634.06

EXHIBIT C

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518
 PH (888) 526-4736 FAX (925) 676-8676
 Lic. No. 857410



INVOICE

DATE 4/22/2010 INVOICE NO. 14366

BILL TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

SHIP TO:

City of Dublin
 Village Parkway Project
 Dublin, CA 94568
 Attn: Mark Lander



P.O. NUMBER		TERMS	REP	SHIP	VIA	F.O.B.	
		Net 30 days	MJS	4/13/2010	Company Trk.	Concord, CA	
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT	
1	Service Prog. 2X Yr	2X A Year Service Program (Standard Package) This invoice represents that the catch basin filter inserts that have been serviced at the location above, have been done (for this time of year) in accordance with the manufacturers recommendations. The Service Checklist has also been attached for your records. (Please see Service Program for more details) (Qty of filters serviced: 16) (Service 1 of 2). Sales Tax			600.00	600.00	
					9.75%	0.00	
Payment Approval							
Account # <u>2302 3201 64076</u> Project # _____   _____ Submitted <u>5-11-10</u> Dept Head <u>5-11-10</u> P. Officer _____ Date Date Date Description <u>Operations & Maintenance (O+M) inspections for 16 REM filters</u>							
CITY OF DUBLIN							
MAY 14 2010							
RECEIVED FINANCE DEPT.							
It's been a pleasure working with you! Please remit to above address.					TOTAL	\$600.00	

EXHIBIT D

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518
 PH (888) 526-4736 FAX (925) 676-8676
 Lic. No. 857410



RECEIVED
 MAY 17 2010
 PUBLIC WORKS

INVOICE



DATE 5/13/2010 INVOICE NO. 14454

BILL TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

SHIP TO:

Sports Grounds
 Civic Plaza
 Dublin, Ca

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.
	Net 30 days	MJS	5/11/2010	Truck	
QUANTITY	ITEM CODE	DESCRIPTION		PRICE EACH	AMOUNT
1	Service Prog. 2X Yr	2X A Year Service Program (Standard Package) This invoice represents that the catch basin filter inserts that have been serviced at the location above, have been done (for this time of year) in accordance with the manufacturers recommendations. The Service Checklist has also been attached for your records. (Please see Service Program for more details) (Qty of filters serviced:2) (Service 2 of 2). Sales Tax		80.00	80.00
				9.75%	0.00
Payment Approval					
Account # <u>2302</u> <u>3201</u> <u>64076</u>					
Project # _____					
				_____	
Submitted		Dept Head		P. Officer	
<u>5-18-10</u>		<u>5-18-10</u>		_____	
Date		Date		Date	
Description <u>Operation + Maintenance of</u>					
<u>2 filters at Dublin Sports Grounds-</u>					
<u>Serviced in May '10.</u>					
It's been a pleasure working with you! Please remit to above address.					TOTAL \$80.00

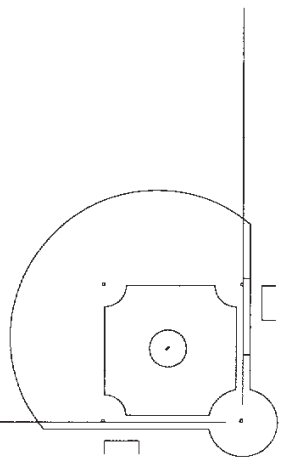


REM
www.remfiltrax.com

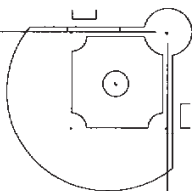
Revel Environmental Manufacturing Inc.
sales@remfiltrax.com (888) 526-4736 Lic. No. 857410

Northern California
960-B Detroit Avenue
Concord, California 94518
P: (925) 676-4736
F: (925) 676-8676

Southern California
2110 South Grand Avenue
Santa Ana, California 92705
P: (714) 537-2676
F: (714) 537-2679



Bathroom



2

1

Dumpster

Curb/Sidewalk

Civic Plaza

Dublin Blvd

EXHIBIT E

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518
 PH (888) 526-4736 FAX (925) 676-8676
 Lic. No. 857410



INVOICE

DATE 6/30/2010 INVOICE NO. 14817

BILL TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

SHIP TO:

City of Dublin
 Village Parkway Project & Iron Horse Pkwy
 Dublin, CA 94568
 Attn: Mark Lander

RECEIVED

SEP 16 2010

PUBLIC WORKS

P.O. NUMBER		TERMS	REP	SHIP	VIA	F.O.B.	
		Net 30 days	MJS	6/25/2010	Company Trk.	Concord, CA	
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT	
1	Service Prog. 2X Yr	2X A Year Service Program (Standard Package) This invoice represents that the catch basin filter inserts that have been serviced at the location above, have been done (for this time of year) in accordance with the manufacturers recommendations. The Service Checklist has also been attached for your records. (Please see Service Program for more details) (Qty of filters serviced: 22) (Service 2 of 2). Sales Tax			840.00	840.00	
					9.75%	0.00	
Payment Approval							
<p style="text-align: center;">CITY OF DUBLIN</p> <p style="text-align: center;">OCT 1 2010</p> <p style="text-align: center;">RECEIVED FINANCE DEPT.</p>		Account #	<u>2307 3201</u>	<u>64076</u>			
		Project #	_____	_____			
		Submitted	<u>[Signature]</u>	<u>[Signature]</u>	_____		
		Date	<u>9/27/10</u>	<u>10/2/10</u>	_____		
		Description	<u>Servicing fee for 22 catch basin filter inserts (Dublin Transit Center and Village Pkw)</u>				
<p>It's been a pleasure working with you! Please remit to above address.</p>					TOTAL	\$840.00	

EXHIBIT F

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518
 PH (888) 526-4736 FAX (925) 676-8676
 Lic. No. 857410



INVOICE

DATE 10/18/2010 INVOICE NO. 15216

BILL TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

SHIP TO:

City of Dublin
 Village Parkway Project, Iron Horse Pkwy
 Sports Complex & Bright Horizon's School
 Dublin, CA 94568
 Attn: Mark Lander

P.O. NUMBER		TERMS	REP	SHIP	VIA	F.O.B.
		Net 30 days	MJS	10/12/2010	Company Trk.	Concord, CA
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
1	Service Prog. 3X Yr	3X A Year Service Program (Standard Package) This invoice represents that the catch basin filter inserts that have been serviced at the location above, have been done (for this time of year) in accordance with the manufacturers recommendations. The Service Checklist has also been attached for your records. (Please see Service Program for more details) (Qty of filters serviced: 24) (Service 3 of 3). Sales Tax			960.00	960.00
					9.75%	0.00
Payment Approval						
Account # <u>2302</u> <u>3201</u> <u>164076</u>						
Project # _____						
<u>ML</u> <u>ML</u> Submitted Dept Head P. Officer <u>1-14-11</u> <u>1/13/11</u> Date Date Date Description <u>servicing fee for</u> <u>24 catch basin filter inserts (Village</u> <u>Pkwy, Transit Center, Sports Center Dublin Blvd.</u>						
It's been a pleasure working with you! Please remit to above address.					TOTAL	\$960.00

EXHIBIT G

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518

PH (888) 526-4736 FAX (925) 676-8676

Lic. No. 857410



INVOICE

DATE INVOICE NO.

4/13/2011 16193

BILL TO:

City of Dublin
 Attn: Mark Lander
 100 Civic Plaza
 Dublin, CA 94568

SHIP TO:

City of Dublin
 100 Civic Plaza
 Dublin, CA 94568
 Attn: Mark Lander

P.O. NUMBER		TERMS	REP	SHIP	VIA	F.O.B.
		Net 30 days	MJS	4/7/2011	Company Trk.	Concord, CA
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
8	Dublin Type "A"	TRITON Filter Configured for the standard Dublin Type "A" Catch Basin. (Price includes installation)			300.00	2,400.00T
		City of Dublin - Village Parkway Project Sales Tax			9.75%	234.00
Payment Approval						
		Account # <u>0302 23201</u>		64076		
		Project # _____		_____		
		<u>ma</u>		<u>[Signature]</u>		
		Submitted <u>5-16-11</u>		Dept Head <u>5/16/11</u>		P. Officer _____
		Date		Date		Date
		Description <u>Purchase and installation of 8 REM triton filters in catch basins along Village Pky.</u>				
It's been a pleasure working with you! Please remit to above address.					TOTAL	\$2,634.00

EXHIBIT H

V-002808

Revel Environmental Manufacturing, Inc.
 960 B Detroit Avenue
 Concord, CA 94518
 PH (888) 526-4736 FAX (925) 676-8676
 Lic. No. 857410



INVOICE

DATE 5/25/2011 INVOICE NO. 16473

BILL TO:

City of Dublin
 Attn: Mark Lander
 100 Civic Plaza
 Dublin, CA 94568

SHIP TO:

City of Dublin
 Village Parkway Project, Iron Horse Pkwy
 Sports Complex & Bright Horizon's School
 Dublin, CA 94568
 Attn: Mark Lander

P.O. NUMBER		TERMS	REP	SHIP	VIA	F.O.B.
		Net 30 days	MJS	5/13/2011	Company Trk.	Concord, CA
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
1	Service Prog. 3X Yr	3X A Year Service Program (Standard Package) This invoice represents that the catch basin filter inserts that have been serviced at the location above, have been done (for this time of year) in accordance with the manufacturers recommendations. The Service Checklist has also been attached for your records. (Please see Service Program for more details) (Qty of filters serviced: 25) (Service 2 of 3). Sales Tax			960.00	960.00
					9.75%	0.00
Payment Approval						
Account # <u>2302 3201 64076</u>						
Project # _____						
<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <u>M.A.</u> Submitted <u>6-2-11</u> Date </div> <div style="text-align: center;"> Dept Head <u>6/2/11</u> Date </div> <div style="text-align: center;"> P. Officer _____ Date </div> </div>						
Description <u>Service fee for cleaning out the filters in city - 25 filters services</u>						
It's been a pleasure working with you! Please remit to above address.					TOTAL	\$960.00

EXHIBIT I



Alameda Countywide Clean Water Program

A Consortium of Local Agencies

951 Turner Court, Hayward CA 94545-2698
(510) 670-5543 FAX (510) 670-5262

RECEIVED

NOV 20 2009

PUBLIC WORKS

November 17, 2009

Member
Agencies:

Alameda

Albany

Berkeley

Dublin

Emeryville

Fremont

Hayward

Livermore

Newark

Oakland

Piedmont

Pleasanton

San Leandro

Union City

Alameda
County

Alameda
County
Flood Control
and Water
Conservation
District

Zone 7 of
the Alameda
County
Flood Control
District

Melissa Morton
Director of Public Works
City of Dublin
100 Civic Plaza
Dublin, CA 94568-2658

**SUBJECT: INVOICE FOR ALAMEDA COUNTYWIDE CLEAN WATER
PROGRAM COSTS FOR FISCAL YEAR 2009/2010**

Dear Ms. Morton:

Please find the attached invoice for your city's share of the Alameda Countywide Clean Water Program Costs for FY 2009/2010. The invoice is based on the FY 2009/2010 budget and cost allocation (attached). If you have any questions, please contact me at (510) 670-6548.

