

**COST-SHARING AGREEMENT**  
**BY AND BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT,**  
**THE COUNTY OF SANTA CLARA, MIDPENINSULA REGIONAL OPEN SPACE**  
**DISTRICT AND GUADALUPE RUBBISH DISPOSAL COMPANY, INC.**  
**TO FUND IMPLEMENTATION OF THE GUADALUPE RIVER COORDINATED**  
**MONITORING PROGRAM**

**THIS COST-SHARING AGREEMENT** ("AGREEMENT") is made and entered into by and between the SANTA CLARA VALLEY WATER DISTRICT ("**DISTRICT**"), an independent special district formed pursuant to California Water Code Appendix Chapter 60, the COUNTY OF SANTA CLARA ("**COUNTY**"), a political subdivision of the State of California, MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, an independent special district formed by the voters pursuant to the Public Resources Code ("MROSD"), and GUADALUPE RUBBISH DISPOSAL COMPANY, INC., ("**GUADALUPE RUBBISH**") a California Corporation. The COUNTY, DISTRICT, MROSD and GUADALUPE RUBBISH are referred to herein as each a "**Party**" and collectively the "**Parties**" to this Agreement.

**RECITALS**

**WHEREAS**, the San Francisco Bay Regional Water Quality Control Board ("**SF Regional Board**"), adopted an amendment to its Water Quality Control Plan on October 8, 2008 for the San Francisco Bay Basin to amend mercury water quality objectives and incorporate a total maximum daily load ("**TMDL**") for mercury in the Guadalupe River watershed;

**WHEREAS**, the SF Regional Board, in a November 23, 2009 letter ("**Order**"), directed to the Parties, asserted that each of the Parties is "individually responsible for monitoring and reporting," but gave the Parties the option to develop and implement a coordinated plan for monitoring mercury in waters downstream of mercury mines in the Guadalupe River Watershed ("**Plan**") in lieu of monitoring mercury loads at points of discharge to demonstrate progress in reducing loads;

**WHEREAS**, the Parties determined that they have a shared interest in reducing monitoring costs, avoiding duplication in monitoring efforts and in obtaining data that will be more relevant to evaluation of the effectiveness of the TMDL, and so the Parties prepared a Plan that was submitted to the SF Regional Board for the first phase of monitoring which was approved by the SF Regional Board;

**WHEREAS**, to implement the first phase of monitoring, the Parties decided that the COUNTY will retain and manage an outside consultant (to implement the first phase monitoring requirements;

**WHEREAS**, On October 15, 2010, the Parties entered into a Cost Sharing Agreement (“**Initial Cost Sharing Agreement**”) (attached hereto as **Exhibit “A”**) to specify their contribution percentage of said outside consultant to implement the first phase monitoring requirements;

**WHEREAS**, the Parties submitted a 5-year monitoring report to the SF Regional Board in January 2017, and received a letter with requirements for the second phase of monitoring from the SF Regional Board in June 2017 (attached hereto as **Exhibit “B”**), including development of a monitoring plan, fish sampling, and water quality sampling during storm events (“**Monitoring Requirements**”);

**WHEREAS**, the DISTRICT has agreed to incur costs for contributing in-kind services for this phase of monitoring; specifically, fish sampling in reservoirs and contributions to the maintenance of the United States Geological Survey (“**USGS**”) stream gage at Highway 101 and the Guadalupe River (“**District Sampling Costs**”); and,

**WHEREAS**, the Parties determined that it is desirable to participate in a joint effort to respond to the Monitoring Requirements, and are, therefore, willing to share the outside consultant (“**Consultant**”) costs of implementing the Monitoring Requirements, and acknowledge that the DISTRICT may apply the District Sampling Costs as a credit towards the DISTRICT’s share of the Consultant costs.

**NOW, THEREFORE**, in consideration of their mutual promises and agreements, and subject to the terms, conditions, and provisions hereinafter set forth, the Parties agree to the foregoing and as follows:

## **AGREEMENT**

### **I. SCOPE OF WORK:**

(1) In order to implement the Monitoring Requirements, the following tasks must be undertaken:

- Solicit proposals from interested and qualified firms to perform tasks required by the SF Regional Board Monitoring Requirements on behalf of the Parties;
- Evaluate proposals and enter into agreement(s) with the successful Consultant(s) to carry out the Monitoring Requirements;
- Administer the contract with the Consultant(s), including, but not limited to, monitoring the work performed and services provided to assure that the Consultant's services meet the Monitoring Requirements in substance and timeliness, respond to the Phase Two Consultant comments and questions, review invoices and remit appropriate payment

- to the Consultant; and
- Maintain contact with the SF Regional Board to determine if the SF Regional Board's expectations are met.

(2) The Parties have determined that the above tasks can be most efficiently performed by designation of one of the Parties as the lead, with responsibility for carrying out those tasks and obtaining the other Parties' review, comment and input when needed. The Parties have designated the DISTRICT as the Party with responsibility for carrying out the above tasks. All of the other Parties will cooperate and respond in good faith and in a timely manner to the DISTRICT'S requests for information, assistance and actions required to facilitate those tasks, including but not limited to, providing reasonable access to the Party's property to facilitate the Consultant services, providing personnel to review and evaluate the Consultant solicitation process, review and evaluate draft reports and letters, and remitting payment to the DISTRICT in a timely fashion as detailed in this Agreement.

## II. COST-SHARING OF CONSULTANT COSTS

(1) For the purposes of this Agreement, the term “**Consultant Costs**” means all direct costs paid by the DISTRICT to the Consultant(s) pursuant to the express terms and conditions of the professional services agreement (“PSA”) entered into by and between the Consultant(s) and the DISTRICT to carry out the written scope of work set out in said PSA that are intended to address and carry out the Monitoring Requirements, including but not limited to, development of a monitoring plan, fish sampling, and water quality sampling.

(2) Each Party will pay their share of 100% of the Consultant Costs estimated at \$350,000 as follows (“**Party Share**”):

COUNTY:	41.5%
DISTRICT:	36.5%
GUADALUPE RUBBISH:	11%
MROSD:	11%

(3) The District Sampling Costs will be credited towards DISTRICT's Party Share of the Consultant Costs. The amount of the DISTRICT credit shall not exceed its “Party Share” of the Consultant Costs. The Parties (other than District) shall not be responsible for any Consultant Costs that exceed District's Party Share. The COUNTY, GUADALUPE RUBBISH, and MROSD shall pay for the DISTRICT credit in proportion to the following percentages:

COUNTY:	65.4 %
GUADALUPE RUBBISH:	17.3 %
MROSD:	17.3 %

The DISTRICT's internal costs in carrying out the tasks specified in Section 1 were an express consideration in allocating the Consultant Costs among the Parties; however, the Parties (other than the District) are not responsible for paying any of the District's internal costs.

