

# **BLUE PLAINS INTERMUNICIPAL AGREEMENT of 2012**

[Effective: 4/3/13]

*Among the*  
**District of Columbia**  
**District of Columbia Water and Sewer Authority**  
**Fairfax County, Virginia**  
**Montgomery County, Maryland**  
**Prince George's County, Maryland**  
**Washington Suburban Sanitary Commission**



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## BLUE PLAINS INTERMUNICIPAL AGREEMENT OF 2012

### PREAMBLE

**THIS BLUE PLAINS INTERMUNICIPAL AGREEMENT OF 2012**, is made among the **DISTRICT OF COLUMBIA** (District), the **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY** (DC Water), **FAIRFAX COUNTY, Virginia** (Fairfax), **MONTGOMERY COUNTY, Maryland** (Montgomery), **PRINCE GEORGE'S COUNTY, Maryland** (Prince George's), and the **WASHINGTON SUBURBAN SANITARY COMMISSION** (WSSC), collectively, "the Parties." This Agreement shall be known as "this IMA" or "the 2012 IMA."

#### **Witness:**

**WHEREAS**, the Parties desire to protect the fish, wildlife, scenic and recreational qualities of the Chesapeake Bay, the Potomac River estuary, the Anacostia River, and other tributary waters, pursuant to the federal Clean Water Act, while providing wastewater collection and treatment services and related biosolids management for the Blue Plains Service Area (BPSA); and

**WHEREAS**, the District, Fairfax, Montgomery, Prince George's, and WSSC entered into the Blue Plains Intermunicipal Agreement of 1985 (the 1985 IMA) in order to resolve a variety of critical wastewater treatment, biosolids management, and cost allocation issues with the Blue Plains Wastewater Treatment Plant (Blue Plains); and

**WHEREAS**, much of the wastewater collection and all of the wastewater treatment and related biosolids management required by the 1985 IMA was provided by the District at Blue Plains until 1996, when the District created DC Water as an independent authority with regional responsibilities to provide these and other services through the operation and management of Blue Plains and Other Associated Facilities; and

**WHEREAS**, the District holds title to the real property, appurtenances, and fixtures of Blue Plains; and

**WHEREAS**, DC Water is the National Pollutant Discharge Elimination System (NPDES) permit holder for and operates Blue Plains; and

**WHEREAS**, WSSC is an agency created by the State of Maryland to provide water supply and wastewater collection and treatment and biosolids management services to Montgomery and Prince George's, whose governments each appoint three (3) of WSSC's six (6) Commissioners; WSSC, on behalf of the residents of Montgomery and Prince George's, contributes their allocated share of costs of wastewater services provided by DC Water; and

**WHEREAS**, the District, Fairfax, Montgomery, and Prince George's are governments, which have cooperated to provide wastewater collection and treatment and biosolids management to protect the public health of their residents and to provide the infrastructure necessary to realize their respective current and long-range planning

and development goals; additionally Fairfax purchases wastewater services directly from DC Water and retails such services to Fairfax customers; and

**WHEREAS**, the District and DC Water have individual service agreements with other entities, known as Non-Party Users, that have defined Allocated Flow Capacity within the IMA but are not Signatories to the IMA, and Fairfax and WSSC also have individual service agreements with other entities, known as Indirect Users, that share a portion of Fairfax or WSSC's Allocated Flow Capacity within the BPSA; and

**WHEREAS**, DC Water represents the interests of the Non-Party Users and is responsible for enforcing any Limited Party Agreements with Non-Party Users, whether those agreements are in the name of DC Water or the District, and Fairfax and WSSC are responsible for enforcing any Limited Party Agreements which they have with Indirect Users; and

**WHEREAS**, the existing institutional arrangements for wastewater treatment, biosolids management, and for Capital Cost and Operating and Maintenance (O&M) Cost allocations among the Parties set forth in the 1985 IMA had their origin in a series of agreements dating back to the 1950s; and

**WHEREAS**, the Parties have demonstrated their willingness to share in the burdens associated with the demands of regional wastewater collection and treatment and biosolids management for the BPSA; and

**WHEREAS**, the Parties desire to establish an equitable arrangement for allocating Capital Costs in relationship to their Allocated Flow Capacity and for allocating O&M Costs in relationship to their Actual Flows, with the potential need to allocate certain costs based on factors not linked to capacity allocation or flow (e.g. loadings); and

**WHEREAS**, the Parties desire to improve and formalize mechanisms for continued cooperation, coordination and communication among the Parties, including capacity planning and technical input regarding Blue Plains and Other Associated Facilities and the BPSA; and

**WHEREAS**, the Parties desire to provide for a continuing water quality monitoring and evaluation program to address Potomac River estuary, Anacostia River and Chesapeake Bay water quality issues, as well as to recognize the continued need for long-term regional water quality planning, wastewater planning, and biosolids management planning for the BPSA and the region as a whole; and

**WHEREAS**, the Parties desire to set forth their rights, obligations and responsibilities with respect to the use and management of facilities necessary for wastewater collection and treatment and for biosolids management for the BPSA; and

**WHEREAS**, the Parties acknowledge that changing conditions may require modifications to Allocated Flow Capacity, Peak Flow Limitations and cost allocations as well as constraints on loadings and potential load allocations; and

**WHEREAS**, the Parties acknowledge the need for flexibility and expedited responsiveness concerning many issues of wastewater collection and treatment systems and facilities, and biosolids management issues within the BPSA and, to that end, desire to authorize the use of Derivative Agreements to implement the intent of the Parties.

**NOW, THEREFORE**, the undersigned Parties agree that

1. This Blue Plains Intermunicipal Agreement of 2012 (this IMA) is entered into for the purposes of:
  - a. Allocating the wastewater treatment capacity of Blue Plains and Other Associated Facilities and related peak flows for the collection system;
  - b. Equitably allocating the Capital Costs of wastewater treatment and biosolids management;
  - c. Equitably allocating O&M Costs;
  - d. Defining the responsibilities of pretreatment and operational requirements and biosolids management;
  - e. Defining the process of making future wastewater capacity planning decisions, including addressing load allocations;
  - f. Providing a mechanism for continuing coordination, cooperation and communication; and
  - g. Providing environmental stewardship.
2. Upon signing of this IMA by all Parties, this IMA shall replace the 1985 IMA, and as of such date the 1985 IMA shall be of no further force and effect, and the Blue Plains Regional Committee shall become the Regional Committee created by this IMA.
3. The terms used in this IMA are defined in **Section 12. Glossary**.
4. The headings used in this IMA are for reference purposes only.

**-END OF PAGE-**

## SECTION 1. KEY PRINCIPLES

The provisions of this IMA, and the Derivative Agreements created to implement it, are based upon certain Key Principles. This IMA and the Derivative Agreements shall be governed by and consistent with these Key Principles. These Key Principles shall guide any interpretation or dispute resolution process.

1. **Ensure Best Management** - The Parties commit to continued cooperation, coordination and communication to ensure the best possible management of all Multi-Jurisdiction Use Facilities (MJUFs), including Blue Plains and Other Associated Facilities for the benefit of the District, Fairfax, Montgomery and Prince George's and their residents. In this regard, the Parties acknowledge that, irrespective of their individual agreements with Non-Party Users and Indirect Users of Blue Plains, the Parties shall meet their contractual obligations under this IMA.
2. **Capacity Allocations and Peak Flow Limitations** - The wastewater treatment flow capacity and Peak Flow Limitations, and associated loadings for Blue Plains, are defined and allocated among the Parties and Non-Party Users as set forth in this IMA.
3. **Management of Flows and Loads** - The Parties agree to manage their flows in accordance with their Allocated Flow Capacity and associated Peak Flow Limitations, and overall loads in accordance with Blue Plains Design Load Capacities.
4. **Assessment of Capital Costs** - All Capital Costs associated with Blue Plains and Other Associated Facilities which are MJUFs, shall be assessed in relationship to the District's, Fairfax's and WSSC's and Non-Party Users' Allocated Flow Capacity, Peak Flow Limitations, or other approved Usage Allocation as may be agreed among the Parties. The methodologies and tools used to make those determinations are defined in this IMA. DC Water shall assess Capital Costs against Non-Party Users in accordance with applicable contracts. These Capital Costs shall include the costs associated with rehabilitation of or other improvements to existing facilities, as well as construction of new facilities.
5. **Assessment of Operating and Maintenance (O&M) Costs and Other Costs** - All O&M Costs associated with MJUFs and processes shall be assessed in relationship to the Parties' and Non-Party Users' Billing Flows, or other approved Usage Allocation as may be agreed among the Parties; and DC Water shall be responsible for O&M Costs of Non-Party Users. The Parties also bear financial responsibility for certain fines, penalties and claims.
6. **Costs of Biosolids Management** - The Parties accept individual and collective regional responsibility for the long-term viability of management for biosolids generated by Blue Plains, and agree to appropriately share the biosolids management Capital Costs in proportion to their Allocated Flow Capacity, and O&M Costs in proportion to their Billing Flows.



7. **DC Water’s Responsibility for Operation of Blue Plains** - While DC Water shall afford the other Parties due opportunity to review and comment on important technical and financial issues that may affect the other Parties’ rights and obligations under this IMA, or that may have regional implications, DC Water shall continue to exercise its discretion and judgment with regard to the operation, maintenance and management of Blue Plains and Other Associated Facilities.
8. **Agreement to Cooperate with DC Water** - The Parties have historic, current and future responsibilities for the effective and efficient development of the region, and the provision and maintenance of the region’s infrastructure, including wastewater collection and treatment, and biosolids management within the BPSA. These interconnected responsibilities require the close cooperation and collaboration by the other Parties with DC Water.
9. **Assessment of Projected Flow Capacity Needs and Future Expansion** - The Parties recognize that the wastewater flow capacity and loading requirements for all Parties and Non-Party Users within the BPSA must be assessed periodically and plans made to provide adequate wastewater collection and treatment facilities. They further recognize that the District shall always possess wastewater treatment capacity at Blue Plains sufficient to meet its Projected Flow Capacity Needs; and, therefore, that all future Projected Flow Capacity Needs may or may not be able to be met at Blue Plains. The Parties agree to establish procedures to define these Projected Flow Capacity Needs, identify options to provide for these needs, agree on time frames for notification and actions, and agree on the allocation of capacity and costs. The District has no obligation to expand the currently authorized capacity or loadings of Blue Plains, although an expansion option is not precluded. The Parties may decide to expand Blue Plains or Other Associated Facilities, or accommodate such future flows at facilities other than Blue Plains, based on a Jointly Managed Study. The Parties (and Non-Party Users, as appropriate) agree to share the costs of an expansion at Blue Plains or Other Associated Facilities, or at any other facilities, based on agreed upon capacity and loading allocations, and associated Peak Flow Limitations.
10. **Protection of Water Quality** – Stewardship and protection of the water quality of the Potomac River estuary, the Anacostia River, and contributing to the health of the Chesapeake Bay are fundamental values of the Parties. Achieving these goals is an inherent function of Blue Plains, manifested through its NPDES permit.
11. **Effect and Amendment of this IMA and Derivative Agreements** - This IMA remains in effect until June 30, 2111, unless amended, replaced or terminated earlier by mutual consent of all the Parties. The Parties may amend this IMA in accordance with its terms. The Parties may create, amend or terminate any associated Derivative Agreements addressing implementation of this IMA, as provided in this IMA. Certain agreements, set forth in the Appendix, which were suspended, extinguished or superseded by the 1985 IMA, are extinguished and superseded by this IMA.

12. **Dispute Resolution** - The Parties agree to a dispute resolution process to resolve differences regarding interpretation of or disputes regarding this IMA or the Derivative Agreements.

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## SECTION 2. GOVERNANCE

### A. LEVELS OF AUTHORITY

The physical and financial interdependence of Blue Plains and Other Associated Facilities requires regular forums where technical, policy and financial issues affecting more than one Party can be presented and discussed, and where differences and disputes can be resolved. The Parties agree that they shall make every effort to achieve consensus decisions. In fulfilling these responsibilities, the Parties may proceed or act at three different levels of authority: (1) the policy level, (2) the administrative level or (3) the technical level.

### B. AUTHORITY TO ACT AND GENERAL PARTY RESPONSIBILITIES

1. **Basis** - Authority for action or decision by each member of the three (3) bodies identified herein as levels of governance is pursuant to applicable enabling legislation, charter provisions or formal policies of each Party.
2. **General Party Responsibilities**
  - a. Unless otherwise stated herein, each Party shall determine which of its officials or staff will act on its behalf.
  - b. Unless otherwise stated herein, each Party shall be responsible for any notice to its officials, staff or constituents, pursuant to applicable legislation, charter provisions, or formal or informal policies of the Party.
  - c. Consistent with the respective bylaws of the Leadership Committee and the Regional Committee, those Committees may allow observers invited by members of those committees to attend their meetings.

### C. POLICY LEVEL: THE IMA SIGNATORIES

1. **Signatory** - The Signatories of this IMA are the highest level of officials of each Party, as designated below:
  - a. District of Columbia – Mayor
  - b. DC Water – Chairman, Board of Directors
  - c. Fairfax County, Virginia – Chairman, Board of Supervisors
  - d. Montgomery County, Maryland – President, County Council and County Executive
  - e. Prince George’s County, Maryland – Chair, County Council and County Executive
  - f. Washington Suburban Sanitary Commission – Chair and Vice Chair
2. Each Signatory warrants that its signature is authorized.
3. Written agreement of the Parties, at the Signatory level, is required to revise, amend or terminate this IMA pursuant to **Section 10**.

4. Signatory review shall constitute the last or highest internal level of dispute resolution under **Section 10**.

**D. ADMINISTRATIVE LEVEL: THE IMA LEADERSHIP COMMITTEE**

1. **Composition** - The IMA Leadership Committee (the Leadership Committee) shall be composed of the governmental Chief Administrative Officers and the Operating Agencies' General Managers, i.e. six (6) members, consisting of one (1) member from each Party as designated below:
  - a. District of Columbia – City Administrator
  - b. DC Water – General Manager
  - c. Fairfax County, Virginia – County Executive
  - d. Montgomery County, Maryland – Chief Administrative Officer
  - e. Prince George's County, Maryland – Chief Administrative Officer
  - f. Washington Suburban Sanitary Commission – General Manager
2. **General Responsibility** - The Leadership Committee shall oversee the implementation of this IMA. The Committee shall convene at least annually to receive briefings and to resolve issues or endorse positions presented by the Regional Committee or a Party, including dispute resolution.
3. **Specific Functions** - The Leadership Committee is charged with overseeing this IMA which function includes, where appropriate or required, authorization, review and approval of:
  - a. Derivative Agreements, except for Limited Party Agreements, and amendments to or termination of Derivative Agreements, except for Limited Party Agreements, entered into pursuant to **Section 11**, in order to address routine, procedural or operational elements of this IMA;
  - b. Final interpretations of this IMA and Derivative Agreements for matters referred to it by the Regional Committee or when dispute resolution has been invoked;
  - c. Action on issues covered by this IMA and Derivative Agreements that have a potential policy or fiscal impact on the Parties, or on the capability of Blue Plains to effectively provide wastewater treatment; and
  - d. Other duties as set forth in this IMA.
4. **Procedures**
  - a. The Leadership Committee shall act by the unanimous agreement of all of its members and formal action documented in minutes or other documents.
  - b. The Leadership Committee may agree that certain decisions or actions implementing this IMA may be made by the unanimous agreement of the respective governmental Chief Administrative Officers or the unanimous agreement of the respective Operating Agency Representatives alone. The Parties acknowledge that Fairfax is both a governmental entity and an Operating Agency, and may participate in either subgroup as appropriate.

c. The Leadership Committee shall select a chair and develop procedures consistent with this IMA.

5. **Regional Committee Input** - The Leadership Committee may seek the recommendation of and request reports from the Regional Committee.

#### **E. TECHNICAL LEVEL: THE IMA REGIONAL COMMITTEE**

1. **Composition** - The IMA Regional Committee (the Regional Committee) shall be composed of 12 members, consisting of two (2) members from each Party.

2. **Appointment** - Members of the Regional Committee shall be appointed by the members of the Leadership Committee for their respective Party, and shall consist of professional staff representatives from each of the Parties.

#### **3. General Responsibilities**

a. The Regional Committee is created for the purpose of assisting in the interpretation, administration and implementation of this IMA and to resolve issues pertaining to Blue Plains that are within the scope of this IMA and the Derivative Agreements.

b. The Regional Committee shall identify issues relevant to the implementation and oversight of this IMA, and shall coordinate, review and consider appropriate actions for the effective provision of wastewater collection and treatment and biosolids management to support the current and future Projected Flow Capacity Needs of the BPSA.

c. The Regional Committee shall make recommendations to the Leadership Committee and, where appropriate, to other entities with respect to the rights and obligations of the Parties.

d. The Regional Committee shall make decisions and take actions as delegated to it by the Leadership Committee.

4. **Specific Functions** - The Regional Committee is responsible for the following:

a. Implementing this IMA and Derivative Agreements, including:

1) Recommendations on policy issues;

2) Initial resolution of disputes associated with implementation;

3) Providing recommendations to the Leadership Committee on amendments to this IMA;

4) Providing recommendations to the Leadership Committee on creation, modification or termination of Derivative Agreements to address routine, procedural or operational elements of this IMA;

- 5) Providing guidance and recommendations for any other issues that may arise within the scope of this IMA.
  - b. Evaluating the terms of agreements with Non-Party Users and Indirect Users;
  - c. Evaluating population impacts, flow projections and service area boundaries;
  - d. Providing analysis of flow measurement and data collection efforts, as well as flow management programs and their flow capacity impacts;
  - e. Evaluating the Parties' flows and conformance with Allocated Flow Capacity and Peak Flow Limitations;
  - f. Defining and assessing the Parties' Projected Flow Capacity Needs, loading requirements and options;
  - g. Evaluating proposals regarding any capacity reallocation;
  - h. Evaluating proposed permit conditions, including potential capacity and financial impacts;
  - i. Establishing cost allocations for Capital Costs and O&M Costs of MJUFs;
  - j. Evaluating Blue Plains impacts and contributions towards meeting local and regional water quality goals;
  - k. Providing input and regional support for Blue Plains biosolids management program;
  - l. Evaluating the Parties' compliance with their requirements under Blue Plains Pretreatment Program;
  - m. Providing recommendations for DC Water's proposed "Capital Improvements Program Budget" and annual "Operating Budget" as they relate to MJUFs; and
  - n. Other duties as set forth in this IMA.
5. **Serve as a Forum** - The Regional Committee shall provide a forum for in-depth discussion and coordination regarding the wastewater and biosolids technical, policy and financial issues affecting Parties. Any Party may submit issues to the Regional Committee for review and comment prior to regional action or prior to Implementation by DC Water or any other Party.
6. **Procedures** - The Regional Committee shall act by the unanimous agreement of all of its members and formal action documented in minutes or other documents.
  - a. The Regional Committee may agree that certain categories of decisions or actions may be made by the unanimous agreement of the representatives of the

- governmental entities alone or the unanimous agreement of the Operating Agency Representatives alone. The Parties acknowledge that Fairfax is both a governmental entity and an Operating Agency, and may participate in either subgroup, as appropriate.
- b. The Regional Committee shall select its own chair and develop its own procedures consistent with this IMA.
  - c. The Regional Committee shall meet at least quarterly.
  - d. The Regional Committee may create standing or ad-hoc subcommittees or work groups to address issues/topics as required. These subcommittees/work groups shall be responsible for addressing issues assigned to them, and for developing recommendations for the Regional Committee.
  - e. The Operating Agency Representatives are a subset of members of the Regional Committee and shall be a standing work group of the Regional Committee.
7. **Annual Work Program and Budget for Secretariat Services** - The Regional Committee shall recommend, and the Leadership Committee shall approve, an annual work program and budget, and an agreement with an entity to provide secretariat services for the Leadership Committee, the Parties and the Regional Committee to carry out their responsibilities under this IMA, as set forth in a Service Agreement.
8. **Annual Work Program and Budget for a Regional Water Quality Management Program** - The Regional Committee shall recommend, and the Leadership Committee shall approve, an annual work program and budget, and an agreement with an entity to address a regional water quality management program, as set forth in a Service Agreement.
9. **Regional Committee Communication with Parties** - On behalf of the Leadership Committee, the Regional Committee shall prepare an annual report to the Parties regarding the implementation of this IMA, and shall provide such other reports on its activities as the Leadership Committee or Signatories may require.

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## **SECTION 3. BLUE PLAINS PERMIT RESPONSIBILITIES AND TREATMENT PROCESS REQUIREMENTS**

### **A. DC WATER'S OVERALL PERMIT RESPONSIBILITIES**

As operator of Blue Plains and Other Associated Facilities, DC Water is responsible for monitoring pending federal, state and local statutory and regulatory developments; and for anticipating potential impacts on the Blue Plains National Pollution Discharge Elimination System (NPDES) permit, or other permit requirements, as a result of such developments. DC Water is also responsible for monitoring and analyzing other issues that can reasonably be expected to impact Blue Plains permit conditions, programs and process requirements. DC Water's assessment of these impacts shall include, but not be limited to, an assessment of the potential impacts on Blue Plains and Other Associated Facilities and Pretreatment Program requirements.

### **B. DC WATER'S NOTIFICATION RESPONSIBILITIES**

If DC Water determines that any matter or issue in this **Section 3** may result in modification of permit conditions, programs or process requirements at Blue Plains and Other Associated Facilities, it shall determine the anticipated timing and potential financial impacts of such modifications on the Parties and Non-Party Users, and shall inform the Regional Committee. Potential financial impacts include Capital Costs, as well as O&M Costs. Once DC Water identifies the need for additional Capital Costs or O&M Costs, the other Parties shall have an opportunity to comment on the timing and other aspects of the projects prior to the projects proceeding.

### **C. INDIVIDUAL PARTY RESPONSIBILITIES**

Each Party is responsible for its share of any financial commitment, including Capital Costs and O&M Costs, to address any modification of permit conditions, programs or process requirements at Blue Plains, as set forth in **Section 5**.

### **D. COLLECTIVE PARTY RESPONSIBILITIES**

In addition to addressing the financial impacts of regulations, permit conditions, programs, and process impacts determined under this **Section 3**, the Parties agree to evaluate this IMA to determine if any elements, including, but not limited to, cost elements need to be amended.

### **E. REGIONAL WATER QUALITY MANAGEMENT PROGRAM SUPPORT**

1. **Stewardship** - The Parties recognize their collective and regional responsibilities for the long-term protection of the Potomac River estuary and the Anacostia River water quality, and supporting restoration of the Chesapeake Bay; and responding to other environmental requirements impacting Blue Plains and Other Associated Facilities. The Parties agree to fulfill these objectives of regional water quality management planning, monitoring and modeling programs in the most cost-effective manner for Blue Plains.
2. **Program Activities** - The Parties shall actively support regional water quality and environmental programs to monitor and analyze state, federal and local water quality



management policies and regulations, as well as wastewater treatment and biosolids management technologies and permitting issues, and engage in policy and technical advocacy.

**F. DERIVATIVE AGREEMENT** – Derivative Agreements shall address additional matters set forth in this **Section 3**. They may be replaced or supplemented by successor or other Derivative Agreements.

**-END OF PAGE-**

## SECTION 4. BLUE PLAINS FLOW CAPACITY, LOADS, AND PEAK FLOWS - ALLOCATIONS AND LIMITATIONS

### A. BLUE PLAINS ALLOCATED FLOW CAPACITY

#### 1. Basis for Capacity Allocations

- a. The Allocated Flow Capacity for the District, Fairfax, WSSC, and Non-Party Users is defined in **Table 4-A** below.
- b. The Allocated Flow Capacity is based on Blue Plains current Design Flow Capacity and reflects the ability of Blue Plains to provide treatment of the incoming wastewater under Annual Average Hydrologic Conditions.
- c. It is recognized that the Captured Stormwater Flows (CSF) that receive treatment to meet the Combined Sewer Overflow Long-term Control Plan (CSO LTCP) requirements are not part of the District’s Allocated Flow Capacity.

**TABLE 4-A**

<b>BLUE PLAINS ALLOCATED FLOW CAPACITY</b>	
<b>ENTITIES</b>	<b>ALLOCATIONS (MGD)<sup>1</sup></b>
District of Columbia	152.50
Non-Party Users:	
Loudoun County Sanitation Authority, Virginia	13.80
Dulles Airport, Virginia	1.50
Town of Vienna, Virginia	1.50
Naval Ship Research & Development Center, Maryland	0.07
National Park Service, Maryland	<u>0.03</u>
Sub-total	16.90
<b>District of Columbia – Total</b>	<b>169.40</b>
<b>WSSC<sup>2</sup> (for Prince George’s County &amp; Montgomery County), Maryland – Total</b>	<b>169.60</b>
<b>Fairfax County, Virginia<sup>3</sup> - Total</b>	<b>31.00</b>
<b>Grand Total – Blue Plains Design Flow Capacity</b>	<b>370.00</b>

<sup>1</sup> Flows represent Annual Average Hydrologic Conditions.

