



Office of the City Manager

CONSENT CALENDAR
June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Contract Amendment: East Bay Municipal Utilities District (EBMUD) for Sanitary Sewer Charge and Billing Collection

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend the agreement (Contract 9735) with East Bay Municipal Utility District (EBMUD) to administer a Customer Assistance Program (CAP) which is an expanded discount program for qualifying City of Berkeley sanitary sewer customers. Eligible customers under the CAP program will receive a 35% discount on their sewer charges.

FISCAL IMPACTS OF RECOMMENDATION

There is no new cost to the Sanitary Sewer Fund for this program. EBMUD currently administers Sanitary Sewer Billing for the City of Berkeley via residential and commercial customer's water bills and will administer this program discount at no additional charge to the City of Berkeley. As the discount program is being administered to a rate governed by California's Proposition 218, the amount discounted must be made whole by local funds. The annual discount is estimated to be \$55,000 and initial funding in the General Fund was established in the FY 2022 budget to fund this program. This allocation will be requested to be carried forward into the FY 2023 Budget. Ongoing funding for FY 2024 and beyond will be requested for appropriation in future year fiscal budgets.

CURRENT SITUATION AND ITS EFFECTS

EBMUD has a Customer Assistance Program (CAP) with the goal of providing discounts to qualifying low-income residents for municipal water and wastewater treatment services. Since EBMUD already administers billing for the City of Berkeley's Sanitary Sewer Charges, they are offering to apply the CAP discounts to Berkeley sewer customers as well, beginning in FY 2023. Qualification for the CAP follows Housing and Urban Development (HUD) income guidelines for qualifying max gross household income. The CAP limits increase based on the number of persons in a household. A 35 percent discount would be applied to Berkeley's sanitary sewer charges collected on EBMUD's bills for eligible CAP accounts. Customer participation is valid for two years. To continue assistance, applicants must reapply after two years.

The rate of discount can be adjusted, however, staff recommends 35%, which is similar to other agencies participating in the CAP program in the region, and limits the General Fund's obligation to repay the Sanitary Sewer Fund. EBMUD has estimated that over 430 accounts would be eligible to enroll. Currently, the City's Very Low Income (VLI) refund program supports on average 40 customers a year.

BACKGROUND

EBMUD has provided the City with sewer service charge billing and collection services for over 20 years. On August 25, 1981, Council authorized the City Manager to enter into a 10-year agreement with EBMUD to perform sewer service fee billing and collection services (Resolution 50,821-N.S.). On October 28, 1997, Council authorized the City Manager to enter into another 10-year agreement with EBMUD (Resolution # 59,236-N.S.) for sewer charge billing and collection services, and on May 22, 2007 Council authorized the City Manager to extend the agreement by three years (Resolution 63,698-N.S.). The 1997 10-year agreement expanded the services provided by EBMUD to include the billing and collection of sewer service fees from residential customers based upon their water consumption. On April 27, 2010, Council authorized the City Manager to extend the sewer service billing and collection agreement by three years (Resolution 64,850-N.S) and on June 4, 2013, Council entered into a new 10-year agreement with EBMUD for sanitary sewer billing and collection through June 30, 2023 (Resolution 64,184-N.S) Collecting sewer fees via the EBMUD bills result in a steady revenue stream with EBMUD remitting monthly the sewer fees they collect on the City's behalf.

The City currently administers its own [Very Low Income \(VLI\)](#) exemption program for certain customers for various local taxes and fees, including Sewer, Clean Storm, Fire, Library and Parks Landscape. In FY 2022, Berkeley's program includes households with an annual gross income of \$54,800 or less and the annual threshold is dependent on the Housing and Urban Development (HUD) VLI limits for 1-2 persons in a household. The VLI program provides a 100% refund to eligible claims filed within one year of payment of fees. In recent years, the City has averaged 40 approved requests, totaling a citywide annual average refund of \$13,000. Inclusion in EBMUD's CAP program does not preclude Berkeley qualifying customers from applying for the City administered VLI full waiver.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental impacts associated with this agreement. This agreement amendment implements a modification to an existing administrative billing program and has no inherent environmental sustainability or climate impacts.

RATIONALE FOR RECOMMENDATION

If adopted, this amendment will expand the reach of the discount program offered to City of Berkeley sewer customers. EBMUD would administer the CAP program and continue to administer the billing to sewer customers as it has for 40 years, with no additional administrative cost to the City.

