



## CITY OF MARTINEZ

## CITY COUNCIL AGENDA October 6, 2010

**TO:** Mayor and City Council

**FROM:** City Engineer

**SUBJECT:** Contra Costa Clean Water Program Agreement

**DATE:** September 29, 2010

### **RECOMMENDATION:**

Adopt resolution approving the Contra Costa Clean Water Program Agreement (2010).

### **BACKGROUND:**

The 1987 amendments to the Clean Water Act (CWA) added Section 402(p) establishing a framework for regulating municipal stormwater discharges under the National Pollutant Discharge elimination System (NPDES) permit program. The United States Environmental Protection Agency (USEPA) promulgated regulations in November 1990 establishing permit application requirements for discharges from municipal separate storm sewer systems (MS4s). In California, the MS4 NPDES Permit Program is administered by California State Water Resources Control Board and the nine (9) Regional Water Quality Control Boards (RWQCBs).

Following promulgation of USEPA's 1990 stormwater regulations, the San Francisco Bay and Central Valley RWQCBs mandated Contra Costa County, its 18 incorporated cities, and the Contra Costa County Flood control and Water Conservation District (District) (hereinafter referred to collectively as Permittees) apply for MS4 NPDES Permit coverage. In May 1991, Permittees entered into an agreement to participate in the preparation of a Joint MS4 NPDES Permit application to minimize the cost to all parties. This cooperative arrangement has evolved and matured over the past 19 years and is now known as the Contra Costa Clean Water Program (Program). The Program has successfully cooperated under a Program Agreement, which has been updated from time to time. The program Agreement delineates Program activities (i.e., activities conducted collectively), structure, membership, costs and participation. A separate Cost Payment Agreement further delineates the fiduciary responsibilities of the District in administering a Stormwater Utility Assessment on behalf of all Permittees (except Brentwood and Richmond), and the Permittees responsibilities for reimbursement of Group Program costs.

The San Francisco Bay and Central Valley RWQCBs issued their first 5-year MS4 NPDES Permit to Permittees on September 15, 1993 and January 28, 1994, respectively. These permits were reissued in July 1999 and June 2000. In October 2010, the San Francisco Bay RWQCB reissued a third permit, which now consolidates most all Bay Area stormwater programs under one Municipal Regional Permit (MRP). The Central Valley RWQCB is scheduled to reissue its third permit in the near future, which is expected to be nearly identical to the MRP.

With the planned expiration of the existing Program Agreement in 2010, and new and enhanced stormwater regulations in the recently adopted MRP, Permittees wish to update the Program Agreement. Proposed changes to the Program Agreement are relatively minor. The most substantive changes in the proposed Program Agreement involve a restructuring of the various subcommittees, and required level of participation on those subcommittees by municipalities. The proposed Program Agreement is also now in perpetuity, unless modified or terminated.

**FISCAL IMPACT:**

None. The City's percentage share of the Group Program remains at 3.61%.

**ACTION:**

Adopt resolution approving the Contra Costa Clean Water Program Agreement (2010).

A handwritten signature in cursive script, appearing to read "Phil Vance", is positioned above the printed name of the City Manager.

**APPROVED BY:** City Manager

**RESOLUTION NO. -10**

**APPROVING THE CONTRA COSTA  
CLEAN WATER PROGRAM AGREEMENT (2010)**

**WHEREAS**, Section 402(p) of the federal Water Pollution Control Act (CWA), as amended by the Water Quality Act of 1987, requires NPDES permits for stormwater discharges from municipal separate storm sewer system (MS4s); and

**WHEREAS**, in California, the NPDES Permits are issued through the California State Water Resources Control Board and the nine (9) Regional Water Quality Control Boards; and

**WHEREAS**, the San Francisco Bay and Central Valley Regional Water Quality Control Boards mandated Contra Costa County, all nineteen (19) of its incorporated cities/towns and the Contra Costa County Flood Control & Water Conservation District (Flood Control District) be covered under a Joint MS4 NPDES Permit; and

**WHEREAS**, these jurisdictions are currently covered under a Joint MS4 NPDES Permit issued by the San Francisco Bay and/or Central Valley Regional Water Quality Control Board; and