<sup>2</sup> The Allocated Flow Capacity for WSSC is on behalf of Prince George’s and Montgomery; with any sub-allocations determined by separate agreements between those entities. The WSSC allocation also includes wastewater from other political jurisdictions with which WSSC has separate agreements.

<sup>3</sup> The Allocated Flow Capacity for Fairfax also includes wastewater from other political jurisdictions with which Fairfax has separate agreements.

**2. Compliance with Capacity Allocations**

- a. The District, Fairfax and WSSC shall comply with their Allocated Flow Capacity.
- b. Compliance with the Allocated Flow Capacity by the District, Fairfax and WSSC shall be assessed based on their Adjusted Flow, and as calculated in **Operating Agreement #3**.
- c. Continued use of this Allocated Flow Capacity by the District, Fairfax, WSSC or Non-Party Users, however, shall be dependent on the respective entity making the financial contribution for its appropriate share of the Capital Cost and O&M Costs of all MJUFs in accordance with **Section 5**.

**3. Assessment of Future Needs** - Assessment of Projected Flow Capacity Needs for the District, Fairfax, WSSC and Non-Party Users, as compared to their Allocated Flow Capacity, shall be in accordance with **Section 7**.

**4. Compliance by Non-Party Users and Indirect Users**

- a. The District and DC Water shall use their best efforts to require Non-Party Users to comply with their Allocated Flow Capacity.
- b. Fairfax and WSSC shall use their best efforts to require Indirect Users to comply with their capacity allocations as defined under Limited Party Agreements with the Indirect Users.
- c. Irrespective of such efforts, all Parties shall be bound by their Allocated Flow Capacity.

**5. Conditions on Limited Party Agreements for a Transfer of Allocated Flow Capacity**

- a. Before a Limited Party Agreement, as permitted by **Section 11**, for a transfer of Allocated Flow Capacity can be executed:
  - 1) It must include terms which do not change the financial obligations required under this IMA to DC Water for the Allocated Flow Capacity being transferred; and
  - 2) It shall be reviewed by the Regional Committee to ensure, among other matters, that the proposed transfer does not change the rights and responsibilities of a Party as set forth in this IMA.
- b. Financial arrangements pursuant to a Limited Party Agreement for a transfer of Allocated Flow Capacity shall be determined by the involved parties.

**-END OF PAGE-**

**B. BLUE PLAINS EFFLUENT LOADS AND BLUE PLAINS EFFLUENT LOAD ALLOCATIONS**

1. **Basis for Blue Plains Effluent Loads and Blue Plains Effluent Load Allocations** - The Blue Plains Effluent Loads and the associated Blue Plains Effluent Load Allocations shall be consistent with Blue Plains permit and as defined in **Operating Agreement #1**.
2. **Requirements for Transfers of Flow and/or Effluent Load Allocations Outside Blue Plains or BPSA**
  - a. If the District, Fairfax or WSSC determine that it will divert any or all of its current or projected wastewater flows originating in the BPSA from Blue Plains, the associated Effluent Load Allocation may be transferred away from Blue Plains.
  - b. The transfer of any Effluent Load Allocations away from Blue Plains, whether by the District, Fairfax, WSSC or by others, shall result in a proportionate reduction in the usable Allocated Flow Capacity of the Party(ies) having their Effluent Load Allocations reduced; unless additional Blue Plains Load Allocations or Blue Plains Load Offsets are obtained. This shall not result in a change to the Allocated Flow Capacities defined in **Table 4-A**.

**C. BLUE PLAINS INFLUENT LOADS AND INFLUENT DESIGN LOAD CAPACITY**

1. **Basis for Blue Plains Influent Loads**
  - a. The pollutant loads from all influent wastewater flows to Blue Plains, their concentrations, associated flow characteristics, and related design assumptions are related to Blue Plains Influent Load(s) and are expressed as the Design Load Capacity, as defined in **Operating Agreement #1**.
  - b. The Design Load Capacity is based on Blue Plains current Design Flow Capacity and reflects the ability of Blue Plains to provide treatment of the incoming wastewater under maximum year flow conditions.
2. **Compliance with Blue Plains Influent Loads** - The Parties shall work to ensure that pollutant loads from all influent flows do not exceed Design Load Capacity(ies), as defined in **Operating Agreement #1**; unless pollutant loads in excess of the Design Load Capacity(ies) have been determined by DC Water to not pose a potential risk of contributing to Blue Plains Permit violations.

**D. MONITORING OF AND RECOMMENDATIONS REGARDING INFLUENT FLOWS AND LOADS**

1. DC Water shall routinely sample and monitor influent loads and wastewater process performance, with input from the other Parties, to determine if and when either the collective or individual influent concentrations from each Party appear to exceed normal variations in influent wastewater strength as determined by DC Water.

2. Such assessments shall address, but not be limited to addressing wastewater and Captured Stormwater Flow contributions, as well as Inflow/Infiltration (“I/I”) impacts on influent loads.
3. DC Water shall determine whether these variations have the potential to impact Blue Plains plant performance, permit compliance, Allocated Flow Capacity, Effluent Load Allocations, or the Design Load Capacity, and make recommendations to the Regional Committee.
4. DC Water shall review influent flow rates and influent loads compared to Design Flow Capacity and Design Load Capacity values, and recommend whether plant-wide influent loads may need to be sub-allocated to the District, Fairfax, WSSC and Non-Party Users, or if any adjustments to the Allocated Flow Capacities might be required in order to meet NPDES permit requirements.
5. The Regional Committee shall routinely review all of these matters to determine whether the rights and responsibilities of the Parties are affected, and to make necessary recommendations to the Leadership Committee regarding, but not limited to, the following: cost elements, Effluent Load Allocations, and/or Allocated Flow Capacity. These recommendations shall address potential assignments to the District, Fairfax and WSSC, individually or collectively, as well as to Non-Party Users.

**E. BLUE PLAINS SERVICE AREA (BPSA) PEAK FLOW LIMITATIONS - GENERAL CONDITIONS**

1. **Peak Flow Limitations** - The Peak Flow Limitations for metered points of connection between the collection systems of two (2) or more Parties within the BPSA are defined as follows:
  - a. Potomac Interceptor (PI) and other interceptors for WSSC, Fairfax and Non-Party Users’ flows to collection systems operated by DC Water - **Table 4-B.**
  - b. Interceptors for WSSC flows to collection systems operated by DC Water – **Table 4-C.**
  - c. Interceptors for District flows to collection systems operated by WSSC - **Table 4-D.**

**-END OF PAGE-**

**Table 4-B - PEAK FLOW LIMITATIONS<sup>1</sup>  
FOR WSSC, FAIRFAX COUNTY & NON-PARTY USERS  
FOR THE POTOMAC INTERCEPTOR & OTHER INTERCEPTORS  
OPERATED BY DC WATER, FAIRFAX AND WSSC**

<b>Jurisdiction / Agency Points of Connection</b>	<b>Flow Capacity (Annual Average in MGD)</b>	<b>Peak Flow Limitation (MGD)</b>	<b>Peak/ Average Ratio</b>
<b>WSSC</b>			
Cabin John (to MUPI) <sup>2</sup>	<b>10.3</b>	<b>23.3</b>	<b>2.3</b>
Cabin John (to PI)	6.1	37.0	6.1
Muddy Branch	8.4	28.3	3.4
Watts Branch	5.8	16.5	2.8
Rock Run	1.3	5.6	4.3
<b>Subtotal to PI</b>	<b>21.6</b>	<b>87.4</b>	
<b>WSSC Total to PI &amp; UPI<sup>3</sup></b>	<b>31.9</b>	<b>110.7</b>	<b>3.5</b>
<b>Fairfax County</b>			
Sully Road #1	4.0	14.0	3.5
Sully Road #2	1.1	3.0	2.7
Rock Hill Road	0.9	2.4	2.7
Sugarland Run	4.0	14.0	3.5
Great Falls <sup>4</sup>	8.7	30.0	3.4
Scotts Run	2.9	10.2	3.5
<b>Subtotal to PI</b>	<b>21.6</b>	<b>73.6</b>	
Pimmit Run	9.4	35.0	3.7
<b>Fairfax Total to PI &amp; Pimmit Run</b>	<b>31.0</b>	<b>108.6</b>	<b>3.5</b>
<b>Loudoun County Sanitation Authority to PI</b>	<b>13.8</b>	<b>31.9</b>	
<b>Other Non-Party Users to PI</b>	<b>3.1</b>	<b>7.2</b>	
<b>Grand Total to PI</b>	<b>60.1</b>	<b>200.1</b>	

**-END OF PAGE-**

<sup>1</sup> The Peak Flow Limitations and peak flow ratios for the Potomac Interceptor are acknowledged to be greater than design and modeling values.

<sup>2</sup> MUPI - Maryland Upper Potomac Interceptor

<sup>3</sup> UPI - Upper Potomac Interceptor

<sup>4</sup> This excludes the flow from the Town of Vienna, Virginia.

**TABLE 4-C – PEAK FLOW LIMITATIONS FOR WSSC  
FOR OTHER INTERCEPTORS OPERATED BY DC WATER**

<b>Jurisdiction / Agency Points of Connection</b>	<b>Flow Capacity (Annual Average in MGD)</b>	<b>Peak Flow Limitation (MGD)</b>
<b>WSSC</b>		
Little Falls Trunk Sewer	7.6	20.8
Rock Creek Main Interceptor <sup>1</sup> and Relief	33.5	56.6
Anacostia Forcemain & Project 89	83.2	185.0
Watts Branch Interceptor (Prince George’s County)	1.3	5.9
Upper Oxon Run Trunk Sewer	6.1	15.6
Barnaby Branch	2.8	8.4
Owens Road	1.7	5.5
Indian Head Highway	1.5	5.3
<b>TOTAL</b>	<b>137.7</b>	<b>N/A</b>

**TABLE 4-D – PEAK FLOW LIMITATIONS FOR THE DISTRICT  
FOR OTHER INTERCEPTORS OPERATED BY WSSC**

<b>Jurisdiction / Agency Points of Connection</b>	<b>Flow Capacity (Annual Average in MGD)</b>	<b>Peak Flow Limitation (MGD)</b>
<b>DISTRICT</b>		
Point M-Kennedy St.	0.7	4.4
Point S-Fort Dupont St.	0.4	3.0
Point W-30th St.	0.7	4.8

2. **Basis for Peak Flow Limitations** - The Peak Flow Limitations, defined in **Table 4-B, Table 4-C, and Table 4-D**, have been developed consistent with the Allocated Flow Capacity for the District, Fairfax, WSSC and Non-Party Users, and reflect the maximum flows that have been determined (through modeling and historical observation of system performance) that the BPSA collection systems can convey without exceeding the capacity of the sewer system during wet weather conditions (e.g., rainfall or snowmelt events).
3. **Constraints on Peak Flow Limitations**
  - a. The Peak Flow Limitations, defined in **Table 4-B, Table 4-C, and Table 4-D**, are predicated on the assumption that the District, Fairfax, and WSSC shall not make piping/service area modifications that would increase or significantly alter the character of the peak flows delivered to these points of connection.

<sup>1</sup> This includes that portion of Silver Spring Maryland which enters the Rock Creek Main Interceptor Sewer within the District.

- b. If the District, Fairfax or WSSC proposes to make such modifications, they shall submit requests to DC Water, and DC Water will evaluate the request to determine whether such modifications can be accommodated.
- c. The District, Fairfax and WSSC shall manage their systems or flow management so that the peak flows or sustained peak flows are consistent with historical patterns and assumptions underlying the Peak Flow Limitations, as determined by DC Water.

**4. Adjustments to Peak Flow Limitations**

- a. The peak flows from the District, Fairfax or WSSC can exceed their Peak Flow Limitations for any point of connection, as defined in **Table 4-B, Table 4-C, and Table 4-D**, if their Adjusted Flow does not exceed their Allocated Flow Capacity and if there are no adverse hydraulic impacts to the affected interceptors. Any peak flow shaving facilities or operations must be approved by DC Water with respect to proposed peak flow rates, duration, and overall interceptor system capacity.
- b. DC Water shall routinely monitor all peak flows within the BPSA collection system, determine appropriate action for any problems which arise, and make recommendations to the Regional Committee, consistent with **Section 6**. Specific details for how this monitoring and assessment shall be conducted are described in **Operating Agreement #3**.
- c. Should future model analysis or observation of system performance indicate a need to revise these Peak Flow Limitations, the affected Parties shall support appropriate modifications to these limits, or to the system to ensure compliance with permit and other legal and Operational Requirements.

**5. Compliance by District, Fairfax and WSSC with Peak Flow Limitations**

- a. Except as otherwise provided herein, the District, Fairfax and WSSC shall comply with their Peak Flow Limitations at the various points of connection.
- b. Continued use of these Peak Flow Limitations by the District, Fairfax and WSSC, however, shall be dependent on that entity making the financial contribution for its appropriate share of the Capital Cost and O&M Costs of all MJUFs in accordance with **Section 5**.
- c. The Parties shall ensure that the District, Fairfax and WSSC's collection systems limit the amount of I/I entering these systems. Collection systems shall be maintained so that I/I volumes do not contribute to exceedances of the Peak Flow Limitations.

**6. Compliance by Non-Party Users & Indirect Users with Peak Flow Limitations**

- a. Continued use of these Peak Flow Limitations by the Non-Party Users, however, shall be dependent on that entity making the financial contribution for its appropriate share of the Capital Cost and O&M Costs of all MJUFs in accordance with **Section 5**.



- b. The Parties shall use their best efforts to require Non-Party Users and Indirect Users to comply with the defined Peak Flow Limitations.
- c. Except as otherwise provided herein, irrespective of such efforts, the Parties shall comply with the Peak Flow Limitations.
- d. As appropriate and necessary, collection systems for the Non-Party Users and Indirect Users should limit the amount of I/I entering these systems.
  - 1) DC Water shall be responsible for ensuring that similar requirements are upheld by the Non-Party Users;
  - 2) Fairfax and WSSC shall be responsible for ensuring that similar requirements are upheld by the Indirect Users; and
  - 3) Irrespective of such efforts, and except as provided herein, the Parties shall be bound by these requirements.

**7. Wastewater Collection System Connections**

- a. **Additional Interconnections** - Subject to the conditions imposed by this IMA and any other conditions which might be imposed by the Parties at the time, additional interconnections between the wastewater collection systems of the District, Fairfax, WSSC and Non-Party Users shall be allowed.
- b. **No Requirement to Accept Flow Causing an Exceedance** - The District, Fairfax and WSSC shall not be required to accept flow into its wastewater collection system if that flow exceeds its own or the Non-Party User's Peak Flow Limitations.
- c. **Sewer Connection Approval** - Every connection of a sewer by the District, Fairfax or WSSC, or a Non-Party User, to the sewage collection system of another shall be made only based on prior written approval of the Operating Agency representative for that entity to whom the connection is being made, with notice provided to the Regional Committee.

**F. ADDITIONAL BPSA PEAK FLOW LIMITATIONS – POTOMAC INTERCEPTOR (PI) CONDITIONS**

- 1. **Additional Basis for PI Peak Flow Limitations** - These Peak Flow Limitations are based on analysis that indicates that the PI has not overflowed when the sum of the peak flows delivered has been limited to the 220-240 million gallons per day range. This performance is due to the large service area, timing of flows and rainfall variability.

**2. Potential Modifications to Potomac Interceptor Peak Flow Limitations**

- a. DC Water shall monitor flows and the performance of the PI system to determine if overflows do occur; and then shall work with Fairfax and WSSC to identify the reasons and to determine if revisions/reductions to the Peak Flow Limitations presented in **Table 4-B** are required.
- b. If DC Water determines based upon its monitoring and technical analysis that such revisions/reductions are necessary, it can require those reductions until this IMA is amended and Fairfax and WSSC shall comply with such determination.

**G. DERIVATIVE AGREEMENT – Operating Agreement #1, Blue Plains Flow Capacity, Loads and Peak Flows – Allocations and Limitations**, addresses additional matters set forth in this Section. It may be replaced or supplemented by successor or other Derivative Agreements.

**-END OF PAGE-**

## SECTION 5. FINANCIAL RESPONSIBILITIES OF PARTIES

### A. ASSIGNMENT OF RESPONSIBILITIES

#### 1. Acknowledgements

- a. The Parties acknowledge their financial responsibility for their respective shares of the Capital Costs and the O&M Costs of all MJUFs, including but not limited to Blue Plains and Other Associated Facilities. The Parties also bear financial responsibility for certain fines, penalties and claims.
- b. The Parties acknowledge that the “*Blue Plains Intermunicipal Agreement of 1985 Equity Payment Study*” (dated February, 1987), and the subsequent “equity payments” required by the 1985 IMA, reconciled all Capital Cost contributions for the Parties prior to 1987 and established a new baseline as of 1988 for calculating and allocating any future Capital Costs associated with Blue Plains.

2. Leadership Committee - The Leadership Committee shall ensure that the financial commitments of the Parties and Non-Party Users are met.

#### 3. Regional Committee

- a. The Regional Committee shall agree upon MJUFs determinations and cost allocations, with detailed project lists and cost rationales, as well as billing and payment procedures.
- b. The Regional Committee shall address any new cost elements and cost allocation issues.
- c. The Regional Committee shall also ensure that a record is kept of calculations, procedures and agreements which implement this **Section 5**, including financial allocations for Capital Costs, O&M Costs, billing and payment procedures, User Fees, as well as fines, penalties and claims.

### B. DETERMINATION OF MULTI-JURISDICTION USE FACILITIES (MJUFs)

1. Basis for Making MJUF Determinations - DC Water shall make determinations of the extent to which any facility is utilized by one or more entities and is, therefore, a MJUF; and, based thereon, shall make a recommendation regarding how the cost of building, operating, maintaining, or rehabilitating the facilities might be equitably shared among those entities, as more fully described in **Section 3.B.3.** below.
2. Parties Commit to Pay Costs - The District, Fairfax, WSSC and Non-Party Users are responsible for their respective share of all Capital Costs, O&M Costs, and other direct costs and indirect costs associated with MJUFs at Blue Plains and Other Associated Facilities. The costs include those associated with meeting permit requirements, as well as normal wastewater treatment process and biosolids management requirements for Blue Plains and Other Associated Facilities. These costs shall be developed to ensure full cost-recovery for the O&M, construction or

rehabilitation of the specified facilities. District costs are met through direct ratepayer payments.

3. **DC Water to Recommend Cost Allocations**

- a. DC Water shall utilize a methodology and associated technical tools that the Regional Committee has agreed to for making determinations whether a facility is a MJUF.
- b. DC Water shall make recommendations to the Regional Committee regarding MJUFs, and the proposed cost allocations proposed for those facilities, including providing specific project/program details and cost allocation rationale for making the MJUF determinations.
- c. DC Water shall inform the Regional Committee in a timely manner of the potential magnitude and anticipated timing of the necessary financial commitments to address their share of those commitments.
- d. DC Water shall consider Regional Committee input regarding the proposed amount and timing of those financial commitments. This process shall be an iterative process as regulatory requirements, process impacts, and major capital program requirements are defined and subsequently refined. The costs associated with the O&M, rehabilitation, construction or other use of these facilities shall be allocated among the Parties and Non-Party Users.
- e. The methodology and technical tools to be used in making these determinations shall be set out in **Operating Agreement #2**.

4. **Regional Committee to Endorse Cost Allocations and Identify Policy Issues** –

The Regional Committee shall review DC Water’s recommendations regarding MJUF designations and proposed cost allocations and, if appropriate, endorse the allocations, and identify any resultant policy issues associated with those recommendations.

5. **Regional Committee to Recommend Cost Allocation** - The Regional Committee shall recommend cost allocations to the Leadership Committee for approval.

**C. CAPITAL COST RESPONSIBILITIES**

1. **General Requirements - DC Water’s Responsibility** - DC Water shall be responsible for addressing all of the obligations in this **Section 5** as they pertain to the Non-Party Users. Once DC Water identifies the need for additional Capital Costs, the other Parties shall be provided the opportunity to comment on the timing and other aspects of the projects. DC Water shall assess Fairfax and WSSC for their proportionate share of the Capital Costs incurred for MJUFs. DC Water shall assess District ratepayers using the same basis and reflecting the District’s proportionate share of all costs.
2. **Blue Plains Capital Cost Allocations** - The costs for construction, installation, upgrade or expansion of any facilities which are built to manage wastewater, other

than Captured Stormwater Flow, that is treated at Blue Plains, or the biosolids or other residuals from Blue Plains shall be allocated to the District, Fairfax, WSSC, and Non-Party Users, based on the methodology set forth in **Operating Agreement #2**.

3. **Other Associated Facilities' Capital Cost Allocations** – Except as provided herein, the costs for construction, installation, upgrade or expansion of any Other Associated Facilities shall be allocated to the District, Fairfax, WSSC and Non-Party Users in proportion to their Allocated Flow Capacity or other Usage Allocations.
4. **Capital Equipment Cost Allocations Relating to MJUFs** - Capital Equipment Costs, that are incurred to replace, extend the life of or increase capacity of Blue Plains assets, will be allocated consistent with Allocated Flow Capacity, Actual Flows or other Usage Allocations, as defined in **Operating Agreement #2**.
5. **Basis for Cost Allocations for Fairfax or WSSC MJUFs** - The District, Fairfax, WSSC, and Non-Party Users shall pay the costs for construction, installation, upgrade or expansion of any MJUFs which are built by Fairfax or WSSC for wastewater treatment or biosolids management, or management of residuals from Blue Plains, in proportion to their Allocated Flow Capacity or other Usage Allocations, or as otherwise may be provided by this IMA or Derivative Agreements.
6. **Basis for Non-Standard Cost Allocations** – Projects, whose basis of design or operation DC Water has determined are not inherently linked to standard systems developed for flow or capacity as otherwise set forth in this IMA, may have their Capital Costs allocated based on a Usage Allocation agreed upon by the Parties. Such cost methodologies and rationale shall be consistent with the Key Principles.

#### **D. OPERATING AND MAINTENANCE (O&M) COST RESPONSIBILITIES**

1. **Blue Plains O&M Cost Allocations**
  - a. **Assessments for Proportionate Treatment Costs** - DC Water shall assess Fairfax and WSSC for their proportionate share of the O&M Costs incurred for MJUFs. DC Water shall assess District ratepayers using the same basis and reflecting the District's proportionate share of all costs. All O&M costs incurred shall include all direct costs and indirect costs as agreed by the Regional Committee.
  - b. **Assessments for Blue Plains** -The District's, Fairfax's and WSSC's proportion of the annual Blue Plains O&M Costs shall be as defined in **Operating Agreement #2**.
  - c. **Process to Address Differential Treatment Costs** - If it is determined, based on a Jointly Managed Study, that there is a significant financial impact and, therefore, a basis for having differential treatment costs applied to the flows from various Parties and Non-Parties (i.e., based on strength of wastewater or other flow parameters), the Regional Committee shall be responsible for assessing and

recommending how cost allocations should be borne by the Parties, and making recommendations to the Leadership Committee.

- d. **Use of Revenue** - Any revenue earned from the by-products from the wastewater treatment and/or biosolids processes at Blue Plains shall be used to offset overall O&M expenses, and be attributed, as appropriate, in proportion to the Capital Cost and/or O&M Cost allocations for those associated MJUFs. Revenue shall include, but not be limited to, any revenue generated by: water reuse, methane gas, electricity, carbon trading, compost and any other biosolids-derived products.
2. **Pipelines and Appurtenances O&M Cost Allocations** – The District, Fairfax and WSSC shall each be assessed by DC Water for their proportionate share of the O&M costs for any MJUFs as defined in **Operating Agreement #2**.
3. **Other Associated Facilities’ O&M Cost Allocations** – The District, Fairfax and WSSC shall each be assessed by DC Water for their proportionate share of the O&M Costs associated with these Other Associated Facilities, based on the proportion of their Actual Flow versus Total Flow through facilities, or based on other Usage Allocations as defined in **Operating Agreement #2**.

#### **E. USER FEE RESPONSIBILITIES**

1. **Annual User Fee** – Fairfax, WSSC and Non-Party User Loudoun County Sanitation Authority (LCSA or Loudoun Water) shall pay to DC Water an annual User Fee on behalf of the District. The initial fee was set at \$1,500,000 per annum, effective July 1, 1986; with subsequent payments compounded annually by one and one half percent (1.5%).
2. **Apportionment** - DC Water shall annually calculate the User Fee for Fairfax, WSSC and LCSA, based in proportion to their share of the Allocated Flow Capacity at Blue Plains.
3. **DC Water’s Use of the User Fee** - DC Water shall utilize the User Fee payments from Fairfax, WSSC and LCSA as a credit to the District’s share of Blue Plains O&M Costs.