Sincerely yours,

James Scanlin
Program Manager

Attachments 2

THE COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY

INVOICE 09M11:10
November 18, 2009

FISCAL DIVISION

399-A Elmhurst Street, 3rd Floor
Hayward, CA 94544

Tax ID 946000501

Customer Code: DUBLCW

MELISSA MORTON
CITY OF DUBLIN
100 CIVIC PLAZA
DUBLIN, CA. 94568

Description of Services

ALAMEDA COUNTYWIDE CLEAN WATER PROGRAM CONTRIBUTION.

ANNUAL INVOICE FY 2009/2010 \$43,645.00

ACCOUNT NUMBER: 459520-21801-270301-50201

Please make remittance payable to "Treasurer of Alameda County"

Please expedite payment so that it can be received by December 31, 2009.

Send to: Alameda County Public Works Agency
 Fiscal Division
 399 Elmhurst Street
 Hayward, CA 94544

Invoice Total: \$43,645.00

PLEASE MAKE REMITTANCE PAYABLE TO "TREASURER OF ALAMEDA COUNTY",
SEND TO ABOVE ADDRESS.

PLEASE REFERENCE ABOVE INVOICE # ON PAYMENT

The undersigned hereby certifies that the above claim is true and correct.



HOLLY LASSALLE

FSS II

(510) 670-5176

cc

**Alameda Countywide Clean Water Program Costs for
Fiscal Year 2009/2010**

Participant	Budget Share %	Budget Share \$
Alameda	3.97%	\$ 69,348
Alameda County	11.82%	\$ 206,563
Albany	1.00%	\$ 17,470
Berkeley	4.87%	\$ 85,159
Dublin	2.50%	\$ 43,645
Emeryville	1.00%	\$ 17,470
Fremont	15.92%	\$ 278,106
Hayward	11.05%	\$ 192,987
Livermore	5.65%	\$ 98,674
Newark	2.69%	\$ 47,028
Oakland	21.58%	\$ 376,920
Piedmont	1.00%	\$ 17,470
Pleasanton	5.12%	\$ 89,369
San Leandro	4.82%	\$ 84,216
Union City	5.02%	\$ 87,634
ACFCD	1.00%	\$ 17,470
Zone 7	1.00%	\$ 17,470
TOTAL	100.00%	\$ 1,747,000

EXHIBIT J



Alameda Countywide Clean Water Program

A Consortium of Local Agencies

951 Turner Court, Hayward CA 94545-2698
(510) 670-5543 FAX (510) 670-5262

RECEIVED

DEC 15 2010

PUBLIC WORKS

December 10, 2010

Member
Agencies:

Alameda

Albany

Berkeley

Dublin

Emeryville

Fremont

Hayward

Livermore

Newark

Oakland

Piedmont

Pleasanton

San Leandro

Union City

Alameda
County

Alameda
County
Flood Control
and Water
Conservation
District

Zone 7 of
the Alameda
County
Flood Control
District

Mark Lander
City Engineer
City of Dublin
100 Civic Plaza
Dublin, CA 94568-2658

**SUBJECT: INVOICE FOR ALAMEDA COUNTYWIDE CLEAN WATER
PROGRAM COSTS FOR FISCAL YEAR 2010/2011**

Dear Mr. Lander:

Please find the attached invoice for your city's share of the Alameda Countywide Clean Water Program Costs for FY 2010/2011. The invoice is based on the FY 2010/2011 cost allocation (attached). If you have any questions, please contact me at (510) 670-6548.

Sincerely yours,

James Scardin
Program Manager

Attachments 2

THE COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY

INVOICE 10M12:11
December 14, 2010

FISCAL DIVISION

399-A Elmhurst Street, 3rd Floor
Hayward, CA 94544

Tax ID 946000501

Customer Code: DUBLCW

MELISSA MORTON

CITY OF DUBLIN

100 CIVIC PLAZA

DUBLIN, CA. 94568

Description of Services

ALAMEDA COUNTYWIDE CLEAN WATER PROGRAM CONTRIBUTION.

ANNUAL INVOICE FY 2010/2011 \$25,804.00

ACCOUNT NUMBER: 459520-21801-270301-50201

Please make remittance payable to "Treasurer of Alameda County"

Please expedite payment so that it can be received by January 15, 2011.

Send to: Alameda County Public Works Agency
Fiscal Division
399 Elmhurst Street
Hayward, CA 94544

*O.K.
M2 12/14/10
12-15-10*

Invoice Total: \$25,804.00

PLEASE MAKE REMITTANCE PAYABLE TO "TREASURER OF ALAMEDA COUNTY",
SEND TO ABOVE ADDRESS.

PLEASE REFERENCE ABOVE INVOICE # ON PAYMENT

The undersigned hereby certifies that the above claim is true and correct.

Holly Lassalle

HOLLY LASSALLE

FSS II

(510) 670-5176

cc

**Alameda Countywide Clean Water Program Charges for
Fiscal Year 2010/2011**

Participant	Cost Share %	Cost Share \$	Credit¹	FY 10-11 Invoice Amount
Alameda	3.97%	\$ 69,348		\$69,348
Alameda County	11.82%	\$ 206,564		\$206,564
Albany	1.00%	\$ 17,470		\$17,470
Berkeley	4.87%	\$ 85,159		\$85,159
Dublin	2.50%	\$ 43,645	\$17,841	\$25,804
Emeryville	1.00%	\$ 17,470		\$17,470
Fremont	15.92%	\$ 278,106	\$100,000	\$178,106
Hayward	11.05%	\$ 192,987		\$192,987
Livermore	5.65%	\$ 98,674		\$98,674
Newark	2.69%	\$ 47,028		\$47,028
Oakland	21.58%	\$ 376,920		\$376,920
Piedmont	1.00%	\$ 17,470		\$17,470
Pleasanton	5.12%	\$ 89,369		\$89,369
San Leandro	4.82%	\$ 84,216		\$84,216
Union City	5.02%	\$ 87,634		\$87,634
ACFCD	1.00%	\$ 17,470		\$17,470
Zone 7	1.00%	\$ 17,470		\$17,470
TOTAL	100.00%	\$ 1,747,000	\$117,841	\$1,629,159

1) The Program's Management Committee authorized the cities of Dublin and Fremont to pay the law firm of Meyers/Nave, for legal services related to the member agencies' pursuit of a test claim with the State Commission on Unfunded Mandates, in exchange for a credit against their FY 2010-2011 Program contribution.

EXHIBIT K

San Francisco Estuary Partnership Bay Area-wide Trash Capture Project

Notice of Acceptance no. Dublin0001-01

The Notice of Acceptance no. is the purchase order no. followed by -01, -02, -03 and so on. If multiple Notice of Acceptance forms are required to document completion of all installations on Purchase Order no. Dublin0001, please number additional notices sequentially (e.g., CityName0001-01, CityName0001-02).

THIS NOTICE OF ACCEPTANCE WILL BE SUBMITTED FOR PAYMENT WHEN SIGNED BY REPRESENTATIVES OF THE MUNICIPALITY, THE VENDOR, AND SFEP/ABAG.

The City of Dublin has received trash capture devices listed on page 2, pursuant to Purchase Order no. Dublin0001, dated 6/21/11.

This form verifies installation of trash capture device(s), as required by the State Water Resources Control Board Clean Water State Revolving Fund Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project, Agreement No. 09-823-550.

Authorized representatives of the City of Dublin and Contech Construction Products Inc., have inspected the listed trash capture devices and find them to be in good working condition, with no defects and in conformity with the purchase order including any special conditions from the purchase order.

The City of Dublin accepts the listed trash capture devices and authorizes ABAG to pay the vendor the total amount shown below.

Payment will be based on this NOA. If vendor is using its own invoicing system, the invoice may be attached to this NOA for payment.

For each device, enter the installation date and unit price on page 2. Calculate the total cost, tax, and shipping and enter below on page 1.

After filling out this form, sign and mail the original to:

Janet Cox: San Francisco Estuary Partnership
1515 Clay St. Suite 1400 Oakland CA, 94612

Total price (from entries on following page) \$54,917.00

Tax: 4,805.24

Tax ~~8,535.41~~

This Notice confirms acceptance ONLY of items that have been installed and have not been included in previous Notices of Acceptance.

Shipping/Delivery, (if n/a, input 0) 0

Total: \$59,722.24

Total ~~\$60,271.41~~

Approved by: [Signature] Date: 12-14-11
(Signature)

Name (print): Mark Lander, City Engineer Phone: 925-833-6635
(Municipal representative)

Email: mark.lander@dublin.ca.gov

Approved by: [Signature] Date: 12/19/11
(Signature)

Name (print): CURTIS KRUGER Phone: 415/887-8587
(Vendor representative)

Email: krugerc@contech-cpi.com

Approved by: [Signature] Date: 12/22/2011
(SFEP/ABAG) Janet Cox

Order Details For each installed device, enter the installation date and unit price. Calculate the total cost, tax and shipping and enter on page 1.

