

DEFENDANTS' SIDE AGREEMENT TO FACILITATE CONSENT DECREE COMPLIANCE

This Side Agreement to Facilitate Consent Decree Compliance ("Agreement") is entered into by and among the CITY OF ALAMEDA, CITY OF ALBANY, CITY OF BERKELEY, CITY OF EMERYVILLE, CITY OF OAKLAND, CITY OF PIEDMONT and STEGE SANITARY DISTRICT (collectively, the "Satellites") and EAST BAY MUNICIPAL UTILITY DISTRICT ("EBMUD"). The Satellites and EBMUD are collectively referred to as the "Defendants."

RECITALS

A. On September 22, 2014, a stipulated final judgment was entered in the consolidated cases *United States, et al. v. EBMUD* (N.D. Cal. CV 09-0186 RS) and *United States, et al. v. City of Alameda, et al.* (N.D. Cal. CV 09-5684 RS). That stipulated final judgment is referred to in this Agreement as the "Consent Decree."

B. The Consent Decree requires the Defendants to perform numerous interrelated actions over a period of time.

C. To facilitate compliance with the Consent Decree, the Defendants wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and following provisions of this Agreement and the Defendants' promises in the Consent Decree, the Defendants agree as follows:

AGREEMENT

1. Definitions. All terms with initial capitals not defined in this Agreement shall be defined as provided in the Consent Decree.

2. Arbitration. In the event the Defendants are required under the Consent Decree to prepare and submit a Revised Work Plan ("RWP"), the Defendants shall submit any disagreement (regarding the contents of the RWP or selection of competing RWPs) to arbitration by a panel of three arbitrators. The arbitration will be subject to the joint-defense-privilege as stated under the Consent Decree.

(a) In advance of the confidential arbitration, each Defendant shall either: (1) declare its support for a single RWP that is presented to the panel, or (2) declare that it will accept any of the proposed RWPs and opt out of participation in

the arbitration process, in which case it shall have no liability for any costs of arbitration. More than one Defendant may declare support for a single RWP. Thus, the panel may be presented with anywhere from two to eight RWPs (there being a total of eight Defendants, and there being no need for arbitration if they all support a single RWP).

(b) The first arbitrator shall be the Chair of the Department of Civil Engineering at one of the following universities: California/Berkeley, California/Los Angeles; CalTech, Carnegie Mellon, MIT, Stanford, or other comparable civil or environmental engineering expert agreed to by the Defendants. If the Defendants cannot agree on which Chair shall serve, a Chair shall be chosen by drawing lots.

(c) The second arbitrator shall be the Dean of the Graduate School of Public Policy at one of the following universities: California/Berkeley (Goldman), University of Southern California (Price), University of Washington (Evans), University of California/Los Angeles (Luskin) or University of Chicago (Harris), or other comparable public policy expert agreed to by the Defendants. If the Defendants cannot agree on which Dean shall serve, a Dean shall be chosen by drawing lots.

(d) The third arbitrator shall be an experienced professional arbitrator chosen from the panel of the Judicial Arbitration and Mediation Service ("JAMS"). If the Defendants cannot agree on which such arbitrator shall serve, each Defendant shall submit a nominee, and the arbitrator shall be chosen by drawing lots. Any disputes regarding procedural matters (e.g., the length of briefs, the timing for filing them, etc.) shall be decided by this arbitrator alone, applying JAMS' Streamlined Arbitration Rules and Procedures.

(e) The fees and costs of the arbitrators shall be assigned in equal shares to each Defendant participating in the arbitration, or as otherwise agreed by the Defendants participating.

(f) The arbitrators shall consider the cost effectiveness of the RWPs proposed, and may consider any other factors they deem appropriate, but may only select an RWP that is an Effective RWP.

3. PSL Roles and Responsibilities. Attached hereto as Exhibits A, B, C, and D, are Statements of Roles and Responsibilities between the Cities of Emeryville, Oakland and Piedmont, and Stege Sanitary District, respectively, and EBMUD for implementation of the Regional Private Sewer Lateral Program. Additional agreements with the Cities of Alameda and Albany are under negotiation. The

attached exhibits are part of this Agreement and are hereby incorporated into it by reference. Any new or amended Statement of Roles and Responsibilities executed by EBMUD and any Satellite shall, upon its full execution, be incorporated into this Agreement without need for further amendment of this Agreement. The Defendants shall perform their respective roles and responsibilities under these agreements as they may be amended from time to time in furtherance of the goals of the Consent Decree.