ALTERNATIVE ACTIONS CONSIDERED

The City could not join EBMUD's CAP program and keep its current system of very low-income discount, which is available to a smaller qualifying segment of Berkeley residents. Viable alternatives to using EBMUD as the City's service provider for billing and collecting sewer fees do not exist at this time since an alternate billing and collection solution would have to be established, including adding City staff to administer.

CONTACT PERSON

Sean O'Shea, Administrative and Fiscal Services Manager, Public Works, (510) 981-6306

Attachments:

- 1: Resolution
- 2: Contract Agreement

RESOLUTION NO. ##,###-N.S.

CONTRACT AMENDMENT #9735: EAST BAY MUNICIPAL UTILITIES DISTRICT
(EBMUD) FOR SANITARY SEWER CHARGE AND BILLING COLLECTION

WHEREAS, the East Bay Municipal Utility District (EBMUD) has provided the City with sewer service charges billing and collection for over 40 years; and

WHEREAS, on June 4, 2013, Council passed Resolution 66,184-N.S, which approved a new 10 year agreement with EBMUD to continue to provide sewer charges billing and collection through June 30, 2023; and

WHEREAS, the City of Berkeley (Agency) and East Bay Municipal Utility District (District) entered into that certain Sewer Agency Charge and Billing Collection Agreement dated July 1, 2013 (Contract #9735). Except as otherwise defined, terms in this Amendment shall have the same meanings as in the agreement; and

WHEREAS, the District offers a Customer Assistance Program ("CAP"), pursuant to Public Utilities Code Section 12811.2, which provides temporary financial assistance to eligible customers of the District in the form of temporarily discounted water and wastewater rates; and

WHEREAS, the Customer Assistance Program ("CAP") is effective on July 1, 2022, the Agency will offer its residents, who are eligible for the District's CAP, temporary financial assistance in the form of temporarily discounted rates for sewer service provided by the Agency; and

WHEREAS, both parties wish to amend the term of the Agreement to extend the contract expiration date to June 30, 2023, under administrative authority.;

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable considerations, the parties hereby agree to amend the Agreement as follows:

1. Create a new Section 2.6(f) to the Agreement as follows and re-number subsequent sections accordingly:

2.6 (f) Customer Assistance Program for Agency Customers. The Agency provides a Customer Assistance Program ("the Agency's CAP") for its residents. The Agency's CAP shall be administered by the District in the same manner as the District administers the District's CAP.

i. Eligibility for the Agency's CAP. Agency Customers who are eligible to participate in the District's CAP shall be eligible to participate in the Agency's CAP. "CAP Account" shall mean an account of an Agency and

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District customer who has established eligibility for both the Agency's and the District's CAP.

ii. Effective immediately upon the execution of this addendum by both parties, the Agency sewer service charge displayed on the District's water bill for each CAP Account shall be sixty-five percent (65%) of the Agency's sewer service charge for the premises. Under the Agency's CAP, sewer rates for eligible residents shall be temporarily discounted at thirty-five percent (35%).

2. Section 2.10 Payments to the Agency of the Agreement shall be amended as follows:

Except as otherwise provided in this Agreement, the District shall remit monthly to the Agency the amount of its sewer service charges collected by the District, including the amount collected by the District for CAP Accounts. The District will also provide to the Agency a monthly summary of the total amount billed, collected, credited, and written off by the District pursuant to this Agreement.

3. Section 2.11 District Right to Terminate Water Service of the Agreement shall be amended as follows:

A. It is understood and agreed that this Agreement shall in no way restrict or limit the District's right to interrupt water service for nonpayment of billed charges or other permissible reasons. The parties expressly agree that the District shall have no liability whatsoever for any reduction in sewer service charge revenue due to an interruption of water service or non-payment by the customer.

4. It is understood and agreed that this Amendment is conditioned upon the appropriation of sufficient monies by the City of Berkeley to fund the program. The Agency or District may terminate this Amendment and Agreement for the non-appropriation of sufficient funds by the City of Berkeley.

5. As soon as possible after the execution of this Amendment, the District and the City of Berkeley commit to working in good faith to negotiate a ten (10) year extension of the Sewer Agency Charge Billing and Collection Agreement. The renewal of the Agreement shall be conditioned upon the City of Berkeley's implementation of the intended goal of ensuring sufficient funds to provide a thirty-five percent discount on the sewer service charge to residents eligible for CAP. The parties mutually agree that if the parties do not agree to extend the Agreement by June 30, 2023, this Amendment shall terminate effective July 1, 2023. Termination of this Amendment shall relieve the parties of any obligations set forth in this Amendment that must be satisfied after June 30, 2023.