(4) DISTRICT acknowledges and agrees that DISTRICT shall not incur or authorize the Phase Two Consultant(s) to incur any expenses that exceed \$350,000.00 without DISTRICT first consulting with and obtaining the approval of all the Parties. The DISTRICT also acknowledges and agrees that DISTRICT shall not authorize or incur District Sampling Costs in excess of \$150,000.00 without first obtaining the prior approval of all the Parties. If DISTRICT elects to proceed with incurring District Sampling Costs in excess of \$150,000.00 without first obtaining the prior approval of all Parties, then DISTRICT will not receive any credit for this excess amount toward any of DISTRICT's Party Share.

### **III. PAYMENT AND INVOICES**

(1) The DISTRICT will send each Party an invoice for each Party's respective Party Share of the Consultant invoice upon DISTRICT's receipt of the Consultant(s) invoice(s) based on the payment and invoicing terms provided in the PSA. The DISTRICT will provide any Party (upon request) with additional, reasonable detail to support the invoiced amount, including but not limited to a copy of the PSA, Consultant invoices, and other information supplied by the Consultant in support of said invoice(s). Within forty-five days of receipt of the DISTRICT's invoice, each Party will remit payment to the DISTRICT. If a Party disputes the amount of its Party Share, then the DISTRICT and said Party shall meet and confer in order to resolve any outstanding issues.

(2) At least once per year during the Term of this Agreement, the DISTRICT will provide detailed information to the Parties relating to the District Sampling Costs, including but not limited to reservoir fish sampling and USGS gage maintenance contribution.

### **IV. RIGHT TO COMMENT ON DRAFT WORK PRODUCT AND PARTICIPATE**

(1) The DISTRICT will transmit relevant work product, including draft documents, prepared by the Consultant to the Parties for the Parties' review and comment. The Parties may also participate in meetings and conference calls to discuss issues relating to the Monitoring Requirements. The DISTRICT may set reasonable deadlines for review and comment, and, if a Party does not present comments on or before the deadline, the Party will be deemed to have waived its rights under this section. With respect to the monitoring plan and final reports, the Parties will be provided with at least 10 business days to review and approve them before submission to the SF Regional Board or any other enforcing or regulatory agencies and a failure to provide said comments or objections within this time



period shall be deemed consent to such submission. In the event of conflict amongst the Parties as to the content of a document, the Parties will work in good faith to resolve the conflict in a manner on which all Parties can agree.

## **V. OWNERSHIP, RETENTION OF RECORDS AND RIGHT TO AUDIT**

(1) All “**Materials**” prepared or obtained by the Consultant pursuant to this Agreement, including but not limited to all reports, documents, statistics, studies, samples, analyses, test results, plans and data, in draft and final form, are the property of all the Parties.

(2) In addition, all materials prepared or obtained by the DISTRICT related to DISTRICT sampling under the second phase of monitoring, including sampling plans and data, are the property of the Parties. The DISTRICT will ensure that Consultant conveys, assigns, and transfers the intellectual property rights it has to such materials to the Parties, and that Consultant is instructed to provide all Parties with a copy of all materials.

(3) The DISTRICT will maintain accurate records and an accounting of all Consultant Costs and District Sampling Costs for a minimum period of three years (or any longer period required by law) after final payment to the Consultant(s) undertaking the work. All such records will be subject to review, inspection and copying by any and all of the Parties, upon request, during regular business hours at the DISTRICT's place of business. Each Party conducting an audit or inspection under this section will bear all costs of copying.

## **VI. MUTUAL HOLD HARMLESS**

(1) Each Party (the “Indemnifying Party”) shall fully indemnify, defend, and hold the other Parties, their officers, Board members, employees and agents, harmless from any claim, expense or cost, damage or liability occurring by reason of the negligent acts or omissions, or willful misconduct of the Indemnifying Party, its officers, board members, employees or agents, in connection with, or arising out of, any obligation, right, work, authority, or jurisdiction of the Indemnifying Party under this Agreement. No Party (including any Indemnifying Party), nor any officer, Board member, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent or wrongful acts or omissions or willful misconduct of any of the other Parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any obligation, right, work authority or jurisdiction of any of the other Parties under this Agreement. If liability arises due to the concurrent negligence of two or more Parties, each Party shall contribute costs of any such suits, defense, damages, costs and liability in proportion to its fault as determined under the principles of comparative negligence. The duties and obligations of this Section will survive and continue in full

force and effect after the termination or expiration of this Agreement.

## **VII. TERM AND TERMINATION**

(1) This Agreement will commence and is effective (“Effective Date”) on the date this Agreement is fully executed by all Parties herein below, and upon such Effective Date shall automatically supersede and replace the Initial Cost Sharing Agreement without notice. This Agreement, unless terminated sooner pursuant to any other provision of this Agreement, shall automatically terminate upon the earlier of following: sixty (60) days after the completion of all of the Monitoring Requirements, (including regulatory approval of the Final Report), or ten (10) years from the Effective Date, unless extended in writing by all Parties. Completion of the Monitoring Requirements is defined as approval of the Final Report by the SF Regional Board.

(2) If any Party fails to perform any of its material obligations under this Agreement, in addition to all remedies provided by law, any other Party may terminate this Agreement immediately upon written notice. This notice may be given only after a thirty (30) day corrective action notice has been provided and the Parties are unable to resolve the issue(s) giving rise to the proposed termination.

(3) Any Party may, upon sixty (60) day written notice, terminate this Agreement with respect to that Party. Termination of the Agreement by one Party shall not terminate the Agreement with respect to Parties who have not terminated their participation in this Agreement. Termination of this Agreement by one Party does not relieve the terminating Party of its obligation to pay its proportionate share of Consultant Costs incurred on or before the effective date of termination.

## **VIII. NOTICES**

(1) All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

**County of Santa Clara, Parks and Recreation Department**

Attn: Director

298 Garden Hill Drive

Los Gatos, CA 95032-7669

**Santa Clara Valley Water District**

Attn: Chief Executive Officer

5750 Almaden Expressway

San Jose, CA 95118

Cost Sharing Agreement for  
Mercury Monitoring in the  
Guadalupe River Watershed  
(Phase Two)

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**Midpeninsula Regional Open Space District**

Attn: General Manager

330 Distel Circle

Los Altos, CA 94022

**Guadalupe Rubbish Disposal Company, Inc.**

Attn: District Manager

PO Box 20957

San Jose, CA 95160

Each Party may designate a different person and address by sending written notice to the other Party, to be effective no sooner than ten (10) calendar days after the date of the notice.

**IX. COUNTERPARTS; ELECTRONIC/DIGITAL SIGNATURES.**

(1) This Agreement may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the Parties have fully executed the Agreement. Unless otherwise prohibited by law, and provided all Parties have first executed the Agreement, the Parties agree and intend that an electronic copy of the Agreement or an electronically signed Agreement, has the same force and legal effect as if the Agreement had been executed with an original ink signature. The term "electronic copy of the signed Agreement" refers to a transmission of a copy of the original ink-signed Agreement by facsimile, electronic mail (email), or other electronic or digital means in a portable document format. The term "electronically signed Agreement" means the Agreement that is fully executed by all Parties each applying an electronic signature. An "electronic signature" means an electronic or digital sound, symbol, or process attached to or logically associated with an electronic or digital record (e.g., docusign) and executed or adopted by a person with the intent to sign the electronic record. The Parties each represent, warrant and agree that the signatures, whether an ink-signed original or electronically signed Agreement, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective agreement when so executed by all the Parties. The Parties further agree if a Party has evidenced its signature by forwarding an electronic copy of a signed Agreement, it will confirm that signature by forwarding to the other Party within ten (10) days an ink-signed original of the Agreement but the failure to so forward an ink-signed original will not affect in any way the validity or enforceability of the Agreement.