**WHEREAS**, the Joint MS4 NPDES Permits require individual municipal implementation of stormwater best management practices to prevent or reduce pollutants in stormwater; and

**WHEREAS**, the Joint MS4 NPDES Permit allows and encourages certain mandated activities be conducted jointly; and

**WHEREAS**, cooperative efforts between the cities/towns, County and the Flood Control District in the MS4 NPDES permits have minimized the costs of the mandated activities to all parties; and

**WHEREAS**, the San Francisco Bay Regional Water Quality Control Board approved a reissued third Joint Municipal Regional Stormwater NPDES Permit (CAS612008) on October 14, 2009; and

**WHEREAS**, the Central Valley Regional Water Quality Control Board is scheduled to reissue a third Joint Municipal NPDES Permit; and

**WHEREAS**, the Contra Costa County, all nineteen (19) of its incorporated cities/towns and the Flood Control District will be subject to the Program Agreement, which delineates Program activities, structure, membership, costs and participation.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Martinez shall continue to participate in the implementation of the MS4 NPDES Permits agreeing to share in Program costs, provide appropriate staff support and provide detailed information necessary to implement the MS4 permits; and

**BE IT FURTHER RESOLVED** the City of Martinez, City Manager is hereby authorized to execute the Contra Costa Clean Water Program Agreement (2010), as described in Attachment "A"; and

**BE IT FURTHER RESOLVED** the City of Martinez, Clerk shall provide three signed, certified copies of this resolution to the Contra Costa Clean Water Program Manager.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 6th day of October, 2010 by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**CONTRA COSTA CLEAN WATER  
PROGRAM AGREEMENT  
(2010-2025)**

**Contra Costa Clean Water  
Program Agreement between  
The Contra Costa County Flood Control  
& Water Conservation District  
and  
City of Martinez**

THIS AGREEMENT is jointly entered into by the Contra Costa County Flood Control and Water Conservation District; the cities of Antioch, Brentwood, Clayton, Concord, El Cerrito, Hercules, Lafayette, Martinez, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, and Walnut Creek; the Towns of Danville and Moraga; and, the County of Contra Costa (sometimes individually referred to herein as "co-permittee" or "agency"). It is dated for administrative convenience as July 01, 2010.

**R e c i t a l s**

A. The parties are holders of Joint Municipal National Pollutant Discharge Elimination System ("NPDES") Permits issued by the San Francisco Bay and/or Central Valley Regional Water Quality Control Boards. The permits expire five years from their effective date, but may be modified, or alternatively revoked or reissued, before the expiration date, or administratively extended beyond the expiration date pending reissuance. The cities, towns and County previously entered into a joint agreement with the Contra Costa County Flood Control and Water Conservation District ("District") for a 7-year period. As set forth more particularly in Section B below, the parties wish to extend the joint agreement to June 30, 2025.

B. The parties (except the cities of Richmond and Brentwood) have entered into a separate cost payment agreement regarding the stormwater utility fee assessment financing with the District. The cities of Richmond and Brentwood may enter into separate cost payment agreements with the District in the future.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**A. Group Activities Delineation.**

The Management Committee (“MC”) is the decision-making body of the Contra Costa Clean Water Program (“Program”). It shall be responsible for setting policies, providing directions, approving contracts and agreements, and authorizing expenditures.

The Program shall administer the Joint Municipal NPDES permits and implement the activities jointly carried out pursuant to this Agreement by the parties including, but not limited to, the following tasks:

1. Provide the necessary administrative, technical and clerical resources to implement all Program activities directed by the Management Committee in order to implement the Joint Municipal NPDES permits. Administrative activities may include attending all Management Committee and sub-committee meetings, and preparing committee staff reports, minutes and/or summaries of committee actions.
2. Administer all consulting services contracts (technical, legal, public relations and associated services) including the coordination, billing and monitoring of all such activities.
3. Represent the Program at federal, state, regional and local governmental, civic, professional and political organizations and agencies.
4. Coordinate the yearly compilation of the Annual Reports for submittal to the appropriate Regional Water Quality Control Boards.
5. Conduct monitoring activities, which may include the purchase, installation and testing of equipment at designated sites.
6. Ensure all regulatory fees and assessments necessary to obtain and maintain the Joint Municipal NPDES Permits are appropriate and, if so, paid.
7. Ensure adequate information is available to all co-permittees for implementation of a comprehensive stormwater management ordinance and its regulations in compliance with the NPDES permits.
8. Implement a comprehensive public information/participation program on behalf of all co-permittees. The Program will be responsible for developing independently or in cooperation with the Bay Area Stormwater Management Agencies Association (“BASMAA”) original public information materials; and, co-permittees shall be responsible for reproducing and distributing these materials.
9. Participate in special studies determined by the Program, the Regional Water Quality Control Boards, BASMAA or other appropriate entities.
10. Ensure adequate information is available for co-permittees to implement a

comprehensive program for field inspection and investigation activities for unauthorized connections and illegal dumping.

11. Ensure adequate information is available for co-permittees to implement source controls, site design measures, and stormwater treatment and runoff control measures on new development and redevelopment projects, and to ensure ongoing operation and maintenance of post-construction stormwater management facilities.

12. Ensure adequate information is available for co-permittees to mitigate impacts to stormwater quality resulting from construction activities specifically focusing on proper site management; erosion control; sediment control; runoff and runoff control; non-stormwater management control; and, proper operation and maintenance of such construction site control best management practices (“BMPs”).

**B. Termination.**

This agreement will terminate on June 25, 2025. However, if the existence of this agreement is necessary to remain in compliance with permit requirements promulgated by the Regional Water Quality Control Board, and the parties have not been able to modify or extend the agreement by such date, the agreement will remain in effect on a month to month basis until formally amended or repealed by the parties. Should a co-permittee want to stop participating in the Program and terminate its obligations under this Agreement, the following conditions must be met:

1. The co-permittee shall provide written notice to the Program Manager and Management Committee chair and vice-chair of its intention to terminate its participation in the Program by no later than 5:00 p.m., December 31 prior to the commencement of the following fiscal year of which it is seeking to terminate its obligations (July 1 - June 30).

To ensure an orderly transition, the departing co-permittee shall also obtain written confirmation from the Regional Board Executive Officer that an individual Municipal NPDES Permit will be issued to the co-permittee and provide a copy to the Program with the notice of termination.

2. The co-permittee shall be committed to fulfill all of its financial obligations outlined in this Agreement to the end of the fiscal year (June 30).

3. The co-permittee shall also fulfill all of its individual obligations for projects, studies, and other programs and activities undertaken on behalf of the Program or BASMAA through the duration of any such projects, studies, programs, and activities.

**C. Sub-committee Structures.**

The following sub-committees to the Management Committee are hereby established, subject to changes approved by the Management Committee:

1. Administrative Committee ("AC") is a sub-committee responsible for administration,

strategic planning, personnel, budget recommendations and conflict resolution.

2. Monitoring Committee ("MONC") is a sub-committee responsible for water quality monitoring activities and coordination of associated special studies/projects.

3. Development Committee ("DC") is a sub-committee responsible for preparing guidance and training on construction site stormwater quality management programs, post-construction stormwater quality management programs, and for reviewing, researching and making recommendations to the Management Committee on matters related to land development activities.

4. Public Information/Participation Committee ("PIPC") is a sub-committee responsible for development of materials and products, information dissemination, technical workshops, marketing and public outreach.

5. Municipal Operations Committee ("MOC") is a sub-committee responsible for development of guidance and training on stormwater pollution prevention activities for municipal maintenance activities, commercial/industrial inspection programs, illicit discharge control activities, and trash load reductions activities.

6. Ad Hoc Workgroups are established by the Management Committee as needed for a temporary period for the purposes of reviewing, researching and making recommendations to the Management Committee or a sub-committee on a permit compliance matter. Ad Hoc Workgroups may act on behalf of the Management Committee or sub-committee if approved and directed by the Management Committee.

