

PREPARED BY: David Baum, Finance Director, Finance Department

SEWER SERVICE CHARGE BILLING AND COLLECTION AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of December, 2002, by and between the CITY OF SAN LEANDRO WATER POLLUTION CONTROL PLANT, hereinafter called "the Agency" and the EAST BAY MUNICIPAL UTILITY DISTRICT, a public body of the State of California, hereinafter called "the District", supersedes any and all other previous Sewer Service Charge Billing and Collection Agreements between the Agency and the District;

W I T N E S S E T H :

I.

General Provisions

1.01 Purpose of Agreement. The City of the Agency has adopted its Ordinance No. 2002-159, hereinafter referred to as "the ordinance", establishing sewer service charges for the use of sewer facilities owned and operated by the Agency, and for the purpose of facilitating the billing and collection of such charges. The Agency has submitted a Request to Bill Sewer Service Charges in the form required by District and has requested that the District bill and collect the Agency's charges for such sewer service, and the District is willing to perform such billing and collection subject to the terms and conditions set forth herein.

1.02 Term of Agreement. Unless the conversion work has been completed pursuant to a prior agreement with the Agency, the District shall commence the conversion work described in paragraph 2.01 upon execution of this Agreement. Once the conversion has been completed, the District will bill and

collect the Agency's sewer service charge pursuant to the terms of this Agreement until this Agreement is terminated as provided herein.

1.03 Supervision and Control by the District. The District shall have sole and exclusive supervision and control over its operations under this Agreement, including but not limited to the method of preparing District bills and making the collections thereunder; the selection, design and use of forms and changes thereto; and the selection and use of data processing equipment and office machinery by the District in the performance of this Agreement. The District's decisions with respect to any and all aspects of its billing and collection operations shall be final and conclusive. The Agency agrees that the District may make changes in its billing and collection procedures during the term of this Agreement, and in the equipment required therefore, and further agrees that the payments to be made by the Agency pursuant to the terms of this Agreement may include a proportionate share of the costs of such changes. District agrees to conduct the operations pursuant to this Agreement in a competent manner and shall exercise reasonable care in performing the duties.

1.04 Communications. All requests by the Agency to add, delete, modify or in any way change its sewer service charges or to obtain information concerning individual accounts or groups of accounts or any other data shall be made in writing to the Secretary of the District, or to such other person designated by the District, and signed by the Agency's liaison (see paragraph 3.03).

1.05 Termination of Agreement Without Cause. This Agreement may be terminated without cause at any time by either party hereto upon giving to the other party at least six (6) months written notice of such termination, except as

provided in paragraphs 2.08, 3.02(b) and 3.04. Termination of this Agreement shall not affect Agency's liability, as provided herein, to pay the cost of services which have been rendered by the District pursuant to the terms of this Agreement.

- 1.06 Termination of Agreement. This Agreement will remain in effect, except as provided for in paragraphs 2.08, 3.02(b) and 3.04, until [10 years from execution of Agreement]. This Agreement may be extended by written agreement between the Agency and the District. Termination of this Agreement shall not affect Agency's liability, as provided herein, to pay the cost of services which have been rendered by the District pursuant to the terms of this Agreement.

II.

Services and Facilities to be Furnished by the District

- 2.01 Modification of the District's Customer Billing System ('`Conversion''). The District agrees to furnish the labor, services, materials and equipment required to redesign and reprogram its customer billing system (including testing and installation) to provide for billing and collection of the Agency's sewer charge, including: (1) identification of the Agency's sewer service charge on District water bills; (2) collection of same with said water bills; (3) identification of collections relating to said charge; and (4) remittance to the Agency of the gross cash collection from the Agency's sewer service charge billing, less debits allowed by this Agreement.

Within thirty (30) days of the effective date of this Agreement, the District will submit to the Agency an estimated date for completion of the conversion.

2.02 Requests for Sewer Service Charge Rate and Structural Changes.

- a. Frequency of Requests. The District agrees to implement either one sewer service charge rate change or one sewer service charge structural change per calendar year. Although the Agency may request other rate or structural changes, it is wholly within the District's discretion to determine whether to implement the Agency's request.

- b. Form of Requests. All requests for rate and structural changes shall be submitted in the form attached hereto as Exhibit A. The Agency shall submit the required information to effect a rate change sixty (60) days prior to the beginning date of the bill period for which the new rate will apply. Said sixty (60) days shall commence upon receipt of approved revised Sewer Service Charges and Rates sheet. The Agency shall submit the required information to effect a structural change six (6) months prior to implementation of said change. Said six month period shall commence upon payment by Agency of the deposit described below.