4. Regional Standards Program Participation and Responsibilities.

(a) Each Defendant shall participate in meetings as needed to update the Regional Standards as required by the Consent Decree, and shall cooperate in the production of a report every five years thereafter.

(b) In the event one or more Defendants disagree with any Regional Standard agreed upon by the remaining Defendants, it will draft an appendix to the report explaining that disagreement and setting forth its different or additional standard addressing its local concerns. Each Defendant shall not be required to use any standard with which it disagrees.

5. Performance Evaluation Plan (PEP) Implementation Cost Allocation.

If a PEP is triggered and must be implemented under the CD, then:

(a) Each Satellite shall bear the cost of installing, maintaining and collecting data from flow monitoring and precipitation monitoring equipment described in the PEP as being located within that Satellite's Collection System. In the event that additional or other data gathering equipment is described in the PEP as being located within that Satellite's Collection System, determination on cost appropriation will be performed during the PEP development process through discussions between EBMUD and the Satellite(s).

(b) EBMUD shall bear the cost of installing, maintaining and collecting data from flow monitoring and other data gathering equipment described in the PEP as being located within EBMUD's Interceptor System. EBMUD shall also bear the cost of loading those data into a digital format compatible with EBMUD's software.

(c) EBMUD shall bear the costs of (i) incorporating into the Flow Model the Satellites' and EBMUD's data, (ii) calibrating the Flow Model, and (iii)

preparing the reports required by the PEP and performing any modeling and other analytical work necessary to prepare those reports.

(d) All data and information collected under this section shall be accessible to all Defendants. At no time may any Defendant interfere with, or deny access needed to perform, any action reasonably necessary for the timely implementation of the approved PEP.

6. General Provisions.

(a) Entire Agreement. This Agreement and the exhibits hereto, along with the Consent Decree, contains the entire agreement of the Defendants with respect to its subject matter and supersedes all prior negotiations, agreements and understandings with respect thereto, whether written or oral.

(b) Amendment. The Defendants may amend this Agreement at any time in a writing duly executed by all affected Defendants. The Defendants agree to meet and confer in good faith upon another Defendant's request for amendment. Any PSL Roles & Responsibilities agreement attached as an exhibit to this Agreement may be amended by a writing executed by EBMUD and the affected Satellite.

(c) Interpretation and Construction. Each Defendant and its counsel has had an opportunity to participate in the review and revision of this Agreement. The Defendants agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement. Should any provision of this Agreement irreconcilably conflict with any part of the Consent Decree, the Consent Decree shall control.

(d) No Implied Waiver. The failure by one Defendant to require performance of any provision of this Agreement will not affect that Defendant's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

(e) Severability. Should any part, term, portion or provision of this Agreement be determined unlawful or otherwise rendered unenforceable, ineffectual or invalid by any court of competent jurisdiction, the validity of the remaining parts, terms, portions or provisions of this Agreement shall be deemed severable and shall not be affected thereby, provided that such remaining parts,

terms, portions or provisions can be construed in substance to constitute the Agreement that the Defendants intended to enter into in the first instance.

(f) Attorney's Fees. If a judicial action or proceeding is commenced to secure the performance of this Agreement or to enforce or interpret any provision of this Agreement or the rights and duties of any Defendant or Defendants in relation to the Agreement, the prevailing Defendant or Defendants shall be entitled to reasonable attorney fees, costs, and other expenses incurred by the prevailing Defendant or Defendants in connection with such action or proceeding, in addition to any other relief to which such Defendant or Defendants may be entitled.

(g) Warranty of Authorization to Execute Agreement. Each Defendant represents and warrants to the other Defendants that the person signing this Agreement is duly authorized to execute this Agreement on such Defendant's behalf and to bind such Defendant to its terms.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(i) Effective Date. This Agreement will take effect on the first date it is executed by all eight Defendants and shall remain binding on each Defendant while the Consent Decree remains in effect.

WHEREFORE, the Defendants have executed and entered into this Agreement as of the dates indicated below.