#### **F. FINES, PENALTIES AND CLAIMS RESPONSIBILITIES**

1. **Joint Responsibility** - The Parties shall have joint responsibility for and shall pay their respective shares of such fines, penalties or claims in accordance with their agreed shares of the O&M Costs or Capital Costs as appropriate for MJUFs or programs, provided that the following criteria are met:
  - a. The fines, penalties or claims are associated with MJUFs;

- b. The Party incurring the fines, penalties or claims demonstrated a reasonable effort to avoid imposition of such fines, penalties or claims, and dispute or contest any unreasonable charges; and
  - c. There is no judicial or adjudicative determination that the fines, penalties or claims are the result of gross negligence or willful misconduct of an employee or agent of the Party incurring the fine, penalty or claim.
2. **Reimbursement of Litigation Costs** - If litigation is filed against a Party for injuries to a third party resulting from operation of a MJUF, the Parties shall share the costs of defense or judgment in accordance with their proportionate shares of the associated O&M Costs or Capital Costs, as appropriate, as long as there is no determination by a court or arbitrator that any such judgment is the result of gross negligence or willful misconduct of an employee or agent of the defendant Party. If a determination is made that there has been gross negligence or willful misconduct of an employee or agent of the defendant Party, the defendant Party shall be solely responsible for the costs of defense and judgment.
  3. **Review and Dispute Resolution** - The Regional Committee shall be responsible for reviewing these fines, penalties or claims and their associated costs, when they relate to billing disputes, and concurring with their applicability to the Parties. If there are disagreements regarding the responsibility of any of the appropriate Parties to pay for such costs, the Regional Committee shall address the issues in a timely manner, including, if necessary, referring the matter to the Leadership Committee for resolution.

## **G. ESTIMATES, BILLINGS, PAYMENTS, AND RECONCILIATION PROCEDURES**

1. **General Requirements for Addressing DC Water Capital Costs and O&M Costs**  
– In accordance with the procedures outlined in Operating Agreement #2, DC Water shall:
  - a. Assess costs based on estimated annual expenses;
  - b. Prepare quarterly billings;
  - c. Receive quarterly payments; and
  - d. Reconcile all costs with payments.
2. **DC Water’s Responsibility for Assessing Capital Costs and O&M Costs for MJUFs for Party and Non-Party Users** – DC Water is responsible for assessing all Capital Costs and O&M Costs associated with MJUFs for the District, Fairfax, WSSC and Non-Party Users. Assessments for each user will be based on their Allocated Flow Capacity or Billing Flows, or other approved Usage Allocations as appropriate.
3. **Fairfax’s and WSSC’s Responsibility for Assessing Capital Costs and O&M Costs for MJUFs for Party and Non-Party Users** – Fairfax and WSSC are responsible for assessing all Capital Costs and O&M Costs associated with MJUFs that they construct on behalf of the District, Fairfax, WSSC and Non-Party Users. Assessments for each user will be based on their Allocated Flow Capacity or Billing Flows, or other approved Usage Allocation as appropriate.

4. **Allocation Method for Capital and O&M Costs for MJUFs** - The method for allocating project-specific Capital Costs and O&M Costs associated with all MJUFs, and the associated billing procedures are as defined in **Operating Agreement #2**.
5. **Party Rights to Documents** – The Parties have the right to audit DC Water’s or another Party’s billings, and access to all existing, relevant financial documents for any billing for which such Party is wholly or partially responsible. Upon written request by a Party, the billing Party shall make the supporting documentation for such billing available for inspection, copy or review by, or on behalf of, the requesting Party.

H. **DERIVATIVE AGREEMENT** – **Operating Agreement #2, Financial Responsibilities of Parties**, addresses additional matters set forth in this Section. It may be replaced or supplemented by successor or other Derivative Agreements.

**-END OF PAGE-**



## SECTION 6. FLOW AND LOAD MEASUREMENT AND MANAGEMENT

### A. WASTEWATER FLOW AND LOAD MEASUREMENT, REPORTING AND MANAGEMENT

1. **Parties' Responsibility to Manage Flows** - The Parties shall take all reasonable actions to maintain their flows within their Allocated Flow Capacity, Peak Flow Limitations, and consistent with any load constraints for Blue Plains, as defined in **Section 4**. These actions shall include, but not be limited to, minimizing extraneous flows and loads in order to preserve capacity at Blue Plains and in the various wastewater collection systems within the BPSA. Based on recommendations from the Regional Committee, the Leadership Committee shall consider and recommend to any or all of the Parties programs, procedures or actions which will minimize wastewater flow and, therefore, preserve these capacities.
2. **Derivative Agreement to Address Procedures** - The methods for measuring monitoring, reporting and assessing Actual Flows within the BPSA and Billing Flows are described in **Operating Agreement #3** and shall include, but not be limited to addressing:
  - a. An assessment of the quantity and timing of any flow management actions that any Party has committed to in order to ensure that they do not exceed their Allocated Flow Capacity, as defined in **Section 4**, and consistent with the long-term planning assumptions described in **Section 7**;
  - b. The methods and frequency of reporting and assessing Actual Flows and Billing Flows;
  - c. The process by which DC Water shall monitor and address any exceedances by the Non-Party Users, and by which Fairfax and WSSC shall monitor and address any exceedances by the Indirect Users as defined in **Operating Agreement #3**; and
  - d. The Regional Committee shall routinely monitor and assess these methods and procedures and make recommendations to the Leadership Committee.
3. **Non-compliance** - If the District, Fairfax or WSSC, or Non-Party User does not comply with its Allocated Flow Capacity, Peak Flow Limitations or load allocations, as defined in **Section 4**; or fails to meet its flow management obligations, the Regional Committee shall address these issues on behalf of all of the Parties, including through use of dispute resolution, as necessary.
4. **District Commitment Regarding Management of Captured Stormwater Flows** - The District shall not expand the service area of its combined sewer system or take other actions that result in significantly increased Captured Stormwater Flow to Blue Plains above the amount set forth in **Operating Agreement #3** except as required for DC Water to meet its NPDES permit. If such actions are required, DC Water shall make recommendations to the Regional Committee, and the other Parties shall address any resultant cost implications consistent with **Section 3**.

**B. CONTROL OF INFLOW AND INFILTRATION (I/I)**

1. **Parties' Responsibility to Manage I/I** - The Parties shall manage their collection systems to minimize the amount of I/I entering their systems. Collection systems shall be maintained so that the I/I volume does not contribute to or cause exceedances of capacities and assumptions defined for:
  - a. Blue Plains,
  - b. The Potomac Interceptor and other wastewater collection system capacities, and
  - c. Facilities associated with the Combined Sewer Overflow Long-term Control Plan.
2. **Non-Party User and Indirect Users' Responsibility to Manage I/I** - DC Water shall work with the Non-Party Users to manage their collection systems to meet the requirements of **Subsection B.1.** above; and Fairfax and WSSC shall work with the Indirect Users to meet the same requirements. Irrespective of arrangements with Non-Party Users or Indirect Users, the Parties shall comply with the flow projection assumptions.

**C. DERIVATIVE AGREEMENT – Operating Agreement #3, Flow and Load Measurement and Management**, addresses matters set forth in this Section. It may be replaced or supplemented by successor or other Derivative Agreements.

**-END OF PAGE-**

## SECTION 7. WASTEWATER PROJECTED FLOW CAPACITY NEEDS AND FUTURE OPTIONS

### A. RATIONALE FOR CONDUCTING ANALYSIS OF PROJECTED FLOW CAPACITY NEEDS

1. **Major Regional Investment** - The Parties recognize that the scale of the BPSA and the associated wastewater collection system, the importance of wastewater treatment provided to the region, and the contributions to local water quality improvements that are provided by Blue Plains constitute a major regional investment by the Parties.
2. **Planning Required** - The Parties also recognize that the planning needed to address future wastewater needs for the BPSA, manage wastewater flows to Blue Plains and respond to evolving water quality issues and regulatory developments will require the Parties to continue to work together to address these interdependent matters.
3. **Commitment to District** – The Parties recognize that, due to the limited options available to the District, the Parties have an obligation to ensure that the District’s wastewater flow capacity needs are addressed in a timely manner.

### B. CONDUCTING PROJECTED FLOW CAPACITY NEEDS ANALYSIS

1. **Analysis and Determination of Options** - In order to assess wastewater flow capacity and loading requirements and define how future flows and loads will be treated, the Regional Committee shall routinely analyze future capacity and loading requirements. Once it has been determined that the facilities and processes at Blue Plains are not sufficient to meet those Projected Flow Capacity Needs, the Regional Committee shall conduct a thorough analysis which includes the following criteria:
  - a. Options for managing and/or treating flows at Blue Plains, as well as other sites;
  - b. A time frame for triggering management actions (including diverting flows and/or rental/sale of capacity);
  - c. A process for notification of all entities potentially affected by those options, and
  - d. A basis and formula for compensation, which includes development costs and the allocation of those costs among the Parties, and Non-Party Users, as appropriate.
2. **Process for Adjustments** - The Regional Committee shall analyze options, and recommend to the Leadership Committee any proposed construction or flow management options, associated cost allocations, and any necessary adjustments to this IMA or the Derivative Agreements. These planning elements shall be conducted consistent with the requirements detailed in the following subsection C.

**C. DETERMINATION OF PROJECTED FLOW CAPACITY NEEDS****1. Respective Roles of Regional Committee and DC Water****a. Regional Committee**

- 1) Shall address the technical, policy and financial interests of the Parties when defining and assessing the Parties' flow capacity and loading requirements and options.
- 2) Shall routinely evaluate and analyze projected flows and loads as compared with Actual Flows, Adjusted Flows and Allocated Flow Capacity, and confirm any potential permit or process implications.

- b. **DC Water** – DC Water shall represent the interests of and assess the future flow capacity and loading requirements of the Non-Party Users, and identify if there are any potential permit or process implications.

2. **Jointly Managed Study of Projected Flow Capacity Needs** - The Regional Committee shall also periodically and at least every five (5) years, assess and determine the individual and collective Projected Flow Capacity Needs of the Parties, and Non-Party Users, through a Jointly Managed Study. This Study shall project the Parties and Non-Party Users' future flow capacity and loading requirements and shall utilize the most recently approved projection methodology for the BPSA. The BPSA flow projection methodology shall be determined and shall include, but not be limited to, application and utilization of:

- a. The latest approved version of the BPSA Flow Forecast Model and COG's latest approved Cooperative Forecast demographic data, or other agreed upon methods; and
- b. The latest agreed upon wastewater flow factors and flow management assumptions of the Parties, including those programs, procedures or actions that minimize wastewater flow and, therefore, preserve capacity.

3. **Time Frame for Assessment of Future Projections** - A Jointly Managed Study for determining Projected Flow Capacity Needs will project both short-term (approximately 5-15 years) and long-term (approximately 20-30 years) flow capacity and loading requirements. This study must confirm all assumptions related to projecting future flows and loads, including but not limited to: growth, flows and loads, flow management, and flow factors. This study shall also evaluate whether projected peak flows may trigger additional capacity needs beyond current limitations. It will also project whether changes in climatological, system conditions, or any other conditions might cause potential capacity or permit exceedances.

**-END OF PAGE-**

## **D. DETERMINATION OF OPTIONS**

### **1. Flow Management Options to Address Projected Flow Exceedances**

- a. If, within the time frame of the long-term projections, the District, Fairfax, WSSC, or any Non-Party User's projected annual average flow is anticipated to exceed its Allocated Flow Capacity, or the associated peak flows exceed their Peak Flow Limitations, then the District, Fairfax or WSSC shall have the option of committing to specific flow management actions and a schedule that reconciles its projected flows with its Allocated Flow Capacity and Peak Flow Limitations.
- b. These flow management actions may include the temporary or permanent diversion of wastewater flows out of the BPSA.
- c. The BPSA flow projections shall then be adjusted to reflect such actions, and the Regional Committee shall be responsible for monitoring and assessing compliance with those actions, as defined in **Section 6**.

### **2. Additional Options to Address Projected Flow Exceedances**

- a. If, after all flow management adjustments are accounted for, the projection results of a Jointly Managed Study for projected flow capacity requirements demonstrate that either the overall flows to Blue Plains generated within the BPSA exceed the plant's Design Flow Capacity or that one or more Parties' projected wastewater capacity requirements exceed their individual Allocated Flow Capacity (as defined in **Section 4**), the Regional Committee shall consider alternative technical and/or programmatic options to address these unmet Projected Flow Capacity Needs.
- b. These options may include, but are not limited to:
  - 1) Reduction of or improved management of wastewater flows to reduce I/I or any other flow or load contributions;
  - 2) Modification of treatment processes at Blue Plains;
  - 3) Diverting flows from the BPSA to other facilities;
  - 4) Sale or rental of excess capacity at Blue Plains between the Parties;
  - 5) Expansion of existing treatment facilities or the addition of new treatment facilities, whether in or out of the BPSA; and
  - 6) Construction of new wastewater treatment and/or storage facilities, whether in or out of the BPSA.

### **3. Jointly Managed Studies to Develop Options**

- a. The development of specific technical and programmatic options and potential construction projects shall generally be based upon a Jointly Managed Study that includes participation of all of the Parties.
- b. The Regional Committee may determine, however, that a Jointly Managed Study is not required, and that development of specific technical or programmatic options and potential construction projects may be conducted by one or more of the Parties.

- c. If the Regional Committee makes such a determination, the Party(ies) conducting the evaluation shall ensure that the Regional Committee has an opportunity to review and evaluate the resulting options in order to confirm that the proposed approach will adequately address the flow management requirements, and that the Allocated Flow Capacity of the other Parties not involved in the proposed approach are not modified or altered.
  - d. Each Jointly Managed Study to develop options shall include a recommendation on cost allocations.
4. **Regional Committee to Make Recommendation** – Based on a Jointly Managed Study, the Regional Committee shall recommend to the Leadership Committee those technical and/or programmatic options that address the individual and collective Projected Flow Capacity Needs of the Parties. The Regional Committee’s recommendations shall include, but not be limited to, addressing:
- a. The proposed time frame for taking specific actions (whether due to changes in existing facilities or processes, or due to the construction of new facilities);
  - b. The estimated cost of these actions;
  - c. The proposed flow, load, and cost allocations and implications for each Party (and Non-Party User) associated with any options; and
  - d. Whether a facility is to be a MJUF.
5. **Regional Committee to Develop Plan** - Once the Leadership Committee approves the proposed options and resulting allocations, the Regional Committee shall develop a plan to address those Projected Flow Capacity Needs that includes the costs associated with any agreed upon treatment options.

#### **E. COST CONSIDERATIONS**

1. The plan developed pursuant to **Section D.5** shall address at a minimum the following criteria:
  - a. The estimated Capital Costs and O&M Costs and cost basis of any proposed facilities (whether new or modified at Blue Plains or at any other facilities or sites) shall be consistent with the MJUFs and cost allocations, as defined in **Section 5**;
  - b. The proposed allocation of Capital Costs and O&M Costs;
  - c. The anticipated schedule for when funds to support these actions are likely to be needed.
2. The rental or sale of Allocated Flow Capacity shall be at the discretion of the Party which is providing the Allocated Flow Capacity for rent or sale.
3. The Parties to the rental or sale transaction shall mutually agree on the cost basis for the rental or sale of Allocated Flow Capacity.

**F. IMPLEMENTATION OF PLAN TO ADDRESS PROJECTED FLOW CAPACITY NEEDS**

1. The Leadership Committee shall review and consider the Regional Committee's options and allocation recommendations on behalf of the Parties.
2. Once an option or set of options and allocations are agreed upon to meet the future Projected Flow Capacity Needs, the Parties shall, if necessary, amend this IMA, and the Leadership Committee shall create or modify the Derivative Agreement(s). For example, if any of the options that are selected result in revisions to the Design Flow Capacity for Blue Plains, or Allocated Flow Capacity defined in **Section 4**, or to reconcile the associated Capital Costs and O&M Costs, as defined in **Section 5**, and any associated Derivative Agreements, the Parties shall make appropriate amendments to this IMA, and the Leadership Committee shall create or modify the Derivative Agreement(s).
3. Any Party which requests additional Allocated Flow Capacity is responsible for securing additional Blue Plains Effluent Load Allocations, or Blue Plains Effluent Load Offsets in proportion to the additional Allocated Flow Capacity which the Party seeks.

**G. DERIVATIVE AGREEMENT – Operating Agreement #4, Wastewater Projected Flow Capacity Needs and Future Options**, addresses matters set forth in this Section. It may be replaced or supplemented by successor or other Derivative Agreements.

**-END OF PAGE-**

## SECTION 8. PRETREATMENT AND OPERATIONAL REQUIREMENTS

### A. PRETREATMENT PROGRAM REQUIREMENTS

#### 1. Fairfax and WSSC Pretreatment Program Responsibilities

- a. Implementation of Programs - Fairfax and WSSC shall adopt, implement and enforce Pretreatment Programs as required and approved by the United States Environmental Protection Agency (EPA). The Pretreatment Programs shall comply with federally imposed discharge limitations, prohibitions, and controls, as well as any Local Limits defined by DC Water, as needed to protect the collection system and treatment processes at Blue Plains and its biosolids management program requirements. Fairfax and WSSC shall set their Pretreatment Program standards to match or exceed any standards specifically required by DC Water.
- b. Compliance and Recordkeeping – Fairfax and WSSC shall conduct annual on-site inspections and obtain samples, and shall maintain documentation to verify compliance with, the Pretreatment Program and shall provide DC Water access to the pretreatment records. They shall also provide DC Water with reasonable access to all pretreatment records required by federal, state, and local regulations.
- c. Indirect User Compliance - To the extent applicable, Fairfax and WSSC shall ensure that the applicable Pretreatment Program terms and conditions which they impose on Indirect Users are consistent with those placed on the Parties.

#### 2. DC Water’s Responsibilities

- a. Compliance by Fairfax and WSSC - DC Water shall have the right to conduct sampling of the Fairfax and WSSC collection systems tributary to Blue Plains to ensure compliance with the provisions of these Pretreatment Programs. The Fairfax and WSSC Pretreatment Programs shall provide that, in the event of discovery of a case of noncompliance, they shall take corrective action, and Fairfax and WSSC, as applicable, shall compensate DC Water for the cost of sampling to identify and track resolution of the problem.
- b. Non-Party User Compliance - DC Water shall ensure that the applicable Pretreatment Program terms and conditions imposed upon the Non-Party Users are consistent with those placed upon the other Parties.

### B. OPERATIONAL REQUIREMENTS

1. Basis for Requirement - The Parties recognize that, in addition to formal regulatory Pretreatment Program requirements, additional Operational Requirements are necessary to protect the operation and maintenance of Blue Plains wastewater, biosolids, residuals and other plant processes, facilities, and equipment.
2. DC Water’s Responsibility for Non-Party User Compliance - DC Water shall ensure that the applicable Operational Requirements and conditions imposed upon the Non-Party Users are consistent with those placed upon the other Parties. Irrespective of such efforts, DC Water shall be bound by the additional Operational Requirements.



3. **Fairfax and WSSC Responsibility for Indirect User Compliance** - Fairfax and WSSC shall ensure that the applicable Operational Requirements terms and conditions imposed upon Indirect Users within the BPSA are consistent with those placed upon the other Parties. Irrespective of such efforts, Fairfax and WSSC shall be bound by the additional Operational Requirements.

**C. DERIVATIVE AGREEMENT – Operating Agreement #5, Pretreatment and Operational Requirements**, addresses additional matters set forth in this Section. It may be replaced or supplemented by successor and other Derivative Agreements.

**-END OF PAGE-**

## SECTION 9. BIOSOLIDS MANAGEMENT COMMITMENTS

### A. BIOSOLIDS UTILIZATION AND DISPOSAL

1. **Collective Commitment to Blue Plains Biosolids Management Program** - The Parties recognize their collective interests in the sound management of all biosolids produced at Blue Plains and its regional implications, and commit to continued planning and coordination in all aspects of biosolids management.
2. **Legislative Support to DC Water** - The Parties shall provide regional coordination and support to DC Water to address proposed legislation, regulations and other related activities that may impact the Blue Plains biosolids management program.
3. **Support for DC Water's Efforts** - The Parties shall actively support DC Water's efforts to ensure that biosolids produced at Blue Plains can be managed in a cost-effective, equitable and environmentally sound manner, and in compliance with all Blue Plains permit requirements and applicable regulations.
4. **Contracting Responsibilities** - DC Water is responsible for the Blue Plains biosolids management program; however, the Parties may determine that Fairfax County or WSSC may also be responsible for portions of the biosolids management. Specific details regarding such contractual or programmatic responsibilities shall be as set forth in **Operating Agreement #6**.
5. **Allocation of Value from Sale of Biosolids or By-Products** - All benefits (including revenue, and cost savings derived from products recycled or generated at Blue Plains) are to first offset the biosolids program and, then to offset Blue Plains operating costs, thereby reducing costs for all Parties.

### B. EMERGENCY CONDITIONS

1. **Emergency Conditions** – An “emergency condition” shall mean situations when various actions or events occur (or have the potential to occur) such as acute weather conditions, abrupt changes in regulatory or legal requirements, or unavoidable contract complications, that will or are likely to impact the normal wastewater treatment processes.
2. **Basis for Emergency Planning** - The Parties recognize that emergency conditions require DC Water take prompt action to protect the Blue Plains processes and permit, to quickly implement alternative management or disposal options for Blue Plains biosolids, or to take other actions, in order to ensure that wastewater operations at Blue Plains and Other Associated Facilities, or the biosolids management program, are not compromised and that all permit conditions continue to be met.
3. **Notice** - As part of its their shared biosolids management responsibilities, DC Water and/or any other Party sharing biosolids management responsibilities on behalf of the Parties, shall alert the other Parties when an emergency condition is likely to or has occurred.

4. **Measures to be Taken** - Once the Parties are alerted that an emergency condition has been designated, the Parties shall work collectively, and in a timely manner, to provide active support to DC Water to address the situation and ensure that the Parties' collective and individual wastewater treatment needs at Blue Plains can continue to be provided, including, but not limited to, the following:
- a. Utilizing other existing contract mechanisms to handle management of all or portions of the biosolids;
  - b. Working to identify additional land application or other management sites;
  - c. Working with local and state regulatory officials to obtain land application or other management permits;
  - d. Working with local and state regulatory officials to change regulations, legislation or legal action that are deemed harmful to the effective and environmentally sound management of biosolids; and
  - e. Invoking the Parties' political leadership and other elected officials to support actions necessary to mitigate the impact of the designated emergency condition.

**C. DERIVATIVE AGREEMENT – Operating Agreement #6, Biosolids Management Commitments**, addresses additional matters set forth in this Section. It may be replaced or supplemented by successor or other Derivative Agreements.

**-END OF PAGE-**

## **SECTION 10. ADMINISTRATIVE PROVISIONS AND PROCEDURES**

### **A. DURATION OF AGREEMENT**

1. This IMA shall become effective upon the date the last Party executes it, as set forth below, subject to any orders of the United States District Court for the District of Columbia in State Water Control Board, et al., vs. Washington Suburban Sanitary Commission, et al., Civil Action No. 1813-73.
2. This IMA may be executed in counterparts, which together shall be regarded as one original.
3. This IMA remains in force and effect until June 30, 2111, unless amended, replaced or terminated earlier by mutual consent of the Parties.

### **B. SEVERABILITY**

Should any provision(s) of this IMA or a Derivative Agreement be deemed illegal or unenforceable by a Court of competent jurisdiction, the remainder of this IMA or the Derivative Agreement shall remain in full force and effect. Provided, however, that within 60 days of the date that such ruling becomes final, including appeals if any, the Signatories or Leadership Committee, as appropriate, shall determine, directly or through the Leadership Committee whether this IMA, or the applicable Derivative Agreement, must be amended to fulfill the original intent of the Parties and to maintain, insofar as possible, the service and financial relationships created by this IMA. Should a determination be made to amend this IMA or the applicable Derivative Agreements, the Parties or Leadership Committee, respectively, shall promptly act on the amendments.

### **C. AUTHORITY**

Each Party represents that it has the authority to enter into this IMA, and that the individuals signing this IMA on its behalf, have the authority to bind the Party to the terms and conditions of this IMA. This IMA shall apply to, and be binding upon, the Parties hereto, their elected officials, officers, agents, employees, successors and assigns, all persons, firms and corporations acting under, through or for them, and upon those persons, firms and corporations in active concert with them in any matter affected by this IMA.