- c. Charges to Process Requests. Charges to process any rate or structural change shall be in addition to other charges set forth in this Agreement and shall be based upon the actual costs to process and implement the change. For requested rate changes, District will provide to Agency an estimate of the cost to implement the rate change within thirty (30) days of Agency's request therefore. Agency understands and agrees that the actual cost to implement the rate change could exceed District's estimate and further agrees to pay said actual costs within thirty (30) days of receipt of District's invoice therefore. For requested structural changes, Agency agrees to deposit with the District a sum equal to fifty percent (50%) of District's

estimated cost to implement the structural change prior to District commencing performance of the work related thereto. Agency understands and agrees that the actual cost to implement the structural change could exceed District's estimate and further agrees to pay said actual costs, less Agency's deposit, within thirty (30) days of receipt of District's invoice therefore. The District agrees to refund any of the Agency's deposit funds that the District determines to be unexpended in the implementation of the structural change.

- 2.03 Delayed Implementation of Requests. Upon written notice to the Agency, the District may delay, for a period not to exceed sixty (60) days, implementation of any requested change in the sewer service charges if the District determines that such delay is necessary to facilitate District's operations. Within fifteen (15) calendar days of receipt of an appropriate Agency request to change the Agency's sewer service charge, the District will notify the Agency if a delay in implementation is required. The notice will include an estimate of the duration of the delay. The Agency understands that revenue anticipated by the Agency as a result of the change in its sewer service charge will not be billed by the District during the period of delay. Agency expressly agrees that the District shall have no responsibility or liability with respect to such anticipated revenue.

2.04 Billing and Collection. For purposes of billing and collection of the Agency's sewer service charge, the District agrees to furnish the labor, services, materials and equipment required for billing, collection, maintenance of customers' records, and customer contact on new services, account closings, allowances and adjustments. Materials so furnished by the District will include the prepared bills, mailing envelopes, postage, and enclosed return envelopes. Equipment to be furnished and used by the District in performing this Agreement will consist of the equipment now or hereafter operated and used from time to time by the District in billing for its own water and sewage disposal accounts. Services provided by the District will include billing, maintenance of controls and customer accounts where volume of water used is a factor in determining Agency's sewer service charge, and the customer contact and collection activities of the District.

2.05 Method of Billing and Collection. The system used to bill, record and collect the Agency's sewer service charge will conform to the District's system, policies and procedures for the handling of its own accounts. In particular, and without limiting the generality of the foregoing, the following shall apply to billing and collection of the Agency's sewer service charges:

- a. The Agency's sewer service charge will be billed on the same bimonthly or monthly basis as the related District accounts.
- b. Interest and penalties or other delinquent charges, if any, imposed by the Agency in connection with its sewer service charge shall not be billed or collected by the District.
- c. The District's collection routines, including bill extensions and date of write-offs, shall be used in

connection with the Agency's sewer service charge. In the event of account write-offs, the District will furnish to the Agency information regarding the amount of revenue written-off, and the District shall have no further responsibility for the billing or collection of said accounts.

- d. The District will make allowances and revenue adjustments in the Agency's sewer service charge in accordance with its practices for District accounts.
- e. Partial payments will be allocated between the Agency and the District in proportion to the amount of the charges billed.
- f. The District will not collect accounts which are unpaid or delinquent on the conversion date of the account, nor collect accounts which the Agency failed to identify as being subject to its charges.
- g. The District will adjust the gross cash collection remitted to the Agency to account for such items as returned checks, erroneous applications and bookkeeping errors.

2.06 Sewer Service Charges to be Billed and Collected. The District agrees to bill and collect the Agency's sewer service charge for each customer within the Agency in whose name a monthly or bimonthly charge for water will be made by the District for its own account. Such billed charges will be in the respective amounts specified by the Agency's Request to Bill Sewer Service Charges, attached hereto as Exhibit B and incorporated herein by this reference. The District agrees to provide one (1) line on its water bill for such Agency sewer service charges.