CITY OF ALAMEDA

Dated:_____

By:_____

Printed Name:_____David Rudat_____

Title:_____Interim City Manager_____

CITY OF ALBANY

Dated: _____

By: _____

Printed Name: Nicole Almaguer

Title: City Manager

CITY OF BERKELEY

Dated: _____

By: _____

Printed Name: Dee Williams-Ridley

Title: City Manager

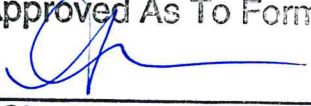
CITY OF EMERYVILLE

Dated: _____

By: _____

Printed Name: James N. Holgersson

Title: City Manager

Approved As To Form


City Attorney's Office

CITY OF OAKLAND

Dated: _____

By: _____

Printed Name: Jason Mitchell

Title: Director of Public Works

CITY OF PIEDMONT

Dated:_____

By:_____

Printed Name:_____ Paul Benoit _____

Title:_____ City Administrator _____

EAST BAY MUNICIPAL UTILITY DISTRICT

Dated:_____

By:_____

Printed Name:_____ Eileen M. White _____

Title:_____ Director of Wastewater _____

STEGE SANITARY DISTRICT

Dated:_____

By:_____

Printed Name:_____ Rex Delizo _____

Title:_____ District Manager _____

**STATEMENT OF ROLES AND RESPONSIBILITIES
BETWEEN THE CITY OF EMERYVILLE
AND THE EAST BAY MUNICIPAL UTILITY DISTRICT
FOR IMPLEMENTATION OF THE
REGIONAL PRIVATE SEWER LATERAL PROGRAM**

This Statement of Roles and Responsibilities (“Agreement”) is entered into this ____ day of _____, 20__, by and between the East Bay Municipal Utility District (“the District”) and the City of Emeryville (“the Satellite”). The District and the Satellite are collectively referred to in this Agreement as “the Parties”.

1. DEFINITIONS

1.1. Reserved.

1.2. Consent Decree means the final judgment between the United States and the Parties in consolidated cases in the U.S. District Court, Northern District of California: *United States of America, et al. v. East Bay Municipal Utility District* (C 09-00186-RS) and *United States of America, et al. v. City of Alameda, et al.* (C 09-05684-RS), including all appendices, attachments and exhibits thereto.

1.3. Enforcement means measures taken against Property Owners by the District to achieve compliance with the Regional PSL Ordinance or by the Satellite to achieve compliance with the Satellite’s Local Ordinance Requirements.

1.4. Fiscal Year means the period that begins on July 1 of a given year and continues through June 30 of the following year.

1.5. High-Value Construction or Remodel Permit means any permit or other approval needed from the Satellite, or from any public entity within the Satellite’s service area, for new construction upon a parcel or for any significant improvement, addition, construction, reconstruction, remodeling, modification or alteration of or to an existing or previously existing structure upon a parcel, where the value of work authorized by such permit or approval exceeds \$100,000.

1.6. Lower Sewer Lateral has the same meaning in this Agreement as given in the definition that appears in the Regional PSL Ordinance.

- 1.7. Outreach Materials** means materials prepared by the District for the purposes of informing the public about (1) the Regional PSL Program, and/or (2) the benefits of obtaining a Compliance Certificate before the Regional PSL Program mandates action. Outreach Materials will be distributed to Property Owners, real estate and escrow professionals, contractors, and other interested parties and will describe the requirements, procedures, and fees associated with the Regional PSL Program as well as general information about the benefits of PSL replacement for Bay protection.
- 1.8.** Reserved.
- 1.9. PSL** has the same meaning in this Agreement as given in the definition that appears in the Regional PSL Ordinance.
- 1.10. Regional PSL Ordinance** means the District’s “Regional Private Sewer Lateral Ordinance” (Ordinance No. 359-13, as amended by Ordinance No. 362-14), as may be further amended from time to time by the District.
- 1.11. Regional PSL Program** means the comprehensive, regional PSL management effort intended to reduce infiltration and inflow into the regional sanitary sewer system from PSLs. The Regional PSL Program requires Property Owners to (1) continuously maintain their Upper Sewer Laterals to standards specified in the Regional PSL Ordinance, (2) arrange for Verification Testing and certification of PSLs upon the occurrence of certain events specified in the Regional PSL Ordinance, and (3) repair or replace PSLs as needed to obtain a passing Verification Test result.
- 1.12. Section** means a numbered paragraph, or series of paragraphs, in this Agreement, except where a different agreement is expressly referenced.
- 1.13. Side Agreement** means the legal agreement among the Parties entitled “Defendants’ Side Agreement to Facilitate Consent Decree Compliance,” of which this Agreement is a part pursuant to Section 9.1.
- 1.14. Upper Sewer Lateral** has the same meaning in this Agreement as given in the definition that appears in the Regional PSL Ordinance
- 1.15.** This Agreement uses other capitalized terms defined in the Regional PSL Ordinance. Such terms shall have the meaning given therein.

