

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: March 25, 2014

**SUBJECT: ADOPT RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE THIRD AMENDMENT TO THE STORMWATER UTILITY AREA AGREEMENT****Report in Brief**

On July 22, 2003, the City Council adopted Resolution No. 03-43 approving the Stormwater Utility Area (SUA) agreement between the City of Concord and the Contra Costa Flood Control and Water Conservation District (Flood Control District). The agreement authorized the Flood Control District to collect annual stormwater utility assessments on behalf of the City.

On December 16, 2003, the City Council adopted Resolution No. 03-70 approving a First Amendment to the SUA agreement amending the effective date of the July 22, 2003 SUA agreement to July 1, 2003; and authorized the Flood Control District to enter into an inspection agreement with Central Contra Costa Sanitary District (CCCSD), Delta Diablo Sanitation District (DDSD), and the East Bay Municipal Utility District (EBMUD) to provide inspections on industrial and commercial businesses on behalf of the cities within Contra Costa County.

On November 30, 2009, the City Council adopted Resolution No. 09-71 approving a Second Amendment to the SUA agreement authorizing the Flood Control District to revise the inspection agreement with CCCSD and to continue administering the stormwater inspection program on the City's behalf. Recently, EBMUD terminated its inspection activities, and a Third Amendment is now needed because the West County cities will be contracting with West Contra Costa Sanitary District for the required inspection services. Approval of this amendment will not modify the stormwater inspection services currently received by the City of Concord from CCCSD.

Staff recommends that the City Council adopt Resolution No. 14-18 authorizing the City Manager to execute the Third Amendment to the Stormwater Utility Area agreement.

**Background**

In 1990, the Federal Environmental Protection Agency (EPA) established regulations governing stormwater pollution that required the City of Concord to obtain an NPDES permit for its stormwater discharges. These regulations are enforced by the San Francisco Bay Regional Water Quality Control Board (RWQCB). In 1993, all cities within Contra Costa County and unincorporated areas of the County formally formed the Contra Costa Clean Water Program (Program). The Program was created to assist cities in carrying out the requirements of the NPDES Permit for the Contra Costa County region.

**ADOPT RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE THIRD  
AMENDMENT TO THE STORMWATER UTILITY AREA AGREEMENT  
(COMMERCIAL AND INDUSTRIAL INSPECTION SERVICES)**

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On March 9, 1993, the Concord City Council adopted Resolution No. 93-14, authorizing the Mayor to execute a Stormwater Utility Area (SUA) agreement between the City and the Flood Control District whereby the Flood Control District would establish a Stormwater Utility Area and impose, collect and administer annual stormwater utility assessments to fund NPDES Permit activities. The SUA agreement was amended on November 9, 1999, to include expanded inspection of industrial and commercial businesses and illegal discharges as required by the RWQCB (Resolution No. 99-107. The SUA agreement was renewed on July 22, 2003, when the City Council adopted Resolution No. 03-43.

On December 16, 2003, the City Council adopted Resolution No. 03-70 authorizing the City Manager to execute a First Amendment to the SUA Agreement. The amendment changed the effective date of the July 22, 2003 SUA agreement to July 1, 2003, and authorized the Flood Control District to pay for any inspections provided by CCCSD by that date and to enter into an inspection agreements with Central Contra Costa Sanitary District (CCCSD), Delta Diablo Sanitation District (DDSD), and the East Bay Municipal Utility District (EBMUD) to provide inspections on behalf of the cities within Contra Costa County. The Flood Control District currently has agreements with CCCSD, DDSD and EBMUD to provide inspection services for the following cities: Antioch, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pittsburg, Pleasant Hill, Richmond, San Ramon, and Walnut Creek. CCCSD provides inspection services for Concord.

On November 30, 2009, the City Council approved Resolution No. 09-71 authorizing the City Manager to execute the Second Amendment to the SUA Agreement. The Second Amendment authorized the Flood Control District to revise the inspection agreement with CCCSD and to continue administering the stormwater inspection program on the City's behalf.

**Discussion**

On June 1, 2013, EBMUD stopped providing inspection services due to escalating inspection costs. EBMUD had been providing services to the cities of El Cerrito, Hercules, and Richmond. West County Wastewater District (WCWD) has agreed to provide inspection services to those cities at a lower rate. However, in order for WCWD to begin providing inspection services, the SUA agreement must be amended by all participating parties to include WCWD as a service provider. The City of Concord's stormwater inspections will continue to be performed by CCCSD.

Staff recommends approval of the Third Amendment to the Stormwater Utility Agreement. No changes or impacts to CCCSD providing services for the City of Concord will result in this amendment. The Third Amendment to the Stormwater Agreement to allow for commercial and industrial inspection services has been reviewed and approved as to form by the Contra Costa Cities/County Attorneys' Association NPDES sub-committee, County Legal Counsel, the respective sanitary districts' legal counsel, and the City Attorney.