### **D. AMENDMENTS TO THIS IMA**

This IMA may be amended in whole, or in part, by the Parties as follows:

1. Proposed amendments to this IMA may be offered by any Party, directly, or through the Regional Committee, which shall make its recommendations to the Leadership Committee and to the Parties; and
2. If the Leadership Committee unanimously recommends an amendment to this IMA, it shall be submitted in writing to the Parties and shall become effective upon approval and execution by the Signatories of all of the Parties.

**E. DISPUTE RESOLUTION**

1. **Goal** - On occasion the Parties may differ on matters including but not limited to: a) their interpretation of terms and conditions of this IMA; b) the implementation of this IMA; c) whether any Derivative Agreement should be created, revised or terminated; and d) whether an IMA amendment should be adopted. If the Parties are unable to reach consensus through their normal coordination processes, in order to promote continued regional cooperation, and to avoid litigation when possible, the Parties shall first utilize the informal dispute resolution process. If the Parties are unable to resolve the dispute through the informal process, the formal dispute resolution process set forth herein shall be implemented.
2. **Informal Resolution** - If disagreements regarding the interpretation or implementation of this IMA surface during its routine business, and the Regional Committee cannot reach a consensus, the Regional Committee shall refer the matter to the Leadership Committee for advice, comment or suggested direction, or if appropriate, for direct resolution of the matter.
3. **Formal Resolution** - Any Party may initiate the formal dispute resolution process if it believes an issue has not been adequately addressed through normal coordination processes or an informal dispute resolution process.

The formal resolution process includes the following requirements:

- a. The aggrieved Party shall provide written notice to the Regional Committee that it has an issue for dispute resolution. The notice must contain the aggrieved Party's rationale, together with the assumptions, supporting documents and computations necessary for an understanding and potential resolution of the dispute.
- b. The Regional Committee must address this issue directly or refer it for non-binding arbitration or third-party mediation within 30 days, or other reasonable time agreed to by the aggrieved Party. The Regional Committee may ask for additional written analysis from the aggrieved Party or from any Party which objects to or disagrees with the aggrieved Party's submission.
- c. The Regional Committee may use a non-binding arbitration or third-party mediation process to resolve the dispute if the aggrieved Party agrees to bear the cost of such non-binding arbitration or third-party mediation services, or the Parties otherwise agree to share costs.
- d. If after consideration by the Regional Committee or, as a result of non-binding arbitration or third-party mediation, agreement is not reached, the Regional Committee shall refer the matter to the Leadership Committee.
- e. If the Regional Committee fails to resolve the issue or refer the matter to non-binding arbitration or third-party mediation within the prescribed time, and the matter is not resolved, the aggrieved Party may then forward the issue to the Leadership Committee for resolution.

- f. The Leadership Committee must address the matter within 30 days, or other reasonable time agreed to by the aggrieved Party, after receiving formal notice from the aggrieved Party. This notice should include the documentation previously submitted by the aggrieved Party to the Regional Committee.
- g. The Leadership Committee may utilize non-binding arbitration or third-party mediation to assist it in reaching a unanimous decision on the dispute presented; if the aggrieved Party agrees to bear the costs of the non-binding arbitration or third-party mediation services, or the Parties otherwise agree to share costs.
- h. If the Leadership Committee cannot resolve the issue within 30 days after presentation, or other reasonable time agreed to the aggrieved Party, the aggrieved Party may then inform the other Parties of the dispute, the inability to reach agreement, and its intention to seek legal or other resolution, including injunctive, declaratory or other relief. Upon receipt of such notice, the Parties agree to meet before any such litigation or other resolution is commenced by any Party or Parties against any other Party. No meeting shall be required as a condition precedent to litigation if such a meeting cannot be held within 30 days after the date on which the written notice was sent to all Parties or within in such other reasonable time agreed to by the aggrieved Party.
- i. No Party may seek independent state or federal litigation or other resolution, including federal legislative assistance, of a dispute that has not yet completed this formal dispute resolution process.

## **F. NOTICES**

1. **To Parties** - Whenever any formal notice is required to be given to any Party under this IMA, it shall be in writing and deemed to be given on the date of actual delivery (or rejection) if delivered by nationally recognized overnight service or by personal delivery. Notices shall be directed to the following officials at their officially designated business addresses:
  - a. District of Columbia - City Administrator
  - b. DC Water – General Manager
  - c. Fairfax County, Virginia - County Executive
  - d. Montgomery County, Maryland - Chief Administrative Officer
  - e. Prince George’s County, Maryland - Chief Administrative Officer
  - f. Washington Suburban Sanitary Commission, Maryland - General Manager
2. **To Secretariat/Administrative Entity** - A copy of any formal notice shall also be sent to the offices of the secretariat/administrative entity, designated by the Leadership Committee, and to the Regional Committee.
3. **Responsibility** - Where notice is required to be given by this IMA or a Derivative Agreement and a specific Party is not designated to give notice, the notice shall be given by the secretariat/administrative entity.
4. **Timing** - Where time deadlines are given, all days are calendar days unless otherwise indicated.

5. **Electronic Notice** – In addition to service by U.S. mail or hand-delivery, the Parties may be served with notice electronically if the Party to be served has given written notice to the other Parties of its email address. Provided, however, that notices of changes to this IMA or a Derivative Agreement, court action or formal dispute resolution shall also be served in accordance with **Section F.1**.

**G. PRIOR AGREEMENTS** - As set forth in the introductory paragraphs of this IMA and in the Appendix, certain agreements preceded the 1985 IMA. Those agreements, which are set forth in the Appendix, as well as the 1985 IMA, are extinguished and superseded by this IMA.

## **H. ANTI-DEFICIENCY ACTS PROVISIONS**

### **1. Relating to the District and DC Water**

Notwithstanding any other provisions of this IMA and the Derivative Agreements:

- a. Pursuant to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2008), and D.C. Official Code §§ 1-206.03(e) and 47-105; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46, the District and DC Water cannot obligate themselves to any financial obligation or expenditure (including capital obligations and expenditures, operating and maintenance obligations and expenditures, and obligations and expenditures related to fines, penalties, and claims) in any present or future year unless the necessary funds to pay that obligation or expenditure have been appropriated by the Congress of the United States (the “Congress”) and are lawfully available for the purpose of the obligation or expenditure. Pursuant to the Anti-Deficiency Acts, nothing in this IMA or the Derivative Agreements creates an obligation of the District or DC Water in anticipation of an appropriation by Congress for such purpose, and the District’s or DC Water’s legal liability for the payment of any amount under this IMA and the Derivative Agreements does not and may not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress. No District of Columbia or DC Water official or employee is authorized to obligate or expend any amount under this IMA or the Derivative Agreements unless such amount has been appropriated by Act of Congress and is lawfully available.
- b. The amount of the DC Water Board of Directors’, or its successors’, annual budget estimate approved by Congress shall serve as the basis for, and the limit on, the billing, payments, and expenditures described in this IMA and the Derivative Agreements. If no appropriation or a smaller appropriation than requested is made by Congress to pay any amount under this IMA, or if appropriated funds for such purposes are not otherwise lawfully available, the legal obligations of all of the Parties under this IMA shall be limited to the amount of any lawfully available appropriation. The District’s right to continued use of its Allocated Flow Capacity, nonetheless, remains subject to the limitations provided in Section 4(A)(2)(c) of the IMA.

## **2. Relating to WSSC**

Notwithstanding any other provisions of this IMA and the Derivative Agreements: The financial obligations (including capital obligations and expenditures, operating and maintenance obligations and expenditures, and obligations and expenditures related to fines, penalties, and claims) of WSSC in any present or future year are subject to any applicable laws regarding appropriation by its governing body and any applicable anti-deficiency or non-appropriation laws. WSSC's right to continued use of its Allocated Flow Capacity, nonetheless, remains subject to the limitations provided in Section 4(A)(2)(c) of the IMA.

## **3. Relating to Fairfax, Montgomery and Prince George's**

Notwithstanding any other provisions of this IMA and the Derivative Agreements: The financial obligations (including capital obligations and expenditures, operating and maintenance obligations and expenditures, and obligations and expenditures related to fines, penalties, and claims) of Fairfax, Montgomery or Prince George's counties in any present or future year are subject to any applicable laws regarding appropriation by their respective governing or legislative body and any applicable anti-deficiency or non-appropriation laws. Fairfax, Montgomery and Prince George's counties' right to continued use of their respective Allocated Flow Capacity, nonetheless, remains subject to the limitations provided in Section 4(A)(2)(c) of the IMA.

**-END OF PAGE-**



## SECTION 11. DERIVATIVE AGREEMENTS UNDER THIS IMA

### A. USE AND PROCESS FOR DERIVATIVE AGREEMENTS

1. **Purpose** - Derivative Agreements are intended to implement the intent of the Parties in an efficient and effective manner without reopening or renegotiating the terms of this IMA. Derivative Agreements are limited to addressing issues that are authorized by this IMA. A Derivative Agreement shall not modify, negate or adversely impact any right or obligation of the Parties set forth in this IMA.
2. **Types** - Three (3) kinds of Derivative Agreements may implement this IMA: Operating Agreements, Service Agreements and Limited Party Agreements. These agreements are designed to address procedural, technical, operational and service issues.
3. **Amendments to Derivative Agreements or Supplemental or Successor Derivative Agreements** – Where this IMA refers to a Derivative Agreement such reference shall include any amendment(s) to that Derivative Agreement or supplemental or successor Derivative Agreement(s).

### B. OPERATING AGREEMENTS

1. **Purpose** - Operating Agreements are made among all the Parties, but deal with a specific function or group of like functions. Specifically authorized functions for Operating Agreements include but are not limited to:
  - a. Allocation and management of flow capacity, loads and peak flows and their associated allocations and limitations;
  - b. Parties' financial responsibilities;
  - c. Flow and load measurement and management;
  - d. Pretreatment and operational requirements; and
  - e. Biosolids management commitments.
2. **Current Agreements** - The Operating Agreements which are executed simultaneously with the execution of this IMA are:
  - a. Blue Plains Flow Capacity, Loads and Peak Flows – Allocations and Limitations;
  - b. Financial Responsibilities of Parties;
  - c. Flow and Load Measurement and Management;
  - d. Wastewater Projected Flow Capacity Needs and Future Options;
  - e. Pretreatment and Operational Requirements; and
  - f. Biosolids Management Commitments.
3. **Development and Approval Process** - The Regional Committee shall recommend Operating Agreements for Leadership Committee approval. The Leadership Committee must unanimously approve Operating Agreements, amendments thereto, or termination thereof, before they are effective.

4. **Notification to Parties and Effective Date** - Once the Leadership Committee approves a new/amended Operating Agreement, or termination thereof, it shall be forwarded to the Parties by the secretariat entity and be subject to a 60-day review period by the Signatories.
  - a. If a Party objects in writing to the Operating Agreement or the amendment or termination thereof within the 60 day period, the Operating Agreement, or the amendment or termination of the Operating Agreement shall not be approved, and, the dispute resolution process may be commenced, as defined in **Section 10.E**.
  - b. If no Party objects in writing within the 60 day period, the new or amended Operating Agreement or termination of an existing Operating Agreement shall take effect upon expiration of the 60 day period and the signature of the chair of the Leadership Committee.

### **C. SERVICE AGREEMENTS**

1. **Purpose** - Service Agreements provide for specific function(s) for the benefit of regional wastewater treatment or for implementation of this IMA.
2. **Development and Approval Process** - The Regional Committee shall recommend Service Agreements for Leadership Committee approval. The Leadership Committee must unanimously approve Service Agreements, amendments thereto, or termination thereof, before they are effective.
3. **Effective Date** - Once the Leadership Committee approves a Service Agreement, the Agreement is effective. Service Agreements are not subject to the 60 day review period for Operating Agreements.
4. **Service Agreements** - Include, but are not limited to:
  - a. **For Secretariat Services** - A Service Agreement pursuant to **Section 2** with an entity on behalf of the Parties to provide secretariat support; and
  - b. **For Regional Water Quality Management Program** - A Service Agreement pursuant to **Sections 2 and 3** with an entity on behalf of the Parties to provide water quality monitoring and evaluation support to address Potomac River estuary, the Anacostia River, and Chesapeake Bay water quality issues.

### **D. LIMITED PARTY AGREEMENTS**

1. **Purpose** – Limited Party Agreements include, but are not limited to, agreements to provide wastewater treatment services and transfers of capacity to satisfy Projected Flow Capacity Needs originating in the BPSA. Such transfers of capacity shall not modify any requirements of or allocations defined under this IMA.
2. **Permitted Limited Party Agreements** – Limited Party Agreements may be between the following entities: a) two (2) or more Parties; b) a Party(ies) and Non-

Party User(s); or c) a Party(ies) and Indirect User(s). These include, but are not limited to:

- a. **DC Water and/or the District and Non-Party Users** – Agreements between DC Water and/or the District and Non-Party Users to provide wastewater treatment services using capacity allocated by this IMA, as defined in **Section 4**.
- b. **Fairfax and WSSC and Indirect Users** – Agreements between Fairfax or WSSC and Indirect Users to provide wastewater treatment services using capacity within their respective Allocated Flow Capacity, as defined in **Section 4**.
3. **Limited Party Agreements in Effect Upon Execution of this IMA** - Limited Party Agreements between DC Water and/or the District and Non-Party Users, or Fairfax or WSSC and Indirect Users which are in existence as of the execution of this IMA, and the rights given in those agreements, are valid under this IMA.
4. **Limited Party Agreements Convey No Rights in IMA** - Limited Party Agreements with Non-Party Users or Indirect Users do not convey any IMA rights to those Users.
5. **Regional Committee to Review Limited Party Agreements** – Limited Party Agreements shall be submitted to the Regional Committee for review to ensure that the terms and conditions do not negatively impact the other Parties’ rights or responsibilities under the IMA.
6. **Notification to Parties and Effective Date for Limited Party Agreements** - Once the Regional Committee reviews a Limited Party Agreement, and does not object, the Agreement is effective. Limited Party Agreements are not subject to the 60 day review period for Operating Agreements. Once the Regional Committee has reviewed a Limited Party Agreement and not objected, the Limited Party Agreement becomes part of the IMA record.

**-END OF PAGE-**

## SECTION 12. GLOSSARY

This Glossary defines terms that have a specific meaning and are used in this IMA.

**Actual Flow(s)** – Wastewater flow that is contributed by the District, Fairfax and WSSC, as well as by Non-Party Users and Indirect Users, that is delivered through various points of connection (both metered and unmetered flows) to Blue Plains for treatment.

**Adjusted Flow(s)** – Actual Flows for only the District, Fairfax and WSSC (less Captured Stormwater Flow in the case of the District), that have been normalized to reflect Annual Average Hydrologic Conditions in order to compare the values to their respective Allocated Flow Capacity.

**Allocated Flow Capacity** – Blue Plains annual average Design Flow Capacity that is apportioned among the District, Fairfax, WSSC, and Non-Party Users (expressed as annual average MGD under Annual Average Hydrologic Conditions).

**Annual Average Hydrologic Conditions** – Conditions based on an average amount of rainfall in a year developed based upon the available historical rainfall and groundwater level records.

**Billing Flow(s)** – Actual Flow for the District, Fairfax, WSSC, and Non-Party Users that has been calculated to account for any differential treatment cost impacts as have been defined or permitted in this IMA, and that is billed by DC Water.

**Blue Plains** - The wastewater treatment plant located at 5000 Overlook Avenue, S.W., Washington, D.C.

**Blue Plains Effluent Load(s)** – A maximum quantity of pollutants assigned to Blue Plains in its NPDES permit and associated Fact Sheet that may be discharged from Outfall #001 and/or Outfall #002 (generally expressed as pounds/day or pounds/year).

**Blue Plains Effluent Load Allocation(s)** – Blue Plains Effluent Load(s) that have been sub-allocated into District, Maryland and Virginia portions.

**Blue Plains Effluent Load Offset(s)** – An allocation of pollutants that can be secured by a Blue Plains User to increase its proportionate share of Blue Plains Effluent Load Allocation to compensate for any additional increase in wastewater flow that it wants to have treated at Blue Plains.

**Blue Plains Influent Load(s)** – Quantity of pollutants that are conveyed to Blue Plains in the incoming wastewater that may or may not be associated with Blue Plains Effluent Loads or any Blue Plain Effluent Load Allocations.

**Blue Plains Service Area (BPSA)** – The combined areas of all sewersheds within all jurisdictions that have historically been authorized to discharge wastewater flows to Blue Plains. This includes wastewater sources (metered or unmetered) that flow by gravity, as well as those that may be pumped into the system.

**Capital Cost(s)** - Costs incurred in the acquisition, construction, modification, replacement, enlargement, rehabilitation, or upgrade of fixed assets. Fixed assets shall include buildings and appurtenances, pipelines, and equipment. Capital Costs must expand facility capacity, improve the efficiency or output of a facility, or extend the useful life of an asset.

**Captured Stormwater Flow (CSF)** – Stormwater flow in the District’s “Combined Sewer System” that is captured within the collection system and conveyed to Blue Plains for treatment in accordance with the CSO LTCP.

**Chief Administrative Officers (CAOs)** – Highest level non-elected government executive in the District of Columbia, Fairfax, Montgomery, and Prince George’s Counties.

**Combined Sewer Overflow Long-term Control Plan (CSO LTCP)** – The approved plan controlling combined sewer overflows from the District that was prepared pursuant to the 1994 Combined Sewer Overflow Policy (55 Fed. Reg. 18688, issued 4/19/94 by the EPA) and Section 402(q) of the Clean Water Act and any supplements thereto.

**Derivative Agreement(s) (DA)** - A formal document, authorized by this IMA, which sets forth technical and procedural details as part of the implementation of this IMA.

**Design Flow Capacity(ies)** – The wastewater flow rates (expressed as MGD) used as the basis of wastewater treatment design for Blue Plains under various flow conditions (e.g., annual average, maximum 30-day, maximum year).

**Design Load Capacity(ies)** – The maximum quantity of pollutants in influent wastewater (expressed as pounds per day, or pounds per year) that is used as the basis of wastewater treatment design for Blue Plains.

**Diversion(s)** – Specific management actions taken by DC Water, Fairfax, WSSC, or Non-Party User to cause wastewater flows generated within the BPSA to be rerouted, pumped, or otherwise redirected from a BPSA sewershed with the result that the Blue Plains User’s flows are or will be reduced. These actions are generally taken to ensure that a Blue Plains User’s flow does not or will not exceed either its Allocated Flow Capacity and/or its Peak Flow Limitations, but may also become appropriate to ensure the District’s long-term wastewater treatment needs can be met at Blue Plains.

**General Managers** – Highest level executive in DC Water and WSSC.

**Indirect User(s)** – Those entities that send wastewater flow to Blue Plains pursuant to service agreements with WSSC or Fairfax. These entities have no direct rights under this IMA, but the Parties have the responsibility to ensure that any agreements and activities associated with the Indirect Users do not infringe or threaten the rights of the Parties under this IMA.

**Intermunicipal Agreement (this IMA)** – The formal agreement that defines the rights, obligations, and relationships of the Parties.

**Jointly Managed Study(ies)** – A formal study that is conducted in order to address issues related to the interests of the Parties under this IMA where the Regional Committee: a) has direct input on preparing the scope of work; b) has input on selection of consultant/contractor (whether through contracting mechanisms of the Regional Committee, DC Water or any Party); and c) is actively involved in the review and acceptance of the work products from that study (e.g., the BPSA Long-term Planning Study, 2003).

**Key Principle(s)** - Statements of general philosophy and intent that govern this IMA and Derivative Agreements, and shall be used to guide any interpretation or dispute resolution process.

**Leadership Committee** – A committee established pursuant to **Section 2** of this IMA to oversee the implementation of this IMA, the members of which are the Chief Administrative Officer or General Manager of each Party.

**Local Limit(s)** – Specific discharge limits developed and enforced by DC Water, Fairfax and WSSC upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b), as amended.

**Multi-Jurisdiction Use Facility(ies) (MJUFs)** – A term that recognizes that more than one jurisdiction's flows are treated by or pass through a facility(ies) and that the costs associated with those facilities are shared among the Parties. It is comprised of those facilities that have something to do with wastewater collection or treatment or biosolids management that have some relationship to Blue Plains. Although such facilities are generally managed by DC Water, some facilities are operated by Fairfax or WSSC on behalf of the Parties. The term refers to any facilities that any of the Parties are operating/managing on behalf of all or some subset of the Parties.

**Non-Party User(s)** - Those entities that contribute wastewater flows to Blue Plains that are managed through separate service agreements either by DC Water directly or on behalf of the District. These include: Loudoun County Sanitation Authority (LCSA or Loudoun Water), Virginia; Town of Vienna, Virginia; Dulles Airport, Virginia; National Park Service, Maryland; and Naval Ship Research and Development Center, Maryland. These entities do not have contractual rights under the IMA; and their interests under this IMA are represented by DC Water.

**Operating Agency(ies)** – DC Water, Fairfax and WSSC (i.e., those Parties that have operational responsibility for wastewater collection and/or treatment within the BPSA, and the associated billing and payment responsibilities).

**Operating Agency Representative(s)** – The members of DC Water, Fairfax and WSSC on the Leadership or Regional Committee, as applicable.

**Operating and Maintenance Cost(s) (O&M)** - Costs incurred by DC Water, Fairfax or WSSC in providing wastewater collection, treatment, and biosolids management and disposal services. Such costs include labor, materials and the repair and upkeep of equipment, but do not include Capital Costs. Costs shall be recognized in accordance

with generally accepted accounting principles. These costs include direct costs, indirect costs and overhead costs.

**Operational Requirements** – Constraints placed on the wastewater sent to Blue Plains that DC Water has determined are required in order to protect DC Water’s wastewater collection system, or equipment, or the processes and equipment at Blue Plains, with which the District, Fairfax, WSSC and, as appropriate, the Non-Party Users and Indirect Users, must comply. These are in addition to any regulatory Pretreatment Program requirements.

**Other Associated Facilities** – All the other facilities, pipelines, and appurtenances within the District, and the Potomac Interceptor sewer system which are managed by DC Water, and are used for the storage and collection of wastewater sent to, or the management of biosolids generated by Blue Plains.

**Party(ies)** – Collectively those entities governed by and signatory to this IMA, being: the District of Columbia (District), the District of Columbia Water and Sewer Authority (DC Water), Fairfax County, Virginia (Fairfax), Montgomery County, Maryland (Montgomery), Prince George’s County, Maryland (Prince George’s), and the Washington Suburban Sanitary Commission (WSSC).

**Peak Flow Limitation(s)** – Maximum wastewater flow rate (MGD) allowed to be transmitted between the wastewater collection systems of two (2) of the Parties using Blue Plains, i.e. the District, Fairfax or WSSC.

**Potomac Interceptor (PI)** - The major wastewater interceptor built as a result of Public Law 86-0515 passed by Congress (June 12, 1960) that conveys wastewater from portions of suburban Virginia and Maryland to the District boundary and hence to Blue Plains for treatment.

**Potomac Interceptor User(s)** – Fairfax, Loudoun County Sanitation Authority (LCSA or Loudoun Water), Town of Vienna, and Dulles Airport, in Virginia; and WSSC, the National Park Service, the Naval Ship Research and Development Center, in Maryland, which utilize portions of the PI to transmit their wastewater flows to Blue Plains.

**Pretreatment Program(s)** – Formal programs established by the District, Fairfax and WSSC in compliance with the Clean Water Act, as amended, to reduce the amount of pollutants or that alter the nature of pollutant properties in wastewater to a less harmful state prior to discharging such wastewater into the sewer system discharging to Blue Plains.

**Projected Flow Capacity Need(s)** – The formal determination, based on a Jointly Managed Study, of the long-term wastewater flows and associated treatment requirements (in MGD) that the District, Fairfax and WSSC and Non-Party Users are anticipated to generate within the BPSA, during or at the end of the agreed upon planning period. These projected wastewater flows are calculated as annual average flows under Annual Average Hydrologic Conditions and therefore do include an inherent contribution from Inflow and Infiltration, but do not include any Captured Stormwater Flow contributions, which are determined through separate processes.

**Regional Committee** - A committee established for the purpose of assisting in the interpretation, administration and implementation of this IMA and to resolve issues pertaining to Blue Plains and Other Associated Facilities that are within the scope of this IMA, its amendments and its associated Derivative Agreements.

**Signatory(ies)** – The representatives for the Parties that have the legal authority to bind their entities to the terms and conditions of this IMA.

**Usage Allocation(s)** - The basis for apportioning Capital Costs and O&M Costs of Multi-Jurisdiction Use Facilities (MJUFs) to the District, Fairfax, WSSC or Non-Party User that is not linked directly to the user's share of Allocated Flow Capacity or measured flow. This basis may include consideration of flow rates, percentage volume, modeled contributions, pollutant loadings (such as nutrients), or other methods for determining the District's, Fairfax's, WSSC's, or Non-Party User's portion of facilities, pipelines, and appurtenances and their associated costs.