**X. SUBMISSION OF AGREEMENT; NONBINDING UNTIL SIGNED.**

(1) Each of the Parties agree, accept and understand that a submission of this Agreement for examination, review, editing or signature by any Party, in any form or by electronic or digital

means, by email, facsimile or docusign, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the Agreement and this Agreement shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this Agreement is nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this Agreement, or by reason of actions taken in reliance upon this Agreement (including, but not limited to, any obligation to continue negotiations) unless and until this Agreement is fully executed by all of the Parties.

## **XI. MISCELLANEOUS PROVISIONS.**

(1) **Invalidity.** In the event any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion will be severed from this Agreement and the remaining parts hereof will remain in full force and effect as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

(2) **Ownership.** All reports, documents, or other materials developed or discovered by any Party or any other person engaged directly or indirectly by any Party to perform the services required hereunder will be and remain the mutual property of all the Parties without restriction or limitation upon their use.

(3) **Force Majeure.**

(a) No Party shall be liable for failure of performance, nor incur any liability to any other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by any of the following “Force Majeure Event” or “Force Majeure Events”: acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, or terrorist activities.

(b) The Party claiming a delay due to a Force Majeure Event, shall give the other Parties notice of its inability to perform and other particulars in reasonable detail of the cause of the inability. The Party claiming a Force Majeure Event must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

(c) The Party claiming a Force Majeure Event, as a cause for non-performance, shall have the burden of proving that reasonable steps and best efforts were taken to minimize delay or damages caused by these events, that all non-excused obligations were substantially fulfilled, and that the other Parties were timely notified of the likelihood or actual occurrence which would justify such an assertion, so that all other reasonable and prudent precautions could be contemplated.

(d) The Parties may, by mutual agreement of all Parties, extend the Term of this Agreement or the time for performance because of a Force Majeure Event.

(4) **Conflict of Interest; California Political Reform Act; Other**

(a) Each of the Parties, and their respective contractors and consultants shall comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by any of the Parties. Any breach of any part of this section shall be deemed a material breach of this Agreement and cause for immediate termination without cost, liability or obligation to the terminating Party.

(b) Each Party, for itself and each of its employees, contractors and consultants, covenants, warrants, represents and agrees that it, and to the best of its knowledge, each of its contractors and consultants presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Each Party further covenants that, in the performance of this Agreement, it and its employees, contractors and consultants will not employ any contractor, consultant or person having such an interest. Each Party and its employees, contractors and consultants may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

(c) If the disclosure provisions of the Political Reform Act are applicable to any individual employed or engaged by a Party, or by its contractors or consultants, the said Party shall ensure that such individual understands that he or she or they is/are subject to the Act and shall conform to all requirements of the Act and other applicable laws and regulations including, as required, filing of Statements of Economic Interests within 30 days of commencing any work pursuant to this Agreement, annually by April 1, and within 30 days of their termination or cessation of work pursuant to this Agreement.

(d) Each Party shall disclose to the other Parties any financial or other interests, whether adverse or otherwise, which it or its employees, contractors or subcontractors may have or propose to have in any company, organization, individual, asset or activity which may have a bearing on the subject matter of this Agreement.

(e) Each Party shall comply, and require its employees, contractors and consultants to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, to the extent applicable, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.).

(f) Each Party shall disclose to the other Parties the names, description of individual duties to be performed and email addresses of all persons who will be engaged in performance of

the Agreement, including without limitation colleagues, employees, agents, contractors, consultants, subconsultants and subcontractors, with the exception of those working solely in a ministerial, secretarial or clerical capacity.

(5) **Independent Contractor.** The Parties acknowledge and agree that all contractors and consultants engaged to perform any work under this Agreement are acting solely as independent contractors and are not officers, agents, servants, or employees of any of the Parties. All contractors and consultants engaged to perform any work under this Agreement shall be solely responsible for the acts and omissions of its/their officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between any of the Parties and any of the contractors or consultants engaged to perform any work under this Agreement.

(6) **Damage and Repair by Consultants.** Each Party acknowledges, represents and agrees that with respect to any contractors or consultants said Party engages or employees, any and all injuries to any person or any damage to any property caused by or resulting from the negligence or willful misconduct of said contractors or consultants, or of any of their/its respective employees, agents, representatives, subcontractors or subconsultants, shall be the sole liability and responsibility of said contractors or consultants and said Party shall ensure that all such injuries and damage shall be repaired, replaced or reimbursed solely by said contractors or consultants.

(7) **Liens, Claims, Encumbrances on Title.** The DISTRICT represents and warrants that all the services and deliverables performed by the Phase Two Consultant shall be free and clear of all liens, claims or encumbrances of any kind.

(8) **Consultant Indemnity.** In addition to any other indemnity provision found elsewhere in this Agreement including in any exhibits, DISTRICT shall require the Consultant to defend, indemnify, and hold harmless the Parties and each of their respective officers, agents and employees from any and all liability, losses, injuries and damages arising out of, or in connection with the Consultant's negligence or willful misconduct

(9) **Consultant Cooperation with Review.** The DISTRICT shall ensure that the Phase Two Consultant shall cooperate with the Parties' periodic review of the Phase Two Consultant's performance and make itself available to review the progress of services and deliverables.

(10) **Audit of Records.** Pursuant to California Government Code Section 8546.7, the Parties acknowledge and agree that every contract involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000 USD) shall be subject to audit by the State Auditor. All payments made under this Agreement shall be subject to an audit at any Party's option, and shall be adjusted in accordance with said audit. Adjustments that are found necessary as a result of auditing may be made from current billings.

(11) **Non-Discrimination.** Each Party, and its employees, agents, contractors, subcontractors, consultants and subconsultants, shall comply with all applicable federal, state, and local laws and regulations concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§§ 503 and 504); California Fair Employment and Housing Act (Government Code §§ 12900 et seq.); and California Labor Code §§ 1101 and 1102. Each Party, and its employees, agents, contractors, subcontractors, consultants and subconsultants, shall not discriminate in the performance of this Agreement, provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of, nor shall any Party, its employees, agents, contractors, subcontractors, consultants and subconsultants, discriminate against any customer, client, employee, contractor, subcontractor or any applicant for employment because of, ethnic group identification, age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, gender identity or orientation, mental handicap or disability, physical handicap or disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment for any positions or in the selection for any position or for any training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Each Party, and its employees, agents, contractors, subcontractors, consultants and subconsultants, shall not discriminate in provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, gender identity or orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. The violation of any of these provisions herein shall be deemed a material default by Contractor giving County a right to terminate the Agreement for cause.