6. Except as specifically amended hereby, the Agreement remains in full force and effect in accordance with the terms thereof.

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NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend the agreement with East Bay Municipal Utility District (EBMUD) to administer a Customer Assistance Program (CAP) which is an expanded discount program for qualifying City of Berkeley sanitary sewer customers.

SEWER AGENCY CHARGE BILLING AND COLLECTION AGREEMENT

THIS AGREEMENT, made and entered into this _____th day of _____, _____ by and between the CITY OF BERKELEY, a municipal corporation, herein after called “the Agency”, and the EAST BAY MUNICIPAL UTILITY DISTRICT, a public agency organized and existing under the law of the State of California, hereinafter called “the District”, supersedes any and all other previous Sewer Agency Billing and Collection Agreements between the Agency and the District;

WITNESSETH:

1. General Provisions

- 1.1. Purpose of Agreement. The City Council of the Agency has adopted its Ordinance No. _____ hereinafter referred to as “the Ordinance”, establishing sewer service charges for the user 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 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.
- 1.2. Term of Agreement. The District will bill and collect the Agency’s sewer service charge pursuant to the terms of this Agreement until June 30, 2023 unless otherwise terminated as provided in paragraph 1.5.
- 1.3. 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 the 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 therefor. The Agency 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 as illustrated by the shared cost billing and collection formula (Exhibit A).
- 1.4. 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. 2).

1.5. Termination of Agreement. This Agreement may be terminated at any time by either party hereto upon: 1) the District giving the Agency at least twelve (12) months written notice of such termination; or 2) the Agency giving the District at least ninety (90) days written notice of such termination. Termination of this Agreement shall not affect the 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; however, after notice of termination is given by Agency as provided herein, no costs incurred by the District for upgrades or changes in equipment, software, personnel or procedures that occur subsequent to such notification shall be assessed or billed to the Agency.

2. Services and Facilities to be Furnished by the District

2.1. Billing and Collection Services Provided. The District agrees to furnish the labor, services, materials and equipment required to program 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 the 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 cash collection from the Agency's sewer service charge billing, adjusted for debits and credits allowed by this Agreement.

2.2. 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 (see paragraph 2. 2.ci,ii). 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 unless the rate and/or structural change is mandated by court or legislative action. If any change is requested as a result of court order or other legal mandate, Agency shall identify the mandate and any legally mandated compliance date(s) and provide supporting documentation to the District. Agency requests to implement such mandated rate and/or structural changes shall conform to the requirements set forth in 2. 2.b, including the applicable period specified therein to effect such changes.
- b. Form of Requests. All requests for rate and structural changes shall be submitted on the Sewer Service Charges and Rates Request Form attached hereto as Exhibit B. 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. The sixty day period shall commence upon receipt of a revised Sewer Service Charges and Rates Request Form that is complete, correct and acceptable to the District. The Agency shall submit the required information on the same form to effect a structural change six (6) months prior to implementation of said change. The six month period shall commence upon payment by the 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.
 - i. Rate Changes. Rate changes are changes only in the rates (dollar value) applied to existing billing structure. (Examples: change metered rate from \$1.00 per ccuft to \$1.50 per ccuft, flat charge from \$10 per billing period to \$15 per billing period, etc.) For requested rate changes, the District will provide to the Agency an estimate of the cost to implement the rate change within thirty (30) days of the Agency's request therefor. The Agency understands and agrees that the actual cost to implement the rate change could exceed the District's estimate and further agrees to pay said actual costs within thirty (30) days of receipt of the District's invoice therefor.
 - ii. Structural Changes. Structural changes are changes in the manner in which the accounts are billed. (Examples: change flat charge to volume charge, add minimum or maximum charge, etc.) For requested structural changes, the Agency agrees to deposit with the District a sum equal to fifty percent (50%) of the District's estimated cost to implement the structural change prior to the District commencing performance of the work related thereto. The Agency understands and agrees that the actual cost to implement the structural change could exceed the District's estimate and further agrees to pay said actual costs, less the Agency's deposit, within thirty (30) days of receipt of the District's invoice therefor. 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.