2. OUTREACH MATERIALS

- 2.1.** The District will produce Outreach Materials for the Regional PSL Program. Upon request, the District will provide the Satellite an opportunity to review and approve Outreach Materials before they are made publicly available. The District will provide the Satellite with Outreach Materials and will replenish the Satellite's supply as needed upon request.
- 2.2.** The District will maintain a Regional PSL Program website containing appropriate referrals to the Satellite's relevant web pages and a telephone number and email address for the public to obtain information about the Regional PSL Program.
- 2.3.** The Satellite will make available Outreach Materials at City Hall (except Stege Sanitary District), the Satellite's permit center, and other appropriate publicly accessible locations. The Satellite will maintain a website containing appropriate referrals and links to the District's Regional PSL Program website.
- 2.4.** The Satellite and the District shall assist each other in outreach activities as needed.

3. VERIFICATION TESTING AND PERMITTING

3.1. The District's Responsibilities.

3.1.1. Performance of Verification Tests. The District will expeditiously perform PSL Verification Tests when such tests are required by the Regional PSL Ordinance or the Satellite's Local Ordinance Requirements. The District will also perform PSL Verification Tests when requested by a customer. This includes instances where the property is ineligible to receive a Compliance Certificate due to non-compliance with Local Ordinance Requirements but the property owner has elected to proceed with the Verification Test.

3.1.2. Waivers.

3.1.2.1. Waiver Exists. If there is a valid General Waiver or Limited Waiver with respect to a parcel at the time of a Verification Test, the District will witness the Verification Test for the Upper Sewer Lateral only and shall document compliance or non-compliance. The

District will honor Limited Waiver or General Waiver status under the circumstances set forth in Sections 4.4 and 4.5, respectively.

3.1.2.2. No Waiver Exists. If there is not a valid General Waiver or Limited Waiver with respect to a parcel at the time of a Verification Test, the District will witness the Verification Test for the Upper Sewer Lateral and, if required by the Satellite's Local Ordinance Requirements, also the Lower Sewer Lateral, and shall document compliance or non-compliance.

3.1.3. Attendance. The District will make reasonable efforts to promptly notify the Satellite if District representatives will be unable to attend a scheduled Verification Test.

3.1.4. Notification of Scheduled Inspections.

3.1.4.1. Notification of Same-Day Inspections. Each business day at 7:00 a.m., the District will provide the Satellite a list of all PSL inspections scheduled for that day and the time window when each inspection is scheduled to occur. The Satellite may use this list to schedule its staff's attendance at inspections as desired.

3.1.4.2. Notifications of Upcoming Inspections. Each business day at 7:00 a.m., the District will provide the Satellite a list of all PSL inspections scheduled for the following day and anytime thereafter. The District will update this list at 2:00 p.m. to include inspections scheduled after that morning's 7:00 a.m. notice. The Satellite may use these lists to review compliance with Local Ordinance Requirements.

3.1.4.3. The Satellite may ask the District in writing not to provide the inspection notifications described in this Section 3.1.4. However, if the Satellite chooses not to receive the notifications, or if after receiving a notification it fails to act in the manner described in Section 3.2, the District will consider the parcel's eligibility for a Compliance Certificate without regard to Local Ordinance Requirements.