(12) **Debarment.**

Each Party, on behalf of itself and its employees, agents, contractors, subcontractors, consultants and subconsultants, represents and warrants that it and they have not and are not suspended, debarred, excluded, or ineligible for participation in any federal, state or local program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration (collectively and each referred to herein as “Debarment”), from the System for Award Management (SAM), or from any Medicare, Medi-Cal or any other federal or state funded health care program.

Each Party must within thirty (30) calendar days advise each of the other Parties if, during the Term of this Agreement, it, or any of its employees, agents, contractors, subcontractors, consultants and subconsultants, becomes suspended, debarred, excluded or ineligible for participation in any such programs, or from receiving federal, state or local funds.

Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epis.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S.

Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

(13) **Protection of Party Data**

The DISTRICT shall ensure that all contracts with the Phase Two Consultant contain express language protecting the confidential information, proprietary data and intellectual property of each of the Parties.

(14) **California Public Records Act.** Some of the Parties are public agencies and are subject to the disclosure requirements of the California Public Records Act (“CPRA”). If any Party’s proprietary information is contained in documents submitted to any other Party, and a Party claims that such information falls within one or more CPRA exemptions, then the claiming Party must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information before providing such documents to the other Parties. In the event of a CPRA request for such information or documents, the Party responding to the CPRA request will notify the other Parties in writing of any such request (“CPRA Notice”) involving data they have provided so that the other Parties can independently seek a protective order against the responding Party from a court in Santa Clara County in order to preclude disclosure. The Parties each acknowledge that if a Party contends that any documents or information are exempt from CPRA and wishes to prevent disclosure, that Party is required, at its sole cost, liability and expense, to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County and thereafter to properly serve notice on the responding Party of such court-provided remedy before the responding Party’s CPRA response deadline. If a Party fails to obtain such court-provided remedy before the CPRA response deadline, the responding Party may disclose the requested information even if marked “CONFIDENTIAL AND PROPRIETARY” without any liability of the responding Party and without any obligation to the other Parties or to any third parties.

(15) **Severability.** Should any part of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the Agreement which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the Parties.

(16) **No Waiver.** No delay or omission by any of the Parties hereto to exercise any right occurring upon any noncompliance or default by any of the other Parties with respect to any of the terms, conditions or provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the Parties hereto of any of the terms, conditions or provisions by any of the other Parties shall not be construed to be a waiver of any succeeding breach thereof or of any term, condition or provision herein contained.

(17) **Government Law; Jurisdiction.** This Agreement, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance



with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). The Parties hereby agree to waive and opt-out of any application of the Uniform Computer Information Transactions Act (“UCITA”), or any version thereof, adopted by any State in any form. Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

(18) **Construction; Ambiguities.** The Parties acknowledge that each Party and/or its counsel have reviewed and participated in the drafting of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all the Parties have prepared it. The Parties agree that any principle or rule of construction or rule of law, that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement, shall not apply to the terms and conditions of this Agreement or in its interpretation or construction. Titles and headings to articles and sections of this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement. The terms “this Agreement,” “herein,” “hereof,” “hereunder” and similar expressions refer to this Agreement and not to any particular section or other portion hereof. Any use of the term “including” in this Agreement shall be construed as if followed by the phrase “without limitation.” The Recitals are hereby incorporated by this reference.

(19) **Relationship of Parties.** Under no circumstances shall any of the Parties be considered the employer of any of the other Parties or of their/its respective employees, officers, attorneys, agents, representatives, contractors, subcontractors, consultants or subconsultants. The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as joint venturers, partners, associations, master-servant, agents, a joint enterprise, employer-employee, lender-borrower or contractors of each other or of any of their respective employees, officers, attorneys, agents, representatives, contractors, subcontractors, consultants or subconsultants.

(20) **Headings and Titles.** The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the Parties to this Agreement.

(21) **Handwritten or Typed Words.** Handwritten or typed words have no greater weight than printed words in the interpretation or construction of this Agreement.

(22) **Entire Agreement; Modification.** This Agreement, together with all of its attachments, sets forth the entire, final and exclusive agreement between and among the Parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings,

negotiations and discussions, whether oral or written, between the Parties. This Agreement may be modified only pursuant to a writing executed by authorized representatives of all of the Parties. The Parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any oral modifications to this Agreement; and (b) any other amendments that are based on course of dealing, waiver, reliance, estoppel or other similar legal theory. The Parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section.

(23) **No Smoking.** The Parties understand and agree to honor the no smoking policies of each of the other Parties. By way of example, but not limitation, Each of the Parties, and their respective employees, officers, attorneys, agents, representatives, contractors, subcontractors, consultants or subconsultants, shall not smoke or vape on, in or around County vehicles, real property, land, buildings, parking lots or facilities.

(24) **Office of Foreign Assets Control Compliance.** The District shall ensure that the Phase Two Consultant represents and warrants in writing that: (i) the Phase Two Consultant is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) the Phase Two Consultant is not engaged in activities in relation to this Agreement, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

(25) **No Third Party Beneficiaries.** This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

(26) **Prevailing Wage.** Only if applicable to the type of work performed, the District shall ensure that the Phase Two Consultant, and any of its contractors or consultants performing work expected to be performed under this Agreement, agree in writing to perform said work in full compliance with the applicable provisions of the California Labor Code, including those provisions relating to the payment of prevailing wages.

(26) **Counting Days.** Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

(27) **Signing Authority.** By signing below, each signatory for a Party warrants and represents that he/she executed this Agreement, in his/her authorized capacity, that he/she has the authority to bind the entity or person for whom he/she signs to contractual obligations and that, by his/her signature, the entity or person on behalf of which he/she acted executed this Agreement.

***////SIGNATURES FOLLOW ON NEXT PAGE////***

**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement effective (“Effective Date”) as of the last date signed by all Parties herein below.

**DISTRICT:**

SANTA CLARA VALLEY WATER DISTRICT, an independent special district

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

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Anthony T. Fulcher, Senior Assistant District Counsel

Date: \_\_\_\_\_

***////SIGNATURES FOLLOW ON NEXT PAGE////***

**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement effective (“Effective Date”) as of the last date signed by all Parties herein below.

**COUNTY:**

COUNTY OF SANTA CLARA, a political subdivision of the State of California

By: \_\_\_\_\_  
Dave Cortese, President  
Board of Supervisors

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Megan Doyle, Clerk of the  
Board of Supervisors

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

By: \_\_\_\_\_  
Shirley R. Edwards, Deputy County Counsel

***////SIGNATURES FOLLOW ON NEXT PAGE////***

**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement effective (“Effective Date”) as of the last date signed by all Parties herein below.

**MROSD:**

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a special district formed by the voters pursuant to the Public Resources Code

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

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

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

Date: \_\_\_\_\_

**ATTEST:**

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

Date: \_\_\_\_\_

***////SIGNATURES FOLLOW ON NEXT PAGE////***

**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement effective (“Effective Date”) as of the last date signed by all Parties herein below.