2.3. 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 the District's operations. The District will notify the Agency within 15 days of making a decision 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. The Agency expressly agrees that the District shall have no responsibility or liability with respect to such anticipated revenue.

2.4. 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, allowance 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 billing for its own water and sewage disposal accounts.

- 2.5. 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 accounts will be handled by the District's collection agent. The Agency agrees not to pursue any collection activity on written-off accounts.
 - d. The District will make allowances and revenue adjustments in the Agency's sewer service charge in accordance with its practices for the 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 collect Agency revenues only on accounts which the District bills through its regular billing process.
 - g. The District will adjust the cash collection remitted to the Agency to account for such items as returned checks, erroneous applications and accounting adjustments.
- 2.6. Sewer Service Charges to be Billed and Collected. The District agrees to bill and collect only the Agency's sewer service and/or sewage treatment charge for each customer served by 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 Sewer Service Charges and Rates Request Form, 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 District's Business Classification Code (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 within ninety (90) days of receipt of the Agency's written request to do so.
 - e. The parties agree that, in the event that the District does not bill an account that is identified as an account to be billed in the Agency's Request To Bill Sewer Service Charges, or in any change thereto, the District shall have no liability therefor and no obligation to collect said unbilled revenue or to pay any costs that may be incurred by the Agency, or by any other person or entity, to collect said unbilled revenue.
- 2.7. Notification to the Public. The Agency agrees to provide public outreach, in a form and manner jointly determined by the District and 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. In all cases, the Agency shall provide its customers through its public outreach program with 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 policy in levying 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 the rationale behind setting said charges.
- 2.8. 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.
- 2.9. 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.
- 2.10. Payments to the Agency. Except as otherwise provided in this Agreement, the District shall remit monthly to the Agency the amount of its sewer service charges collected by the District. The District will also provide to the Agency a monthly summary of the total amount billed, collected, credited and written-off by the District pursuant to this Agreement.
- 2.11. 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.

- 2.12. Yearly Consumption Data. Upon request, the District will provide to the Agency yearly consumption data in the format described in Exhibit C which format may be revised by the District from time to time. The medium for the data shall be electronic file transfer. Charges for said data shall be in addition to other charges set forth in this Agreement and shall be based upon the actual cost to produce the data. The District is not obligated under the terms of this Agreement to provide any other special reports, data, mailing labels or mailing lists. In the event this Agreement is terminated, the District will continue to provide yearly consumption data upon the Agency's request and the Agency will pay the District's cost to produce said data. The District is not obligated to make available to the Agency any other form of data requested for individual customer records or groups of such records except as part of the annual consumption data. The Agency should review the annual consumption data for accuracy and advise the District as soon as practicable of any omissions, errors or discrepancies in the billing of its sewer service charges.

3. Obligations of the Agency

3.1. Payments to be Made by the Agency

- a. Billing and Collection Expense. The District will annually calculate the estimated monthly cost to bill and collect the Agency's sewer service charge. The calculation of said estimated cost as shown in Exhibit A, shall be based upon (a) the 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 reduced by an allocation of late payment penalty fees billed by the District, based upon the Agency's portion of total revenue billed. During the fiscal year in which the billing and collection of the Agency's sewer service charge is commenced, the Agency shall pay to the District, on a monthly basis, said estimated cost plus the amortized payment amount towards the Agency's prorated share of the fixed asset or Customer Information System (CIS) replacement as shown in Exhibit A. 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 the District within thirty (30) days of the 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 be the estimated monthly charge which shall be paid by the Agency during the next fiscal year. The District will provide to the Agency an annual reconciliation of billing and collection actual costs to estimated costs for the preceding year and provide projected estimated costs for the following year. Calculation by the District of its actual costs to bill and collect the Agency's sewer service charge shall be conducted according to standard accounting practices on a shared cost basis. 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.

- b. Manner of Payment. The Agency and the District agree that the District shall debit sewer service charges collected by the District , which have not yet been remitted to the Agency pursuant to paragraph 2.10 herein for aforesaid charges for billing and collection costs, and other charges set forth in this Agreement. Any unpaid and overdue sum owing to the District by the Agency 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.
- 3.2. 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.
- 3.3. 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. The 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. The Agency shall inform the District prior to making such disclosure. Subject to these limitations, the District agrees to furnish customer account data to the Agency solely for the intended purpose of this Agreement. The Agency agrees that the only use it shall make of such data shall be for development and substantiation of sewer service charges.
- 3.4. 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 or from the furnishing of customer account data to the Agency, except to the extent attorney's fees or demands of whatever character, direct or consequential, arising from the billing or collection of the Agency's sewer service charge or from the furnishing of customer account data to the Agency, except to the extent caused by the sole negligence or willful misconduct of the District, its officers, agents and employees. 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.
- 3.5. 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.