**User Fee(s)** – A fee paid by Fairfax, WSSC and Non-Party User Loudoun County Sanitation Authority (LCSA or Loudoun Water) to DC Water, on behalf of the District, in accordance with **Section 5** of this IMA.

**-END OF PAGE-**



### SIGNATORIES

**WITNESS** the following signatures of the Parties by their duly authorized representatives:

#### District of Columbia

Vincent C. Gray 4/2/13  
 Mayor Date:

#### DC Water

[Signature] 040213  
 Chairman, Board of Directors Date:

#### Fairfax County, Virginia

Sharon Sulner 3/25/13  
 Chairman, Board of Supervisors Date:

#### Montgomery County, Maryland

[Signature] 3/2/13  
 President, County Council Date:

[Signature] 4/2/13  
 County Executive Date:

**Prince George's County, Maryland**

Andrea C. Harrison 4/2/13  
Chair, County Council Date:

[Signature] 4/3/13  
County Executive Date:

**Washington Suburban Sanitary Commission**

[Signature] 3/20/2013  
Chair Date:

[Signature] 3/20/13  
Vice Chair Date:

**APPENDIX**

**HISTORICAL AGREEMENTS** (These agreements are inapplicable as of the execution of this IMA. They are mentioned here solely for historical context)

1. The 1985 Blue Plains Intermunicipal Agreement (IMA).
2. Accordingly, except as otherwise provided herein and subject to any orders of the U.S. District Court for the District of Columbia in State Water Control Board, et al. vs. WSSC, et al., Civil Action No. 1813-73, this Agreement shall extinguish and supersede the following agreements, which were also previously suspended, extinguished or superseded by the 1985 IMA:
  - a. Agreement No. DCF-A-766, dated August 12, 1954, between the District and WSSC;
  - b. Agreement No. DCF-A-1357, dated April 28, 1959, between the District and Fairfax County;
  - c. Memorandum of Understanding on Washington Metropolitan Regional Water Pollution Control Plan of October 1970 among the District, WSSC and Fairfax County;
  - d. Interim Treatment Program Agreement, dated October 18, 1971, among the District, WSSC and Fairfax;
  - e. The 1974 Blue Plains Sewage Treatment Plant Agreement, as amended;
  - f. Agreement No. DCF-A-766, dated February 11, 1965, between the District and Fairfax County;
  - g. Agreement No. DCF-A-2824, dated July 6, 1967, between the District and WSSC; and
  - h. Agreement No. DCF-A-145-DES, dated April 21, 1976, between the District and WSSC.

**-END OF PAGE-**

**2012 IMA  
LIST OF DERIVATIVE AGREEMENTS**

<b>OPERATING AGREEMENTS</b>		
<b>NO.</b>	<b>TITLE</b>	<b>EFFECTIVE DATE</b>
1.	BLUE PLAINS FLOW CAPACITY, LOADS AND PEAK FLOWS - ALLOCATIONS AND LIMITATIONS	4/3/13
2.	FINANCIAL RESPONSIBILITIES OF PARTIES	4/3/13
3.	FLOW AND LOAD MEASUREMENT AND MANAGEMENT	4/3/13
4.	WASTEWATER PROJECTED FLOW CAPACITY NEEDS AND FUTURE OPTIONS	4/3/13
5.	PRETREATMENT AND OPERATIONAL REQUIREMENTS	4/3/13
6.	BIOSOLIDS MANAGEMENT COMMITMENTS	4/3/13

## OPERATING AGREEMENT #1

### PARTIES' AGREEMENT REGARDING: BLUE PLAINS FLOW CAPACITY, LOADS, AND PEAK FLOWS - ALLOCATIONS AND LIMITATIONS

**THIS OPERATING AGREEMENT** ("Agreement"), made among the **DISTRICT OF COLUMBIA** (the District), the **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY** (DC Water), **FAIRFAX COUNTY, Virginia** (Fairfax), **MONTGOMERY COUNTY, Maryland** (Montgomery), **PRINCE GEORGE'S COUNTY, Maryland** (Prince George's), and the **WASHINGTON SUBURBAN SANITARY COMMISSION** (WSSC),

Witness:

**WHEREAS**, the Parties have entered into the Blue Plains Intermunicipal Agreement (2012 IMA); and

**WHEREAS**, the Parties have agreed to comply with the Allocated Flow Capacity values for the Blue Plains Wastewater Treatment Plant (Blue Plains), which apportion capacity among the District, Fairfax, WSSC and Non-Party Users, as set forth in the 2012 IMA, **Section 4**; and

**WHEREAS**, the Parties agree to comply with nutrient loads for Blue Plains effluent discharged through two Blue Plains effluent points, designated Outfall #001 and Outfall #002; and

**WHEREAS**, the Parties agree to routinely monitor their Actual Flows, Adjusted Flows and the associated nutrient loads to Blue Plains to ensure that all allocations and/or limitations for Blue Plains are not exceeded; and

**WHEREAS**, the Parties have agreed to regularly monitor all wastewater process, permit, regulatory and other developments that have the potential to impact either flow capacity, nutrient loads or other parameters that may affect Blue Plains and its ability to comply with its permit or process requirements as defined in **Section 6**; and

**WHEREAS**, the Parties recognize that the Blue Plains NPDES permit, applicable Total Maximum Daily Load (TMDLs) for the Potomac River Watershed, and associated state Watershed Implementation Plans (WIPs) must all be complied with, and that the load limits in Blue Plains' permit are applied to Outfall #001 and #002; and

**WHEREAS**, the Parties have agreed to regularly monitor their peak flows at the point of connection to the collection system owned by the District and operated by DC Water, and to comply with their Peak Flow Limitations, as set forth in the 2012 IMA, **Section 6**; and

**WHEREAS**, the Parties acknowledge their responsibility to ensure that the Non-Party Users and Indirect Users also comply with the terms of this Agreement as applicable;

and

**WHEREAS, Section 2** of the 2012 IMA authorizes the Leadership Committee to create, modify or terminate an Operating Agreement to implement the terms of the IMA consistent with **Section 11**.

**NOW, THEREFORE, the Parties agree as follows:**

**PURPOSE:** The purpose of this Agreement is to address matters relating to **Section 4** of the 2012 IMA

**A. BLUE PLAINS EFFLUENT LOADS AND ALLOCATIONS**

1. The Blue Plains Effluent Loads and Blue Plains Effluent Load Allocations (for Outfalls #001 and #002) are defined in **Table OA 1-A** below.
2. The Parties acknowledge that these Effluent Load Allocations are based on various state and District flow and concentration assumptions.

**Table OA 1-A**

<b>BLUE PLAINS EFFLUENT LOADS<sup>1, 2</sup></b>		
<b>ENTITIES WITH ALLOCATIONS</b>	<b>LOAD ALLOCATIONS (LBS/YR)</b>	
	<b>Total Nitrogen</b>	<b>Total Phosphorus</b>
<b>District of Columbia’s Blue Plains Load Allocation<sup>3</sup> - Total</b>	<b>2,114,542.00</b>	<b>87,993.54</b>
<i>WSSC</i>	<i>Not specified</i>	<i>Not specified</i>
<i>Naval Ship Research &amp; Development Center</i>	<i>Not specified</i>	<i>Not specified</i>
<i>National Park Service</i>	<i>Not specified</i>	<i>Not specified</i>
<b>Maryland’s Blue Plains Load Allocation-Total<sup>4</sup></b>	<b>1,993,000.00</b>	<b>89,694.91</b>
<i>Fairfax County</i>	<i>Not specified</i>	<i>Not specified</i>
<i>Loudoun County Sanitation Authority</i>	<i>Not specified</i>	<i>Not specified</i>
<i>Dulles Airport</i>	<i>Not specified</i>	<i>Not specified</i>
<i>Town of Vienna</i>	<i>Not specified</i>	<i>Not specified</i>
<b>Virginia’s Blue Plains Load Allocation-Total</b>	<b>581,458.00</b>	<b>26,166.00</b>
<b>Blue Plains Effluent Loads (Grand Total)<sup>1</sup></b>	<b>4,689,000.00</b>	<b>203,854.45</b>

<sup>1</sup> Loads for Blue Plains and sub-allocations are as documented in EPA’s Final TMDL (December 29, 2010), Section Q.

<sup>2</sup> Use of Allocated Flow Capacity is contingent on providing an allocation equivalent to at least 4.0 mg/L for TN and 0.18 mg/L for TP for Allocated Flow Capacity plus Captured Stormwater Flow, i.e. all flow out of Outfall 002. The District must also provide an allocation for flow discharged to Outfall 001.

<sup>3</sup> The load allocations shown for the District only address that portion associated with District flows to Blue Plains. Allocations for other Non-Party Users are reflected in the respective state allocations.

<sup>4</sup> WSSC use of allocated flow capacity is limited to 163.6 mgd due to diversion of nitrogen and phosphorus load allocations to the Seneca WWTP (i.e., loads associated with 6 mgd).

**B. BLUE PLAINS INFLUENT DESIGN LOAD CAPACITY**

1. Influent loads to Blue Plains must be limited so that the Blue Plains effluent loads meet permit requirements. The Parties agree that the Design Load Capacities are set forth in **Table OA 1-B**. If there are potential problems with meeting plant permits then the load capacities set forth in **Table OA 1-B** will apply.
2. The Design Load Capacity reflects Complete Treatment requirements for those flows that are discharged through Outfall #002, under Maximum Design Flow Capacity flows.

**Table OA 1-B**

<b>BLUE PLAINS DESIGN LOAD CAPACITY FOR INFLUENT FLOWS<sup>1</sup></b>		
<b>Parameters</b>	<b>Loads (lb/day)</b>	
	<b>Annual Average</b>	<b>Maximum 30-Day Rolling Average</b>
<b>BOD</b>	525,977	694,290
<b>TSS</b>	562,282	747,836
<b>TKN</b>	104,940	137,471
<b>NH<sub>3</sub></b>	55,390	64,252
<b>TP</b>	14,108	18,340
<b>Associated Maximum Design Flow Capacity – Basis (mgd)</b>		
<b>Flow, Average Year</b>	<b>384</b>	<b>485</b>
<b>Flow, Maximum Year</b>	<b>431</b>	<b>485</b>

**GLOSSARY TERMS FOR OPERATING AGREEMENT #1**

This Glossary identifies terms that have a specific and defined meaning for purposes of interpreting this Operating Agreement. Additional terms that are also used in the 2012 IMA Core Agreement are defined in the Glossary included in the IMA.

**Complete Treatment** – Flow that is discharged out of Outfall #002 and receives the following treatment: screening, grit removal, primary treatment, secondary treatment, nutrient reduction, disinfection, and de-chlorination.

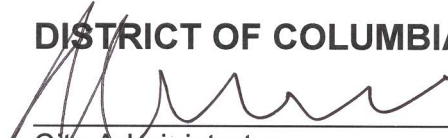
**Maximum Design Flow Capacity** – Design flow capacity figures, used to develop design loads for complete treatment out of Outfall #002, that reflects flow assumptions during specific wet weather conditions (i.e., 60 inch Rain Year and after full implementation of the CSO LTCP and the Total Nitrogen and Wet Weather Plan).

<sup>1</sup> \*Source: “Design - Level Plant Influent Flows and Loads Technical Memorandum”, AECOM May 2009 and “Projected Flows and Sources – NT/Wet Weather Plan”, Greeley and Hansen, July 2010.

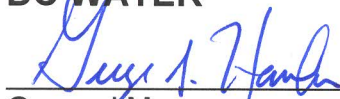
**EXECUTION**

This Agreement is executed on behalf of the Parties by the Members of the IMA Leadership Committee who, by affixing their signatures, confirm the authorization of their respective Party to be bound thereby. It shall be effective on the date indicated by the Chair below.

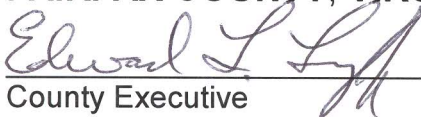
**DISTRICT OF COLUMBIA**

  
City Administrator 04/02/13 Date

**DC WATER**

  
General Manager 3/21/13 Date

**FAIRFAX COUNTY, VIRGINIA**

  
County Executive 3/25/13 Date

**MONTGOMERY COUNTY, MARYLAND**

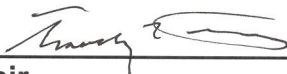
  
Chief Administrative Officer 4/3/2013 Date

**PRINCE GEORGE'S COUNTY, MARYLAND**

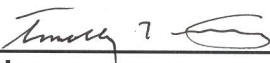
  
Chief Administrative Officer 4/2/13 Date

**WASHINGTON SUBURBAN SANITARY COMMISSION, MARYLAND**

  
General Manager 3/20/13 Date

Approved by Leadership Committee:   
Chair 4/3/13 Date

All Parties have been notified, 60 days have passed from notification, no objection has been made by any Party, this Agreement is, therefore,

EFFECTIVE:   
Chair 4/3/13 Date



## **OPERATING AGREEMENT #2**

### **PARTIES' AGREEMENT REGARDING: FINANCIAL RESPONSIBILITIES OF PARTIES**

**THIS OPERATING AGREEMENT** (Agreement), made among the **DISTRICT OF COLUMBIA** (the District), the **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY** (DC Water), **FAIRFAX COUNTY, Virginia** (Fairfax), **MONTGOMERY COUNTY, Maryland** (Montgomery), **PRINCE GEORGE'S COUNTY, Maryland** (Prince George's), and the **WASHINGTON SUBURBAN SANITARY COMMISSION** (WSSC),

Witness:

**WHEREAS**, the Parties have entered into the Blue Plains Intermunicipal Agreement (2012 IMA); and

**WHEREAS**, the Parties recognize their collective and mutual interests under the 2012 IMA include the authorization, review, or approval of actions that have a potential fiscal impact on the Parties, including, but not limited to billing, auditing and fiscal management; and

**WHEREAS**, the Parties agree to their collective and individual responsibility for complying with the fiscal allocations for Capital Costs, Operating and Maintenance (O&M) Costs, billing and payment procedures, User Fees, as well as fines, penalties and claims; and

**WHEREAS**, the Parties agree that their financial responsibilities and payment obligations for Capital Costs and O&M Costs of facilities include those implemented by DC Water and by Fairfax or WSSC, to the extent that those facilities are deemed to be Multi-Jurisdiction Use Facilities (MJUFs); and

**WHEREAS**, the Parties agree to work with DC Water and, as applicable, Fairfax and WSSC, to ensure that MJUF determinations and associated cost allocations are consistent with the 2012 IMA; and

**WHEREAS**, the Parties recognize that any significant changes in the wastewater flows, peak flows, and/or loads could require modification to the terms of the 2012 IMA, **Section 5**, and this Operating Agreement; and

**WHEREAS**, **Section 2** of the 2012 IMA authorizes the Leadership Committee to create, modify or terminate an Operating Agreement to implement the terms of the IMA consistent with **Section 11**.

**NOW, THEREFORE, the Parties agree as follows:**

**PURPOSE:** This Operating Agreement shall set forth additional matters implementing **Section 5** of the 2012 IMA:

- A. General Cost Responsibilities;
- B. Capital Cost Responsibilities;
- C. Operation and Maintenance Costs Responsibilities;
- D. User Fees Responsibilities;
- E. Fines, Penalties and Claims Responsibilities; and
- F. Billing and Payment Procedures.

**A. GENERAL COST RESPONSIBILITIES**

1. **Timing** - Following agreement of the directly involved Operating Agency Representatives regarding the needs, location, size, allocation of capacity, and allocation of cost for new or expanded collection facilities, such facilities shall be constructed as promptly as needs require.
2. **Contingent Obligations**
  - a. Construction of new or improved MJUFs shall be contingent on funding; however, failure to fund will result in a loss of allocation to the non-paying Party.
  - b. No Operating Agency shall be obligated to commence construction or installation of any additional pipelines and appurtenances until:
    - 1) DC Water, Fairfax and WSSC have made their share of the cost available to the constructing Operating Agency or have otherwise satisfied the constructing Operating Agency that funds will be available as expended; and
    - 2) The constructing Operating Agency has available sufficient funds, including funds which the other Operating Agencies have made available or will make available as expended, to pay for all estimated costs of such facility.
3. **Cost Basis** – The cost basis for Capital Costs shall be actual incurred Capital Costs associated with the MJUFs. The cost basis for O&M costs shall be actual incurred O&M costs associated with the MJUFs.
4. **Billing Disputes** – If disputes regarding billings cannot be resolved through routine procedures, the affected Operating Agency Representatives shall endeavor to reach a consensus with DC Water and/or others involved. If a consensus cannot be reached, the dispute resolution process outlined in **Section 10** of the 2012 IMA will be used.

**-END OF PAGE-**

**B. CAPITAL COST RESPONSIBILITIES**

1. **Blue Plains Capital Cost Allocations** - Capital Costs for Blue Plains and Other Associated Facilities shall be allocated proportionate to the District, Fairfax, WSSC, and Non-Party Users' Allocated Flow Capacity or other Usage Allocations as defined in the 2012 IMA **Section 5**. Cost allocations for all Blue Plains wastewater treatment and biosolids management are as set forth in **Table OA 2-A** below.

**TABLE OA 2-A**

<b>BLUE PLAINS ALLOCATED FLOW CAPACITY AND RESULTING COST ALLOCATIONS</b>		
<b>ENTITIES</b>	<b>CAPACITY ALLOCATIONS (MGD)</b>	<b>COST ALLOCATIONS (Percent)</b>
District of Columbia	152.50	<b>41.216</b>
Non-Party Users:		
LCSA, Virginia	13.80	<b>3.730</b>
Dulles Airport, Virginia	1.50	<b>0.405</b>
Town of Vienna, Virginia	1.50	<b>0.405</b>
Naval Ship Research & Development Center, Maryland	0.07	<b>0.019</b>
National Park Service, Maryland	<u>0.03</u>	<u><b>0.008</b></u>
Sub-total	16.9	N/A
<b>District of Columbia - Total<sup>1</sup></b>	<b>169.40</b>	45.783
<b>WSSC<sup>2</sup> (for Prince George's County &amp; Montgomery County), Maryland – Total</b>	<b>169.60</b>	<b>45.838</b>
<b>Fairfax County, Virginia<sup>3</sup> - Total</b>	<b>31.00</b>	<b>8.378</b>
<b>Grand Total</b>	<b>370.00</b>	<b>100.000</b>

<sup>1</sup> Pursuant to the 2012 IMA, the District is responsible for costs on behalf of the Non-Party Users, which it then recovers through separate agreements with those entities.

<sup>2</sup> The Allocated Flow Capacity for WSSC is on behalf of Prince George's and Montgomery; with any sub-allocations determined by separate agreements between those entities. The WSSC allocation also includes wastewater from other political jurisdictions, including some within those Counties with which WSSC has separate agreements.

<sup>3</sup> The Allocated Flow Capacity for Fairfax also includes wastewater from other political jurisdictions with which Fairfax has separate agreements.

2. **Pipelines and Appurtenances Capital Cost Allocations Methodology for Determining MJUF Portions of Pipelines & Appurtenances** - Capital Costs associated with constructing, replacing, or rehabilitating the wastewater collection systems and facilities shall be allocated utilizing the MJUF capital cost allocation methodology. This methodology uses a computer model to calculate a percentage of use by each entity for each project, and for each portion of the facility being evaluated (i.e., node-to-node). This assessment determines the MJUF portion for every project and its components.
3. **CSO Long-term Control Plan (LTCP) Capital Cost Allocations**
- a. **Parties Agree to Pay MJUF Portion** - The Parties agree to pay proportionate shares of the Capital Costs of that portion of the CSO LTCP that has been determined to be a MJUF, as defined in **Table OA 2-B**.
  - b. **Basis for Determining MJUF Portion of CSO LTCP Cost Allocations** - The MJUF portion of the approved CSO LTCP and resulting Capital Cost allocations are based on the modeling used in the development and assessment of the CSO LTCP. These Capital Cost allocations shall apply to the District, Fairfax, WSSC and Non-Party Users. Sub-allocations of those Capital Cost allocations for Fairfax, WSSC and the Non-Party Users shall be in proportion to their Allocated Flow Capacity.
  - c. **Modification of the CSO LTCP** - DC Water shall evaluate performance assumptions associated with any modifications to the CSO LTCP to determine if the Capital Cost allocations should be modified; and present the findings to the Regional Committee.
  - d. **Leadership Committee to Approve Modifications** - The Leadership Committee, after reviewing recommendations from the Regional Committee and determining that such modifications are desirable or required, shall approve and adopt revisions. The revisions may supplant the established Capital Cost allocations.

**TABLE OA 2-B**

<b>COMBINED SEWER OVERFLOW LONG-TERM CONTROL PLAN CAPITAL COST ALLOCATIONS FOR MJUF DESIGNATED PORTIONS ONLY</b>	
<b>USER</b>	<b>PERCENT</b>
<b>District of Columbia</b>	<b>92.90</b>
<b>Fairfax County</b>	<b>1.01</b>
<b>WSSC</b>	<b>5.54</b>
<b>Non-Party Users</b>	<b>0.55</b>
<b>Sub-Total: Fairfax, WSSC &amp; Non-Party Users</b>	<b>7.10</b>
<b>TOTAL</b>	<b>100.00</b>

4. **Capital Equipment Capital Cost Allocations**

- a. Cost allocations for all capital equipment are set forth in **Table OA 2-C**.
- b. Those capital equipment assets which reflect capital that has a shorter life span (such as information technology equipment and fleet, etc.), will be allocated using capacity or flow rates. See **Table OA 2-C** for a list of items included in capital equipment costs and designation as to the cost allocation basis.
- c. Funding of the MJUF portion of capital equipment is derived by first allocating each pool of capital equipment costs to one or more agreed upon cost drivers. (These cost drivers include the number of full time employees, departmental budgets, etc.)
- d. Changes to these cost drivers can be proposed by DC Water, Fairfax or WSSC and are subject to future evaluation by the Regional Committee.

**-END OF PAGE-**

**TABLE OA 2-C**

<b>CAPITAL EQUIPMENT COST ALLOCATION METHODOLOGY</b>		
<b>SERVICE AREA</b>	<b>PROJECT</b>	<b>ALLOCATION METHODOLOGY</b>
<b>Wastewater Treatment</b>	Plant Model	Allocated Capacity
	Laboratory Equipment	Allocated Capacity
<b>Maintenance Services</b>	Maintenance	Allocated Capacity
	Pump Repairs/Replacement	Allocated Capacity
	Turbine, Aerator & Methanol	Allocated Capacity
	Maintenance Management System	Actual Flows
	Large Electric Motors	Allocated Capacity
	Potomac Sewage Pumping Station	Allocated Capacity
	High Priority Rehabilitation Program	Allocated Capacity
	Large Meter Testing	Allocated Capacity
	Centrifuge Repair/Replace	Allocated Capacity
	<b>Fleet</b>	Vehicles
Indirect Fleet Allocation		Actual Flows
<b>Information Technology</b>	Financial Management	Actual Flows
	Radio Equipment	Actual Flows
	General IT Infrastructure	Actual Flows
	Payroll/HR System	Actual Flows
<b>Facilities &amp; Security</b>	HVAC at Various Locations	Actual Flows
	Doors, Signage, Fencing, etc.	Actual Flows

**-END OF PAGE-**

5. **Other Capital Cost Allocation Calculations - Indirect Labor Cost Pools** – DC Water will segregate its Blue Plains indirect labor cost pool from its non-Blue Plains indirect labor cost pool. The Blue Plains indirect labor cost pool's allocation base will be the total costs of Blue Plains project/activities managed by DC Water's Engineering Department or its successor. The non-Blue Plains indirect labor cost pool's allocation base will be the total cost of all non-Blue Plains projects/activities managed by DC Water's Engineering Department or its successor.

### **C. OPERATION AND MAINTENANCE (O&M) COST RESPONSIBILITIES**

#### **1. Determination of Billing Flow**

- a. Each of the District, Fairfax and WSSC's proportion of the annual MJUF O&M Costs shall be its Billing Flow divided by the Total Billing Flow. The Billing Flow will be the Actual Flow for each entity; except that the District Actual Flow is adjusted to account for any differential treatment cost impacts to calculate the District Billing Flow. The procedures for calculating these Billing Flows are set forth below in **Table OA 2-D**. For purposes of this calculation, all Actual Flows reflect Allocated Flow Capacities, and the Captured Stormwater Flow represents total estimated flows once the CSO LTCP is fully implemented.
- b. **Differential Treatment Cost Impacts** - Consistent with 2012 IMA **Section 5**, the calculation of Billing Flow from Actual Flow shall take into account any differential treatment cost impacts that have been determined based on a Jointly Managed Study.
- c. **District Billing Flows** - As of the date of this Agreement, the only agreed upon differential treatment cost applies to the District's CSF. The cost of treating CSF has been determined to be 49.28% of the cost of treating average strength wastewater (consistent with a technical review of DC Water analysis, 3/22/10). This percentage will be reviewed and updated periodically for changed conditions.
- d. **Annual Adjustment of Billing Flow** - The Billing Flow for any year will, therefore, be adjusted as follows:
- 1) DC Water will calculate the CSF treated at Blue Plains using the measured rainfall and the CSO LTCP model. The CSO LTCP model, this calculation, and the nomograph in the **Appendix of OA #3** will be reviewed periodically by the Regional Committee.
  - 2) The calculated CSF will be subtracted from the Actual Flow.
  - 3) The CSF will be multiplied by the CSF cost ratio (i.e. the cost per gallon of treating CSF divided by the cost per gallon of treating average strength wastewater). This is the Adjusted CSF.
  - 4) The Billing Flow is calculated by adding the Adjusted CSF to the Actual Flow less the CSF.