Item No.	Device ID No.	Description/Model <small>CDS=Continuous Deflective Separator</small>	Location <small>Examples: 1515 Clay St. Oakland, CA or SE corner 16th St. and Clay St. Oakland, CA</small>	Estimated	Installation	Unit Price
				Date Installed <small>mm/dd/yy</small>		
1	CCP-1HFj	CDS	6600 Golden Gate Drive, Dublin, CA	9/21/11	City/County	39,912.00
2	CCP-1HFd2	Diversion Box	6600 Golden Gate Drive, Dublin, CA	9/21/11	City/County	15,000.00
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EXHIBIT L

RESOLUTION NO. 153 - 09

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**APPROVING CONTRACT FOR SERVICES WITH
THE ASSOCIATION OF BAY AREA GOVERNMENTS FOR THE
VILLAGE PARKWAY STORM DRAIN INLET FILTER INSERT PROJECT**

WHEREAS, the Association of Bay Area Governments (ABAG) has obtained a grant in the amount of \$5,000,000 from the State Water Resources Control Board's State Clean Water Revolving Fund for the Bay Area Trash Capture Demonstration Project (Project); and

WHEREAS, the Project is intended as a pilot project to install and assess various types of trash capture equipment in storm drain systems throughout the Bay Area, and will assist local governments in meeting trash capture requirements under the upcoming Municipal Regional Permit for Stormwater to be issued by the San Francisco Bay Regional Water Quality Control Board; and

WHEREAS, the Project includes the installation of storm drain inlet filter inserts on Village Parkway from Amador Valley Boulevard to Brighton Drive, and the City of Dublin is eligible for a portion of the ABAG grant funds for use in purchasing and installing the filters; and

WHEREAS, ABAG has prepared a Contract For Services (Contract), under which the City will agree to install and maintain the filters and ABAG will agree to reimburse the City for these costs in an amount not to exceed \$5,000.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve the Contract between ABAG and the City of Dublin.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the Contract, attached hereto as **Exhibit A**.

BE IT FURTHER RESOLVED that the City Clerk of the City of Dublin is hereby directed to transmit a certified copy of this Resolution, together with duplicate executed copies of the Contract, to ABAG for approval and processing.

PASSED, APPROVED AND ADOPTED this 20th day of October, 2009, by the following vote:

AYES: Councilmembers Biddle, Hart, Hildenbrand, Scholz, and Mayor Sbranti

NOES: None

ABSENT: None

ABSTAIN: None



Mayor

ATTEST:



City Clerk

ASSOCIATION OF BAY AREA GOVERNMENTS

6 of 28

CONTRACT FOR SERVICES

This contract is made and entered into effective _____, by and between the Association of Bay Area Governments (ABAG), a public entity formed under the California Joint Exercise of Powers Act, Government Code Section 6500, et seq. and City of Dublin (Contractor).

1. Employment of Contractor

ABAG agrees to engage Contractor and Contractor agrees to undertake, carry out, and complete in a satisfactory and proper manner certain work and services set forth in the attached Exhibit A, Scope of Work, which is incorporated herein.

2. Time of Performance

Contractor shall begin performance of the services set forth in Exhibit A upon receipt of Notice to Proceed or no later than November 30, 2009. Such services shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all construction shall be completed by January 31, 2010, and all other services and a final construction project invoice shall be completed and submitted to ABAG by February 15, 2010.

3. Subcontractors

Contractor is fully responsible for all work performed under this Contract including subcontracted work. Subcontract terms and conditions must include all applicable contract terms and conditions as provided herein. Subcontractor agreements require prior approval by ABAG, unless the subcontract is already part of the contract. Any amendments to subcontracts must be approved by ABAG. In obtaining a subcontract, the Contractor must obtain at least three (3) competitive bids, or comply with the provisions of Government Code Section 4525 et seq., as applicable, or provide written justification for nonfulfillment of these requirements. Upon termination of any subcontract, ABAG shall be notified immediately.

4. Compensation and Method of Payment

Contractor shall be compensated for all services to be rendered under this Contract in a maximum sum not to exceed five thousand dollars (\$5,000.00). Compensation by ABAG to Contractor shall be payable as set forth in attached Exhibit A. Contractor shall submit invoices for payment no more frequently than once monthly and shall be paid in arrears. Invoices shall be submitted in accordance with "Invoicing Procedures" as set forth in Exhibit A. ABAG shall review Contractor's invoices and approve or disapprove them for payment, which shall be made by ABAG as appropriate.

5. Availability of Funds

This Contract shall be contingent upon funds being appropriated to ABAG for the purposes of this contract. ABAG shall pay invoices within fourteen (14) days of receiving payment from Clean Water State Revolving Fund (CWSRD). If sufficient funds are not made available, ABAG has the option of immediately voiding this contract by giving written notice of same to Contractor.

6. Insurance Requirements

Contractor shall, at its own expense, obtain and maintain in effect at all times during the life of this Contract the insurance coverages set forth in Exhibit B, which is hereby made part of this Contract.

7. Findings Confidential

To the extent allowed by law, including but not limited to the California Public Records Act, any reports, information, data, etc. given to, prepared, or assembled by Contractor shall be kept as confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of

ABAG.

8. Entire Agreement

This contract and its attachment are entire as to the services to be rendered under it. This contract supersedes any and all other contracts either oral or in writing between ABAG and Contractor with respect to the subject matter hereof, including the Prior Agreement, and contains all of the covenants and contracts between the parties with respect to such matters. ABAG and Contractor acknowledge that no representations, inducements, promises or agreements, orally or otherwise, have been made to any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contracts, statement, or promise not contained in this Contract shall be valid or binding.

9. Conflict of Interest

Contractor covenants that presently there is no interest, and none shall be acquired, direct or indirect, which conflicts in any manner or degree with its performance of services as required under this Contract. Contractor further covenants that in the performance of this Contract, no person having any interest shall be employed by it.

10. Notices

Any notices, demands, or elections required or permitted to be given or made hereunder shall be in writing, shall be personally delivered or mailed by certified or registered mail, return receipt requested, addressed to the respective parties as follows:

ABAG

San Francisco Estuary Partnership
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn.: Janet Cox
PH: (510) 622-2334 FAX: (510) 622-2459
Email: JanetC@abag.ca.gov

and

Contractor

City of Dublin
Attention: Mark Lander
100 Civic Plaza
Dublin, CA 94568
PH: (925) 833-6630 FAX: (925) 829-9248
Email: Mark.Lander@ci.dublin.ca.us

11. Binding on Heirs

This contract shall be binding upon the heirs, successors, assigns, or transferees, of ABAG or Contractor, as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Contract other than as provided above.

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12. Other Contract Provisions

This Contract shall be subject to the Standard Contract Provisions and Federal ARRA Contract Provisions as set forth in Exhibits B and C, respectively, which are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

Dated: _____

City of Dublin

City Manager

(Tax ID #)

Dated: _____

ASSOCIATION OF BAY AREA GOVERNMENTS:

Henry L. Gardner
Executive Director

Approved as to legal form and content:

Kenneth K. Moy, Legal Counsel
Association of Bay Area Governments

Approved as to legal form and content:

City Attorney, City of Dublin

Attest:

District Clerk

Date: _____

EXHIBIT A

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SCOPE OF WORK

OVERVIEW

The Project generally consists of installing storm water treatment devices in catch basins in Dublin, California. These devices will meet the Los Angeles Regional Water Board definition of Full Trash Capture Devices, which are defined as any device or series of devices that trap all particles retained by a 5mm mesh screen and that has a hydraulic design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour storm in the storm drainage catchment area draining to the device(s). The Project will install 15 storm drain inlet filter inserts on Village Parkway, between Amador Valley Boulevard and Brighton Drive, a high-trash generating area. The inserts will be Triton TH-Series for Type A Inlets, manufactured by REM, Inc., Concord, CA. Village Parkway is a four-lane arterial street.

1. The Recipient agrees to initiate construction no later than **November 30, 2009**. The City of Dublin shall notify the Association of Bay Area Governments in writing when construction begins. TIME IS OF THE ESSENCE. FAILURE TO MEET THIS DATE WILL RESULT IN AUTOMATIC TERMINATION OF THIS AGREEMENT AND IMMEDIATE REPAYMENT OF ANY FUNDS DISBURSED HEREUNDER.
2. Completion of Construction date is hereby established as January 31, 2010. The City of Dublin shall notify the Association of Bay Area Governments in writing upon completion of construction and inspection by City staff.
3. The Project Completion date is hereby established as February 15, 2010.
4. The Project, commonly known as Bay Area-wide Trash Capture Demonstration Project, will retrofit Bay Area storm drainage infrastructure by installing trash capture devices, in order to address trash impairment of San Francisco Bay and local creeks. The Project will facilitate early compliance with the San Francisco Bay Regional Water Quality Board's Municipal Regional Stormwater Permit (pending) affecting Phase I communities, as more particularly described in the financial assistance application of the Agency and the accepted plans and specifications of the Project, if any.
5. This project enables the Bay Area-wide Trash Capture Demonstration Project, funded by the American Recovery and Reinvestment Act monies awarded by the State Water Resources Control Board's Clean Water State Revolving Fund, to meet the State Water Board's requirement that construction begin no later than November 30, 2009. Incorporated by reference into this Agreement are the following documents:
 - a. The Facility Plan Approval and Preliminary Funding Commitment for the Bay Area-wide Trash Capture Demonstration Project, signed by representatives of the State Water Board and the Association of Bay Area Governments;
 - b. The Project Finance Agreement for State Revolving Fund Project No.C-06-6441-110, the Bay Area-wide Trash Capture Demonstration Project, signed by representatives of the State Water Board and the Association of Bay Area Governments;
 - c. The Final Plans and Specifications for the City of Dublin's trash capture devices to be installed under terms of this contract, which are the basis for the construction contract to be awarded by the City of Dublin; and

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- d. The Notice of Exemption from the California Environmental Quality Act, filed by the Association of Bay Area Governments for the Bay Area-wide Trash Capture Demonstration Project, of which this project is a part.
- 6. Maintenance: The City of Dublin shall operate and maintain the devices properly for 2 years of the design life of the devices, according to Exhibit C, Section 4.14.
- 7. Trash Monitoring and Reporting: The City of Dublin shall monitor and report trash collection from the devices according to protocols and procedures to be developed by the Bay Area-wide Trash Capture Demonstration Project.