- 3.6. 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.
- 3.7. Amendments. This Agreement is not subject to modification or amendment, except by a writing executed by both the Agency and the District, which writing shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.
- 3.8. Whole Agreement. This Agreement has 8 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, Agency, by and through its officers, duly authorized by Resolution No. _____ and the District, by and through its General Manager or designee, duly authorized to act, have executed this Agreement in triplicate on the day and year first written above.

CITY OF BERKELEY:

EAST BAY MUNICIPAL UTILITY DISTRICT:

Approved as to Form: _____
(Counsel's Initials)

Approved as to Form: _____
(Counsel's Initials)

Signature

Signature

Name

Name

Title

Title

Date

Date

SEAL:

SEAL:

EXHIBIT A

Agency Shared-Cost Calculations for Billing and Collection of Sewer Service Charges

The following outline is a numerical and narrative description of the shared-cost calculations for Billing and Collection of sewer service charges for any agency. It is for illustrative purposes only and does not represent any particular agency charges. The schedule summarizing the share of Billing and Collection expenses for the "Agency" follows the narrative. The Billing and Collection expenses come from Collection, Customer Service and Meter Reading Activities, and they are allocated based on each agency's share of revenues collected, share of bills issued, and share of meters read by the District.

CALCULATION	DEFINITION
<p><u>Share of Fixed Asset Replacement</u></p> <p>Customer Information System (CIS) Replacement Cost per District account of \$39.24</p> <p>multiplied by</p> <p>Agency's participatory share of account services, of 33.33 percent if 1 of 3 types on each account, or 50.00 percent if 1 of 2 types on each account</p> <p>multiplied by</p> <p>Total Number of Agency accounts in new CIS to equal Agency's share of District's CIS Replacement Cost.</p>	<p>The CIS Replacement Cost per District account represents the portion of District's full cost to implement the Collections, Customer Services, and Meter Reading functions in the new CIS installed in September 2011 divided by 404,348 total District accounts converted into the new system.</p> <p>An account may receive District Water, District Wastewater, and Agency services. The resulting Cost per Agency account is \$13.08 if the Agency service is 1 of 3 types, or \$19.62 if 1 of 2 types of services per account.</p> <p>Total Number of Agency accounts within District's service area that are set-up for Agency sewer service.</p>
<p><u>Share of Collections</u></p> <p>Annual Agency Revenue collected for "Agency" of \$600,000 is</p> <p>divided by the</p> <p>Annual District Revenue collected of \$200,000,000 to equal .003.</p> <p>This factor is multiplied by</p> <p>Annual District Collection expenses of \$3,000,000 to equal "Agency's" share of Collection expenses totaling \$9,000.</p>	<p>Annual Agency Revenue collected is the yearly amount of sewage revenue invoiced on each bill relating to the agency.</p> <p>Annual District Revenue collected is the yearly amount of District water and District sewage treatment and agency revenue invoiced on each District water bill.</p> <p>Annual District Collection expenses are defined as Salaries and Employee Benefits, Services and Supplies, and Fixed Assets directly charged to Collections during the Year. In addition to the direct charges, an overhead amount is charged based on Total Collection Salary and Employee Benefit dollars .</p>