**D. Management Committee Representatives.**

1. The City Manager shall designate in writing to the Program Manager and chair or vice-chair of the Management Committee the Management Committee representatives for their jurisdiction. The designations may be identified by job classifications or as named individuals. The City Manager shall designate up to two (2) individuals who may vote on behalf of their agency at any Management Committee deliberation. Each co-permittee shall have one vote on the Management Committee. The voting decisions of the Management Committee representatives shall be binding upon their agency. Co-permittees shall be permitted to send substitutes to any Management Committee meeting, permitting the individual to vote on behalf of the agency when the designated representative is absent. Written confirmation from the City Manager indicating the identity of the substitute shall be provided to the Program Manager prior to the meeting. The substitute's decisions shall be binding upon its agency.

2. Each Management Committee representative shall consist of a designated individual responsible for directly administering the stormwater management program for their agency.

3. Management Committee representatives shall continue for the entire term of the Agreement unless changed by the City Manager by providing timely written notification to the Program Manager.

4. Any decision made by the Management Committee shall be binding upon all co-permittees.

**E. Committee Membership.**

1. For the purposes of this agreement, a “Large Municipality” is designated as having a population of 50,000 or more obtained from the State of California’s Department of Finance. The population data published in January of each year will be used for determining municipalities within this designation for the following fiscal year.

Each co-permittee designated as a “Large Municipality” shall have one voting representative on the Management Committee and a minimum of two voting representatives on two of the following (except as stipulated in Section E.11. i below):

- Administrative Committee
- Monitoring Committee
- Development Committee
- Public Information/Participation Committee
- Municipal Operations Committee, or
- BASMAA sub-committee duly recognized by the Management Committee

Each co-permittee not designated as a “Large Municipality” shall have one voting representative on the Management Committee and one voting representative on the Administrative Committee, Monitoring Committee, Development Committee, Public Information/Participation Committee, Municipal Operations Committee, or BASMAA subcommittee duly recognized by the Management Committee. Participation in any Ad Hoc Workgroup duly created by the Management Committee shall be voluntary.

2. Co-permittees serving as voting members of any BASMAA subcommittee shall represent all Program co-permittees. Co-permittees designated as voting members of a BASMAA subcommittee shall also participate on the equivalent or corresponding Program subcommittee as determined by the Management Committee to best serve the interests of the Program.

3. Co-permittees may have membership on any sub-committees as full voting members if approved by the Management Committee at its May meeting upon the recommendation of the Management Committee chairperson for the following fiscal year. Each co-permittee shall only be allowed one vote per sub-committee. Participants at sub-committee meetings, other than approved

voting members, shall not be allowed to vote on any item under consideration.

4. Co-permittees may participate in the discussions of any sub-committee; however, any co-permittee not designated as an approved voting member shall not be allowed to vote on recommendations.

5. Each of the following sub-committees shall have the following minimum number of members subject to changes by the Management Committee:

- Administrative Committee 7
- Monitoring Committee 5
- Development Committee 5
- Public Information/Participation Committee 5
- Municipal Operations Committee 5

6. The Management Committee chairperson and vice-chairperson shall be chosen at the May Management Committee meeting for the following fiscal year.

7. The Management Committee chairperson shall be chairperson of the Administrative Committee for one fiscal year (July 1 to June 30).

8. The Management Committee chairperson, in accordance with established guidelines, shall by May of each fiscal year recommend, after consultation with all co-permittees, membership on all sub-committees effective July 1 of the next fiscal year. Recommendations shall be considered by the Management Committee at its May meeting. Sub-committee members shall be encouraged to rotate every two years.

9. The first order of business for each sub-committee at its July meeting is to choose a chairperson and vice chairperson for the remainder of the fiscal year, and to establish the sub-committee's work plan for the fiscal year dealing with its goals, objectives, time lines and related items, consistent with the requirements in the NPDES Permits. The sub-committee's work plan shall be provided to the Management Committee for review upon completion.

10. Attendance at all Management Committee and sub-committee meetings shall be published monthly. Co-permittees with voting rights are expected to attend at least 80% of the regularly scheduled meetings. Two consecutive absences shall cause the Management Committee or sub-committee chairperson to request new representatives from the designated co-permittee by contacting either their Management Committee representative or the co-permittee's City Manager. Attendance of all committees shall be added to the Annual Report provided to the Regional Water Quality Control Boards.