TABLE OF ITEMS FOR REVIEW (DELIVERABLES SCHEDULE)

DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
PLANNING AND DESIGN		
Final Plans and Specifications		November 1, 2009
Project Construction Contract Award for initial construction/installation	November 23, 2009	
CONSTRUCTION		
Photos of Construction Work		Quarterly, as applicable
Final Inspection Notes		Quarterly, as applicable
MONITORING		
Post-construction monitoring data		Annually, or as required
INVOICING		
PROJECT REPORTING		
Report to ABAG in writing when construction begins	By November 30, 2009	
Report to ABAG in writing when construction is completed	By January 31, 2010	

INVOICING PROCEDURES

Contractor shall prepare and submit to ABAG, no more frequently than quarterly, a statement of work performed in that period. Each invoice shall specify in detail number of hours worked and billing rate for each employee working on the project under the specific task worked. Supporting documentation for other direct costs (e.g., receipts) must be submitted with each invoice to support request for grant funds as well as

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to support matching funds. Contractor shall be paid in arrears.

PROJECT FINANCING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is FIVE THOUSAND dollars and no cents (\$5,000).
2. Project Funding. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of FIVE THOUSAND dollars and no cents (\$5,000).
3. The term of this agreement is from the date specified on the first page of this document to February 15, 2010.
5. Budget costs are as follows:

	ARRA FINANCING	TOTAL
Direct Project Expenses	\$5,000.00	\$5,000.00
TOTAL	\$5,000.00	\$5,000.00

EXHIBIT B

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STANDARD CONTRACT PROVISIONS

1. Conflict of Interest. No employee, officer, or agent of ABAG shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - a) The employee, officer or agent;
 - b) Any member of his or her immediate family;
 - c) His or her partner; or
 - d) An organization which employs, or is about to employ, any of the above has a financial or other interest in the firm selected for award.

ABAG's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
2. Extensions of Time. The granting of or acceptance of extensions of time to complete performance by Contractor will not operate as a release to Contractor or otherwise modify the terms and conditions of this Contract.
3. Headings. The descriptive headings used in this Contract are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
4. Prohibited Interest. Contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
5. Remedies Cumulative. The remedies conferred by this Contract upon ABAG are not intended to be exclusive, but are cumulative and in addition to all other remedies provided by law.
6. Severability. Should any part of this Contract be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Contract, which shall continue in full force and effect; provided that, the remainder of this Contract can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
7. Insurance Requirements. Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor may satisfy all of the requirements of this Section 7 and of Section 8 by documentation of its membership in a California government agency self-insurance risk pool with coverage at least as broad as the Insurance Requirements set out in this Contract.
 - a. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - 1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
 - 2) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
 - 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4) Errors and Omissions Liability insurance appropriate to the Contractor's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability. The City is not required to obtain Errors and Omissions Liability insurance for work and services provided by its own employees or officials.

b. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

- 1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- 3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. At the option of ABAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects ABAG, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to ABAG guaranteeing payment of losses and related investigations, claim administration and defense expenses. (Including operations, products and completed operations, as applicable.).

d. Other Insurance Provisions. The Contractor will cause its self-insurance government agency risk pool, to provide documentation of the following:

- 1) ABAG, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.
- 2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects ABAG, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by ABAG, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- 3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG.
- 4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

e. Acceptability of Insurers. Based on Contractor's representation that its self-insurance agency risk pool is solvent and funded at prudent levels, ABAG accepts the coverage provided in lieu of commercial insurance.

f. Verification of Coverage. Contractor shall furnish ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

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EXHIBIT C

FEDERAL ARRA CONTRACT PROVISIONS

ARTICLE I: DEFINITIONS

“Recipient” as used in Exhibits C, C-2, C-3, C-4 and C-5 is the City of Dublin.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Recipient Commitments.

The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance.

2.2 Completion of Project.

The Recipient agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A.

2.3 Project Certification.

The Recipient shall prepare a Project Certification that includes information collected by the Recipient in accordance with the Bay Area-wide Trash Capture Demonstration Project monitoring and reporting plan, a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program. The Project Certification shall follow the general format provided by the Bay Area-wide Trash Capture Demonstration Project.

Failure to submit a Project Certification, an affirmative certification, or a corrective action report that meets the above requirements and is satisfactory to the Division within fifteen (15) months of the Project Completion date will cause the State Water Board to stop processing any pending or future applications for new financial assistance, withhold payments on any existing financial assistance, and begin administrative proceedings pursuant to sections 13267 and 13268 of the Water Code.

2.4 Award of Construction Contracts.

(a) The Recipient agrees to award the prime construction contract no later than the date specified in Exhibit A. Failure to meet this date will have serious consequences, as specified in Exhibit B.

(b) The Recipient agrees to promptly notify the ABAG Contract Manager in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project.

(c) The Recipient agrees to make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not reasonably deny such a timely request, but the Division will deny requests received after this time.

2.5 Notice. The Recipient agrees to promptly notify the ABAG Contract Manager in writing of:

(a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Recipient’s revenues used for operations, maintenance, and repairs of the Project during its useful life.

- (b) Any substantial change in scope of the Project. The Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the State Water Board SRF Division and the Division has given written approval for such change;
- (c) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (d) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the ABAG Contract Manager. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- (g) Any monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;
- (h) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days notice; and,
- (i) Completion of Construction of the Project, and actual Project Completion.

2.6 Project Access.

The Recipient agrees to insure that ABAG, the State Water Board, the Governor of the State, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the life of the Project. The Recipient acknowledges that the Project records and locations are public records.

2.7 Project Completion; Initiation of Operations.

Upon Completion of Construction of the Project, the Recipient agrees to expeditiously initiate Project operations. The Recipient agrees to make all reasonable efforts to meet the Project Completion date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by ABAG upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Project Completion date no less than ninety (90) days prior to the Project Completion date. ABAG will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

2.8 Continuous Use of Project; Lease or Disposal of Project.

The Recipient agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the ABAG and the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all Project Funds together with accrued interest and any penalty assessments which may be due.

2.9 Reports.

- (a) Quarterly Reports. The Recipient agrees to expeditiously provide status reports no less frequently than

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quarterly, or as required by the Bay Area Trash Capture Demonstration Project. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed; a listing of change orders including amount, description of work, and change in contract amount and schedule; any problems encountered, proposed resolution, schedule for resolution, status of previous problem resolutions, and number of jobs created or preserved due to the Project.

(b) As Needed Reports. The Recipient agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required by ABAG or the Division, including but not limited to material necessary or appropriate for evaluation of the CWSRF Program or to fulfill any reporting requirements of the federal government.

2.11 Records.

(a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Recipient agrees to:

- (1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
- (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
- (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
- (6) If a Force Account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.

(b) The Recipient shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Recipient shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of six (6) years after repayment of Project Funds, if any, or six (6) years after Project Completion if no repayment is required. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the USEPA, the Office of Inspector General, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement.

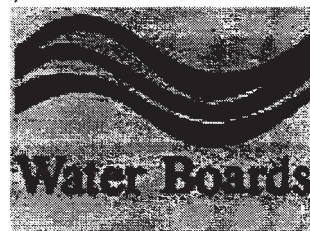
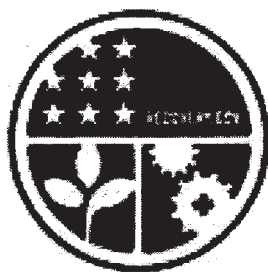
2.12 Audit.

The Recipient shall comply with the audit requirements in the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

2.13 Signage.

The Recipient shall post project posters inside its city hall and by posting notice on the its website until the Completion of Construction date specified in Exhibit A. Both posters and website notices shall include the following color logos:

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(logos available from the Division) and the following disclosure statement:

Funding for this project has been provided in full or in part by the American Recovery and Reinvestment Act of 2009 and the Clean Water State Revolving Fund, through an agreement with the State Water Resources Control Board.

The Project poster and website notice may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the posters and website notice. The poster and website notice shall be prepared in a professional manner.

Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code, § 7550, 40 CFR § 31.20.)

ARTICLE III: FINANCING PROVISIONS

3.1 Amounts Payable by the Recipient.

(a) Contingent Obligation to Repay Project Funds. The Recipient's obligation to repay Project Funds is forgiven contingent on meeting the requirements of ARRA and Exhibit A. Failure to meet these requirements for any reason whatsoever, within or outside the control of the Recipient, will result in automatic suspension and termination of this Agreement and immediate repayment of all disbursed Project Funds plus interest at the highest legal rate due immediately whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part.

(b) Where repayment is required, the Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board through ABAG, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board through ABAG of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action

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taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

(c) Project Costs. The Recipient agrees to pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

(d) Additional Payments. In addition to any repayment required to be made by the Recipient, the Recipient shall also pay to the State Water Board through ABAG the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments may be billed to the Recipient by the State Water Board through ABAG from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

(e) The Recipient agrees that it shall not be entitled to interest earned on undisbursed project funds.

3.2 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt or liability of the State and any such obligation shall be payable solely out of the moneys in the CWSRF made available pursuant to this Agreement.