**-END OF PAGE-**

**NOTE:** For purposes of this calculation, all Actual Flows reflect Allocated Flow Capacities, and the Captured Stormwater Flow represents total estimated flows once the CSO LTCP is fully implemented. Numbers are rounded for purposes of the example.

**TABLE OA 2-D**

<b>Actual Flow</b>			
<b>Flow Sources</b>	<b>Flows (MGD)</b>	<b>Outfalls</b>	
		<b>#001</b>	<b>#002</b>
<b><u>MD</u></b>			
WSSC	169.60		
Navy	0.07		
NPS	0.03		
<b>Sub-Total MD</b>	<b>169.70</b>		
<b><u>VA</u></b>			
Fairfax	31.00		
Loudoun	13.80		
Dulles	1.50		
Vienna	1.50		
<b>Sub-Total VA</b>	<b>47.80</b>		
<b>Suburb Total</b>	<b>217.50</b>		
<b><u>DC</u></b>			
DC	152.5		
CSF	21		
Total DC	173.5		
<b>Grand Total</b>	<b>391.00</b>	<b>7.30</b>	<b>383.70</b>



## 2. **Blue Plains & Associated Facility O&M Cost Allocations**

- a. The District, Fairfax and WSSC and Non-Party Users shall be assessed by DC Water for their proportionate share of the cost of operating and maintaining Blue Plains.
- b. The DC Water Central Operations Facility (COF) building O&M Costs allocated to wastewater services shall be 54%. However, all Parties have the right to request a detailed analysis of this agreed allocation percentage if a circumstance occurs that materially changes the assumptions used in developing this ratio. Where practicable, DC Water will continue to segregate COF related costs from other cost pools in the Facilities Department or its successor.

## 3. **Pipelines and Appurtenances O&M Cost Allocations**

- a. The District, Fairfax and WSSC and Non-Party Users shall be assessed by DC Water for their proportionate share of the cost of operating and maintaining the interceptors (including the Potomac Interceptor) and appurtenances, and including wastewater pumping stations at locations other than Blue Plains which are determined to be MJUFs.
  - b. WSSC shall assess DC Water, as appropriate, for its proportionate share of the cost of O&M of the interceptors, wastewater pumping stations, screen chambers and wastewater Flow meters that are operated and maintained by WSSC or any of the other parties to handle BPSA flows that are directed to Blue Plains.
  - c. The District, Fairfax and WSSC's share of these O&M Costs shall be based on a node-to-node assessment methodology.
4. **CSO LTCP O&M Cost Allocations** – The District, Fairfax, WSSC and Non-Party Users shall be assessed by DC Water for their proportionate share of the cost of operating and maintaining that portion of the CSO LTCP that has been determined to be a MJUF by the Regional Committee based on the proportion of their Actual Flow versus Total Flow through the facility or based on other Usage determinations. Any methodology used shall be approved by the Regional Committee.

<b>Billing Flow – Example Calculation</b>		
1	Metered Plant Flow (Actual Flow), MGD	391
2	Metered <b>WSSC</b> (Actual Flow = Billing Flow), MGD	169.6
3	Metered <b>Fairfax</b> (Actual Flow = Billing Flow) MGD	31
4	Metered <b>Loudoun</b> (Actual Flow = Billing Flow)MGD	13.8
5	<b>Other PI Users</b> (Actual Flow = Billing Flow), MGD	3.1
6	Total Suburban (Actual Flow = Billing Flow), MGD	217.5
7	<b>District</b> (Actual Flow), MGD	$391 - 217.5 = 173.5$
8	Captured Stormwater Flow (CSF) (from LTCP model), MGD	21
9	CSF Cost Ratio (from AECOM cost study)	49% <sup>1</sup>
10	Adjusted CSF Flow, MGD	$(21)(.49) = 10.3$
11	District Billing Flow, MGD	$173.5 - 21 + 10.3 = 162.8$
12	Total Billing Flow, MGD	$217.5 + 162.8 = 380.3$

<sup>1</sup> Cost ratio applied to Captured Stormwater Flow is based on determination cited in **Subsection C.1.c.**

#### **D. USER FEE RESPONSIBILITIES**

1. **Payment** - The WSSC and Fairfax shall pay to the District an annual User Fee in accordance with **Section F.2.** of this Agreement. This fee shall be proportionately adjusted if the Allocated Flow Capacities defined in **Section 4** of the 2012 IMA are reduced.
2. **Annual Estimate** - In accordance with **Section 5** of the 2012 IMA, DC Water shall prepare an estimate of the User Fee prior to the beginning of each DC Water fiscal year and include it in the next billings rendered to Fairfax, Loudoun County Sanitation Authority (LCSA or Loudoun Water) and WSSC.

#### **E. FINES, PENALTIES AND CLAIMS RESPONSIBILITIES**

1. **Proportionate Allocation for Capital Projects** - Except as otherwise provided in the 2012 IMA, all fines, penalties and claims relating to Capital Projects will be allocated proportionately to the District, Fairfax and WSSC, and Non-Party Users based on Allocated Flow Capacity.
2. **Proportionate Allocation for O&M Activities** - Except as otherwise provided in the 2012 IMA, all fines, penalties and claims relating to O&M Activities will be allocated based on the Actual Flows of District, Fairfax, WSSC and Non-Party Users.

#### **F. BILLING AND PAYMENT PROCEDURES**

1. **DC Water to Annually Estimate Costs** - Before October 1 of each year, DC Water shall prepare an annual estimate of the Capital Costs and O&M Costs expected to be incurred during the following year and the estimated share of these costs for the District, Fairfax and WSSC. These estimates will be allocated in accordance with **Section 5.C. and 5.D.** As appropriate, the estimated share of the annual costs for each of these Parties shall be offset by each Party's estimate of the costs that it will incur in operating and maintaining its share of MJUFs for managing BPSA flows, or its share of managing Blue Plains biosolids or other residuals.
2. **Billing and Payment** - DC Water shall bill Fairfax and WSSC quarterly for Capital Costs and O&M Costs. Fairfax and WSSC shall remit quarterly payments to DC Water to cover 25% of their share of estimated annual Blue Plains O&M Costs and User Fees. Payments shall be made within 30 days of receipt of the invoices. If quarterly payments are not made on time, interest shall be charged at the Federal Reserve Bank's Discount Rate in effect on the due date of the bill. The Federal Reserve Bank Discount Rate will be determined quarterly at the end of each quarter.
3. **Reconciliation of Annual Bills**
  - a. **Capital Costs** – DC Water shall submit a reconciled quarterly invoice, including the estimate for the following quarter.

- b. **O&M Costs** - No later than 90 days after the completion of the annual independent audit or March 31st, DC Water shall prepare an annual bill for the purpose of reconciling payments made during the year by Fairfax and WSSC. This bill shall be based upon the actual costs incurred by each Party; such information to be provided to DC Water by Fairfax and WSSC within 30 days after the close of each DC Water fiscal year.
- c. **Capital Costs and O&M Costs** - Any overpayments or underpayments shall be equally prorated to each quarterly payment date and simple interest calculated from the date the quarterly payment was paid until the overpayment is refunded or the underpayment is paid. See **Table OA 2-E** for an example of the computation of the interest discussed in this sub-section

**TABLE OA 2-E**

<b>FEDERAL RESERVE DISCOUNT RATE INTEREST CALCULATION EXAMPLE (For illustrative purposes only)</b>					
Quarter	Interest Rate <sup>1</sup>	In Thousand Dollars			Period Outstanding <sup>2</sup> (Months)
		Payment <sup>3</sup>	Over/ <Under> <sup>4</sup>	Interest Owed <sup>5</sup>	
1	2.00%	7,500.00	625.00	14.06	13.5
2	2.00%	7,500.00	625.00	10.94	10.5
3	2.50%	7,500.00	625.00	9.77	7.5
4	3.00%	7,500.00	625.00	7.03	4.5
Total Annual Payment		30,000.00	2,500.00	41.8	
Total Annual Actual		(27,500.00)			
Over/<Under> <sup>4</sup>		2,500.00			

\* \*\* Assumes refund/payment received end of subsequent year Quarter 1.

4. **Maintenance and Review of Records** - DC Water, Fairfax and WSSC shall maintain books, accounts, records, documents and other evidence, employing generally accepted accounting principles and practices sufficient to show properly

<sup>1</sup> Federal Reserve Discount Rate in effect at end of each Quarter.

<sup>2</sup> Number of months between making payment and time of refund/payment (true up). Assumes quarterly payment made in mid-quarter. Assumes true up received end of subsequent year Quarter 1. This would be 13.5 months for Quarter 1, 10.5 months for Quarter 2, etc.

<sup>3</sup> Quarterly payments based upon annual budget.

<sup>4</sup> Over or Underpayment equally prorated over each quarter. Annual difference is divided evenly between the quarters.

<sup>5</sup> Example interest calculation for the first quarter:  $(625) \times (0.02) \times (13.5/12) = 14.06$

all direct and indirect costs of whatever nature they claim to have incurred or anticipate incurring. The foregoing records shall be subject at reasonable times to audit, examination, inspection or reproduction by DC Water, Fairfax or WSSC or a duly authorized representative of these Parties. Upon request, the Party shall provide a mutually acceptable electronic data processing medium containing all available computerized cost data to support the billing. Records shall be preserved for a period of at least three (3) years from the end of the fiscal year in which payment was made.


5. **Right to Audit** - All cost elements charged to DC Water, Fairfax, WSSC, or any Non-Party User may be audited by any Party. These cost elements include, but are not limited to: Capital Costs, O&M Costs, direct costs, indirect costs and flow data. Any adjustments made to DC Water, Fairfax or WSSC's bill as the result of an audit shall also automatically be made, as applicable, to other entities.
6. The right of any Party to any sum due pursuant to this Agreement shall not be barred by any statute of limitations.
7. **Biosolids Management Cost Procedures** - WSSC will incur Blue Plains biosolids management costs in accordance with **Operating Agreement #6, Biosolids Management Commitments**. The payment procedures for these costs shall be as follows:
  - a. DC Water shall credit WSSC for all Blue Plains related biosolids costs incurred by WSSC less the share allocated to WSSC.
  - b. DC Water shall then collect the share of these costs allocated to Fairfax by adding these costs to the regular payments due from Fairfax.
  - c. DC Water shall also recover the costs paid on behalf of the Non-Party Users.

**-END OF PAGE-**

**EXECUTION**

This Agreement is executed on behalf of the Parties by the Members of the IMA Leadership Committee who, by affixing their signatures, confirm the authorization of their respective Party to be bound thereby. It shall be effective on the date indicated by the Chair below.

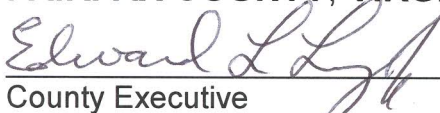
**DISTRICT OF COLUMBIA**

 040213  
City Administrator Date

**DC WATER**

 3/21/13  
General Manager Date

**FAIRFAX COUNTY, VIRGINIA**

 3/25/13  
County Executive Date

**MONTGOMERY COUNTY, MARYLAND**

 4/3/13  
Chief Administrative Officer Date

**PRINCE GEORGE'S COUNTY, MARYLAND**

 4/2/13  
Chief Administrative Officer Date

**WASHINGTON SUBURBAN SANITARY COMMISSION, MARYLAND**

 3/20/13  
General Manager Date

Approved by Leadership Committee:  4/3/13  
Chair Date

All Parties have been notified, 60 days have passed from notification, no objection has been made by any Party, this Agreement is, therefore,

EFFECTIVE:  4/3/13  
Chair Date

## **OPERATING AGREEMENT #3**

### **PARTIES' AGREEMENT REGARDING: FLOW AND LOAD MEASUREMENT AND MANAGEMENT**

**THIS OPERATING AGREEMENT** (Agreement), among the **DISTRICT OF COLUMBIA** (the District), the **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY** (DC Water), **FAIRFAX COUNTY, Virginia** (Fairfax), **MONTGOMERY COUNTY, Maryland** (Montgomery), **PRINCE GEORGE'S COUNTY, Maryland** (Prince George's), and the **WASHINGTON SUBURBAN SANITARY COMMISSION** (WSSC),

Witness:

**WHEREAS**, the Parties have entered into the Blue Plains Intermunicipal Agreement (2012 IMA); and

**WHEREAS**, the Parties agree to routinely monitor and assess their Actual Flows, Adjusted Flows, and the associated Pollutant/Nutrient Loads to Blue Plains to ensure that all allocations and/or limitations for Blue Plains are not exceeded, as set forth in **Section 4** of the 2012 IMA; and

**WHEREAS**, the Parties agree to regularly monitor and assess their Peak Flows at the point of connection to the BPSA's collection system; and comply with Peak Flow Limitations, as set forth in **Section 4** of the 2012 IMA and **Operating Agreement #1**; and

**WHEREAS**, the Parties acknowledge their responsibility to ensure that the Non-Party Users and Indirect Users also comply with the terms of this Operating Agreement; and

**WHEREAS**, **Section 2** of the 2012 IMA authorizes the Leadership Committee to create, modify or terminate an Operating Agreement to implement the terms of the 2012 IMA consistent with **Section 11**.

**NOW THEREFORE, the Parties agree as follows:**

**PURPOSE:** The purpose of this Agreement is to address matters related to **Section 6** of the 2012 IMA, including:

- A. Flow Measurement, Reporting and Assessment;
- B. Load Measurement, Reporting and Assessment; and
- C. Load Management.

## **A. FLOW MEASUREMENT, REPORTING AND ASSESSMENT**

### **1. Flow Measurement**

- a. For each sewer of a Party that has, or is expected to have, a discharge of 60,000 GPD or greater which discharges from a sewer of the District, Fairfax or WSSC into a sewer owned or operated by the District, DC Water, Fairfax or WSSC; the owner/manager of such discharging sewer(s) shall provide and install wastewater flow meters of the maximum practicable accuracy, at its own expense. The receiving Party directly involved shall mutually approve all such meter installations, shall designate who shall read, test, operate and maintain all such meters, and shall determine the methods and procedures to be followed. DC Water, Fairfax and WSSC may jointly read, test and inspect such meters at reasonable times at the request of any Party.
- b. DC Water shall provide, operate and maintain metering of the total Blue Plains wastewater Flow, as well as Intra-plant Flows<sup>1</sup>, in order to implement this agreement. DC Water, Fairfax and WSSC may jointly read, test and inspect such meters at reasonable times at the request of any Party.
- c. In case a wastewater flow meter fails to function for any reason, the meter shall be repaired as expeditiously as possible. Wastewater flow for the period of such failure shall be deemed to be equal to the flow during the most recent equivalent period that the meter was in satisfactory operation. If there is no such corresponding period, the flow shall be determined or estimated in such a manner as shall be agreed upon by the Parties involved.
- d. **Wastewater Units** - For each sewer that has, or is expected to have, a discharge of less than 60,000 GPD which discharges from a sewer of the District, Fairfax or WSSC into a sewer of another entity, the total annual estimated wastewater flow shall be calculated based upon the number of wastewater units connected to or discharging into such sewer. A wastewater unit shall equate to an annual discharge of 125,000 gallons. Each service connection shall be counted as one or more wastewater units depending upon the use of the premises served through such connections as follows:
  - 1) Each single family dwelling unit, whether detached or attached, shall constitute one (1) wastewater unit;
  - 2) Each apartment unit shall constitute one-half (0.5) of a wastewater unit;
  - 3) Wastewater units for premises used for other than residential purposes shall be determined by multiplying the annual water consumption by one and one-half (1.5)<sup>2</sup> and dividing by 125,000 gallons<sup>3</sup>.

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<sup>1</sup> Wastewater flow meters that are located within the Blue Plains WWTP that are used to help calculate District Flows.

<sup>2</sup> Ratio of 1.5 accounts for contributions from I/I sources to the estimated flows.

<sup>3</sup> 125,000 gallon figure reflects conversion of flows (water consumption and I/I) to estimated wastewater units.

- e. The monthly computation of the District, Fairfax, WSSC, and Non-Party User's Actual Flow shall include both its metered and unmetered flow entering the District's sewer system.
- f. The District's Actual Flow shall be calculated by subtracting the sum of Fairfax, WSSC and Non-Party Users' Actual Flows from the total plant Actual Flow.
- g. Additional long-term flow meters to monitor flows to the Potomac Interceptor are critical to ensuring that there is adequate and detailed flow data to evaluate how well the PI system is functioning under various flow conditions; and to ensure that individually and collectively that the flows into and through the PI are consistent with those values set forth in **Section 4** of the IMA.
- h. In order to address flow limitations necessary to ensure the proper performance of the Potomac Interceptor, the Regional Committee shall evaluate the need for developing a long-term rain gauge network, adding meters near Manholes #7 or #18 (i.e., section of PI where surcharging occurs), and addressing any other technical issues that would aid in this effort. The Regional Committee shall develop a plan to identify, fund, and implement this evaluation; which shall include defining specific tasks, roles and responsibilities, and a schedule for accomplishing this work.

## 2. **Flow Reporting**

- a. No later than 15 days after the end of each month, Fairfax, WSSC and each Non-Party User shall prepare and send to DC Water a report on the status of its Actual Wastewater Flows and commitments. DC Water shall compile these reports into a single report and distribute this report to the Parties no later than 30 days after the end of the month. DC Water shall also prepare an annual summary report for each calendar year and distribute this report to the Parties no later than February 15th of the following year.
- b. Fairfax, WSSC and Non-Party Users' report shall include at least the following information:
  - 1) The measured average flow and Peak Flow rate and duration during the month of the report for each metered point of connection between two (2) entities in the wastewater collection systems;
  - 2) The measured Actual Flow and the Peak Flow rate and duration for each metered point of connection between two (2) entities' wastewater collection systems for the 12 month period ending with the month for which the report is prepared;
  - 3) The estimated Actual Flow for the unmetered points of connection between the two (2) entities' wastewater collection systems, and the method used to estimate the annual average;
  - 4) The User's total daily average of all Actual Flows (i.e. the sum of all metered and unmetered flows) during the month for which the report is prepared;
  - 5) The total rainfall, as measured at Washington National Airport, during the 12 months ending with the month for which the report is prepared;
  - 6) The Highest Rolling Annual Average for its Actual Flow during the 12 months ending with the month for which the report is prepared;



- 7) Such other related information/data as may be deemed necessary to implement the 2012 IMA.
  - c. DC Water shall be responsible for ensuring that the Non-Party Users comply with these reporting requirements.
  - d. DC Water's monthly and annual summary reports shall include Actual Flow data at Blue Plains, including total flow through the plant, and the distribution of the flow to Outfall #001 and Outfall #002; and such other related information/data as may be deemed necessary to implement the 2012 IMA.
  - e. The District's Actual Flow for the purposes of flow management within the context of this Agreement shall be the total flow to Blue Plains less flows reported by Fairfax and WSSC and the Non-Party Users. The Parties recognize that a portion of the District's Actual Flow to Blue Plains is stormwater flow from its Combined Sewer area.
3. **Flow Assessment**
- a. DC Water shall monitor reported flows and calculate Adjusted Flows from Actual Flows provided by Fairfax, WSSC and Non-Party Users (i.e., to present normalized flows that reflect average hydrologic conditions). **Table OA 3-A** shows Adjusted Flow –Calculation Example.
  - b. DC Water shall monitor the flow trends and any potential allocation or limit exceedances and alert the Parties each month if any reported flows or peak flow values indicate problems.
  - c. DC Water shall prepare an annual BPSA flow report for the Regional Committee that assesses flow trends, as well as noting any instances where Adjusted Flows and/or Peak Flow values indicate that flows are or have the potential to exceed Allocated Flow Capacity and/or Peak Flow Limitations, as defined in **Section 4** of the 2012 IMA.
  - d. DC Water shall also be responsible for assessing all flows, analyzing data and modeling flows as needed to make recommendations what and where peak flow reductions are required in the system and for potential modifications to the Peak Flows in the Potomac Interceptor defined in the **Section 4** of the 2012 IMA.
  - e. The Regional Committee is responsible for reviewing the BPSA flow report and assessing what actions, if any, are required. These actions may include, but are not limited to, determining if additional flow management or documentation of flow management efforts are required from the District, Fairfax, WSSC and/or the Non-Party Users; and determining whether a comprehensive BPSA Long-term Planning Study and updated BPSA Flow Projections are needed in advance of their regularly scheduled 5-year update. These efforts will be used to formally assess Adjusted Flow and Peak Flow trends against Allocated Flow Capacity and Peak Flow Limitations, as well as flow management actions. The procedures for conducting this BPSA work are outlined in **Operating Agreement #4**.
  - f. The Regional Committee shall report to and make recommendations to the Leadership Committee based on the results of the BPSA Long-term Planning Study.

4. **Flow Management**

- a. The District's, Fairfax's, WSSC's and Non-Party Users' Adjusted Flow shall at no time exceed its Allocated Flow Capacity as defined in **Section 4** of the 2012 IMA.
- b. If the Adjusted Flow of the District, Fairfax or WSSC exceeds the Allocated Flow Capacity for any reason, the District, Fairfax or WSSC shall immediately stop making any further commitments for hookups, connections and extensions to its sewage system tributary to Blue Plains until three (3) consecutive months have passed during which the sum of the entity's Adjusted Flow shall not have exceeded its Allocated Flow Capacity. The sole exceptions to this prohibition shall be:
  - 1) To eliminate an alternative method of wastewater disposal that has been certified by a duly constituted health officer in the District, Fairfax or WSSC's BPSA, or his designated local representative, to constitute a public health hazard. This certification shall be on a parcel by parcel basis;
  - 2) For public service buildings, which include schools, hospitals, nursing homes, medical and dental clinics, and other structures used by public agencies in providing essential services for public health and welfare;
  - 3) If the User has a plan approved by the Regional Committee to bring its Adjusted Flow within its Allocated Flow Capacity.

**B. LOAD MEASUREMENT, REPORTING AND ASSESSMENT**

1. DC Water shall be responsible for sampling, monitoring and assessing the influent flows to Blue Plains. If there are exceedances that create problems with the Blue Plains permit or other issues, then the Load Capacities set forth in **Table OA 1-B of Operating Agreement #1** will apply.
2. DC Water shall be responsible for providing annual reports to the Regional Committee regarding the results of these assessments and recommending any potential actions, including conducting detailed strength of influent wastewater studies.
3. The Regional Committee shall participate in DC Water-required Jointly Managed Studies to assess the strength of influent wastewater and to determine what changes, if any are required to Allocated Flow Capacity, Peak Flow Limitations or any Load Limitations in order to ensure that Blue Plains continues to have the ability to comply with all of its process and permit requirements.
4. Based on the results of such studies, the Regional Committee shall make recommendations to the Leadership Committee regarding changes that may be required to the flow, load and/or financial obligations of the Parties.

**A. LOAD MANAGEMENT**

1. The Regional Committee shall review options for managing loads in influent wastewater flows, including but not limited to, assessing the increase in loadings that

result from extensive Inflow/Infiltration reductions in sewer collection system, use of garbage disposals, and potential Pretreatment requirements for commercial, household or other activities.

2. Based on the results of such studies, the Regional Committee may make recommendations to the Leadership Committee regarding any potential changes to the Flow Management responsibilities, Pretreatment obligations, and any other obligations of the Parties.