CALCULATION	DEFINITION
<p><u>Share of Customer Services</u></p> <p>Sixty percent of Annual District Customer Service expenses of \$5,000,000, or \$3,000,000, is</p> <p>divided by the</p> <p>Annual number of District bills rendered to customers of 2,200,000 to equal the Cost per Bill of \$1.3636.</p> <p>The Cost per Bill is multiplied by</p> <p>"Agency's" participatory share of billing entities, 1 of 3 on each bill, or 33.33 percent. The Cost per Bill for the agency charge is \$.4545.</p> <p>This amount is multiplied by</p> <p>the Annual number of "Agency" bills issued by the District of 30,000 to equal "Agency's" share of Customer Service expenses of \$13,635.</p>	<p>Annual District Customer Service expenses are defined as Salaries and Employee Benefits, Services and Supplies, and Fixed Assets directly charged to Business Office Administration, Repair Business Office Bldgs., and Equipment, Grounds keeping Customer Records and Billings, Customer Information Systems, and Administrative and General during the Year. In addition to the direct charges, an overhead amount is charged based on Total Customer Services Salary and Employee Benefit dollars. At the present time, forty percent of the total Customer Services expenses relate only to Water System business and are not shared by agencies, and sixty percent relates to total combined District water, District sewage treatment, and agency business.</p> <p>Annual number of District bills used to collect revenues for the District.</p> <p>The portion of each bill relating to the Agency refers to the number of entities who share the benefit of billing. District Water, District Wastewater, and Agency are the three current entities who may share billing and collection. However, all three may not be present on all bills. Agencies that share the benefit of billing with only District Water have a participatory share of billing of 1 of 2 entities or 50 percent.</p> <p>The Annual number of Agency bills issued by the District may include charges for District Water, District Wastewater, and Agency. One, two or three entities may be listed on each bill depending on the location of the service.</p>

CALCULATION	DEFINITION
<p><u>Share of Meter Reading</u></p> <p>Total annual District Meter Reading expenses are defined as Salaries and Annual District Meter Reading expenses Employee Benefits, Services and of \$2,000,000 is Supplies, and Fixed Assets (minor) directly charged to - Read Meters during the Year. In addition to the direct charges, an overhead amount is charged based on Total Meter Reading Salary and Employee Benefit dollars.</p> <p>divided by the</p> <p>Annual number of District bills rendered to customers of 2,200,000 to equal the Cost per Bill of \$.9091.</p> <p>The Cost per Bill is multiplied by</p> <p>"Agency's" participatory share of each billing, entities 1 of 3 on each bill, or 33.33 percent. The Cost per Bill for the agency charge is \$.303. This amount is</p> <p>multiplied by</p> <p>the annual number of "Agency" bills requiring flow data from meter readings of 3,000 to equal "Agency's" share of Meter Reading Costs of \$909.</p>	<p>Total annual District Meter Reading expenses are defined as Salaries and Employee Benefits, Services and Supplies, and Fixed Assets directly charged to Read Meters during the Year. In addition to the direct charges, an overhead amount is charged based on Total Meter Reading Salary and Employee Benefit dollars.</p> <p>Annual number of District bills used to collect revenues for the District.</p> <p>The portion of each bill relating to the Agency refers to the number of entities who use meter reading data in the calculation of charges that appear on each bill. District Water, District Wastewater, and Agency may all base charges on flow data derived from meter readings. Agencies that share the benefit of billing with only District Water have a participatory share of billing of 1 of 2 entities or 50 percent.</p> <p>The Annual number of Agency bills issued requiring flow data from meter readings issued by the District.</p>

The Agency’s share of the fixed asset or CIS replacement can be amortized over a specific period based on the total amount: 1) \$50,000 or below can be paid without interest in 12 monthly installments beginning January 1, 2014; 2) greater than \$50,000 to \$200,000 with 2.5 percent interest in 48 monthly installments beginning January 1, 2014 ; or 3) over \$200,000 will be paid with 2.5 percent interest in 114 monthly installments beginning January 1, 2014 and as described in paragraph 3.1.a.

In summary, by adding together the share of Collection expense of \$9,000, the share of Customer Service expense of \$13,635 and the share of Meter Reading expense of \$909, the actual annual Billing and Collection share for "Agency" will be \$23,544 .This figure represents the "Agency's" shared cost of the District's billing and collection operation. Actual cost varies by the nature of events during a year, and it may not necessarily reflect the above algorithm. This figure is paid in addition to the total amortized monthly payments towards the Agency’s share of the fixed asset or CIS replacement described in paragraph 3.1.a.