3.3 Disbursement of Project Funds; Availability of Funds.

(a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board through ABAG of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
- (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with the budget amounts referenced in Exhibit B.
- (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt by the State Water Board of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.9 above.
- (4) The Recipient agrees that it will not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
- (5) Recipient shall spend Project Funds within thirty (30) days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board through ABAG and may be required to be returned to the State Water Board through ABAG or deducted from future disbursements.
- (6) Recipient shall request its final disbursement no later than six (6) months after Completion of Construction unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated. Notwithstanding any other

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provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

- (7) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations..

(b) The State Water Board's and ABAG's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, neither the State Water Board nor ABAG shall be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board and ABAG to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this contract are deferred because sufficient funds are unavailable, such disbursement will be made to the Recipient when sufficient funds do become available.

3.4 Withholding of Disbursements.

(a) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board through ABAG may retain an amount equal to ten percent (10%) of the financial assistance specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

(b) The State Water Board through ABAG may withhold all or any portion of the funds provided for by this Agreement in the event that:

- (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
- (2) The Recipient fails to maintain reasonable progress toward completion of the Project.

(c) For the purposes of this section, the terms "material violation" or "threat of material violation" include, but are not limited to:

- (1) Placement on the ballot of an initiative to reduce revenues necessary for operations, maintenance, and repairs to the Project during its useful life;
- (2) Passage of such an initiative;
- (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure revenues necessary for operations, maintenance, and repairs to the Project during its useful life; or
- (4) Any other action or lack of action that may be construed as a material violation or threat thereof.

3.5 Rates, Fees and Charges.

The Recipient agrees to comply with the rates, fees and charges requirements in the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

3.6 Accounting Standards and Federal Single Audit Act.

The Recipient agrees to comply with the accounting standards and the Federal Single Audit Act requirements in the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

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4.2 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

4.3 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4.4 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.

4.5 Compliance with Law, Regulations, etc.

(a) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Recipient agrees that, to the extent applicable, the Recipient will:

- (1) Comply with the provisions of the Categorical Exemption from California Environmental Quality Act requirements (15302(c)) associated with the Bay Area-wide Trash Capture Demonstration Project, for the term of this Agreement;
- (2) Comply with the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," as amended from time to time; and
- (3) Comply with and require its contractors and subcontractors to comply with the list of federal laws certified to by the Recipient.

4.6 Conflict of Interest.

The Recipient certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

4.7 Damages for Breach Affecting ARRA Compliance.

(a) In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government by reason of any arbitrage profits, the Recipient shall immediately reimburse the State Water Board or ABAG, as the case may be, in an amount equal to any damages paid by or loss incurred by the state due to such breach.

(b) In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government, the Recipient shall immediately reimburse the State Water Board or ABAG, as the case may be, in an amount equal to any damages paid by or loss incurred due to such breach.

4.8 Disputes.

(a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent

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jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.

(b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

(c) The Recipient shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

4.10 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State under this Agreement.

4.11 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board or ABAG.

4.12 Non-Discrimination Clause.

(a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

(b) The Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

(e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

4.14 Operation and Maintenance; Insurance.

The Recipient agrees to properly staff, operate and maintain all portions of the Project for 2 years of the design life of the devices in accordance with all applicable state and federal laws, rules and regulations. The

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Recipient certifies that it has in place and will maintain a reserve fund for this purpose.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund funded in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens.

4.15 Permits, Subcontracting, Remedies and Debarment.

The Recipient shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

Any subcontractors, outside associates, or consultants required by the Recipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Project Representative through ABAG during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates, or consultants, shall be subject to the prior written approval of the Division.

The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code, § 4477)

The Recipient certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- (b) Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

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4.16 Prevailing Wages.

The Recipient agrees to be bound by the provisions of the Davis-Bacon Act, as identified in Exhibit H of the CWRSF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

4.17 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. Neither the State Water Board nor ABAG will mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

4.18 Related Litigation.

Under no circumstances may a Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against ABAG, the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

4.19 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State and ABAG shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State and ABAG reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request. (40 CFR §§ 31.34, 31.36)

4.20 State and ABAG Reviews and Indemnification.

The parties agree that review or approval of Project plans and specifications by ABAG or the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless ABAG and the State Water Board against any loss or liability arising out of any claim or action brought against ABAG or the State Water Board from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of

the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against ABAG or the State Water Board with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

4.21 State Water Board and ABAG Action; Costs and Attorney Fees.

The Recipient agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to ABAG or the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by ABAG or the State Water Board shall not preclude ABAG or the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.

4.22 Termination; Immediate Repayment; Interest.

(a) This Agreement will automatically terminate without written notice if the Recipient fails to meet the timelines in Exhibit A and the ARRA provisions of Exhibit E. Under such circumstance, the Recipient shall immediately repay all Project Funds received under this Agreement, at the highest legal rate of interest.

(b) Additionally, this Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete repayment by the Recipient, at the option of the State Water Board through ABAG, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division. In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board through ABAG an amount equal to Installment Payments due hereunder, including accrued interest, and all penalty assessments due. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date of full repayment by the Recipient.

4.23 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

4.24 Useful Life of the Project.

The useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth in Exhibit A hereto.

4.25 Venue.

The State Water Board and the Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

4.26 Waiver and Rights of the State Water Board.

Any waiver of rights by ABAG or the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of ABAG or the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

EXHIBIT C-1

SPECIAL ENVIRONMENTAL, FINANCIAL AND OTHER PROGRAM CONDITIONS

The Recipient shall comply with the Special Environmental, Financial, and Other Program Conditions listed in Exhibit D of the CWRSF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

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EXHIBIT C-3

FEDERAL ARRA SPECIAL CONDITIONS

The Recipient shall comply with the Federal ARRA Conditions in Exhibit E of the CWRSF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project, with exception to section 1(f). Section 1(f) shall read:

(f) Reports. In addition to the reports specified in this Agreement, the Recipient may be asked for quarterly reports related to the goals of ARRA, including jobs created or saved. The Recipient agrees to provide such reports in an expeditious fashion.

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EXHIBIT C-4

ARRA SECTION 1511 CERTIFICATION

The Recipient shall comply with the Section 1511 Certification in Exhibit G of the CWRSF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

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EXHIBIT C-5

DAVIS-BACON ACT COMPLIANCE

The Recipient shall comply with the Davis-Bacon Act requirements listed in Exhibit H of the CWRSF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

1 DECLARATION OF JAMES SCANLIN IN SUPPORT OF TEST CLAIM

2 I, JAMES SCANLIN, declare as follows:

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

7 2. I have received the following degrees and credentials: Bachelor of Science in
8 Political Economy of Natural Resources, University of California, Berkeley; Master of Public
9 Administration, California State University, East Bay.

10 3. I am employed by Alameda County as an Associate Environmental Compliance
11 Specialist. In that position, I serve as lead staff member working on behalf of the Alameda
12 County Flood Control and Water Conservation District (“District”) for the Alameda Countywide
13 Clean Water Program (“Alameda Countywide Program,” or “Program”). The District has the
14 responsibility to administer and coordinate the Alameda Countywide Program.

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

23 5. I have held my current position since 1999. In this role, I have primary
24 responsibility on behalf of the District for administration and coordination of Alameda
25 Countywide Program activities. My duties include preparing annual budgets and expenditure
26 reports, coordinating and submitting required program-wide reports to the Regional Water Quality
27 Control Board (San Francisco Bay Region) (“Regional Water Board”), and advising the
28 Consortium on compliance with federal and state laws, regulations, and orders.

Municipal Regional Stormwater Permit, City of Dublin. 6. Declarations (Scanlin)

1 6. The City of Dublin (City), along with all other Consortium members, is subject to
2 the Municipal Regional Stormwater NPDES Permit, issued by the Regional Water Board, Order
3 No. R2-2009-0074 (NPDES Permit No. CAS612008), adopted on October 14, 2009 and revised
4 by Order No. R2-2011-0083, adopted November 28, 2011 (MRP).¹ I have reviewed the MRP and
5 I know and understand its requirements.

6 7. I have also reviewed and I know and understand the requirements of NPDES
7 Permit No. CAS029718 issued by Regional Water Board Order No. 01-024 on April 21, 2001,
8 amended by Order No 01-119 on October 17, 2001 and Order No. R2-2005-0035 on July 20, 2005
9 (Prior Permit), under which Dublin was a permittee.

10 8. In order to provide the information required under Government Code section
11 17553, subdivision (b)(1)(E), Shannan Young, on behalf of Dublin, has requested that I provide a
12 statewide cost estimate of increased costs that all local agencies or school districts will incur to
13 implement the mandates of the MRP during the 2010/2011 fiscal year – the fiscal year
14 immediately following the fiscal year for which the claim was filed. I provide my cost estimates
15 and associated methodology below.

16 **MRP Actual Cost Figures**

17 9. Basis of Figures Presented. Activities required by the MRP and Prior Permit were
18 implemented either by each Permittee individually, or as a group through the Alameda County
19 Clean Water Program. The actual costs incurred by Permittees for new or enhanced activities
20 conducted by the Alameda County Clean Water Program are based on my firsthand review of
21 program budgets for the fiscal year for which the test claim was filed as well as the actual annual
22 costs that were incurred by the claimant to implement the MRP mandates during the fiscal year
23 immediately following the fiscal year for which the test claim was filed. These costs were
24 associated with staff costs, consultant services, materials and expenses actually expended via the
25

26 _____
27 ¹ The MRP has since been superseded by Order No. R2-2015-0049, adopted November 19, 2015.
28

Municipal Regional Stormwater Permit, City of Dublin. 6. Declarations (Scanlin)

1 Alameda Countywide Program to comply with the applicable MRP provisions. They are attached
2 hereto as Exhibits XXX, which are true and correct copies of records of expenditure I obtained
3 from the Program's official files. All such costs have been rounded to the nearest dollar figure.
4

5 (i) For purposes of the discussion below, actual costs are presented for
6 FY 2009-10 (January through June 2010), as the first *partial fiscal* period subject to the MRP
7 requirements ("Year 1") and for FY 2010-11, the first *full fiscal* year during which the MRP was
8 effective ("Year 2").