## APPENDIX

### Table OA 3-A

#### Adjusted Flow - Calculation Example (for comparing to Allocated Flow Capacity)

1) **Actual Flows, Rainfall and Well Depths**

a) Assume it was a wet year and annual averages of Actual Flows were measured as follows:

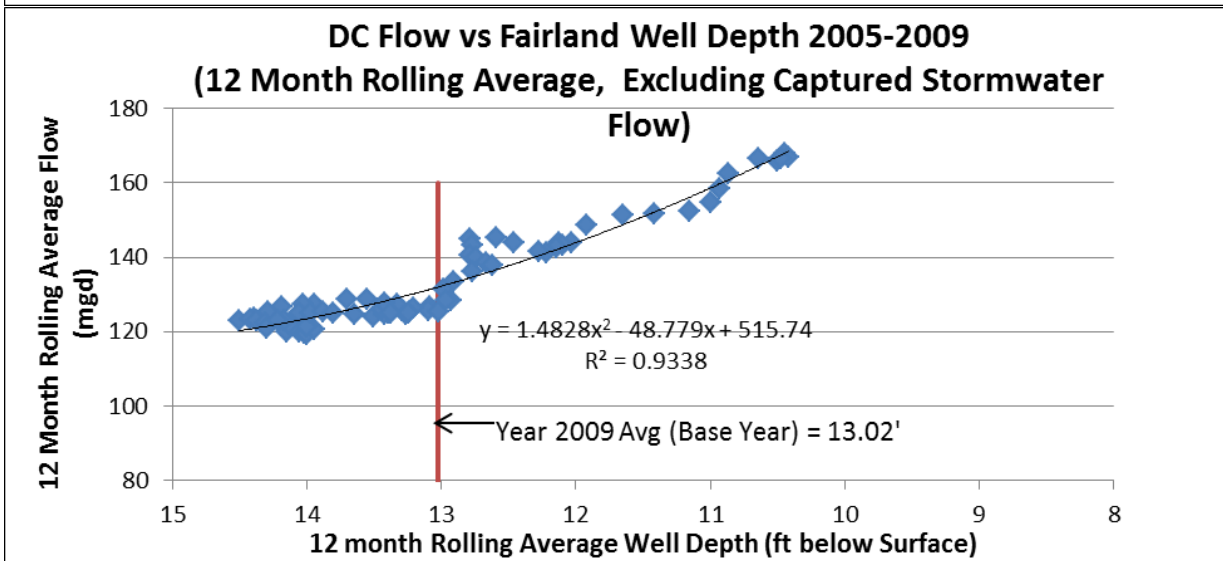
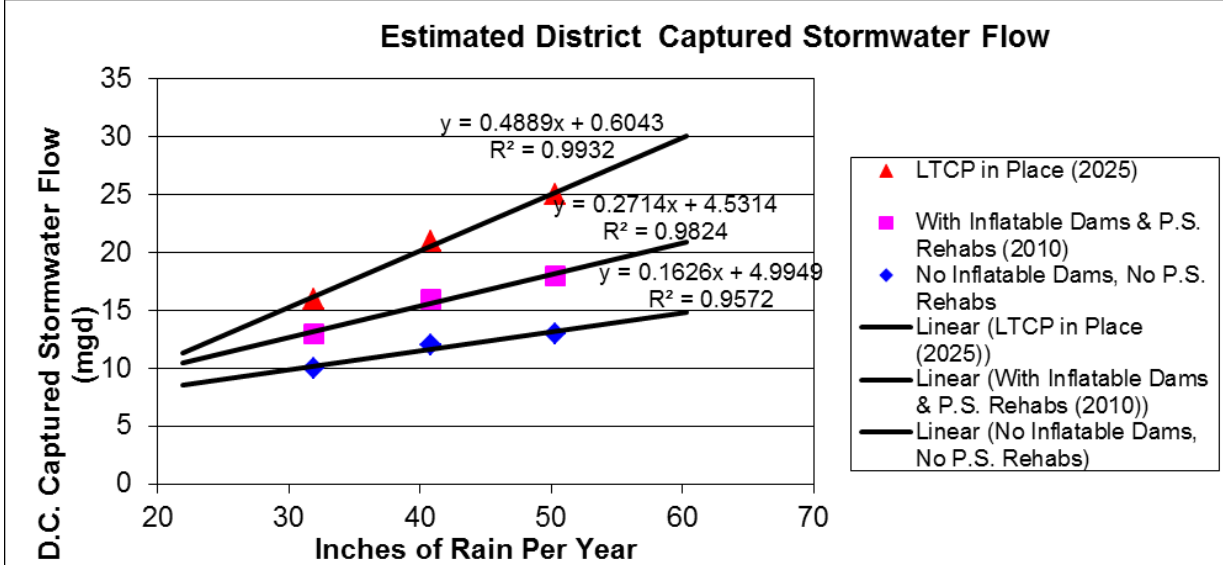
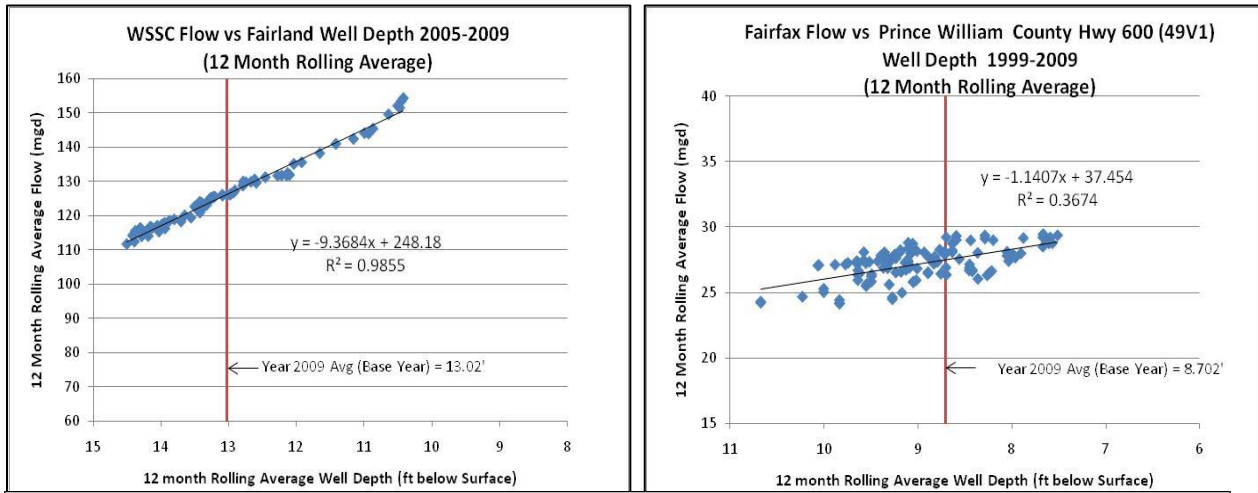
Line	Item	Value (MGD)	Calculation
1	Blue Plains Outfall #002	400.00	
2	Blue Plains Outfall # 001	8.00	
3	Total Blue Plains	408.00	Lines 1 + Line 2
4			
5	Maryland		
6	WSSC	175.00	
7	Navy	0.07	
8	NPS	0.03	
9	<b>Sub-Total Maryland</b>	175.10	Sum of Lines 6,7,9
10			
11	Virginia		
12	Fairfax	30.00	
13	Loudoun	13.80	
14	Dulles	1.50	
15	Vienna	1.50	
16	<b>Sub-Total Virginia</b>	46.80	Sum of Lines 12 to 15
17			
18	<b>Total Suburban Flow</b>	221.9	Line 9 + Line 16
19			
20	<b>Total District Flow</b>	186.10	Line 3 minus Line 18

b) **Rainfall and Well Depths**

Assume 12 month rolling average rainfall and well depths were as follows:

Item	Value	Notes
Rainfall at National Airport	48 in.	12 month rolling average
Fairland Well Depth	11.5 ft	12 month rolling average
Prince William County Highway 600 Well Depth	7.50 ft	12 month rolling average

## Nomographs Used to Calculate Flow Adjustments<sup>1</sup>



<sup>1</sup> These nomographs shall be reviewed periodically by the Regional Committee for accuracy and adjusted accordingly.

## SAMPLE CALCULATIONS

### 2) WSSC Flow Calculation

- a) Assume Actual Flow = 175.00 MGD (metered)
  
- b) Make adjustment to average hydrologic conditions using Fairland Well depth
  - i) Assume actual 12 month rolling average Fairland well depth = 11.50 ft
  - ii) Nomograph flow:  $y = -9.3684 * (11.50) + 248.18 = 140.4$  MGD
  - iii) Base year (2009) 12 month rolling average Fairland well depth = 13.02 ft
  - iv) Nomograph flow:  $y = -9.3684 * (13.02) + 248.18 = 126.2$  MGD
  - v) Adjustment =  $126.2 - 140.4 = -14.2$  MGD
  
- c) WSSC Adjusted Flow =  $175.00 - 14.2 = 160.8$  MGD

### 3) Fairfax Flow Calculation

- a) Assume Actual Flow = 30 MGD (metered)
  
- b) Make adjustment to average hydrologic conditions using Prince William County Highway 600 Well depth
  - i) Assume actual 12 month rolling average Prince William County well depth = 7.50 ft
  - ii) Nomograph flow:  $y = -1.1407 * (7.5) + 37.454 = 28.9$  MGD
  - iii) Base year (2009) 12 month rolling average Prince William County well depth = 8.702 ft
  - iv) Nomograph flow:  $y = -1.1407 * (8.702) + 37.454 = 27.5$  MGD
  - v) Adjustment =  $27.5 - 28.9 = -1.4$  MGD
  
- c) Fairfax Adjusted Flow =  $30 - 1.4 = 28.6$  MGD

### 4) District Flow Calculation

- a) Assume Actual Flow = 186.1 MGD
  
- b) Make adjustment to average hydrologic conditions using Fairland Well depth
  - i) Assume actual 12 month rolling average Fairland well depth = 11.50 ft
  - ii) Nomograph flow:  $y = 1.4828 * (11.50^2) - 48.779 * (11.50) + 515.74 = 150.9$  MGD
  - iii) Base year (2009) 12 month rolling average Fairland well depth = 13.02 ft
  - iv) Nomograph flow:  $y = 1.4828 * (13.02^2) - 48.779 * (13.02) + 515.74 = 132.0$  MGD
  - v) Adjustment =  $132.0 - 150.9 = -18.9$  MGD
  
- c) Make adjustment for Captured Stormwater Flow (CSF)
  - i) Assume LTCP is in place and 48" rainfall
  - ii) CSF =  $0.4889 * (48) + 0.6043 = 24.1$
  
- d) District Adjusted Flow =  $186.1 - 18.9 - 24.1 = 143.1$

5) Comparison of Actual Flow and Adjusted Flow

Line	Item	Actual Flow (MGD)	Adjusted Flow (MGD)
1	Blue Plains Outfall #002	400.00	
2	Blue Plains Outfall #001	8.00	
3	<b>Total Blue Plains</b>	408.00	349.40
4			
5	Maryland		
6	WSSC	175.00	160.80
7	Navy	0.07	0.07
8	NPS	0.03	0.03
9	<b>Sub-Total Maryland</b>	175.10	160.90
10			
11	Virginia		
12	Fairfax	30.00	28.60
13	Loudoun	13.80	13.80
14	Dulles	1.50	1.50
15	Vienna	1.50	1.50
16	<b>Sub-Total Virginia</b>	46.80	45.40
17			
18	<b>Total Suburban Flow</b>	221.9	206.30
19			
20	<b>Total District Flow</b>	186.10	143.10

-END OF PAGE-





## **OPERATING AGREEMENT #4**

### **PARTIES' AGREEMENT REGARDING: WASTEWATER PROJECTED FLOW CAPACITY NEEDS AND FUTURE OPTIONS**

**THIS OPERATING AGREEMENT** (Agreement), among the **DISTRICT OF COLUMBIA** (the District), the **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY** (DC Water), **FAIRFAX COUNTY, Virginia** (Fairfax), **MONTGOMERY COUNTY, Maryland** (Montgomery County), **PRINCE GEORGE'S COUNTY, Maryland** (Prince George's), and the **WASHINGTON SUBURBAN SANITARY COMMISSION** (WSSC),

Witness:

**WHEREAS**, the Parties have entered into the Blue Plains Intermunicipal Agreement (2012 IMA); and

**WHEREAS**, the Parties recognize their collective and mutual interests under the 2012 IMA, which includes the management of Wastewater flows generated in the Blue Plains Service Area (BPSA) and sent to the Blue Plains Wastewater Treatment Plant (Blue Plains); and

**WHEREAS**, the Parties recognize that the District has limited options available to it to address its own Projected Flow Capacity Needs; and

**WHEREAS**, the Parties agree to work together to address their individual and collective Projected Flow Capacity Needs for flows generated within the BPSA, including development of Jointly Managed Studies to determine these Projected Flow Capacity Needs and to develop alternatives for addressing these Projected Flow Capacity Needs as defined in **Section 7**; and

**WHEREAS**, **Section 2** of the 2012 IMA authorizes the Leadership Committee to create, modify or terminate an Operating Agreement to implement the terms of the IMA consistent with **Section 11**.

**NOW, THEREFORE, the Parties agree as follows:**

**PURPOSE:** The purpose of this Agreement is to address matters relating to **Section 7** of the 2012 IMA, including:

- A. Long-term Planning for BPSA;
- B. Development of Options and Proposed Actions; and
- C. Assessment and Notification Requirements.

#### **A. LONG-TERM PLANNING FOR BPSA**

1. **Jointly Managed Study** - The Regional Committee shall be responsible for conducting a Jointly Managed Study to produce a BPSA Long-term Planning Study at least every five (5) years, unless flow or load or other issues require this

assessment to be done sooner. It is anticipated that 5-year updates for an approximately 30-year planning horizon are adequate to assess and take necessary actions to protect the Parties' rights under this Agreement. As flows to the Blue Plains approach its Design Flow Capacity, the frequency of conducting such assessments may be increased.

2. **Flow Projection Methodology**

- a. The BPSA Long-term Planning Study shall address at a minimum:
  - 1) Updated flow projections for the District, Fairfax and WSSC, as well as for Non-Party Users and Indirect Users as well as for the overall BPSA, including:
    - a) Incorporation of MWCOG's most recently adopted Cooperative Forecast, which includes regionally developed demographic data, or other mutually agreed forecast;
    - b) Updates to all Parties' wastewater flow management actions and plans;
    - c) Confirmed or updated wastewater flow factors;
    - d) Confirmed or updated Inflow and Infiltration assumptions; and
    - e) Updated base year flow figures (i.e. flow defined or calculated that best reflects annual average flows under average hydrologic conditions), that are used to develop Projected Flow Capacity Needs of the BPSA for each jurisdiction/entity that contributes flow to Blue Plains;
  - 2) Updated information regarding water quality issues, loading limits, state or federal regulations, and any other activities or initiatives that will or have the potential to impact the Blue Plains' permit and/or treatment process requirements;
  - 3) Updated information and assessments about peak flows generated in the BPSA; and
  - 4) Trend data and analysis as needed to assess the potential impacts all of these factors will or could have on the Allocated Flow Capacity, Peak Flow Limitations and/or load assumptions for the BPSA.
- b. As a result of this periodic assessment, the Parties agree to reconcile any differences between the total and individual projected Annual Average Design Capacity requirements and with each of the Parties' and Non-Party User's Allocated Flow Capacity. This reconciliation may include, but is not limited to, the application of the following:
  - 1) Flow management projects/programs that reduce and/or increase flows;
  - 2) Load management programs that reduce or increase loads; and
  - 3) Reallocation (via sale or rental) of Allocated Flow Capacity.
- c. Evaluation of projected Annual Average Design Flow Capacity requirements will address the associated flow allocations, limitations, definitions, and assumptions set forth in the Derivative Agreement(s), to determine if any flow parameters, allocations, and/or limitations require modification to reflect the new projections.

## **B. DEVELOPMENT OF OPTIONS AND PROPOSED ACTION**

1. Based on the results of any Jointly Managed Study, as defined in **Section 7** of the 2012 IMA, the Regional Committee shall develop options (for the Parties and Non-Party Users, as appropriate) that address at a minimum the following elements and criteria:
  - a. Provide wastewater capacity at Blue Plains to meet the District's Projected Flow Capacity Needs unless other options better meet the District's Projected Flow Capacity Needs;
  - b. Give priority to the reallocation of annual average wastewater flow capacity that is not expected to be needed for more than 15 to 20 years;
  - c. Use the following hierarchy for considering the location of any proposed new or expanded treatment options: at Blue Plains, at WSSC's facilities, or at Fairfax's facilities, all of which shall be deemed to be Multi-Jurisdiction Use Facilities (MJUF) as defined in **Section 5** of the 2012 IMA, unless the Regional Committee agrees to alternative site considerations;
  - d. Evaluate storage options to identify any potential impacts on the peak flows and Allocated Flow Capacity defined in **Section 4** of the 2012 IMA;
  - e. Evaluate the rental or sale of capacity to ensure it would be consistent with the terms and assumptions in **Sections 4** and **6** of the 2012 IMA, and the associated Derivative Agreement(s), considering that the rental or sale of capacity shall be at the discretion of the Party allocated the capacity.
  - f. Consider that rental of capacity shall be viewed as a short-term solution and must be reassessed at least every five (5) years;
  - g. Consider that the Non-Party Users' Projected Flow Capacity Needs may have unique contractual agreements and there may be limited options available for them to address their capacity requirements outside of Blue Plains;
2. The options developed during a Jointly Managed Study shall address the following elements for each Party and Non-Party User, as appropriate:
  - a. The resulting Allocated Flow Capacities;
  - b. The resulting Peak Flow Limitations; and
  - c. The impact on Design Flow Capacities and Design Load Capacities.
3. The Regional Committee shall recommend to the Leadership Committee technical and/or programmatic options that address the individual and collective Projected Flow Capacity Needs of the Parties under **Section 7** of the 2012 IMA. These recommendations shall include, but not be limited to, addressing:
  - a. The proposed time frame for taking specific actions (whether operational or construction);
  - b. The estimated cost of these actions; and

- c. The proposed flow, load, and cost allocations and implications for each Party (and Non-Party User) associated with any options.
4. If suburban flows are diverted, nutrient loads associated with the diverted flows go with those flows and the District is responsible for finding nutrient offsets.
5. Any jurisdiction that requires additional flow capacity shall be responsible for finding nutrient offsets for that flow.

### **C. ASSESSMENT AND NOTIFICATION REQUIREMENTS**

1. The Regional Committee shall periodically assess the Adjusted Flows set forth in **Section 6** and the flow projections set forth in **Section 7** of the 2012 IMA, and as set forth in this Agreement, to determine if the timing or the scope of the agreed upon actions are being implemented in a manner that protects the interests of all the Parties.
2. The Regional Committee shall develop an implementation plan that outlines the proposed actions to be taken and associated schedule and defines the Parties' responsibilities. For those options which require that additional flow or load capacity be provided at Blue Plains or at other sites, this implementation plan shall include, but not be limited to:
  - a. A timeline with periodic milestones (generally every 5 to 10 years) that ensures that the necessary flow and/or load capacity is available when the Projected Flow Capacity Need is required;
  - b. A reassessment of Projected Flow Capacity Needs versus agreed upon actions, whether addressed via flow management, rental/sale of capacity, or construction projects;
  - c. A minimum 15-year advance notification period for any proposed action that requires capital funding.
3. Any Party that requires additional capacity in the BPSA in order to meet its Projected Flow Capacity Needs, which it cannot meet through its own flow management actions or are not being addressed through a Jointly Managed Study, shall provide 15-year advance notification to the Regional Committee that it requires such capacity, define those actions it must undertake to manage its future flows, and outline a schedule for those actions.
4. Unless otherwise agreed to by the Regional Committee, any diversions or reallocation of flow capacity by Fairfax or WSSC greater than five (5) MGD to meet District Projected Flow Capacity Needs shall occur at least one (1) year before the projected requirement for those flows.

**EXECUTION**

This Agreement is executed on behalf of the Parties by the Members of the IMA Leadership Committee who, by affixing their signatures, confirm their authorization of their respective Party to be bound thereby. It shall be effective on the date indicated by the Chair below.

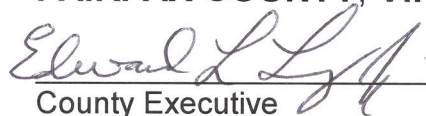
**DISTRICT OF COLUMBIA**

  
City Administrator \_\_\_\_\_ Date 040219

**DC WATER**

  
General Manager \_\_\_\_\_ Date 3/21/13

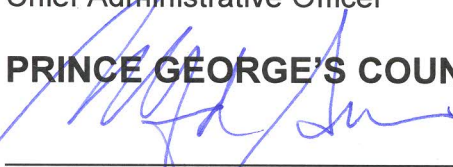
**FAIRFAX COUNTY, VIRGINIA**

  
County Executive \_\_\_\_\_ Date 3/25/13

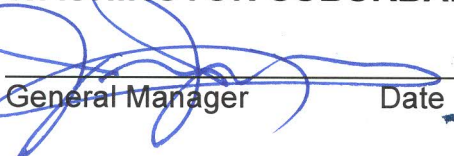
**MONTGOMERY COUNTY, MARYLAND**

  
Chief Administrative Officer \_\_\_\_\_ Date 4/3/13

**PRINCE GEORGE'S COUNTY, MARYLAND**

  
Chief Administrative Officer \_\_\_\_\_ Date 4/2/13

**WASHINGTON SUBURBAN SANITARY COMMISSION, MARYLAND**

  
General Manager \_\_\_\_\_ Date 3/20/13

Approved by Leadership Committee:  \_\_\_\_\_ Date 4/3/13  
Chair Date

All Parties have been notified, 60 days have passed from notification, no objection has been made by any Party, this Agreement is, therefore,

EFFECTIVE:  \_\_\_\_\_ Date 4/6/13  
Chair Date

## **OPERATING AGREEMENT #5**

### **PARTIES' AGREEMENT REGARDING: PRETREATMENT & OPERATIONAL REQUIREMENTS**

**THIS OPERATING AGREEMENT** (Agreement), among the **DISTRICT OF COLUMBIA** (the District), the **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY** (DC Water), **FAIRFAX COUNTY, Virginia** (Fairfax), **MONTGOMERY COUNTY, Maryland** (Montgomery), **PRINCE GEORGE'S COUNTY, Maryland** (Prince George's), and the **WASHINGTON SUBURBAN SANITARY COMMISSION** (WSSC),

Witness:

**WHEREAS**, the Parties have entered into the Blue Plains Intermunicipal Agreement (2012 IMA); and

**WHEREAS**, the 2012 IMA authorizes and requires the IMA Leadership Committee (the Leadership Committee), to set forth specific pretreatment and operational requirements, as well as monitoring and reporting processes, that they determine are appropriate to implement the provisions of **Section 8**;

**WHEREAS**, the Parties recognize their legal obligations to comply with all state, federal and local pretreatment requirements applicable to the Blue Plains Wastewater Treatment plant (Blue Plains) and its collection systems and their need to establish operational requirements for wastewater coming into Blue Plains as necessary to preclude damage to Blue Plains' wastewater and biosolids processes and equipment, to meet permit requirements, to avoid contributing any pollutants which cause or have the ability to cause wastewater, air, and/or biosolids permit exceedances, or that have any negative impacts at the plant;

**WHEREAS**, the Leadership Committee hereby agrees on behalf of the Parties to set forth specific requirements and monitoring and reporting processes necessary to protect the wastewater collection lines within the Blue Plains Service Area (BPSA), as well as the wastewater treatment processes and biosolids management programs at Blue Plains; and

**WHEREAS**, **Section 2** of the 2012 IMA authorizes the Leadership Committee to create, modify or terminate an Operating Agreement to implement the terms of the IMA consistent with **Section 11**.

**NOW, THEREFORE, the Parties agree as follows:**

#### **A. SCOPE**

The requirements of this Agreement are intended to apply to only those regulations, requirements, and discharges in the BPSA and/or to the Blue Plains WWTP.

## **B. REGULATORY AUTHORITY**

The Parties recognize their legal obligations to comply with all state, federal and local pretreatment requirements applicable to Blue Plains and its collection systems.

## **C. EXISTING AGREEMENTS**

In addition to the 2012 IMA, the following agreements are applicable to this Agreement

### **1. Agreements among Parties**

- a. **District & Fairfax**, *Wastewater Pretreatment Agreement* (June 27, 1986)
- b. **District & WSSC**, *Wastewater Pretreatment Agreement* (June 30, 1986)

### **2. Agreements among Parties and Non-Party Users, and Parties and Indirect Users**

#### **Indirect User Agreements**

- a. **Fairfax Co. & Herndon**, *Interjurisdictional Wastewater Pretreatment Agreement* (October 10, 1995)
- b. **Fairfax Co. & Arlington Co.**, *Sewage Conveyance, Treatment and Disposal* (October 03, 1994)
- c. **Fairfax Co. & Arlington Co.**, *Interjurisdictional Pretreatment Agreement* (June 17, 1994)

#### **Non-Party User Agreements**

- a. **District & LCSA**, *Wastewater Pretreatment Agreement* (September 12, 1989)
- b. **District & LCSA**, *Amendment to the Agreement* (November, 11, 1998)
- c. **District & Vienna**, *Wastewater Pretreatment Agreement* (April 20, 1986)
- d. **District & US FAA**, *General Agreement* (January 1966)
- e. **District & the Navy**, *General Agreement* (April 27, 1965)
- f. **District & Fairfax County Park Authority**, *General Agreement* (January 23, 1964)
- g. **District & National Park Services**, *General Agreement* (August 18, 1964)

Copies of these agreements and all future agreements relating to Pretreatment and operational requirements between and among the Parties and Non-Party Users shall be maintained at the offices of DC Water and the IMA Secretariat. As these agreements are replaced or amended, their successor agreements will be appended to and incorporated by reference into this Derivative Agreement.