- a. The Agency's sewer service charges may be structured to bill either by metered water use or by flat rate according to Business Classification Code (BCC). In no case shall the District bill tiered Agency sewer service charge rates. In no case shall the District bill individual sewer service charges for specific accounts that would otherwise be billed according to the BCC of said accounts.
- b. The Agency agrees to use the District's standard system of rate codes.
- c. Sewer service charges will be billed for the first day of the applicable billing period and for each day thereafter during the entire billing period.
- d. The District will cease billing sewer service charges for any or all classifications, at the Agency's written request, for bills produced on or after a specified date only if that request is part of an annual rate change request.
- e. The parties agree that, in the event that District is unable to bill an account that is identified in the Agency's Request To Bill Sewer Service Charges, or in any change thereto, due to operational conditions, including but not limited to broken, obstructed or unlocatable meter or unoccupied service, the District shall have no liability therefore and no obligation to collect said unbilled revenue or to pay any costs that may be incurred by Agency, or by any other person or entity, to collect said unbilled revenue.

2.07 Notification to the Public. The Agency agrees to provide notice, in a form and manner determined by the Agency, to affected customers advising them of any change in the Agency's sewer service charge prior to the effective date of

said change. The Agency shall set forth in the notification an Agency telephone number for customer inquiries regarding said change. It is understood and agreed that the District will not explain or respond to customer inquiries about the Agency's sewer service charges, or changes thereto, and will only inform customers that the charges correctly reflect the expressed request of the Agency. Customers shall be directed to the Agency for further clarification of said charges.

It is further understood and agreed that the District will not produce or provide information for the production of mailing labels to be used by the Agency for the notification of sewer service charge changes or for any other use by the Agency.

2.08 Public Statements. Agency expressly agrees that it shall not make, and shall not permit to be made by its employees, officers, agents or representatives, disparaging or false statements about the billing and collection services provided by the District pursuant to this Agreement. Agency agrees to inform its employees, officers, agents and representatives about the requirements of this paragraph. Failure to abide by this provision shall entitle the District to terminate this Agreement upon fifteen (15) days written notice to the Agency.

2.09 Identification of Services to be Included for the Agency's Charge. Upon execution of this Agreement the Agency shall submit to the District a detailed map of its service territory. A revised map shall be submitted not later than fifteen (15) days after any subsequent modification of the Agency's territory. Said maps shall clearly show, by individual address, which services are to be included for sewer service charges.

- 2.10 Services Excluded from the Agency's Charge. The Agency shall designate promptly to the District by name and account number such services as are to be excluded from all billing and collection by the District, and those that are to be billed directly by the Agency. Services may be added to, or deleted from, said list of excluded premises by the Agency at any time. Such additions or exclusions shall be for future billings only and shall not be retroactive to prior billed periods.
- 2.11 Payments to the Agency. Except as otherwise provided in this Agreement, the District shall remit monthly to the Agency the gross amount of its sewer service charges collected by the District.
- 2.12 District Right to Terminate Water Service. It is understood and agreed that this Agreement shall in no way restrict or limit the District right to terminate water service for nonpayment of billed charges or other permissible reason. The parties expressly agree that the District shall have no liability whatsoever for any reduction in sewer service charge revenue due to a termination of water service.
- 2.13 Yearly Consumption Report. Upon request, the District will provide to the Agency a yearly consumption report in the form attached as Exhibit C which form may be revised by the District from time to time. Said report will be produced once each calendar year. The medium for the report shall be printed report, diskette, or tape cartridge or any combination thereof. Charges for said report shall be in addition to other charges set forth in this Agreement and shall be based upon the actual cost to produce the report. No other special reports nor data shall be developed by the District.
- 2.14 Monthly Revenue Summary. The District will provide to Agency a monthly summary of the total amount billed, collected, and written-off by the District pursuant to this

Agreement. The Agency shall have the right, once per fiscal year, to access all records of the District used to prepare the Yearly Consumption Report and the Monthly Revenue Summary for the purposes of performing an audit of such reports.

III.

Obligations of the Agency

3.01 Payments to be Made by the Agency.

- a. Conversion Costs. The Agency agrees to pay, in the manner provided below, the District's actual costs, as hereinafter defined, to make the conversion described in paragraph 2.01. "Actual costs" include materials, labor, use of equipment, overhead charges, and all other costs incurred by the District to design, code, test and install the program necessary to bill and collect Agency's sewer service charges.

Upon execution of this Agreement, District will evaluate Agency's Request to Bill Sewer Service Charges and, based thereon, prepare an estimate of the cost to perform the conversion work described in paragraph 2.01. Agency understands that conversion work by the District will not commence until official approval by their Board or City Council and a notice to proceed in writing is received by the District. Agency understands and agrees that the actual cost to perform the conversion could exceed District's estimate and further agrees to pay said actual costs within thirty (30) days of receipt of District's invoice therefore. The District agrees to invoice the Agency after complete installation of the programs and testing prior to

production of actual bills, which is expected to occur no earlier than July 1, 2003.