**GUADALUPE RUBBISH:**

GUADALUPE RUBBISH COMPANY, INC., a California Corporation

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

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

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

Date: \_\_\_\_\_

**ATTEST:**

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

Date: \_\_\_\_\_

***////END OF DOCUMENT////***



COST-SHARING AGREEMENT  
BETWEEN THE COUNTY OF SANTA CLARA,  
THE SANTA CLARA VALLEY WATER DISTRICT, MIDPENINSULA REGIONAL OPEN SPACE DISTRICT  
AND GUADALUPE RUBBISH DISPOSAL COMPANY, INC.  
TO FUND IMPLEMENTATION OF THE GUADALUPE RIVER  
COORDINATED MONITORING PLAN

This Agreement ("**Agreement**") is made and entered into by and between the County of Santa Clara ("**County**"), a political subdivision of the State of California, the Santa Clara Valley Water District ("**Water District**"), a special district of the State of California, Midpeninsula Regional Open Space District, a special district formed pursuant to the Public Resources Code ("**MROSD**"), and Guadalupe Rubbish Disposal Company, Inc., a California Corporation ("**Guadalupe Rubbish**"). The County, Water District, MROSD and Guadalupe Rubbish may be collectively referred to as "**Parties**".

**RECITALS**

WHEREAS, the San Francisco Bay Regional Water Quality Control Board ("**SF Regional Board**") adopted an amendment to its Water Quality Control Plan for the San Francisco Bay Basin to amend mercury water quality objectives and incorporate a total maximum daily load ("**TMDL**") for mercury in the Guadalupe River watershed;

WHEREAS, the SF Regional Board, in a November 23, 2009 letter ("**Order**") directed to the Parties, asserted that each of the Parties is "individually responsible for monitoring and reporting", but gave the Parties the option to develop and implement a coordinated plan for monitoring mercury in waters downstream of mercury mines in the Guadalupe River Watershed ("**Plan**") in lieu of monitoring mercury loads at points of discharge to demonstrate progress in reducing loads;

WHEREAS, the Parties determined that they have a shared interest in reducing monitoring costs, avoiding duplication in monitoring efforts and in obtaining data that will be more relevant to evaluation of the effectiveness of the TMDL, and so the Parties prepared and submitted a draft Plan to the SF Regional Board;

WHEREAS, SF Regional Board has determined that the draft Plan meets the California Water Code's technical report requirement and offered comments for the Parties' issuance of the Final Plan;

WHEREAS, the Water District, in anticipation of the Order, conducted mass load sampling for water year 2010, which data will be used by the Parties in evaluating progress in reducing mercury loads ("**Water District Sampling Costs**");

WHEREAS, the Parties determined that it is desirable to participate in a joint effort to respond to the SF Regional Board's monitoring requirements, and are willing to share the costs of implementation of the Plan and of the Water District's Sampling Costs at the allocations stated in this Agreement, which are intended to be used only for purposes of this agreement and for no other purpose.

NOW, THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions, and provisions hereinafter set forth, the Parties agree as follows:



## PROVISIONS

### 1. Plan Implementation

To implement the Plan, the Parties must:

- Solicit proposals from interested and qualified firms to perform all tasks required in the Plan on behalf of the Parties;
- Evaluate proposals and enter into agreement(s) with the successful firm ("**Plan Consultant**");
- Administer the contract with the Plan Consultant(s), including, but not limited to, monitoring the work performed and services provided to assure that the Plan Consultant's services meet the requirements of the Plan in substance and timeliness, respond to Plan Consultant comments and questions, review pay applications and remit appropriate payment to the Plan Consultant; and
- Maintain contact with the SF Regional Board to determine if the Board's expectations are met.

The Parties have determined that these Plan Implementation tasks can be most efficiently performed by designation of one of the Parties as lead, with responsibility for carrying out the Plan Implementation tasks and obtaining the other Parties' review, comment and input when needed. The Parties have designated the County as the Party with responsibility for Plan Implementation ("**Implementing Party**"). All of the other Parties will cooperate and respond in good faith and in a timely manner to all the Implementing Party's requests for information, assistance and actions required to facilitate the Plan Implementation tasks, including but not limited to, providing access to the Party's property to facilitate services, providing personnel to review and evaluate the Plan Consultant solicitation process, review and evaluate draft reports and letters, and remitting payment to the Implementing Party in a timely fashion as detailed in this Agreement.

### 2. Funding Amounts

The estimated total cost of Plan Implementation is \$467,504. The Plan provides for annual sampling on an intermittent basis over a five year period. The annual costs are as estimated in **Exhibit A, Estimated Annual Plan Costs**.

For the purposes of this Agreement, Plan Implementation Costs are the Implementing Party's third party Plan Consultant costs. The Implementing Party's internal costs in carrying out the Implementation tasks were an express consideration in allocating costs for Plan Implementation.

Each Party will pay their share of 100% of the Implementation Costs as follows ("**Party Share**"):

County – 36.5%

Water District – 41.5%

Guadalupe Rubbish – 11%

MROSD – 11%

In addition, the Parties will reimburse the Water District a portion of the Water District's Sampling Costs, as follows:



County – 36.5% share is \$32,666

Guadalupe Rubbish – 11% share is \$9,845

MROSD – 11% share is \$9,845

Total - \$52,356

The Water District will be paid in the form of a credit towards Plan Implementation Costs in the amount of \$52,356. The County, MROSD and Guadalupe Rubbish's shares will be paid into the Plan Account described in section 3.A within 30 days of the full execution of this Agreement.

3. Payments and Invoices

- A. When the balance in the Plan Account falls below \$50,000, the Implementing Party will send each Party an invoice for an advance of 80% of the that Party's Share of the remaining estimated Implementation Costs for the year. The Implementing Party will provide any Party with additional, reasonable detail to support the invoiced amount. Within thirty days of receipt of the invoice, the Party will advance the invoiced amount to the Implementing Party, who will retain all advanced funds, including 80% of the Implementing Party's share, in a separate account ("Plan Account"). Interest earned, if any, will be applied to Plan Implementation Costs. Any funds remaining upon completion of the Plan will be returned to each Party according to their respective Party Share.
- B. If the balance in the Plan Account falls below \$50,000 and work remains for the year, the Implementing Party may bill each Party for their remaining, estimated Party Share of Implementation Costs, and each Party will advance the invoiced funds within thirty days.
- C. Notwithstanding any other provision in this Agreement, the Implementing Party shall have no obligation to make expenditures in amounts that exceed the balance in the Plan Account.

4. Right to Comment on Draft Work Product and Participate

The Implementing Party will transmit relevant work product, including draft documents, prepared by the Consultant to the Parties for the Parties' review and comment. The Parties may also participate in meetings and conference calls to discuss issues relating to the Plan. The Implementing Party may set reasonable deadlines for review and comment, and, if a Party does not present comments on or before the deadline, the Party will be deemed to have waived its rights under this section. In the event of conflict amongst the Parties as to the content of a document, the Parties will work in good faith to resolve the conflict in a manner that all Parties can agree on.