11. The Administrative Committee shall consist of the following membership and

conditions, subject to changes by the Management Committee, and shall generally follow the rotation guidelines contained in **Exhibit "A"**:

a)	Management Committee chairperson	1
b)	Flood Control District	1
c)	Contra Costa County	1
d)	“Designated Large Municipality”	1/0*
e)	Other Co-Permittees	<u>3/4*</u>
		Total 7

- \* (i) A “Designated Large Municipality” is defined as one of the three co-permittees with the largest populations based on State of California’s Department of Finance’s population estimates. The population data published in January of each year will be used for determining the three municipalities within this designation for the following fiscal year.
- (ii) The three “Designated Large Municipalities” will rotate voting membership on the Administrative Committee annually.
- (iii) The “Designated Large Municipality” serving on the Administrative Committee shall also serve as the voting member of two additional subcommittees.
- (iv) If the Chairperson on the Administrative Committee is from a “Designated Large Municipality”, then the “Other Co-Permittees” category shall be increased to four members and the “Designated Large Municipality” category shall be decreased to zero.
- f) Administrative Committee vice-chairperson shall be selected at the first meeting in July of each fiscal year. The Management Committee vice-chairperson does not have to be the Administrative Committee vice-chairperson.
- g) Balanced representation from the following geographical areas will be encouraged:
  - (i) West County: El Cerrito, Richmond, San Pablo, Hercules, Pinole, and unincorporated County.
  - (ii) East County: Antioch, Brentwood, Oakley, Pittsburg, and unincorporated County.
  - (iii) Central/North County: Concord, Clayton, Pleasant Hill, Walnut Creek,

Martinez, and unincorporated County.

(iv) Lamorinda/South County: Lafayette, Orinda, San Ramon, Danville, Moraga, and unincorporated County.

- h) The Flood Control District shall be a permanent member of the Administrative Committee, but shall also participate as a voting member on at least one additional subcommittee.
- i) Contra Costa County shall be a permanent member of the Administrative Committee, but shall also participate as a voting member on at least two additional subcommittees.
- j) Administrative Committee voting membership can only be changed during the fiscal year by the Management Committee Chairperson following established guidelines:
  - i) The minimum membership per Section E5.
  - ii) Balanced membership from the four geographical areas generally outlined in **Exhibit A**.

12. Membership shall be chosen to enhance the sub-committee's manageability and overall effectiveness in attaining goals and objectives.

13. A quorum for each committee or sub-committee shall consist of a majority of its voting members.

**F. Program Costs Participation and Allocation.**

All program costs shall be allocated to co-permittees on population numbers annually obtained from the State of California's Department of Finance. The population data published in January of the preceding year will be used to form the cost allocations of the following fiscal year. (See **Exhibit "B"** for the 20010/11 Fiscal Year Allocations table as an example.)

**G. Optional Services.**

Additional services requested by a co-permittee and consistent with carrying out tasks outlined in the Joint Municipal NPDES Permits may be provided by Program staff as long as they minimally impact Program staffing and are approved by the Management Committee. Such requests shall be in writing and detail tasks to be accomplished. Such services shall be completely financed by the requesting co-permittee.

**H. Contracting.**

1. All contracts shall be administered through the District on behalf of the Program. Other co-permittees may be permitted to contract on behalf of the Program upon Management

Committee approval.

2. Contracts may be entered into for up to three years.
3. Contracts entered into for a period less than three years may be extended, based upon satisfactory performance, for a total contract term of three years.
4. The appropriate sub-committee shall recommend consultant contracts and contract extensions to the Management Committee for approval.
5. The aforementioned contracts are for services, not products.
6. Procuring technical services shall be accomplished in the following manner:
  - a) A formal Request for Proposal ("RFP") shall be developed for all required technical services detailing goals, objectives, budget, tasks and time lines, unless an alternative process is approved by the Management Committee.
  - b) All co-permittee(s) will be asked if they wish to respond to the RFP. If so, the co-permittee(s) must respond in writing to the appropriate sub-committee.
  - c) The sub-committee can either recommend approval of the submitted co-permittee(s)' proposal to the Management Committee; or, may send the RFP to outside vendors and review all submittals before making a final recommendation to the Management Committee.
  - d) The appropriate sub-committee shall be responsible for recommending a consultant to the Management Committee.