If the District has already performed the necessary conversion work pursuant to a prior agreement with the Agency, no additional conversion cost shall be charged to the Agency unless further conversion is requested.

- b. Billing and Collection Expense. Upon completion of the required conversion work, the District will calculate the estimated monthly cost to bill and collect Agency's sewer service charge. The calculation of said estimated cost shall be based upon (a) District's knowledge of the cost to collect on behalf of its own accounts and (b) the amount of revenue collected, number of accounts to be billed, and number of meters read for the Agency compared to the total revenue collected, number of accounts billed, and meters read by the District. Said estimated costs shall be offset by an estimated percentage of late payment penalty fees collected by the District. This percentage shall be based on the Agency's portion of total revenue collected. During the fiscal year in which the billing and collection of the Agency's sewer service charge is commenced, Agency shall pay to the District, on a monthly basis, said estimated cost.

At the close of the initial fiscal year, and at the close of each subsequent fiscal year, the District will calculate the actual costs incurred to bill and collect the Agency's sewer service charge. If the District's actual costs are greater than the estimated costs paid by the Agency, the Agency shall pay the difference to District within thirty (30) days of District's invoice therefor. If the District's actual costs are less than the estimated costs paid by the Agency, the District

will apply a credit to the Agency's account. The actual cost calculation by the District at the close of each fiscal year shall constitute the estimated monthly charge which shall be paid by the Agency during the next fiscal year.

Calculation by the District of its actual costs to bill and collect Agency's sewer service charge shall be conducted according to standard accounting practices. The District agrees that the charge to the Agency shall not exceed the reasonable costs of providing the services rendered hereunder. Subject to the limitations expressed herein, the parties agree that the District's determination of its actual costs shall be final.

- c. Manner of Payment. The aforesaid charges for conversion and billing and collection costs, and other charges set forth in this Agreement, shall be paid by the Agency to the District within thirty (30) days following billing by the District. Checks should be made payable to East Bay Municipal Utility District, P.O. Box 24055, Oakland, CA 94623.

Agency and District agree that District may debit sewer service charges collected by District, which have not yet been remitted to Agency pursuant to paragraph 2.11 herein, to satisfy any unpaid and overdue sum owing to the District by Agency and/or may terminate this Agreement upon fifteen (15) days notice in writing to the Agency.

- 3.03 Liaison by the Agency with District. The Agency shall designate a representative for liaison with the District to cooperate in the handling of disputed accounts and other matters arising under the administration of this Agreement. The District will make available to the Agency upon request

District records pertinent to the billing and collection of the Agency's sewer service charges. The District shall not make available to the Agency individual customer records or groups of such records except as described elsewhere in this Agreement.

3.04 Confidentiality of Records. The Agency acknowledges that

District records pertaining to individual customers may be protected by a constitutional right of privacy or may contain proprietary information. Agency agrees to limit access to data furnished to the Agency pursuant to this Agreement and not to make such data available for public inspection unless required by law to make disclosure. Agency shall inform District prior to making such disclosure. Subject to these limitations, the District agrees to furnish customer account data to Agency solely for the intended purpose of this Agreement. Agency agrees that the only use it shall make of such data shall be for development and substantiation of sewer service charges. Failure by the Agency to comply with the provisions of this paragraph shall entitle the District to terminate this Agreement upon fifteen (15) days written notice to the Agency.

3.05 Liability of the Agency. The Agency agrees to indemnify, defend and hold harmless the District, its board, officers, employees and agents from and against any and all loss, liability, expense, claims, costs, suits, damages, including attorney's fees or demands of whatever character, direct or consequential, arising from the billing or collection of the Agency's sewer service charge, however, this indemnification shall not extend to negligent or reckless conduct of the District, its board, officers, employees and agents. The Agency agrees that the District may itself defend, at its own election, any such actions brought against the District arising out of the billing or collection of such sewer service charge, and the Agency agrees to indemnify the District against any judgments or damages for which the

District may be found to be liable in such action or actions and to reimburse the District for any costs incurred, including attorney's fees, arising from the defense of such actions. In the event action is brought against the Agency, or it is joined therein, the Agency shall provide its own defense at the sole cost and expense of the Agency.