5. Ownership, Retention of Records and Right to Audit

- A. All materials prepared or obtained by Consultant pursuant to this Agreement, including reports, plans and data, are the property of the Parties. In addition, all materials prepared or obtained by the Water District relating to the mass load sampling in water year 2010 (described in the fifth recital), including reports (draft or final), plans and data, are the property of the Parties. The Implementing Party will ensure that Consultant conveys, assigns and transfers the intellectual property rights it has to such materials to the Parties, and that Consultant is instructed to provide all Parties with a copy of all materials.



- B. The Implementing Party will maintain accurate records and an accounting of all Implementation Costs for a minimum period of three years (or any longer period required by law) after final payment to the Consultant undertaking the work. All such records will be subject to review, inspection and copying by any of the Party's upon request during regular business hours at the Implementing Party's place of business. Each Party conducting an audit or inspection under this section will bear all costs of copying.

6. Mutual Hold Harmless

- A. Each Party shall fully indemnify, defend and hold the other Parties, their officers, Board members, employees and agents, harmless from any claim, expense or cost, damage or liability occurring by reason of the negligent acts or omissions, or willful misconduct of the indemnifying Party, its officers, board members, employees or agents, under or in connection with, or arising out of any obligation, right, work, authority, or jurisdiction of such Party under this Agreement. No Party, nor any officer, Board member, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent or wrongful acts or omissions or willful misconduct of the other Party hereto, their officers, board members, employees or agents, under or in connection with or arising out of any obligation, right, work authority or jurisdiction of such other Party under this Agreement. If liability arises due to the concurrent negligence of two or more Parties, each Party shall contribute costs of any such suits, defense, damages, costs and liability in proportion to its fault as determined under the principles of comparative negligence.
- B. The duties and obligations of this Section will survive and continue in full force and effect after the termination or expiration of this Agreement.

7. Agreement Term

- A. This Agreement will commence upon the date of full execution, and automatically terminate sixty (60) days after the completion of all requirements of the Plan, including regulatory approval of the Final Report, unless extended in writing by all Parties. Completion of the Plan is defined as approval by the SF Regional Board.
- B. If any Party fails to perform any of its material obligations under this Agreement, in addition to all remedies provided by law, any other Party may terminate this Agreement immediately upon written notice. This notice may be given only after a thirty (30) day corrective action communication has been provided and the Parties are unable to resolve the issue(s) giving rise to the proposed termination.
- C. Any Party may, upon sixty (60) day written notice, terminate this Agreement with respect to that Party. Termination of the Agreement by one Party shall not terminate the Agreement with respect to Parties who have not terminated their participation in this Agreement. Termination of this Agreement by one Party does not relieve the terminating Party of its obligation to pay its proportionate share of Implementation Plan Costs incurred on or before the effective date of termination.

8. Notices

Notices given under this Agreement may be delivered by first class mail addressed to the appropriate Party at the following addresses:



County: County of Santa Clara, Parks and Recreation Department  
Attn: Director  
298 Garden Hill Drive  
Los Gatos, CA 95032-7669

Water District: Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118  
Attn: Chief Executive Officer

MROSD: Stephen E. Abbors  
General Manager  
Midpeninsula Regional Open Space District  
330 Distel Circle  
Los Altos, CA 94022

Guadalupe Rubbish: William Spence  
District Manager  
Guadalupe Rubbish Disposal Company, Inc.  
PO Box 20957  
San Jose, CA 95160

9. Severability

In the event any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion will be severed from this Agreement and the remaining parts hereof will remain in full force and effect as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

10. Governing Law and Compliance with Laws

The Parties agree that California law governs this Agreement. In the performance of this Agreement each Party will comply with all applicable laws, ordinances, codes and regulations of the federal, state, and applicable local government.

11. Venue

In the event that suit is brought by any Party to this Agreement, the Parties agree that venue will be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

12. Ownership of Materials

All reports, documents, or other materials developed or discovered by any Party or any other person engaged directly or indirectly by any Party to perform the services required hereunder will be and remain the mutual property of the Parties without restriction or limitation upon their use.



13. Entire Agreement

This Agreement constitutes the entire agreement between County of Santa Clara, Open Space District, Water District, and Guadalupe Rubbish with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect except by an instrument in writing signed by authorized representatives of the Parties.

14. Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed to be an original, and all of which, taken together, will be deemed to be one and the same instrument.

15. Nonwaiver

Except as expressly provided in this Agreement, a Party's waiver of any term, condition, or covenant, or breach of any term, condition or covenant will not be construed as a waiver of any other term, condition or covenant.

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Approved



16. Third Parties

This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.

IN WITNESS WHEREOF, the County and the Water District have executed this agreement as of the date and year first above written.

MIDPENINSULA OPEN SPACE DISTRICT

SANTA CLARA VALLEY WATER DISTRICT

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

GUADALUPE RUBBISH DISPOSAL COMPANY, INC.

By: Ken Yeager  
Ken Yeager, President  
Board of Supervisors

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

Title: \_\_\_\_\_

Date: NOV 09 2010

Date: \_\_\_\_\_

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

Maria Marinos  
Maria Marinos, Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Katherine Harasz  
Katherine Harasz, Deputy County Counsel

Approved



Approved

# EXHIBIT A

Guadalupe River CMP Budget for Fish Monitoring				
Task #	Task Name	Cost 2011	Cost 2012	Cost 2016
1	Project Management	\$6,780	\$6,780	\$6,780
2	Permit Acquisition	\$7,500	\$ -	\$ -
3	Fish Tissue Monitoring			
	Labor	\$19,630	\$19,630	\$19,630
	Analytical	\$18,040	\$18,040	\$18,040
	ODCs	\$5,000	\$5,000	\$5,000
5	Meetings	\$12,260	\$12,260	\$12,260
6	Reporting	\$17,670	\$17,670	\$21,204
Total		\$86,880	\$79,380	\$82,914
				\$249,174

Guadalupe River CMP Budget for Loading Monitoring			Total Cost Fish and Loading
Task #	Task Name	Cost 2015	
1	Project Management	\$6,780	
2	Mercury Loading		
	Labor	\$92,980	
	ODCs	\$11,400	
	Analytical	\$16,500	
	USGS	\$63,000	
3	Meetings	\$10,000	
4	Reporting	\$17,670	
		\$218,330	\$467,504

COST-SHARING AGR.

Final 10.15.2010

16. Third Parties

This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.

IN WITNESS WHEREOF, the County and the Water District have executed this agreement as of the date and year first above written.

MIDPENINSULA OPEN SPACE DISTRICT

SANTA CLARA VALLEY WATER DISTRICT

By: 

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

Title: GENERAL MANAGER

Title: \_\_\_\_\_

Date: 11.10.10

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

GUADALUPE RUBBISH DISPOSAL COMPANY, INC.

By: \_\_\_\_\_  
Ken Yeager, President  
Board of Supervisors

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.  
ATTEST:

\_\_\_\_\_  
Maria Marinos, Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Katherine Harasz, Deputy County Counsel

16. Third Parties

This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.