**Fiscal Impact**

The stormwater utility assessment fee is collected by the Flood Control District. The assessment revenue for the City is estimated to generate \$1,219,554 for FY 2013/14, which is deposited into the City's Stormwater Fund. The FY 2013/14 budget for storm water inspection services is \$100,438. Amending the agreement will not affect current City of Concord expenditures for inspection services or change the current level of service.

**ADOPT RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE THIRD  
AMENDMENT TO THE STORMWATER UTILITY AREA AGREEMENT  
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**Public Contact**

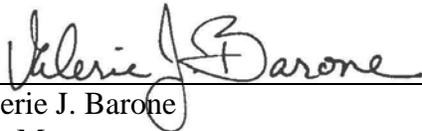
The City Council Agenda was posted in accordance with legal requirements.

**Recommendation for Action**

Staff recommends that the City Council adopt Resolution No. 14-18 approving the Third Amendment to Stormwater Utility Area Agreement between the Contra Costa County Flood Control and Water Conservation District and the City of Concord, and authorizing the City Manager or authorized representative to sign the amendment.

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Reviewed by: Robert Ovardia, PE  
City Engineer  
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Valerie J. Barone  
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Reviewed by: Victoria Walker  
Director of Comm. & Econ. Develop.  
[Victoria.Walker@cityofconcord.org](mailto:Victoria.Walker@cityofconcord.org)

Attachment 1 – Resolution No. 14-18

Attachment 2 – Third Amendment to Stormwater Utility Area agreement

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Approving the Third Amendment to  
Stormwater Utility Area Agreement between the  
Contra Costa County Flood Control and Water  
Conservation District and the City of Concord**

**Resolution No. 14-18**

**WHEREAS**, the County of Contra Costa, the Contra Costa County Flood Control and Wastewater District (District), and nineteen (19) cities and towns in Contra Costa County have joined to form the Contra Costa Clean Water Program (Program); and

**WHEREAS**, the members of the Program hold joint National Pollution Discharge Elimination System (NPDES) Permits (Nos. CA0029912 and CA 0083313) issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards, respectively; and

**WHEREAS**, the NPDES permits require the inspection of industrial and commercial facilities and the control of illicit discharge activities; and

**WHEREAS**, on July 22, 2003 District and the City of Concord (City) entered into an agreement entitled “STORMWATER UTILITY AREA AGREEMENT BETWEEN THE CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND THE CITY OF CONCORD” (SUA Agreement), which provides for the imposition, collection, and administration of Stormwater Utility Area Assessments for the funding of NPDES Permit activities; and

**WHEREAS**, the City agrees that the public good is best served by implementing a joint inspection program to encompass inspection activities and illicit discharge control activities, rather than establishing new, separate inspection programs for each municipality; and

**WHEREAS**, on December 16, 2003, CITY approved a First Amendment to the SUA AGREEMENT authorizing the DISTRICT to enter into an agreement (INSPECTION AGREEMENT) with the Central Contra Costa Sanitary District (CCCSD), Delta Diablo Sanitation District (DDSD), and the East Bay Municipal Utility District (EBMUD) for those agencies to perform joint inspection activities and illicit discharge control activities on behalf of CITY and fourteen (14) other municipalities: Antioch, Clayton, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Orinda,

1 Pinole, Pittsburg, Pleasant Hill, San Ramon, and Walnut Creek.

2 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**  
3 **RESOLVE AS FOLLOWS:**

4 **Section 1.** Approve and authorize the City Manager to execute the Third Amendment to the  
5 SUA Agreement, a copy of which is attached to this Resolution as Exhibit A.

6 **Section 2.** Approve and authorize the District to execute the Amended and Restated Contra  
7 Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013, by and among the  
8 DISTRICT, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County  
9 Wastewater District, a copy of which is attached to this Resolution as Exhibit B.

10 **Section 3.** This Resolution shall become effective immediately upon its passage and adoption.

11 **Section 4.** Three (3) certified copies of this Resolution and three (3) signed originals of the  
12 Third Amendment to the SUA Agreement shall be promptly forwarded to the Contra Costa Clean  
13 Water Program.

14 **PASSED AND ADOPTED** by the City Council of the City of Concord on March 25, 2014,  
15 by the following vote:

16 **AYES:**

17 **NOES:**

18 **ABSTAIN:**

19 **ABSENT:**

20 **I HEREBY CERTIFY** that the foregoing Resolution No. 14-18 was duly and regularly  
21 adopted at a regular meeting of the City Council of the City of Concord on March 25, 2014.