- 3.1.5. Notification of Non-Compliance with Local Ordinance Requirements.** When the District receives the Satellite's notice provided under Section 3.2.3.3 that a parcel scheduled for inspection is non-compliant with Local Ordinance Requirements, the District will notify the Property Owner and any representative of the Property Owner in communication with the District regarding PSL certification), by email with U.S. mail follow-up, that the Satellite has stated that a property is not in compliance with Local Ordinance Requirements and therefore is not eligible to receive a Compliance Certificate until the property is brought into compliance with the Satellite's requirements. The District shall provide the Property Owner or the representative with contact information for Satellite staff designated by Satellite for that purpose under Section 3.2.2. The notice in this Section is in addition to the separate notice provided by the Satellite under Section 3.2.4.1. If the property successfully passes a Verification Test, the District will refrain from issuing any Compliance Certificate until it receives notice from the Satellite under Section 3.2.4.3 that indicates (1) that the property has become compliant with Local Ordinance Requirements, and (2) whether or not a new Verification Test is required.
- 3.1.6. Material Modifications; New Verification Test.** In the event that the Satellite notifies the District that material modifications were mandated to achieve compliance with Local Ordinance Requirements, the District will issue a Compliance Certificate when the PSL achieves a passing result on a new Verification Test.
- 3.1.7. After Hours and Weekend Inspections.** The District will notify the Satellite of scheduled after-hours and weekend inspections at least 24 hours in advance.
- 3.1.8. Shared Laterals & Illicit Connections.** The District will notify the Satellite if it becomes aware that contiguous parcels are sharing a lateral. The District will notify the Satellite of any illicit connections it finds during a Verification Test.
- 3.1.9. Potential Debris.** The District will communicate any potential debris introduced into the sewer system during the course of the inspection and certification process, such as lost plugs, to the Satellite upon becoming aware.

3.2. The Satellite's Responsibilities – Local Ordinance Requirements.

3.2.1. The Satellite will comply with the provisions of this Section 3.2 if, and only if, the Satellite wishes the District to take into account a parcel's compliance or non-compliance with Local Ordinance Requirements when evaluating the parcel's eligibility for a Compliance Certificate. This Section 3.2 is the exclusive process by which the District will delay or withhold a Compliance Certificate on grounds of non-compliance with Local Ordinance Requirements.

3.2.2. Point of Contact. The District will include the Satellite contact information the Satellite provides under Section 3.3.1 in any notice of non-compliance with Local Ordinance Requirements it provides to a Property Owner or representative under Section 3.1.5.

3.2.3. Local Ordinance Requirements – Compliance Review.

3.2.3.1. Morning Review. Each business day, the Satellite will review the morning list of PSL inspections scheduled for the following day or anytime thereafter to identify any parcels it believes are non-compliant with Local Ordinance Requirements. The District will provide the morning list by 7:00 a.m. each business day pursuant to Section 3.1.4.2.

3.2.3.2. Afternoon Review. Each business day, the Satellite will review the updated list of PSL inspections scheduled for the following day or anytime thereafter to identify any parcels it believes are non-compliant with Local Ordinance Requirements. The District will provide the updated list by 2:00 p.m. each business day pursuant to Section 3.1.4.2.

3.2.3.3. Notification of Non-Compliance with Local Ordinance Requirements. If the Satellite believes any parcel that appears on the either the morning list or the updated list is non-compliant with Local Ordinance Requirements (for example, by failing to obtain a necessary permit from the Satellite), the Satellite will notify the District in writing no later than the business day before the scheduled inspection, by 2:00 p.m. in the case of

parcels appearing on the morning list, or by 4:00 p.m. in the case of parcels appearing on the afternoon list.

3.2.4. Local Ordinance Requirements – Gaining Compliance. For any parcel scheduled for inspection which the Satellite believes is non-compliant with Local Ordinance Requirements, the Satellite will do the following:

3.2.4.1. Immediately notify the Property Owner and any representative of the Property Owner indicated on the scheduled inspection list provided by the District, by email with U.S. mail follow-up, that the Satellite has determined that the property is not compliant with Local Ordinance Requirements and therefore is not eligible to receive a Compliance Certificate until the property is brought into compliance with the Satellite's requirements. The notification will specifically identify the cause of the non-compliance. The Satellite shall provide the Property Owner or the representative with contact information for appropriate Satellite staff. The notice in this Section is additional to the separate notice provided by the District under Section 3.1.5.

3.2.4.2. Manage all communications with the affected persons regarding the non-compliance and pursue any enforcement action deemed appropriate by the Satellite.

3.2.4.3. Notify the District in writing as soon as practicable after determining the parcel has become compliant with Local Ordinance Requirements. This notification will indicate whether material modifications were made to bring a PSL into compliance with Local Ordinance Requirements, such that the District should not rely on any existing Verification Test result as the basis for issuing a Compliance Certificate. Where material modifications were made, the Satellite shall send the Property Owner (or a representative of the Property Owner indicated on the scheduled inspection list provided by the District) a notification stating that (1) as a result of the material modification, any pre-existing Verification Test result is no longer valid, and (2) the

notice recipient should contact the District to schedule a new Verification Test, which the PSL must pass before a Compliance Certificate will be issued.