IN WITNESS WHEREOF, the County and the Water District have executed this agreement as of the date and year first above written.

MIDPENINSULA OPEN SPACE DISTRICT

SANTA CLARA VALLEY WATER DISTRICT

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: Beau GoldieTitle: Chief Executive OfficerDate: November 9, 2010

COUNTY OF SANTA CLARA

GUADALUPE RUBBISH AND DISPOSAL INC.

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

Ken Yeager, President  
Board of Supervisors

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

\_\_\_\_\_  
Maria Marinos, Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Katherine Harasz, Deputy County Counsel



16. Third Parties

This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.

IN WITNESS WHEREOF, the County and the Water District have executed this agreement as of the date and year first above written.

MIDPENINSULA OPEN SPACE DISTRICT

SANTA CLARA VALLEY WATER DISTRICT

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

COUNTY OF SANTA CLARA

GUADALUPE RUBBISH DISPOSAL COMPANY, INC.

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

Ken Yeager, President  
Board of Supervisors

By: 

Barry Stetler

Title: Assoc Vice President

Date: \_\_\_\_\_

Date: 10/18/2010

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

\_\_\_\_\_  
Maria Marinos, Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Katherine Harasz, Deputy County Counsel

Exhibit B: 13267 Letter

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**San Francisco Bay Regional Water Quality Control Board**

*Sent via electronic mail: no hard copy to follow*

June 29, 2017  
CIWQS Place No. 717765

County of Santa Clara  
Parks and Recreation Dept.  
ATTN: Mr. Robb Courtney, Director  
298 Garden Hill Dr.  
Los Gatos, CA 95032-7669  
Robb.Courtney@prk.scc.gov

Santa Clara Valley Water District  
ATTN: Melanie Richardson, Interim Chief  
Operating Officer Watersheds  
5750 Almaden Expressway  
San Jose, CA 95118-3686  
MRichardson@valleywater.org

Midpeninsula Regional Open Space District  
ATTN: Stephen E. Abbors, General Manager  
330 Distel Circle  
Los Altos, CA 94022  
sabbors@openspace.org

Guadalupe Rubbish Disposal Company, Inc.  
ATTN: Daniel North, District Manager  
P. O. Box 20957  
San Jose, CA 95160  
dnorth1@wm.com

Subject: Water Code Section 13267 Technical Report Requirement for a Monitoring Plan for Mercury in Waters Downstream of New Almaden Mercury Mining District, Guadalupe Mercury Mine, and/or Bernal Mercury Mine

Dear Sirs and Madams:

This letter requires that the County of Santa Clara (County), the Guadalupe Rubbish Disposal Company, Inc. (Guadalupe Disposal), the Midpeninsula Regional Open Space District (Open Space District), and the Santa Clara Valley Water District (Water District) submit a plan for monitoring mercury in waters downstream of mercury mines in the Guadalupe River watershed. As explained below, this information will be used by San Francisco Bay Regional Water Quality Control Board (Water Board) staff to evaluate progress in attaining the numeric targets in the Guadalupe River watershed mercury total maximum daily load (TMDL) project.

The County, Guadalupe Disposal, and the Open Space District are receiving this letter because they discharged, discharge, or are suspected to have discharged or be discharging mercury mining waste into surface waters of the Guadalupe River watershed. The Water District is receiving this letter because it owns and operates reservoirs and lakes, and is responsible for reducing methylmercury production in and releases from Guadalupe, Almaden, and Calero reservoirs, and Lake Almaden.

**Background**

The Water Board adopted the Guadalupe River Watershed Mercury TMDL on October 8, 2008. The implementation plan requires monitoring that is proceeding in cycles; cycle 1 covered 2011–2016, and cycle 2 will cover 2018–2023.

On November 23, 2009, the Water Board issued a Water Code Section 13267 Technical Report Requirement for a monitoring plan for cycle 1 mercury monitoring in accordance with the Guadalupe River Watershed Mercury TMDLs. On February 1, 2011, the Water Board issued a Water Code Section 13267 Technical Report Requirement that approved the coordinated monitoring plan and required monitoring for 2011–2016 and report due January 30, 2017. The purpose of the monitoring was to quantify interannual variability of mercury in fish and to assess progress in attaining TMDL targets and allocations.

In cycle 1, fish were sampled in three years in reservoirs and creeks downstream of mercury mines, as planned. These data are useful to quantify the interannual variability of mercury in fish from reservoirs and creeks. Although no decreases in fish mercury concentrations were observed in response to source reductions from mines, hypolimnetic oxygenation in reservoirs did reduce water methylmercury concentrations. Storm sampling was conducted in one year, as planned. Four storm events were sampled in Water Year 2015 between December 2014 and April 2015 at one location on Guadalupe River. These storm data combined with continuous data from a U.S. Geological Survey gage were used to calculate the annual mercury load. The annual mercury load is highly dependent on precipitation and flow, and unsurprisingly given the drought conditions in 2015 was 20% lower than the Water Year 2010 mercury load. Monitoring is needed in cycle 2 to assess progress in attaining TMDL targets and allocations.

To coordinate their response to the Water Board's requirements for cycle 1 of mercury monitoring, the County, Guadalupe Disposal, Open Space District, and Water District entered into a Memorandum of Understanding (MOU) that expires 60 days after the Water Board approves the cycle 1 monitoring report. These four entities developed a monitoring plan, conducted monitoring from 2011–2016, and submitted a final report in 2017. In the future, upon receipt of an MOU executed by all parties for cycle 2 monitoring, the Water Board plans to send an approval letter for cycle 1 monitoring and reporting.

**You are required to submit a technical report containing the following information by June 30, 2018:**

The technical report shall consist of a monitoring plan for mercury in waters downstream of mercury mines in the Guadalupe River watershed, for water years 2019 through 2023 (October 1, 2018 through September 30, 2023) including the following components (requirements 2–4 in the [Monitoring Program in the Basin Plan, Chapter 7.7.1.6](#)):

2. Monitoring Plan and Time Schedule for monitoring the mercury load at the points of discharge to demonstrate progress in reducing loads.

3. Monitoring Plan and Time Schedule for fish tissue mercury monitoring to assess progress in attaining targets.
4. Monitoring Plan and Time Schedule for monitoring the mercury load to San Francisco Bay to assess progress in attaining the legacy and urban stormwater runoff mass load allocations assigned by the Bay mercury TMDL.

The monitoring plan must meet or exceed the above requirements (2, 3, and 4), and include questions and hypotheses to be resolved, detailed description of the sampling design, explanation of how the results are expected to resolve the questions and hypotheses, rationale for timing and frequency of sampling, sampling methods and procedures, quality assurance and quality control procedures, and data review and reporting.