23 **APPROVED AS TO FORM:**

\_\_\_\_\_  
24 Mary Rae Lehman, CMC  
City Clerk

25 \_\_\_\_\_  
26 Mark S. Coon  
City Attorney

27 cc: Contra Costa Clean Water Program

**ATTACHMENT 2**

**THIRD AMENDMENT TO  
STORMWATER UTILITY AREA AGREEMENT  
BETWEEN  
THE CONTRA COSTA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
AND  
THE CITY OF CONCORD**

## **THIRD AMENDMENT TO STORMWATER UTILITY AREA AGREEMENT (CITY OF CONCORD)**

### **1. PARTIES**

This Third Amendment to Stormwater Utility Area Agreement, is entered into as of January 28, 2014 (this "Third Amendment"), between the City of Concord, a municipal corporation of the State of California (hereinafter "Concord"), and the Contra Costa County Flood Control and Water Conservation District, a flood control district existing under the laws of the State of California (hereinafter "District"). The parties to this Third Amendment mutually agree and promise as follows.

### **2. PURPOSE**

This Third Amendment amends the Stormwater Utility Area Agreement between the Contra Costa County Flood Control And Water Conservation District and the City of Concord (as amended, the "SUAA"), entered into on July 23, 2003.

### **3. AMENDMENT**

The SUAA is hereby amended as follows:

- a. Section 7 (City Use of Revenue). The third paragraph of Section 7 of the SUAA is deleted in its entirety and replaced it with the following:

"City authorizes District, on its behalf, to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013 (the "Amended and Restated Inspection Agreement") among District, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District attached hereto as Exhibit A, to implement an industrial and commercial inspection activities and illicit discharge control inspection activities program (hereinafter the "Inspection Program"), and any amendments or restatement of the Amended and Restated Inspection Agreement that may be required from time to time to implement the Inspection Program."

- b. Exhibit B (Estimate of Inspections and Share of Inspection Costs). The SUAA is hereby amended by deleting the existing Exhibit B attached to the SUAA and replacing it with the Exhibit B (Fiscal Year 2013/14 Stormwater Inspection Program by City) attached to this Third Amendment.
- c. Section 13 (Inspection Program Share of Costs). A new Section 13 (Inspection Program Share of Costs) is hereby added to the SUAA as follows:

“13. INSPECTION PROGRAM SHARE OF COSTS: “City’s estimated share of the cost for the Inspection Program will be based on the projected number of inspections shown in Exhibit B attached to this Agreement. No later than May 1 of each year, City and District will update Exhibit B to this Agreement by agreeing to the Inspection Program activities and budget for the subsequent year without further amendment of this Agreement.”

4. REMAINING PROVISIONS

Other than the amendments made by this Third Amendment, the SUAA, as previously amended, remains in full force and effect.

[Signatures appear on following pages.]

CONTRA COSTA COUNTY FLOOD  
CONTROL AND WATER  
CONSERVATION DISTRICT

CITY OF CONCORD

By: \_\_\_\_\_  
Chair, Board of Supervisors

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Manager

ATTEST:  
David Twa, Clerk of the Board of  
Supervisors and County Administrator

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Clerk

Recommended for Approval:

Recommended for Approval:

\_\_\_\_\_  
Julia R. Bueren, Chief Engineer, Contra  
Costa County Flood Control and Water  
Conservation District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Engineer

Form Approved:  
Sharon L. Anderson, County Counsel

Form Approved:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy County Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Attorney

**AMENDED AND RESTATED CONTRA COSTA CLEAN WATER PROGRAM  
INSPECTION ACTIVITIES AGREEMENT**

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

**RECITALS**

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

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

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

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

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

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

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

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

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

## AGREEMENT

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

1. Term; Termination.

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

(b) Termination.

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

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

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

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

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

2. Participating Municipalities.

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

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

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

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

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

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

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

(d) Prepare inspection and investigation reports;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Indemnification.

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

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

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

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

If to District, to:

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

If to the Agencies collectively, to:

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

If to CCCSD, to:

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

If to WCWD, to:

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

If to DDSD, to:

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

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

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

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

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

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

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

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

[Signatures appear on the following page.]

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

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

**EXHIBIT A****INSPECTION AGENCIES AND PARTICIPATING MUNICIPALITIES**

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

## EXHIBIT B

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

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

### RECITALS

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

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

### AMENDMENT

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

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

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

[Signatures appear on following page.]

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

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

**EXHIBIT A<sup>1</sup>**

**INSPECTION AGENCIES AND PARTICIPATING MUNICIPALITIES**

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

<sup>1</sup>Revise as necessary to add new Participating Municipality

**Exhibit B**  
**Fiscal Year 2013/14 Stormwater Inspection Program by City**

City	Annual Target	FY 13-14 Budget
Antioch	48	\$22,528 <del>\$22,528</del>
Clayton	8	\$3,755
Concord	214	\$100,438
Danville	57	\$26,752
El Cerrito	40	\$20,651
Hercules	16	\$8,260
Lafayette	32	\$15,019
Martinez	67	\$31,446
Moraga	16	\$7,509
Orinda	15	\$7,040
Pittsburg	55	\$25,814
Pleasant Hill	54	\$25,344
Richmond	50	\$23,467
San Ramon	77	\$36,139
Walnut Creek	120	\$56,320
Totals	869	\$410,482