9 (b) Summary of Provision C.8 Actual Cost Figures Presented:

10 (i) Prior Permit Costs. Although monitoring activities were required
11 under the Prior Permit, as discussed above, Provision C.8.c of the MRP comprises new activities
12 that required additional planning, sampling, and analysis. The costs detailed here are related to
13 planning activities that were not required under the Prior Permit. Provision c.8.c also required an
14 increase in the overall level of effort related to Status Monitoring, but those increased efforts were
15 not initiated until later in the Permit term.

16 (ii) MRP Costs. No costs were expended on Provision C.8.c during Year
17 1 (first six-month period). Based on my review of the associated invoices that Applied Marine
18 Sciences issued to the Alameda Countywide Program and which were subsequently paid by the
19 Permittees' fiscal agent, actual costs for new monitoring activities mandated by MRP Provision
20 C.8 and conducted by the Alameda Countywide Clean Water Program were \$13,606 during Year
21 2 (twelve-month period). These actual costs are more fully detailed in Exhibit A to this
22 Declaration.

23 (iv) Cost Allocations. Pursuant to the Alameda Countywide Program's
24 MOA, cost allocations for shared responsibilities (the General Program) are made according to a
25 formula ("Funding Formula") for which the Permittees' proportional shares were based on a 50
26 percent weight given to the area and a 50 percent weight given to the population within each
27 Permittee's jurisdiction (excluding open water and wetland areas of San Francisco Bay). The
28 minimum allocation for each Permittee was 1% of total Program costs. Summary of Provision

1 C.10 Actual Cost Figures Presented:

2 (iii) Prior Permit Costs. Under the Prior Permit, the Permittees did not
3 incur any costs specifically attributable to the MRP's trash-related requirements because they are
4 new obligations imposed for the first time in the MRP.

5 (iv) MRP Costs. Based on my review of the associated staff costs and
6 invoices that EOA issued to the Alameda County Clean Water Program and which were
7 subsequently paid by the Permittees' fiscal agent, actual costs for implementing trash related
8 activities mandated by MRP Provision C.10 and conducted by the Alameda County Clean Water
9 Program were \$5,806 during Year 1 (six-month period) and \$12,652 during Year 2 (twelve-month
10 period). These actual costs are more fully detailed in Exhibits C-D to this Declaration, which I
11 prepared based on my firsthand review of relevant records and which I believe is true and correct.

12 (v) Cost Allocations. Certain measures identified to implement
13 Provision C.10.a (e.g., baseline trash loading estimates and trash load reduction tracking
14 methods) are General Program tasks that were funded by the Permittees according to the
15 Funding Formula.

16 (c) Summary of Provision C.11.f/C.12.f Actual Cost Figures Presented:

17 (i) Prior Permit Costs. Under the Prior Permit, the Permittees did not
18 incur any costs associated with the MRP-mandated diversion studies because this is a new
19 program.

20 (ii) MRP Costs. The Permittees' aggregate actual costs for
21 implementing activities mandated by MRP Provision C.11.f and C.12.f, and conducted by the
22 Alameda County Clean Water Program were \$7,334 during Year 2. No costs were expended on
23 implementing Mercury and PCB diversion studies pursuant to C.11.f and C.12.f during Year 1.
24 These costs are detailed in Exhibit D to this Declaration.

25 (iii) Assumptions. I and other Alameda Countywide Program staff, as
26 well as staff for other Programs made up of MRP permittees in other Bay Area counties, have
27 collaborated to identify the individual tasks and associated projected costs necessary to implement
28 the five pump station diversion studies required by the MRP. For the Alameda Countywide

Municipal Regional Stormwater Permit, City of Dublin. 6. Declarations (Scanlin)

1 Program Permittees, these tasks include coordination with other MRP permittees via the Bay Area
2 Stormwater Management Agencies Association and significant costs for project planning, permits,
3 administration, legal counsel, and reporting. The Alameda Countywide Program's share of the
4 regional cost to implement these requirements is estimated to be 29.8%.

5 10. Increased Actual Costs – Year 1 (FY 2009-10).

6 (a) Based on the foregoing, the Permittees expended no costs associated with
7 the new MRP requirements during the Prior Permit because the mandates at issue in this Test
8 Claim are new.

9 (b) Based on the foregoing, during Year 1, the Permittees' aggregate increased
10 actual costs to implement new trash-related activities conducted by the Alameda County Clean
11 Water Program and mandated by the MRP were \$5,806 (six-month period).

12 11. Increased Actual Costs – Year 2 (FY 2010-11).

13 (a) Based on the foregoing, the Permittees expended no costs associated with
14 the new MRP requirements during the Prior Permit because the mandates at issue in this Test
15 Claim are new.

16 (b) Based on the foregoing, during Year 2, the Permittees' aggregate increased
17 actual costs to implement activities conducted by the Alameda County Clean Water Program and
18 mandated by MRP provisions C.8.c, C.10, and C.11.f and C.12.f were \$33,592.

19 12. Statewide Estimates.

20 (a) Basis for Statewide Estimate. MRP requirements apply to the 76 cities,
21 counties, and flood control districts subject to the MRP. Costs for each of the Permittees will vary
22 depending on a number of factors specific to each of the Permittees. However, the population of
23 each Permittee is a primary determining factor in the cost to comply with MRP requirements. The
24 required mercury and PCB reductions are explicitly determined by each agency's population.
25 Similarly, entities with higher populations will tend to have higher levels of trash reduction
26 required to meet the MRP's required trash reductions. Monitoring requirements in Provision C.8
27 vary generally based upon the relative populations of the countywide programs. As Dublin is a
28 fairly typical Bay Area city, it is reasonable to extrapolate from Dublin costs to the entire MRP

Municipal Regional Stormwater Permit, City of Dublin. 6. Declarations (Scanlin)

1 area based upon the relative population of Dublin compared to the population of the entire area
2 covered by MRP. Based upon the State Department of Finance estimates, Dublin’s 2017
3 population is 59,686. The estimated 2017 population for the entire MRP area is 5,662,448. The
4 population of the entire MRP population is approximately 94 times the population of Dublin.

5 (b) Statewide Estimates. Based on the foregoing, during Year 2 (the fiscal year
6 immediately following the fiscal year for which the claim was filed), the City of Dublin’s
7 increased statewide costs resulting from the challenged items in MRP provisions C.8, C.10, and
8 C.11/C.12 are estimated to be \$506,942.

9 13. With the exception of the partial potential funding source set forth below, I am not
10 aware of any dedicated state or federal funds that are or will be available to pay for these increased
11 costs.

12 (a) Pursuant to the American Recovery and Reinvestment Act (“ARRA”), the
13 San Francisco Estuary Partnership (“SFEP”) has been awarded \$5 million from the State Water
14 Resources Control Board’s Clean Water State Revolving Fund to purchase trash capture devices
15 and provide them to cities and counties throughout the Bay Area, according to a formula based on
16 population and permit requirements. Participation by municipalities, which is voluntary, required
17 contracting with the Association of Bay Area Governments and compliance with ARRA and
18 Revolving Fund requirements. Therefore, the ARRA funds represent a funding source to offset
19 certain costs to comply with the Provision C.10 trash-related requirements. I am not aware of any
20 dedicated state or federal funds, or of any other non-local agency funds, that were available to pay
21 for these increased costs.

22 9. I have personally compiled the information in the tables above and believe that the
23 information they contain is accurate.

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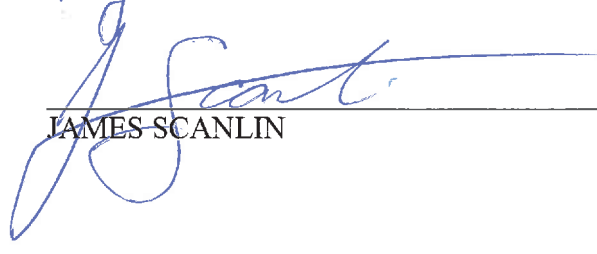
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I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on September 22, 2017, at Hayward, California.



JAMES SCANLIN

EXHIBIT A

CAS AD-HOC REPORT

Employee / Activity / Date / Doc (Employee / Equipment or PO)	Hours	Labor Amount	Overhead	Hours	Equipment M+O	ACO	Contract	Mgmt Adj	Total
F43 - Feng, Arleen Yar Li									
E03 - WATERSHED MGMT/SPECIAL STUDIES									
02/03/2011									
0000004967 - APPLIED MARINE SCIENCES INC	0.0	0.00	0.00	0.0	0.00	0.00	5,471.50	0.00	5,471.50
0067934									
02/03/2011 Totals:	0.0	0.00	0.00	0.0	0.00	0.00	5,471.50	0.00	5,471.50
03/08/2011									
0000004967 - APPLIED MARINE SCIENCES INC	0.0	0.00	0.00	0.0	0.00	0.00	3,657.25	0.00	3,657.25
0068644									
03/08/2011 Totals:	0.0	0.00	0.00	0.0	0.00	0.00	3,657.25	0.00	3,657.25
03/23/2011									
0000004967 - APPLIED MARINE SCIENCES INC	0.0	0.00	0.00	0.0	0.00	0.00	3,480.00	0.00	3,480.00
0068971									
03/23/2011 Totals:	0.0	0.00	0.00	0.0	0.00	0.00	3,480.00	0.00	3,480.00
05/06/2011									
0000004967 - APPLIED MARINE SCIENCES INC	0.0	0.00	0.00	0.0	0.00	0.00	997.50	0.00	997.50
0069993									
05/06/2011 Totals:	0.0	0.00	0.00	0.0	0.00	0.00	997.50	0.00	997.50
E03 - WATERSHED MGMT/SPECIAL STUDIES									
0000004967 - APPLIED MARINE SCIENCES INC	0.0	0.00	0.00	0.0	0.00	0.00	13,606.25	0.00	13,606.25
0069993									
05/06/2011 Totals:	0.0	0.00	0.00	0.0	0.00	0.00	13,606.25	0.00	13,606.25
F43 - Feng, Arleen Yar Li Totals:									
Report Total	0.0	0.00	0.00	0.0	0.00	0.00	13,606.25	0.00	13,606.25