Fish tissue mercury monitoring is necessary to evaluate effectiveness of the Water District's methylation control actions in reservoirs on both fish in the reservoirs and downstream. Fish tissue mercury monitoring (requirement 3) must address the following:

- Questions to be resolved:
  - What is the temporal trend in fish tissue mercury concentrations in remediation effectiveness indicators in Lake Almaden, Guadalupe, Almaden, and Calero Reservoirs, Alamitos and Guadalupe Creeks, and the Guadalupe River? The monitoring plan must provide explanation for a) why to only monitor remediation effectiveness indicators or b) why to monitor remediation effectiveness indicators in addition to TMDL targets, with a discussion about sampling locations for TMDL targets;
  - Is there a temporal trend in fish tissue mercury concentrations at reference sites, and if so, how does it inform interpretation of remediation effectiveness indicators?
- Locations:
  - Same sample locations downstream of mercury mines as cycle 1 mercury monitoring except may remove sample locations along same stream with statistically indistinguishable mercury concentrations;
  - Sample creek reference site (Los Gatos Creek at Lincoln Ave) and reservoir reference sites (Lexington Reservoir and/or Stevens Creek Reservoir) previously sampled.
- Frequency:
  - Sample locations downstream of mercury mines at least twice this cycle;
  - Sample reference sites at least once and at the same time (e.g., week) as the first samples are collected from respective creek and reservoir sites downstream of mercury mines; If needed to inform interpretation of remediation effectiveness indicators, sample reference sites again at same time as second samples are collected from respective creek and reservoir sites downstream of mercury mines.
- Sampling details:
  - Monitoring plan to provide sampling details including but not limited to the following: clarify standardized size fish and determine the associated age class for that time of year (remediation effectiveness indicators age class but consistent with previously-sampled size class; generally targets are age-0+ [aka young of the

year]); use power analysis to determine number of samples; fish collection methods; and best sample date range.

- Reporting:
  - The monitoring plan must describe anticipated report graphics, tables, calculations, analyses, and conclusions and describe how the data collection supports report contents; data analysis must include data collected for the TMDL staff report, and from cycle 1 monitoring.

Mercury loads monitoring is necessary to quantify the mercury load delivered to San Francisco Bay. The Guadalupe River mercury load contains two controllable sources, legacy mercury from mining and mercury from urban stormwater runoff. Mercury controls for urban stormwater runoff are addressed in the Bay mercury TMDL and monitoring is accomplished through the [“Municipal Regional Permit”](#) for urban stormwater runoff (Order no. R2-2015-0049). However, no mercury loads monitoring from Guadalupe River is required in the current Municipal Regional Permit. Nonetheless, the Regional Monitoring Program and urban stormwater runoff permittees voluntarily funded monitoring of a large storm event in January 2017 for mercury load from Guadalupe River. The Water District contributed a significant portion of the funding for the January 2017 monitoring as an urban stormwater runoff permittee and by funding the turbidity probe at a USGS gage. The January 2017 monitoring provides helpful data on legacy mercury loads to the Bay. Because large storm events are infrequent but transport the largest mercury loads, mercury loads monitoring in cycle 2 continues to focus on legacy mercury.

Mercury loads monitoring (requirement 4) must address the following:

- Questions to be resolved:
  - What is the mercury load from Guadalupe River delivered to San Francisco Bay in large storms?
  - What component of these storm loads are from each of legacy mining and urban stormwater runoff sources?
- Frequency:
  - Monitor one storm of 25 year or higher return interval; if monitored successfully, the Water Board plans to credit this monitoring towards future mercury monitoring requirements; and
  - Sample up to two storms in two separate years (up to four storm events) that meet large storm threshold in upper watershed.
- Develop large storm threshold based on threshold developed by San Francisco Estuary Institute, as follows:
  - Season-to-date rainfall > 7 in. everywhere (define everywhere and how evaluated);
  - Baseflow at USGS Hwy 101 gage elevated above dry season (quantify both baseflow and elevated);
  - Storm forecast of 6–12 in. on upper watershed (define upper watershed);
  - 6-hr rainfall forecast > 2 in. Quicksilver County Park (clarify storm return interval); and
  - Almaden Reservoir is near capacity (quantify near capacity).

- Propose load calculation method(s) and corresponding field methods:
  - Load calculation methods may be either linear interpolation, flow weighted mean concentration, or other method(s); more than one load calculation method may be employed.
  - Field methods are dependent on the load calculation method. For example whether to maintain a turbidity probe or rely on grab suspended sediment concentration (SSC) samples will be determined by the load calculation methods, and lab and field QA/QC requirements.
- Location:
  - Same sample location at Guadalupe River at Highway 101, i.e., grab samples collected from rental car return bridge over Guadalupe River, and USGS stream and turbidity gage on Guadalupe River above Highway 101 (#11169025).
- Sampling details:
  - Monitoring plan to provide sampling details including but not limited to the following: frequency and total number of samples per storm, field parameters, laboratory analysis.
- Reporting:
  - The monitoring plan must describe anticipated report graphics, tables, calculations, analyses, and conclusions and describe how the data collection supports report contents.

Although each party is individually responsible for monitoring and reporting, we encourage the parties to satisfy monitoring requirements 3 (fish) and 4 (loads to Bay) through a coordinated watershed monitoring program. We believe that fish mercury monitoring is best undertaken through a coordinated program, because fish integrate methylmercury over time and space. Monitoring of legacy (i.e., mercury mining waste) and urban stormwater runoff mercury discharges to San Francisco Bay is best undertaken in a coordinated fashion, because these loads to the Bay are attributable to a combination of sources and responsible parties.

We will waive TMDL monitoring requirement 2 on an individual basis for parties who both (a) submit an executed copy of the MOU for cycle 2 no later than January 31, 2018, and (b) co-sign the coordinated monitoring plan submitted to the Water Board for review no later than June 30, 2018. Individual parties who do not meet both (a) and (b) must submit an individual monitoring plan that addresses requirement 2 for discharges of mercury mining waste from their mine sites, and requirements 3 and 4 for waters downstream of their site(s) no later than June 30, 2018.

### **Technical Report Requirement Basis**

This technical report requirement is necessary to demonstrate progress in (a) reducing loads of mercury from mining waste to surface waters, (b) reducing methylmercury produced in reservoirs and lakes, which is discharged downstream, and in (c) attaining the TMDL fish tissue targets. As described in the TMDL project documents and cycle 1 monitoring report, high concentrations of mercury continue to be found in stormwater discharges from the New Almaden Mining District, and fish downstream of mercury mines have elevated mercury concentrations.

This requirement for a report is made pursuant to California Water Code § 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. Any extension in the above deadlines must be confirmed in writing by Water Board staff.

Failure to comply with this letter may subject you to civil liability in an amount no to exceed \$1,000 for each day of violation. Falsifying any information in the required report may subject you to misdemeanor charges and civil liability not to exceed \$25,000 for each day of violation. If you have any questions, please contact Carrie Austin of my staff at (510) 622-1015 [e-mail [carrie.austin@waterboards.ca.gov](mailto:carrie.austin@waterboards.ca.gov)].

Sincerely,

for Bruce H. Wolfe  
Executive Officer

cc: Vincent Gin, Santa Clara Valley Water District [vgin@valleywater.org](mailto:vgin@valleywater.org)  
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