## **D. PRELIMINARY TREATMENT AND OPERATING REQUIREMENTS**

1. Coarse screening shall be provided at any pumping station pumping more than an average of 2.5 mgd of flow, unless coarse screening is provided at a downstream facility. Screenings shall not be ground and returned to the wastewater flow under normal operations.
2. If necessary to bypass screens for more than four (4) hours, DC Water shall be notified within 24 hours.

3. If conditions arise requiring screening to be ground and returned to the wastewater flow, DC Water shall be notified within 24 hours.
4. Fairfax and WSSC shall generate a screenings report semi-annually which documents the location and total tonnage of screenings removed during each month within the six (6)-month period (January to June and July to December). The reports shall be due by the 30<sup>th</sup> of the month following the end of the reporting period (i.e., by July 30 and January 30) and shall be submitted to the DC Water Wastewater Treatment Manager:

DC Water Wastewater Treatment Manager  
5000 Overlook Ave., SW, Washington, DC 20032  
202-787- 4008

**E. TRUCKED WASTE MONITORING REQUIREMENTS**

1. Trucked waste shall only be discharged at monitored location(s). Access control or surveillance cameras shall be required for unmanned stations.
2. Within 12 months of the 2012 IMA Agreement, all septage receiving stations that send waste to the BPSA shall have access control or surveillance cameras in operation, except when units are out of service for routine maintenance – a time period not to exceed one (1) week.
3. Surveillance camera records or gate records shall be reviewed as necessary to verify discharge activity. Camera records shall be maintained for 72 hours.
4. After proper notification and review, DC Water reserves the right to prohibit any wastes that are deemed to cause, or have the potential to cause, operational or system problems, and/or which cause or have the ability to cause wastewater, air, and/or biosolids permit exceedances.
5. DC Water shall be notified prior to the establishment of any new septage receiving sites in the BPSA.
6. Periodic self-monitoring data shall be required for existing discharges of non-domestic trucked waste, landfill leachate, or trucked waste containing sludge or other residuals. The Party shall determine the list of requested parameters and frequency of self-monitoring. Data shall be submitted to DC Water in the quarterly pretreatment program reports.
7. Each Party shall conduct random sampling of the trucked wastes at least semi-annually for all parameters. Data shall be submitted to DC Water in the quarterly pretreatment program reports.

**F. PROHIBITED TRUCKED WASTES**

Prohibited wastes shall not be discharged to the BPSA unless conditionally authorized under the terms outlined in Subsection G of this Agreement. Prohibited wastes include:



1. Trucked wastes that are generated outside of the counties included in the BPSA (i.e., out-of-state and out-of-county wastes), unless the out-of-state and/or out-of-county waste is incidental to other waste collected from within the counties included in the BPSA;
2. Hazardous waste, as defined by EPA in 40 CFR 261 and/or in District of Columbia Code § 8-1302(2);
3. Wastes that are specifically prohibited by DC Water's prohibited discharge standards;
4. Wastes that exceed DC Water's local discharge standards or EPA's gas/vapor toxicity screening levels (EPA 812-B92-001), if measured in mg/L; or wastes that exceed EPA's Part 503 biosolids quality standards or applicable State biosolids standards, if measured in mg/kg; and
5. Portable toilet waste, where formaldehyde and 1,4-dichlorobenzene are used in deodorizer/sanitizer products. The prohibition of these products shall be implemented within 90 calendar days from the effective date of this Agreement.

**G. CONDITIONALLY AUTHORIZED TRUCKED WASTES**

DC Water may conditionally accept the following trucked wastes:

1. Grease trap waste – if no blockages or significant grease accumulation in the collection system or other issues arise;
2. Car wash waste – if no blockages or significant solids accumulation in the collection system or other issues arise;
3. Non-hazardous non-domestic waste - if characterized and approved by DC Water in advance;
4. Leachate from domestic landfills – if characterized and approved by DC Water in advance; and
5. Sludge or other residuals - if characterized and approved by DC Water in advance, and no blockages or significant solids accumulation in the collection system or other issues arise.

**H. AUTHORIZED TRUCKED WASTES**

DC Water will accept the following trucked wastes:

1. Portable toilet waste, where formaldehyde and 1,4-dichlorobenzene are not used in deodorizer/sanitizer products; and
2. Domestic septage.

## **I. CHARACTERIZATION AND MONITORING OF NEW TRUCKED WASTES**

Any Party proposing to accept hauled waster from a new non-domestic source (i.e., those that have not already been approved by DC Water) shall submit a request for approval to DC Water for new discharges of non-domestic trucked waste, landfill leachate, or trucked waste containing sludge or other residuals. DC Water shall respond with a determination on such a request within 30 calendar days. DC Water shall hold Non-Party Users to these same conditions for requesting new discharges of non-domestic trucked waste, landfill leachate, or trucked waste containing sludge or other residuals. The request may include:

1. Analytical data representative of the discharge, including, but not limited to:
  - a. pH,
  - b. Total Solids,
  - c. Total Suspended Solids,
  - d. Volatile Suspended Solids,
  - e. Biochemical Oxygen Demand,
  - f. Total Phosphorus,
  - g. Total Kjeldahl Nitrogen,
  - h. Total Metals (i.e., arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, silver, and zinc),
  - i. Total Petroleum Hydrocarbon/Oil and Grease, and
  - j. Polychlorinated Biphenyls (PCBs).
2. Estimates of volume and frequency of discharge that DC Water will use to evaluate the effect of the loading on the wastewater and sludge treatment plant processes.
  - a. If the sewage strength and/or load impacts warrant consideration of differential treatment cost, this will be negotiated among the Parties.
  - b. If the discharge is accepted, periodic monitoring may be required, with frequency and parameters to be agreed upon by the affected Party and DC Water.
  - c. If the discharge is prohibited, the limitations of **Subsection F** apply.

## **J. TREATMENT PLANT RESIDUALS**

Other Wastewater Treatment Plants or Water Treatment Plants within the BPSA shall not directly discharge sludge or other residuals into the Blue Plains sewage system, unless characterized and approved by DC Water in advance.

## **K. PRETREATMENT PERMITS**

1. Significant Industrial Users (SIU) in the BPSA must obtain a pretreatment permit from DC Water, Fairfax, or WSSC, unless the SIUs are regulated through Limited Party Agreements with Non-Party Users or Indirect Users.
2. Permits must contain, at a minimum, effluent limitations that match or exceed DC Water's discharge standards, monitoring and reporting requirements, a statement of duration, a statement of non-transferability, a statement of applicable civil and criminal penalties, and any other conditions requested to be included in the permit by DC Water.

3. Permits shall require immediate notification to DC Water of a spill, slug, or other unplanned emergency discharge (such as decontamination Wastewater) to the sewer at 202-612-3400 (24 hours per day, 7 days a week), and written notification to the DC Water Pretreatment Supervisor within five (5) days following the event, to the:  
DC Water Pretreatment Supervisor  
5000 Overlook Ave., SW, Washington, DC 20032  
202-787- 4177
4. Such notification shall include:
  - a. Name and address of the premises where the discharge occurred or is occurring;
  - b. The precise location of the discharge at the premises;
  - c. Type of waste discharged or being discharged;
  - d. Volume and concentration of Wastewater discharged;
  - e. Corrective actions conducted or planned to mitigate the incident and prevent reoccurrence; and
  - f. Contact name and phone number.
5. Permits shall require immediate notification to DC Water of any changes at its facility affecting the potential for a slug discharge.
6. Permits shall indicate that DC Water has right of entry and inspection of pretreatment and sewer facilities, observation, measurement, sampling, testing, and access to (with the right to copy) all pertinent compliance records located on the premises of the SIU. Whenever DC Water exercises this right, advance reasonable notice shall be given to the Operating Agencies. The Operating Agencies shall make all necessary legal and administrative arrangements for these inspections.

## **L. REPORTING**

1. **Quarterly Pretreatment Program Reports**
  - a. Reports shall be due to DC Water 45 days following the last day of the quarter for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters. However, the 4<sup>th</sup> quarter report due date may be extended an additional 30 days (if necessary, to allow additional time for completing the annual report).
  - b. Reports shall be prepared in accordance with a format to be developed by DC Water. For example, report all violations during the quarter, compliance status of each SIU, the date enforcement action is taken or is anticipated to be taken, identify any SIUs with a substantial change in volume or character of pollutants, etc.
  - c. Each Operating Agency/Jurisdiction shall submit all requested hauled waste documentation to DC Water in the quarterly report. Documentation shall include, but not be limited to:
    - 1) A current list of haulers (or changes to the list from the previous report), including approved sources (types) of waste, permitted vehicle information, and truck volume for each hauler;

- 2) Results of all analytical monitoring done on the hauled waste during that quarter (either by the Operating Agency/Jurisdiction or the waste hauler);
- 3) Where possible, flow estimates or number of loads of each waste type received during the quarter; and
- 4) If requested, gate records or security camera records, for verification of discharge activity.

**2. Annual Pretreatment Program Reports**

- a. In addition to the quarterly reports, an annual report shall be prepared. However, if the fourth quarter report is expanded to incorporate all the requirements of the annual report noted below, that report will suffice to meet both reporting obligations
  - b. Reports shall be prepared in accordance with instructions from EPA Region III. If a Party does not receive 'new or updated' guidance from DC Water by January 5, the same report format/procedures used the previous year shall apply.
  - c. The annual report shall include a master list of permitted waste haulers. At a minimum, the list shall include hauler name, contact information, list of vehicles, permitted truck capacities, and permitted waste type. The master list can reference the list provided in the fourth quarter report, as long as it notes any subsequent changes.
  - d. Reports shall be due to DC Water 45 days following the last day of the year (i.e., by February 15th), unless an alternate date is established in writing by DC Water.
  - e. Reports shall be accurate and complete upon submittal. Allowable exceptions to this include the following:
    - 1) Significant Non-Compliance (SNC) for the July to December period shall be submitted no later than March 15).
    - 2) The publication of the SNC violators shall occur no later than June 30, when required, and proof of publication shall be submitted to DC Water immediately following publication.
3. Follow-up comments from DC Water and/or EPA Region III shall be addressed as soon as practicable or as required by a comment letter.

**M. ENFORCEMENT**

1. The Parties shall, in accordance with their approved Enforcement Response Plans, take escalating enforcement action against any industrial user or waste hauler in the BPSA that violates any provision of the approved DC Water or Parties' pretreatment program. If EPA Region III, or the delegated state agency for the Parties, reviews the enforcement action taken by the Party and requests further action, the Party shall comply with the request or show just cause why such action is not warranted.
2. If DC Water does not agree with a decision made by a Party regarding specific enforcement action against a SIU or waste hauler, the issue shall be raised to the Regional Committee for dispute resolution pursuant to the 2012 IMA.

**N. REVISIONS TO LEGAL AUTHORITY**

1. DC Water shall forward a copy of proposed revisions to its legal authority (DC Code § 8-105) and/or implementation regulations (21 DCMR Chapter 15), to the Parties prior to or at the time of submittal to EPA Region III. Similarly, whenever the Parties revise their legal authority and/or implementation regulations, they shall forward a copy of the proposed revisions to DC Water prior to or at the time of submittal to their state approval authority. If there are significant changes to the regulations, EPA Region III review and approval may also be required.
2. Adopted Final Rulemaking or regulations shall be submitted to the Parties (or to DC Water, if the Parties adopted new regulations) within 30 days of the adoption date.
3. As necessary, the Parties shall adopt revisions (either directly or by reference) to their Sewer Use Ordinances (SUOs) pertaining to industrial waste pretreatment that are at least as stringent as those adopted by DC Water pertaining to industrial waste pretreatment. Proposed SUO revisions will be forwarded to DC Water within 180 days of receipt of DC Water's Final Rulemaking. If this schedule cannot be met, the Party shall notify DC Water in writing, and provide an alternate due date and reason why the schedule cannot be met. The Party shall then proceed to adopt the final regulations.
4. DC Water shall provide the Parties an opportunity to provide comments prior to making any revisions or additions to its Local Limits. Once DC Water makes any revisions or additions to its Local Limits, the Parties shall adopt any such revisions or additions and incorporate the new limits into all applicable SIU permits as soon as practical following receipt of the Final Rulemaking.

**O. COMPLIANCE BY NON-PARTY USERS**

DC Water shall require and enforce the same compliance by Non-Party Users, as applicable, with the substantive provisions of Subsections C through M, above, as is required of the Parties.


**P. PERIODIC REVIEW OF PRETREATMENT AND OPERATIONAL REQUIREMENTS**

1. The Regional Committee, as part of the review for its Annual Report, shall consider the efficiency and effectiveness of the practices and procedures of this Agreement. This review will include technical input from any appropriate Regional Committee work group(s). The Regional Committee will also consider, in a timely manner, any concerns that are raised by DC Water or any other Party over these practices and procedures or proposed modifications required by EPA or any state agency.
2. If the Regional Committee determines these requirements, practices or procedures should be modified, the Regional Committee shall recommend to the Leadership Committee any revisions that may be required to this Operating Agreement, the 2012 IMA or any associated Derivative Agreements.


**EXECUTION**

This Agreement is executed on behalf of the Parties by the Members of the IMA Leadership Committee who, by affixing their signatures, confirm the authorization of their respective Party to be bound thereby. It shall be effective on the date indicated by the Chair below.

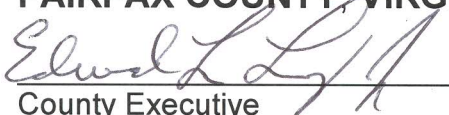
**DISTRICT OF COLUMBIA**

  
City Administrator 0402 13  
Date

**DC WATER**

  
General Manager 3/21/13  
Date


**FAIRFAX COUNTY, VIRGINIA**

  
County Executive 3/25/13  
Date


**MONTGOMERY COUNTY, MARYLAND**


  
Chief Administrative Officer 4/3/13  
Date

**PRINCE GEORGE'S COUNTY, MARYLAND**

  
Chief Administrative Officer 4/2/13  
Date

**WASHINGTON SUBURBAN SANITARY COMMISSION, MARYLAND**

  
General Manager 3/20/13  
Date

Approved by Leadership Committee:  4/3/13  
Chair Date

All Parties have been notified, 60 days have passed from notification, no objection has been made by any Party, this Agreement is, therefore,

EFFECTIVE:  4/3/13  
Chair Date

## **OPERATING AGREEMENT #6**

### **PARTIES' AGREEMENT REGARDING: BIOSOLIDS MANAGEMENT COMMITMENTS**

**THIS OPERATING AGREEMENT** (Agreement), among the **DISTRICT OF COLUMBIA** (the District), the **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY** (DC Water), **FAIRFAX COUNTY, Virginia** (Fairfax), **MONTGOMERY COUNTY, Maryland** (Montgomery), **PRINCE GEORGE'S COUNTY, Maryland** (Prince George's), and the **WASHINGTON SUBURBAN SANITARY COMMISSION** (WSSC),

Witness:

**WHEREAS**, the Parties have entered into the Blue Plains Intermunicipal Agreement (2012 IMA); and

**WHEREAS**, DC Water, Fairfax and WSSC recognize their obligations to comply with all state, federal and local biosolids preparation and land application regulations applicable to the Blue Plains Wastewater Treatment plant (Blue Plains); and the need to remove biosolids from the sewage generated within the Blue Plains Service Area (BPSA); and

**WHEREAS**, DC Water, Fairfax and WSSC recognize the need to establish operational requirements for the manufacturing of biosolids products at Blue Plains or offsite; and

**WHEREAS**, the Parties desire to manage the biosolids resource by the most practical, sustainable, environmentally sound, and economically beneficial means;

**WHEREAS**, the 2012 IMA authorizes and requires the Leadership Committee to set forth specific operational processes and contractual support for biosolids management that they determine are appropriate to implement the provisions of **Section 9** of the 2012 IMA;

**WHEREAS**, **Section 2** of the 2012 IMA authorizes the Leadership Committee to create, modify or terminate an Operating Agreement to implement the terms of the IMA consistent with **Section 11**.

**NOW, THEREFORE, the Parties agree as follows:**

**PURPOSE:** The purpose of this Agreement is to address matters relating to **Section 9** of the 2012 IMA. This Agreement confers no rights upon any person other than the Parties to this Agreement.

#### **A. REGULATORY AUTHORITY**

The Parties recognize their legal obligations to comply with all state, federal and local biosolids preparation and land application regulations applicable to Blue Plains.

**B. REGIONAL COMMITTEE ASSIGNMENT AND REPORTING RESPONSIBILITIES**

The Regional Committee shall periodically review and analyze the biosolids management activities of the Parties. The Regional Committee may request the assistance of Party experts and biosolids contractors in performing these analyses. The Regional Committee shall make recommendations to the Leadership Committee to maintain or improve the management of biosolids, including:

1. Utilizing contract mechanisms to handle management of all or portions of the biosolids;
2. Identification of additional land application or other management sites;
3. Working with local and state officials to obtain land application or other management permits;
4. Working with local and state officials to change regulations, legislation, or legal actions that are deemed harmful to the effective and environmentally sound management of biosolids;
5. Requesting support of the Leadership Committee and elected officials as necessary to support these efforts; and
6. Contracting for research that supports the biosolids management activities of the Parties.

**C. BIOSOLIDS REUSE AND DISPOSAL OPTIONS – ALLOCATION, MATERIAL RESPONSIBILITY AND CONTRACTS**

1. DC Water and WSSC shall independently contract for services related to reuse or disposal (if necessary) of biosolids produced at Blue Plains. The percentage of biosolids reuse and disposal managed by DC Water shall be no less than 50% and no greater than 70%. WSSC will manage the remainder. The percentages within these limits are to be based on a balance between financial and contractual security, and on programmatic needs as determined by the Regional Committee.
2. DC Water and WSSC may also, with concurrence of the Regional Committee, allocate tonnage to a user or a regional entity that has the opportunity to contract for sustainable reuse of biosolids. DC Water and WSSC shall separately issue one or more contracts for the sustainable reuse of biosolids resources for use in agriculture, mine reclamation, silviculture, composting, soil blending, energy production, or any other sustainable and economically feasible technology.
3. Other options, such as landfilling, may also be included in contracts by DC Water and WSSC for backup and emergency purposes or as recommended by the Regional Committee. In all scenarios, the Parties shall meet the biosolids management commitments set forth in the 2012 IMA. The Parties may consider regional contractual coordination, if another entity outside of DC Water is willing and interested in such collaboration. A recommendation in this direction would allow for



diversification of reuse options and geography, but should only be done if it furthers the biosolids commitments in the 2012 IMA.

**D. PREPARATION OF CONTRACT SOLICITATIONS**

1. DC Water and WSSC shall be responsible for the issuance and administration of their contract solicitations for the reuse of biosolids generated at Blue Plains.
2. The specifications, terms, conditions, and evaluating criteria for any biosolids reuse contract solicitations shall be developed by DC Water and WSSC with input from the Regional Committee.
3. The Regional Committee, either directly or through technical staff, may participate in the review of technical proposals or other contract documents for the hauling and reuse of biosolids received, pursuant to contract solicitations issued by DC Water and WSSC, and make recommendations for award to the respective contracting officers.

**E. CONTRACT REVIEW**

1. DC Water and WSSC shall each execute contracts awarded pursuant to the contract solicitations. They shall appoint contracting officers for such contracts and, in consultation with the other participating parties, administer all aspects of contract performance in accordance with their respective procurement laws and regulations.
2. With respect to DC Water and WSSC's contracts, the Regional Committee's functions and responsibilities shall include the following:
  - a. Provide information, recommendations and requests to the contracting officer to remedy or avoid existing or potential problems caused by any contractors or subcontractors operating within any of the Parties' jurisdictions or caused by their operation in other areas that are or will adversely impact a Party; and
  - b. Monitor the performance and administration of all contracts awarded and provide the contracting officer with the recommendations of the other participating jurisdictions on administrative actions that should be taken to protect the interests of such other parties in all such biosolids contracts; and
  - c. Receive and assess progress and other relevant reports relating to the performance and administration of all biosolids contracts and reports on proposed actions contemplated by the contracting officers in the administration of such contracts; and
  - d. Review research findings funded through the Regional Committee.

## **F. COST AND PAYMENT**

All costs, including administrative costs, of managing the biosolids program will be borne by the Parties and shared based upon the methods and procedures described in **Section 5** of the 2012 IMA. The Parties will receive monthly reports of tonnage allocations to each contract and a final cost accounting at the end of the DC Water fiscal year.

## **G. EMERGENCY PROVISIONS**

1. If any contractors for Blue Plains biosolids reuse and/or disposal service unexpectedly cease operations for any reason, all Parties shall cooperate in order to continue transportation and management of the quantities of Blue Plains biosolids defined in the 2012 IMA and this Agreement.
2. All Parties shall assist in making available, to the extent possible, disposal and reuse options in the region (landfills, incinerators, etc.). If necessary, all Parties shall commit to investigating regional cooperation on biosolids reuse with other parties. This investigation shall include, but not be limited to, other land application programs, composting, incineration, soil blending, etc., and emergency plans shall consider all these options.
3. Separately, or as part of the BPSA Emergency Operating Plan, the Parties shall include emergency back-up contingency plans for removal and transport of biosolids generated at Blue Plains.

## **H. PRODUCT MARKETING AND REVENUE**

1. DC Water will produce into the foreseeable future a Class B stabilized biosolids cake products, as well as a Class A biosolids cake suitable (with further conditioning or mixing) for marketing. DC Water and WSSC shall market and reuse this material for all of the Parties in a manner advantageous to DC Water, Fairfax and WSSC. This marketing will promote the product's use and, if successful, will generate revenue. Potential products from the Blue Plains biosolids program include compost, blended soil, dried product, green energy/carbon credits, and electrical power. DC Water and WSSC will use all revenue to first offset biosolids program and, then, Blue Plains' operating costs thereby reducing costs for all Parties.
2. Each Party shall provide data monthly regarding the revenue or credits generated by DC Water and WSSC. At the end of each fiscal year, DC Water and WSSC shall calculate annual totals for each product, and calculate the percentage of each product for which each Party may take credit. These credits are not for monetary purposes (as the revenue will be used to offset biosolids program costs) but for the purposes of informing rate payers and regulators of efforts to produce valuable products, clean energy, and carbon credits.

3. DC Water and WSSC shall separately be responsible for preparing, negotiating and managing all contracts and agreements related to the sale or use biosolids products. Other products such as steam, electricity, and/or carbon/renewable energy credits produced at Blue Plains shall be managed by DC Water.
4. The Regional Committee shall cooperate in these distribution and marketing efforts with the DC Water biosolids manager to determine if there are markets and/or distribution points in their respective jurisdiction. The region has many potential uses for a Class A biosolids product, and the Parties shall work to maximize reuse within the BPSA. All users will work to inform end-users of the benefits and limited risks of using these products.
5. DC Water shall develop an agency-wide carbon footprint model and establish a baseline for registration with a certified entity. This model will be updated and audited, as necessary, to maintain certification. As improvements occur at Blue Plains (digesters, fine bubble diffusers, energy efficiency projects, etc.) the DC Water carbon footprint will shrink, possibly making carbon credits available for sale or trade. The production of energy from a renewable source (biosolids) may also make available Renewable Energy Credits (REC's) for sale or trade.

**-END OF PAGE-**

**EXECUTION**

This Agreement is executed on behalf of the Parties by the Members of the IMA Leadership Committee who, by affixing their signatures, confirm the authorization of their respective Party to be bound thereby. It shall be effective on the date indicated by the Chair below.


**DISTRICT OF COLUMBIA**

 040213  
City Administrator Date

**DC WATER**

 3/21/13  
General Manager Date

**FAIRFAX COUNTY, VIRGINIA**

 3/25/13  
County Executive Date


**MONTGOMERY COUNTY, MARYLAND**

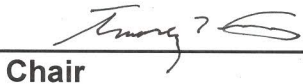
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Chief Administrative Officer Date

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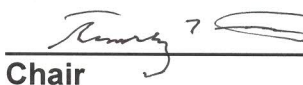
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Chief Administrative Officer Date

**WASHINGTON SUBURBAN SANITARY COMMISSION, MARYLAND**

 3/20/13  
General Manager Date

Approved by Leadership Committee:  4/3/13  
Chair Date

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Chair Date