3.3. The Satellite's Responsibilities – General.

- 3.3.1. Point of Contact.** The Satellite will provide the District with the name, title, direct phone line, and email address of appropriate Satellite staff for the District to provide to Property Owners and their representatives as needed. The Satellite will provide updated contact information as needed.
- 3.3.2. Permitting and Inspection.** The Satellite will be the permitting agency for all PSL work in accordance with the Satellite's Local Ordinance Requirements. The Satellite will expeditiously issue sewer and encroachment permits for PSL work performed under the Regional PSL Program, unless the Satellite does not issue encroachment permits. The Satellite will perform construction and materials inspection for all PSL work.
- 3.3.3. Effect of Verification Test.** The Satellite will accept the District's documentation of a passing Verification Test result as conclusive evidence that the PSL, or the portion of it subject to the Verification Test, is free from leaks.
- 3.3.4. Emergency.** In an emergency condition, including when the District has notified the Satellite that its representatives will be unable to attend a scheduled Verification Test or when the District representatives fail to arrive within the scheduled inspection window and cannot be contacted, the Satellite may witness the Verification Test and provide the following information to the District: (1) length and diameter of the Upper Sewer Lateral and, if applicable, the Lower Sewer Lateral, (2) which portion of the PSL was tested and by which testing method, (3) which work was performed (for example, repair or replacement), (4) result of the pressure test, (5) if the PSL was replaced, the material of both the old and new PSLs, (6) whether or not a lower cleanout was present, (7) the location of the public Sewer Main, and (8) the contractor's name and phone number.

4. CERTIFICATES, WAIVERS, AND EXEMPTIONS

4.1. Compliance Certificates. The District will issue a single Compliance Certificate for a given parcel after all PSLs associated with the parcel have passed a Verification Test, except in the following circumstances:

4.1.1. No Compliance Certificate will be issued in connection with any parcel that is the subject of a Local Ordinance Requirements non-compliance notification provided by the Satellite under Section 3.2.3.3, until the non-compliance is resolved and the Satellite has so notified the District under Section 3.2.4.3.

4.1.2. No Compliance Certificate will be issued if either the Upper Sewer Lateral or the Lower Sewer Lateral fails to pass a Verification Test, unless the Upper Sewer Lateral passes and one of the following circumstances applies to the Lower Sewer Lateral:

4.1.2.1. a Lower Sewer Lateral does not exist (e.g. where an Upper Sewer Lateral connects to a Sewer Main via backyard easement); or

4.1.2.2. the Satellite has declared in the letter described in Section 4.3 that it does not legally require Property Owners within its jurisdiction to obtain a Compliance Certificate for Lower Sewer Laterals; or

4.1.2.3. the Satellite has informed the District as provided in Sections 4.4 and 4.5 that a valid General Waiver or Limited Waiver covers the parcel's Lower Sewer Lateral.

4.2. Liability. The District and its Directors, officers, agents and employees assume no liability by declining to issue a Compliance Certificate as a result of receiving notification from the Satellite of non-compliance with Local Ordinance Requirements. The Satellite will indemnify, defend and hold harmless the District and its Directors, officers, agents and employees from and against any claims, lawsuits, proceedings, damages, and/or losses of any kind (including legal costs and attorneys' fees) arising from or related to a District decision not to issue a Compliance Certificate where such decision is made in substantial accordance with Section 4.1.1.