Select Criteria Program = 50201, Activity = E03 Labor Overhead Equipment Expense Cost; Format: Job Cost, First Data Field: Employee; Second Data Field: Activity; Third Data Field: Date; Fourth Data Field: Doc (Employee / Equipment or PO); Cost Date Range: 07/01/2010 To 06/30/2011

EXHIBIT B

C.10. TRASH

JOB COST REPORT

Activity / Doc / Employee / Date	Lbr Hrs	Lbr Amount	Overhead	Eq Hrs	Eq M+O	Eq ACO	Contract	Material	Total
F15W81 CLEAN WATER - GENERAL PROGRAM (50201) Start Date: 06/27/1991									
K Clean Water Program									
K42 POLLUTANT CHARACTERIZATION									
K42 S71 Scanlin, James L 01/19/2010	1.5	145.03	71.06	0.0	0.00	0.00	0.00	0.00	216.09
K42 S71 Scanlin, James L 01/21/2010	2.0	193.38	94.75	0.0	0.00	0.00	0.00	0.00	288.13
K42 S71 Scanlin, James L 01/22/2010	2.5	241.72	118.44	0.0	0.00	0.00	0.00	0.00	360.16
K42 S71 Scanlin, James L 02/02/2010	8.0	773.52	379.02	0.0	0.00	0.00	0.00	0.00	1,152.54
K42 S71 Scanlin, James L 02/03/2010	2.0	193.38	94.75	0.0	0.00	0.00	0.00	0.00	288.13
K42 S71 Scanlin, James L 02/05/2010	3.0	290.07	142.13	0.0	0.00	0.00	0.00	0.00	432.20
K42 S71 Scanlin, James L 02/09/2010	4.0	386.76	189.51	0.0	0.00	0.00	0.00	0.00	576.27
K42 S71 Scanlin, James L 02/16/2010	1.0	96.69	47.37	0.0	0.00	0.00	0.00	0.00	144.06
K42 S71 Scanlin, James L 04/19/2010	0.1	9.66	4.73	0.0	0.00	0.00	0.00	0.00	14.39
K42 S71 Scanlin, James L 04/21/2010	0.5	48.34	23.68	0.0	0.00	0.00	0.00	0.00	72.02
K42 S71 Scanlin, James L 04/23/2010	0.5	48.34	23.68	0.0	0.00	0.00	0.00	0.00	72.02
K42 S71 Scanlin, James L 04/26/2010	0.6	58.01	28.42	0.0	0.00	0.00	0.00	0.00	86.43
K42 S71 Scanlin, James L 04/27/2010	0.6	58.01	28.42	0.0	0.00	0.00	0.00	0.00	86.43
K42 S71 Scanlin, James L 04/28/2010	0.7	67.68	33.16	0.0	0.00	0.00	0.00	0.00	100.84
K42 S71 Scanlin, James L 04/29/2010	1.0	96.69	47.37	0.0	0.00	0.00	0.00	0.00	144.06
K42 S71 Scanlin, James L 04/30/2010	0.3	29.00	14.21	0.0	0.00	0.00	0.00	0.00	43.21
K42 S71 Scanlin, James L 05/20/2010	4.0	386.76	189.51	0.0	0.00	0.00	0.00	0.00	576.27
K42 S71 Scanlin, James L 06/03/2010	4.0	386.76	189.51	0.0	0.00	0.00	0.00	0.00	576.27
K42 S71 Scanlin, James L 06/17/2010	4.0	386.76	189.51	0.0	0.00	0.00	0.00	0.00	576.27
K42 Totals:	40.3	3,896.56	1,909.23	0.0	0.00	0.00	0.00	0.00	5,805.79
K Totals:	40.3	3,896.56	1,909.23	0.0	0.00	0.00	0.00	0.00	5,805.79
F15W81 Totals:	40.3	3,896.56	1,909.23	0.0	0.00	0.00	0.00	0.00	5,805.79
Report Total	40.3	3,896.56	1,909.23	0.0	0.00	0.00	0.00	0.00	5,805.79

EXHIBIT C

C.10

JOB COST REPORT

Activity / Doc / Employee / Date	Lbr Hrs	Lbr Amount	Overhead	Eq Hrs	Eq M+O	Eq ACO	Contract	Material	Total
F15W81 CLEAN WATER - GENERAL PROGRAM (50201) Start Date: 06/27/1991									
K Clean Water Program									
K42 POLLUTANT CHARACTERIZATION = C.IQ, TRASH									
K42 S71	4.0	391.08	183.80	0.0	0.00	0.00	0.00	0.00	574.88
K42 S71	4.0	391.08	183.80	0.0	0.00	0.00	0.00	0.00	574.88
K42 S71	4.0	391.08	183.80	0.0	0.00	0.00	0.00	0.00	574.88
K42 S71	4.0	391.08	183.80	0.0	0.00	0.00	0.00	0.00	574.88
K42 S71	4.0	391.08	183.80	0.0	0.00	0.00	0.00	0.00	574.88
K42 S71	4.0	391.08	183.80	0.0	0.00	0.00	0.00	0.00	574.88
K42 S71	4.0	391.08	183.80	0.0	0.00	0.00	0.00	0.00	574.88
K42 S71	5.0	488.85	229.75	0.0	0.00	0.00	0.00	0.00	718.60
K42 0000004973 - 0070001	0.0	0.00	0.00	0.0	0.00	0.00	3,738.28	0.00	3,738.28
K42 Totals:	39.0	3,813.03	1,792.05	0.0	0.00	0.00	3,738.28	0.00	9,343.36
K Totals:	39.0	3,813.03	1,792.05	0.0	0.00	0.00	3,738.28	0.00	9,343.36
F15W81 Totals:	39.0	3,813.03	1,792.05	0.0	0.00	0.00	3,738.28	0.00	9,343.36
Report Total	39.0	3,813.03	1,792.05	0.0	0.00	0.00	3,738.28	0.00	9,343.36