The District agrees to indemnify, defend and hold harmless the Agency, its board, officers, employees and agents from and against any and all loss, liability, expense, claims, costs, suits, damages, including attorney's fees or demands of whatever character, direct or consequential, arising out of or resulting from its associates', employees', sub-consultants' or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this agreement. However, this indemnification excludes loss, liability, expense, claims, costs, suits, damages, including attorney's fees or demands of whatever character, direct or consequential, arising out of or resulting from errors in the billing data provided by the Agency to the District

3.06 Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

3.07 Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be 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 Agreement, which shall continue in full force and effect,

provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

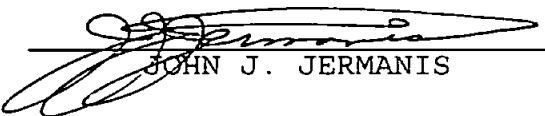
3.08 Amendments. This Agreement is not subject to modification or amendment, except by a writing executed by both Agency and District, which writing shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

3.09 Whole Agreement. This Agreement has 16 pages excluding any exhibits described herein. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the Agency has caused its name to be affixed hereto by the City Manager thereunto duly authorized by Ordinance No.2002-159 and the District has caused its name to be affixed hereto by its officers thereunto duly authorized, all in triplicate, the day and year first above written.

CITY OF SAN LEANDRO

EAST BAY MUNICIPAL UTILITY DISTRICT



JOHN J. JERMANIS



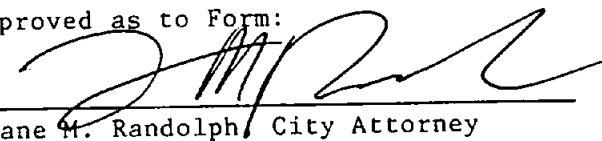
REBECCA F. LAMOREAUX

City Manager
TITLE

Manager, Customer & Community Svc
TITLE



MICHAEL WHITE

Approved as to Form:


Liane M. Randolph, City Attorney

Finance Director
TITLE



City of San Leandro

Meeting Date: December 17, 2012

Resolution - Council

File Number: 12-590

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: ADOPT: Resolution Approving a Six Month Extension of the Contractual Services Agreement with East Bay Municipal Utility District to Conduct Sewer Utility Commercial Account Billing Services, Effective January 1, 2013 (approves Amendment No. 1 to extend the original agreement)

WHEREAS, an amendment to extend the original agreement between the City of San Leandro and East Bay Municipal Utility District, a copy of which is attached, has been presented to the City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager has recommended approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement is hereby approved and execution by the City Manager is hereby authorized.

**AMENDMENT NO. 1
TO SEWER SERVICE CHARGE BILLING AND COLLECTION AGREEMENT OF
DECEMBER 27, 2002,
BY AND BETWEEN
EAST BAY MUNICIPAL UTILITY DISTRICT
AND
CITY OF SAN LEANDRO WATER POLLUTION CONTROL PLANT**

THIS AMENDMENT, dated the 13th of November, 2012 (hereinafter the “AMENDMENT”) amends the Agreement dated December 27, 2002 for billing and collection of sewer charges (hereinafter the “AGREEMENT”), by and between the EAST BAY MUNICIPAL UTILITY DISTRICT (hereinafter the “District”), a public entity, and the CITY OF SAN LEANDRO WATER POLLUTION CONTROL PLANT (hereinafter “the Agency”), a public corporation.

WITNESSETH

WHEREAS District’s Board of Directors adopted Motion 196-02 on December 10, 2002 authorizing the AGREEMENT for billing and collection of sewer charges; and

WHEREAS on December 27, 2002, the Agency and District (collectively, the “PARTIES”) entered into the AGREEMENT for billing and collection of sewer charges; and

WHEREAS the PARTIES wish to amend paragraph 1.06 – Termination Of Agreement in the AGREEMENT to extend the term of the original AGREEMENT by six months from December 27, 2012 to June 30, 2013, and to provide for six-months written notice before implementing a new rate tier calculation for the Agency’s prorated share of the Customer Information System replacement cost; and

WHEREAS all other provisions of the AGREEMENT remain unchanged and in full force and effect.

NOW, THEREFORE, the PARTIES do agree as follows:

1.06 Termination Of Agreement

Paragraph 1.06 of the AGREEMENT is replaced in its entirety with the following:

This Agreement will remain in effect, except as provided for in paragraphs 2.08, 3.02(b) and 3.04, until [10 years and 6 months from execution of Agreement]. This Agreement may be extended by written agreement between the Agency and the District. Termination of this Agreement shall not affect Agency's liability, as provided herein, to pay the cost of services which have been rendered by the District pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Carol Y. Nishita
Director of Administration

Date: _____

Approved As To Form

By: _____
For the Office of the General Counsel

CITY OF SAN LEANDRO

By: _____
Signature

Date: _____

Name: _____

Title: _____