- 4.3.** Responsibility for Lower Sewer Laterals. The Satellite will inform the District in a letter signed by the Satellite's attorney or other authorized representative whether or not the Satellite legally requires Property Owners within its jurisdiction to obtain a Compliance Certificate for Lower Sewer Laterals. The District will rely on the Satellite's letter to determine the scope of the Regional PSL Program within the Satellite's jurisdiction. The Satellite agrees to promptly notify the District in writing when it substantially modifies legal requirements relating to Lower Sewer Laterals.
- 4.3.1.** In the letter described in Section 4.3, the Satellite may optionally state the location of the boundary between the Upper Sewer Lateral and Lower Sewer Lateral that shall be used within its jurisdiction, if that boundary differs from the boundary described in the Regional PSL Ordinance by the definitions of "Upper Sewer Lateral" and "Lower Sewer Lateral." If the Satellite's letter states a jurisdiction-specific boundary, the District will certify a parcel upon on a passing Verification Test result for the portion of the PSL defined in the letter as part of the "Upper Sewer Lateral," and the Satellite will rehabilitate the entire portion of the PSL defined in its letter as the "Lower Sewer Lateral" at the time it rehabilitates the sewer main associated with the PSL. If the letter does not specify a boundary location, the District will use the definitions in the Regional PSL Ordinance for testing and certification purposes.
- 4.4.** General Waivers (Satellite's Prior Work on Lower Sewer Lateral). If and when the District receives the spreadsheet or GIS data described in Section 5.2.2 from the Satellite, the District will apply General Waiver status to all parcels listed in the spreadsheet or GIS data and qualifying for General Waiver status under the Regional PSL Ordinance. The District will update its General Waiver database on an ongoing basis when the Satellite provides the District with an updated spreadsheet or additional GIS data. To document General Waiver status for individual parcels, the Satellite may complete a District form used for that purpose in lieu of providing an updated spreadsheet. Upon receiving the information from a Satellite, the District will honor the General Waivers for their period specified in the Regional PSL Ordinance.
- 4.5.** Limited Waivers. A valid Limited Waiver excuses the Property Owner from any applicable Local Ordinance Requirement that mandates the performance of work on the Lower Sewer Lateral. A Satellite may issue a

Limited Waiver to a property owner to accommodate a paving moratorium or for any other reason except the Satellite's prior Repair or Replacement of the Lower Sewer Lateral. The Satellite shall provide the District a letter and spreadsheet with affected parcel numbers and associated expiration dates and may update the spreadsheet as needed. To document Limited Waiver status for individual parcels, the Satellite may complete a District form used for that purpose in lieu of providing an updated spreadsheet. Upon receiving the information from a Satellite, the District will honor the Limited Waivers for their period of validity.

- 4.6.** Construction and Remodeling. Whenever a Property Owner submits an application for a High-Value Construction or Remodel Permit, the Satellite may open the permit but will not perform a final inspection or otherwise finalize the permit until the Satellite receives one of the following:
- 4.6.1.** a copy of a valid Compliance Certificate or Exemption Certificate for the parcel at issue; or
 - 4.6.2.** written notification from the District that the Property Owner is eligible to defer certification pending compliance with Regional PSL Ordinance requirements for parcels or parcel groups with PSLs exceeding 1,000 feet or parcels within Homeowner's Associations that have assumed responsibility for PSL compliance.
- 4.7.** Exemption Certificates. When a property owner requests an Exemption Certificate from the District, the District will confirm eligibility based on data provided to the District by the Satellite under Section 5.2.3 or, in cases of sales or transfers exempted from the Regional PSL Ordinance's definition of "Title Transfer," based on the District's verification of supporting documentation submitted by the Property Owner. The District will inform the Property Owner of the Property Owner's eligibility status as soon as reasonably possible.
- 4.8.** Notification of Issued Compliance Certificates. Each business day, the District will notify the Satellite of Compliance Certificates issued the previous day.

5. DATA SHARING AND ANNUAL REPORTING

5.1. The District's Responsibilities.

5.1.1. Annual Reporting. The District will report on the Regional PSL Program in its Consent Decree Annual Report.

5.1.2. Regional Database. The District will develop and maintain a regional database of Regional PSL Program records that includes information related to parcel compliance status, including Verification Test records. The District will share the information maintained in the regional database with the Satellite in a timely fashion, upon reasonable request by the Satellite.

5.2. The Satellite's Responsibilities.

5.2.1. Data Regarding High-Value Construction & Remodel Permits. For each High-Value Construction & Remodel Permit, the Satellite shall document, in spreadsheet format, the permits issued during the Fiscal Year, the APN and address associated with the permit, and whether a Compliance Certificate was submitted prior to issuance of the certificate(s) of occupancy, and shall provide this spreadsheet to the District after each Fiscal Year by July 31.