Select Criteria Activity = k42, Employee = s71, Job = 15w81

* BASMAA 3,209.
= 12,652.36

Job Cost Report for 7/1/10 Thru 6/30/11

EXHIBIT D

	MRP Provision(s) (if applicable)	Member Programs Contributions						
		ACCWP						
		09-10	10-11	11-12	12-13	13-14	14-15	Total
Banked Revenues - BASMAA contributions								
Regional Advertising Campaign IV (FY 05-06 - FY 08-09) + ACCWP (FY 09-10) + CCCWP (FY 09-10)		\$ 120,804						\$ 120,804
CEP Rebates		\$ 36,151						\$ 36,151
CEP FY 06-07 contributions								\$ -
MRP Implementation contributions		\$ 270,000	\$ 310,000					\$ 580,000
Totals		\$ 426,955	\$ 310,000	\$ -	\$ -	\$ -	\$ -	\$ 736,955
Pledges / Expenditures - BASMAA projects (Actual expenditures & Completed projects in bold)								
Green Streets Pilot Projects: Assessment and Reporting	C.3.b.iii				\$ 5,775			\$ 5,775
Assistance for LID Feasibility/Infeasibility Criteria Report	C.3.c.i.(2)(b) / C.3.c.iii.(1)		\$ 16,335		\$ 2,887			\$ 19,222
Soil media specifications roundtable	C.3.c.i.(2)(b)(vi)							\$ -
Preparation of Regional Biotreatment Soil Guidance and Related Documentation	C.3.c.i.(2)(b)(vi)							\$ -
Preparation of Green Roofs Submittal	C.3.c.iii.(4)							\$ -
Special Projects Criteria and Procedures	C.3.e.ii							\$ -
Standard Specs for Single-Family Homes and Small Development Projects	C.3.f.iv			\$ 2,316	\$ 574			\$ 2,890
Total - C.3 New Development and Redevelopment		\$ -	\$ 16,335	\$ 2,316	\$ 9,236	\$ -	\$ -	\$ 27,887
Enhancement of BASMAA Surface Cleaner Training and Recognition Program	C.5.d		\$ 15,306					\$ 15,306
Total - C.5 Illicit Discharge Detection and Elimination		\$ -	\$ 15,306	\$ -	\$ -	\$ -	\$ -	\$ 15,306
Regional Outreach Strategic Plan	C.7.b		\$ 11,131					\$ 11,131
Implementation Plan - Litter	C.7.b		\$ 3,434					\$ 3,434
Regional Outreach Campaign - Litter	C.7.b			\$ 58,993	\$ 84,305	\$ 58,472		\$ 201,770
Total - C.7 Public Information and Outreach		\$ -	\$ 14,565	\$ 58,993	\$ 84,305	\$ 58,472	\$ -	\$ 216,335
Regional Creek Status and Long - Term Trends Monitoring Design (RMC Task 3a)	C.8.c / C.8.e							\$ -
Creek Status monitoring - SOPs and Quality Assurance Procedures (RMC Task 3b)	C.8.c		\$ 28,225	\$ 9,204	\$ 5,053			\$ 42,482
Creek Status Monitoring Coordination (RMC Task 3c)	C.8.c			\$ 7,212	\$ 4,345			\$ 11,557
Creek Status Monitoring Information Management System Development (RMC Task 3e)	C.8.c / C.8.e / C.8.h							\$ -
Creek Status Monitoring - Lab Std Contract Language/Reporting Formats (RMC Task 3f)	C.8.c			\$ 3,248	\$ 2,752			\$ 6,000
Creek Status and Trends Information Management and Quality Control (RMC Task 3g)	C.8.c				\$ 16,385			\$ 16,385
Stressor / Source Identification Guidance (RMC Task 4a)	C.8.d.i.(1)							\$ -
Multi-Year Pollutants of Concern Sampling Plan (RMC Task 5a)	C.8.e	\$ 10,000	\$ 4,422	\$ 209				\$ 14,631
Standard Operating and Quality Assurance Procedures (RMC Task 5b)	C.8.e			\$ 29,204	\$ 30,796			\$ 60,000
Laboratory Standard Contract Language and Reporting Formats (RMC Task 5c)	C.8.e							\$ -
POC Monitoring Information Management System Development (RMC Task 5d)	C.8.e / C.8.h							\$ -
POC Monitoring Station Setup, Equipment Purchasing, Operation (RMC Task 5e - PART A)	C.8.e			\$ 47,781	\$ 223,599			\$ 271,350
POC Monitoring Lab Contracting, Data Analyses, Information and Data Management (RMC Task 5e - PART B)	C.8.e			\$ 26,690	\$ 157,003			\$ 183,693
POC Information Management and Quality Control (RMC Task 5f)	C.8.e							\$ -
Sediment Delivery Estimate/Budget (RMC Task 8b)	C.8.e	\$ 188	\$ 15,000	\$ 10,000	\$ 13,671			\$ 38,857
Emerging Pollutants (RMC Task 8c)	C.8.e.vii				\$ 5,000			\$ 5,000
Creek Status Electronic Reporting Template (RMC Task 7b)	C.8.g.ii							\$ -
Regional Urban Creeks Monitoring Report Format (RMC Task 7d-1)	C.8.g.iii			\$ 3,613	\$ 14,452			\$ 18,065
Program-specific Urban Creeks Monitoring Report (RMC Task 7d-2)	C.8.g			\$ 2,890				\$ 2,890
Regional POC (Loads) Monitoring Report (RMC Task 7d-3)	C.8.g							\$ -
Integrated Monitoring Report Outline and Template (RMC Task 7e-1)	C.8.g			\$ 7,226				\$ 7,226
Integrated Monitoring Report (RMC Task 7e-2)	C.8.g							\$ -
Total - C.8 Water Quality Monitoring		\$ 10,188	\$ 47,647	\$ 147,247	\$ 473,056	\$ -	\$ -	\$ 678,136
Regulatory efforts - Track and participate	C.9.a		\$ 17,810	\$ 16,499				\$ 36,309
Regulatory efforts - Report	C.9.a	\$ 5,050	\$ 1,914	\$ 832				\$ 7,796
Total - C.9 Pesticides Toxicity Control		\$ 5,050	\$ 19,724	\$ 19,331	\$ -	\$ -	\$ -	\$ 44,105
Short-Term Trash Load Reduction Plan Guidance	C.10.a.(i)							\$ -
Trash Load Reduction Tracking Method (Tasks 1 and 2)	C.10.a.(ii)							\$ -
Trash Load Reduction Tracking Method (Task 4)	C.10.a.(ii)							\$ -
Baseline Trash Load Development Method (Phase I)	C.10.a.(ii)							\$ -
Baseline Trash Load Estimate 2010/11 Wet-Season Monitoring (Phase II-a)	C.10.a.(ii)		\$ 3,209	\$ 23,268	\$ 5,347			\$ 31,824
Baseline Loading Development - Contingency Monitoring (Phase II-b)	C.10.a.(ii)							\$ -
Baseline Loading Development - Data Analysis / Load Estimate (Phase III)	C.10.a.(ii)							\$ -
Total - C.10 Trash Load Reduction		\$ -	\$ 3,209	\$ 23,268	\$ 5,347	\$ -	\$ -	\$ 31,824
Training Materials to Identify Pollutants of Concern (POCs) in Commercial / Industrial Facilities	C.11.a / C.12.a / C.13.d							\$ -
Methylmercury Monitoring - Annual Report	C.11.b							\$ -
Desktop Analysis to Inform Pilot Testing of Municipal O&M Enhancements	C.11/12.d							\$ -
Evaluation of Stormwater Diversion to POTWs	C.11.f / C.12.f		\$ 7,334	\$ 1,445				\$ 8,779
Stormwater Pollutant Loads and Loads Reduced	C.11/12.g							\$ -
Studies of Mercury/PCBs	C.11/12.h	\$ 460	\$ 58	\$ 62	\$ 1,500			\$ 2,080
Mercury Allocation Sharing with Caltrans	C.11.j							\$ -
Total - C.11 Mercury Controls		\$ 460	\$ 7,392	\$ 1,507	\$ 1,500	\$ -	\$ -	\$ 10,859
PCBs in Caulk - Pilot projects	C.12.b	\$ 690	\$ 7,421	\$ 2,350				\$ 10,461
PCBs in Caulk - Incorporate into evaluation	C.12.b							\$ -
Total - C.12 PCBs Controls		\$ 690	\$ 7,421	\$ 2,350	\$ -	\$ -	\$ -	\$ 10,461
Vehicle Brake Pads	C.13.c	\$ 345	\$ 1,898	\$ 62	\$ 2,000			\$ 4,305
Studies of Copper Uncertainties	C.13.e	\$ 345	\$ 4,062	\$ 4,000				\$ 4,345
Total - C.13 Copper Controls		\$ 690	\$ 1,898	\$ 4,062	\$ 2,000	\$ -	\$ -	\$ 8,650
PBDEs, Legacy Pesticides, Selenium - Characterization	C.14.a	\$ 751	\$ 20,000	\$ 40,000	\$ 6,937			\$ 67,688
PBDEs, Legacy Pesticides, Selenium - Control measures	C.14.a							\$ -
Total - C.14 PBDEs, Legacy Pesticides, and Selenium Controls		\$ 751	\$ 20,000	\$ 40,000	\$ 6,937	\$ -	\$ -	\$ 67,688
Development of MRP Annual Report Template	C.16.b							\$ -
Totals		\$ 17,827	\$ 153,497	\$ 299,074	\$ 582,381	\$ 58,472	\$ -	\$ 1,111,251

Legend

Contributions not required. If contribution(s) made = prorata share, others' contributions drop proportionally
 Allocations tentative; based on FY 11-12 population estimates until new estimates are available - each May
 In-Kind
In-Kind values in bold are actuals
 Combination - Cash and In-Kind (see inserted comment for split)
 Board of Directors Approved
 Placeholder value
 Reduced for not participating in a project (i.e., no pro-rata share for that project) (ROC-Litter)
 Cost expected - to be determined
 Blue font is for restricted Regional Advertising Campaign contributions and expenditures

29.16
\$ 40,456

29.17
\$ 173,961

28.90
\$ 331,511

28.87
\$ 487,922

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 November 22, 2017, I served the:

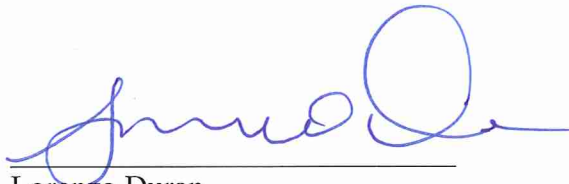
- **Notice of Withdrawal of Test Claim 10-TC-01, Withdrawal of Co-Claimants and Replacement of Lead Claimant for Test Claim 10-TC-02, Complete Filing of Consolidated Test Claims (10-TC-02, 10-TC-03, and 10-TC-05), Renaming of Matter, and Tentative Hearing Date issued November 22, 2017**
- **Claimant's (City of Dublin) Response to the Notice of Incomplete Joint Test Claim Filing filed September 26, 2017**
- **Claimants' (City of Brisbane and City of Alameda) Request to Withdraw the Test Claim 10-TC-01 and Replace the Claimant filed September 26, 2017**
- **Test Claim filed by City of San Jose (Claimant) filed November 30, 2010 revised September 26, 2017**
- **Test Claim filed by County of Santa Clara (Claimant) filed October 14, 2010 revised July 18, 2017**
- **Test Claim filed by City of Dublin (Claimant) filed October 13, 2010 revised September 26, 2017**

*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 iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and
C.12.f, 10-TC-02, 10-TC-03, and 10-TC-05*

Cities of Dublin and San Jose, and County of Santa Clara, Claimants

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 November 22, 2017 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/21/17

Claim Number: 10-TC-02, 10-TC-03, and 10-TC-05

Matter: 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

Claimants: City of Dublin
City of San Jose
County of Santa Clara

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.)

Shahram Aghamir, City Engineer, *City of Alameda*
950 West Mall Square, Alameda, CA 94501
Phone: (510) 747-7930
saghamir@alamedaca.gov

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Rafael Alvarado, City Attorney, *City of East Palo Alto*
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SAquino@sco.ca.gov

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Phone: (916) 341-5171

Tamarin.Austin@waterboards.ca.gov

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Phone: (925) 833-6600

jbakker@meyersnave.com

Harmeet Barkschat, *Mandate Resource Services, LLC*

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Phone: (916) 727-1350

harmeet@calsdrc.com

Jim Barse, *City of Alameda*

950 West Mall Square, Room 110, Alameda, CA 94501

Phone: (510) 749-5857

jbarse@alamedaca.gov

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

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Controller-Treasurer Department, 70 W. Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112

Phone: (408) 299-5225

Jeanette.Bazar@fin.sccgov.org

Shanda Beltran, General Counsel, *Building Industry Legal Defense Foundation*

Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614

Phone: (949) 553-9500

sbeltran@biasec.org

David Benoun, City Attorney, *City of Newark*

37101 Newark Boulevard, Newark, CA 94560

Phone: (510) 578-4427

david.benoun@newark.org

Cindy Black, City Clerk, *City of St. Helena*

1480 Main Street, St. Helena, CA 94574

Phone: (707) 968-2742

cityclerk@cityofstheleena.org

Dennis Bosch, Public Works Superintendent Wastewater, *City of Redwood City*

1400 Broadway, Redwood City, CA 94063

Phone: (650) 780-7476
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