EXHIBIT B

SEWER SERVICE CHARGES AND RATES REQUEST FORM

Updated 12/31/12

AGENCY NAME:
 DATE SENT:
 EFFECTIVE DATE:
 DATE RECEIVED BY EBMUD:

SERVICE CHARGES
 (amount by rate code, applicable by BCC code)

RATE CODE	MONTHLY	BI-MONTHLY (monthly x2)	DAILY (monthly/30)
0- Not Billed	\$nnn.nn	\$nnn.nn	\$nnn.nn
1 - Single Family Residence (1 dwelling, 1 meter)	n . nnnn	n . nnnn	n . nnnn
2 - Duplex (2 dwellings, 1 meter)	n . nnnn	n . nnnn	n . nnnn
3 - Triplex (3 dwellings, 1 meter)	n . nnnn	n . nnnn	n . nnnn
4 - Fourplex (4 dwellings, 1 meter)	n . nnnn	n . nnnn	n . nnnn
5 - Metered Rates (per ccuft.)	n . nnnn	n . nnnn	n . nnnn

7 - Not connected to side sewer, not billed (fire services, etc)
 9 - Billed by agency directly

MINIMUMS
 (applicable by BCC Code)

MONTHLY	BI-MONTHLY (monthly x 2)	DAILY (monthly/30)
\$n.nnnn	\$n.nnnn	\$n.nnnn

BCC CODE TABLE

BCC CODE	DESCRIPTION	SERVICE CHARGE? Y/N	MINIMUM CHARGE? Y/N	METERED RATE PER CCUFT
0100	Agriculture			\$nnn.nn
0700	Veterinarian Services			\$nnn.nn
2010	Meat Products			\$nnn.nn
2011	Slaughterhouses			\$nnn.nn
2020	Dairy Product Processing			\$nnn.nn
2030	Fruit and Vegetable Processing			\$nnn.nn
2040	Grain Mills			\$nnn.nn
2050	Bakeries (including pastries)			\$nnn.nn
2060	Sugar Processing			\$nnn.nn
2077	Rendering Tallow			\$nnn.nn
2080	Beverage Manufacturing and Bottling			\$nnn.nn
2090	Specialty Foods Manufacturing			\$nnn.nn
2600	Pulp and Paper Products			\$nnn.nn
2810	Inorganic Chemicals Manufacturing			\$nnn.nn
2820	Synthetic Material Manufacturing			\$nnn.nn
2830	Drug Manufacturing			\$nnn.nn
2840	Cleaning and Sanitation Products			\$nnn.nn
2850	Paint Manufacturing			\$nnn.nn
2893	Ink and Pigment Manufacturing			\$nnn.nn
3110	Leather Tanning and Finishing			\$nnn.nn
3200	Earthenware Manufacturing			\$nnn.nn
3300	Primary Metals Manufacturing			\$nnn.nn
3400	Metal Products Fabricating			\$nnn.nn
3410	Drum and Barrel Manufacturing			\$nnn.nn
3470	Metal Coating			\$nnn.nn
4500	Air Transportation			\$nnn.nn
5812	Food Service Establishments			\$nnn.nn
6513	Apartment Buildings (5 or more units)			\$nnn.nn
7000	Hotels, Motels with Food Service			\$nnn.nn
7210	Commercial Laundries			\$nnn.nn
7215	Coin-Operated Laundromats			\$nnn.nn
7218	Industrial Laundries			\$nnn.nn
7300	Laboratories			\$nnn.nn
7542	Automobile Washing and Polishing			\$nnn.nn
8060	Hospitals			\$nnn.nn
All Other BCCs	Schools			\$nnn.nn

EXHIBIT C

**SEWER SERVICE/SEWAGE TREATMENT CONSUMPTION DATA
FILE FORMAT
Updated 12/30/12**

Field Name	Format	Length	
EBMUD Account No.	Alpha	11	
Customer Name	Alpha	26	
Service Address	Alpha	40	
BCC Code	Alpha	4	
Meter Size	Alpha	2	
Billing Frequency	Alpha	1	M – monthly, B – bimonthly
January Consumption	Numeric	8	Ccuft, unpacked
February Consumption	Numeric	8	Ccuft, unpacked
March Consumption	Numeric	8	Ccuft, unpacked
April Consumption	Numeric	8	Ccuft, unpacked
May Consumption	Numeric	8	Ccuft, unpacked
June Consumption	Numeric	8	Ccuft, unpacked
July Consumption	Numeric	8	Ccuft, unpacked
August Consumption	Numeric	8	Ccuft, unpacked
September Consumption	Numeric	8	Ccuft, unpacked
October Consumption	Numeric	8	Ccuft, unpacked
November Consumption	Numeric	8	Ccuft, unpacked
December Consumption	Numeric	8	Ccuft, unpacked
Agency Rate Code	Numeric	2	
Total Annual Agency Charges	Numeric	10	