5.2.2. Data Regarding Satellite-Performed Work on Lower Laterals. Unless the Satellite provides the letter described in Section 4.3 declaring Property Owners' non-responsibility for Lower Sewer Laterals, the Satellite will: (1) provide the District with a spreadsheet or GIS data containing the assessor's parcel number (APN) and date of Lower Sewer Lateral replacement for each parcel on which the Satellite replaced the Lower Sewer Lateral during the 20-year period prior to the effective date of the Regional PSL Program in the Satellite's jurisdiction to facilitate the District's issuance of parcel-specific General Waivers where appropriate, and (2) keep the spreadsheet or GIS data current to reflect the Satellite's ongoing Lower Sewer Lateral replacement work on additional parcels and provide the District with the updated spreadsheet monthly.

5.2.3. Data Regarding Satellite-Issued Compliance Certificates. Unless it has done so before the this Agreement's effective date, the Satellite will provide the District with a spreadsheet or GIS data containing

the assessor's parcel number (APN) and date of issuance of all valid, unexpired Compliance Certificates or comparable documents issued by the Satellite during the period prior to the effective date of this Agreement to facilitate the District's issuance of Exemption Certificates, where applicable. The Satellite will timely provide information upon the District's request confirming if a specific Property Owner obtained and finalized a permit for PSL work.

- 5.3. Staff Contacts.** The Parties each agree to provide each other a list of staff contacts involved in the Regional PSL Program and to keep each other informed of relevant personnel changes on an ongoing basis.

6. ENFORCEMENT

- 6.1. District's Role.** The District may enforce all provisions of the Regional PSL Ordinance. Enforcement of Regional PSL Ordinance provisions related to Compliance Certificates and Time Extension Certificates is the District's sole responsibility.
- 6.2. Satellite's Role.** Enforcement of the Satellite's Local Ordinance Requirements is the Satellite's sole responsibility. When the Satellite identifies non-compliance with Local Ordinance Requirements, the District will decline to issue a Compliance Certificate in the manner and under the circumstances specified in this Agreement, but all further actions to gain compliance will be the Satellite's responsibility.

7. INSURANCE

- 7.1.** The Satellite shall take out and maintain during the life of the Agreement all the insurance required in this Section 7 (Insurance), and shall submit certificates for review and approval by the District. The Satellite shall not commence work until such insurance has been approved by the District. The Satellite may comply with its obligations under this Section 7 (Insurance) by providing evidence of self-insurance to the District signed by a responsible official of Satellite with authority to provide proof of insurance coverage.
- 7.2.** The Satellite shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, the District will accept a Self-Insured Certificate from the State of California. Workers'

Compensation insurance must contain a waiver of subrogation endorsement providing that each insurer waives any rights of recovery by subrogation, or otherwise, against the District, its directors, officers, officials, agents, volunteers, and employees.

- 7.3.** The Satellite shall take out and maintain during the life of the Agreement Commercial General and Automobile Liability Insurance that provides protection from claims that may arise from operations or performance under this Agreement. The amounts of insurance shall not be less than the following:

7.3.1. \$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile.

7.3.2. \$2,000,000/Occurrence, Bodily Injury, Property Damage – General Liability.

8. TERM AND TERMINATION

- 8.1.** This Agreement shall become effective on the first date it has been executed by both Parties. This Agreement will remain binding and effective until terminated in the manner provided in this Section 8.
- 8.2.** The Parties may terminate this Agreement at any time by mutual written consent.
- 8.3.** In the absence of mutual written consent, this Agreement may not be terminated before five years has elapsed from the Consent Decree's effective date.
- 8.4.** Once at least five years has elapsed from the Consent Decree's effective date, the Satellite may unilaterally terminate this Agreement if the Satellite has completed the process required by the Consent Decree to cease its participation in the Regional PSL Program (including U.S. EPA approval of the Satellite's no-less-stringent application for its proposed PSL ordinance).

9. GENERAL PROVISIONS

- 9.1.** The General Provisions set forth in Section 6 of the Side Agreement are incorporated by reference into and shall apply to this Agreement. This Agreement, immediately upon its full execution, will be automatically incorporated by reference into the Side Agreement.

* * * * *

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year below written.

EAST BAY MUNICIPAL UTILITY DISTRICT

EILEEN M. WHITE
Director of Wastewater

Date: _____

Approved as to form:

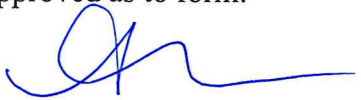
for the Office of General Counsel

CITY OF EMERYVILLE

JAMES N. HOLGERSSON
Interim City Manager

Date: _____

Approved as to form:



MICHAEL A. GUINA
City Attorney