**I. Staffing.**

1. Program staff are employees of Contra Costa County, employed on behalf of all co-permittees to administer the Program. The Management Committee may contract for Program staff through another co-permittee, another institutional arrangement (such as a joint powers agreement), or consultant(s).
2. The County, or other staff provider, shall obtain input from the Management Committee regarding staff evaluations, job classifications and salary ranges. The Administrative Committee shall be responsible for soliciting input from the Management Committee members.
3. The Management Committee shall negotiate an administrative overhead rate with any appropriate agency providing services to the Program.
4. Program staff shall provide a written record of all policies, rules and regulations duly adopted by the Management Committee.

**J. Indemnity.**

Each party to this Agreement agrees to protect, indemnify and hold harmless the other parties and their officers, officials, employees and volunteers from and against all claims, demands and

causes of action by third parties on account of personal injuries or death or on account of property damages arising out of the work to be performed under this Agreement and resulting from the negligent act or omission of the party, its contractors, agents, employees or subcontractors.

Dated: \_\_\_\_\_

**CONTRA COSTA COUNTY  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Attorney

Dated: \_\_\_\_\_

**CITY OF MARTINEZ**

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT "A"

# CONTRA COSTA CLEAN WATER PROGRAM ADMINISTRATIVE COMMITTEE PARTICIPATION ROTATION GUIDELINE

Municipalities by Geographic Designation	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
<b>Countywide</b>					
Contra Costa County	x	x	x	x	x
Flood Control District	x	x	x	x	x
<b>Central/North County</b>					
Concord			x		
Walnut Creek	x				
Martinez		x			x
Pleasant Hill				x	
Clayton		x			
<b>Lamorinda/South County</b>					
San Ramon	x				
Danville			x		
Lafayette				x	
Orinda					x
Moraga		x		x	
<b>East County</b>					
Antioch		x			x
Pittsburg	x				
Brentwood				x	
Oakley			x		x
<b>West County</b>					
Richmond	x			x	
San Pablo			x		
Hercules		x			x
El Cerrito			x		
Pinole	x			x	

## EXHIBIT “B”

### CONTRA COSTA CLEAN WATER PROGRAM GROUP COST METHODOLOGY & ALLOCATION FOR THE 2010/11 FISCAL YEAR

ENTITY	POPULATION <sup>1</sup>	PRORATA SHARE OF GROUP COSTS <sup>2</sup>	BUDGET ALLOCATION
ANTIOCH	100,957	9.52%	\$ 214,215
BRENTWOOD	51,908	4.89%	\$ 110,141
CLAYTON	10,864	1.02%	\$ 23,052
CONCORD	124,599	11.75%	\$ 264,380
DANVILLE	43,043	4.06%	\$ 91,331
EL CERRITO	23,440	2.21%	\$ 49,736
HERCULES	24,480	2.31%	\$ 51,943
LAFAYETTE	24,087	2.27%	\$ 51,109
MARTINEZ	36,348	3.43%	\$ 77,125
MORAGA	16,204	1.53%	\$ 34,382
OAKLEY	34,468	3.25%	\$ 73,136
ORINDA	17,669	1.67%	\$ 37,491
PINOLE	19,383	1.83%	\$ 41,128
PITTSBURG	63,771	6.01%	\$ 135,312
PLEASANT HILL	33,547	3.16%	\$ 71,182
RICHMOND	104,513	9.86%	\$ 221,760
SAN PABLO	31,808	3.00%	\$ 67,492
SAN RAMON	63,176	5.96%	\$ 134,050
WALNUT CREEK	65,860	6.21%	\$ 139,745
UNINCORPORATED	170,310	16.06%	\$ 361,371
		100%	\$ 2,250,079

1. Population figures based on State of California’s Department of Finance population estimates as of January 1, 2009.
2. Prorata share of group costs based upon percentage of countywide population, which 1,060,435.

