

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



- This page blank -

TABLE OF CONTENTS	
SECTIONS	PAGE
PREAMBLE	1
SECTION 1. KEY PRINCIPLES	4
SECTION 2. GOVERNANCE	7
A. LEVELS OF AUTHORITY	7
B. AUTHORITY TO ACT AND GENERAL PARTY RESPONSIBILITIES	7
C. POLICY LEVEL: THE IMA SIGNATORIES	7
D. ADMINISTRATIVE LEVEL: THE IMA LEADERSHIP COMMITTEE	8
E. TECHNICAL LEVEL: THE IMA REGIONAL COMMITTEE	9
SECTION 3. BLUE PLAINS PERMIT RESPONSIBILITIES AND TREATMENT PROCESS REQUIREMENTS	12
A. DC WATER'S OVERALL PERMIT RESPONSIBILITIES	12
B. DC WATER'S NOTIFICATION RESPONSIBILITIES	12
C. INDIVIDUAL PARTY RESPONSIBILITIES	12
D. COLLECTIVE PARTY RESPONSIBILITIES	12
E. REGIONAL WATER QUALITY MANAGEMENT PROGRAM SUPPORT	12
F. DERIVATIVE AGREEMENT	13
SECTION 4. BLUE PLAINS FLOW CAPACITY, LOADS AND PEAK FLOWS – ALLOCATIONS AND LIMITATIONS	14
A. BLUE PLAINS ALLOCATED FLOW CAPACITY	14
TABLE 4-A - BLUE PLAINS ALLOCATED FLOW CAPACITY	14
B. BLUE PLAINS EFFLUENT LOADS AND BLUE PLAINS EFFLUENT LOAD ALLOCATIONS	16
C. BLUE PLAINS INFLUENT LOADS AND INFLUENT DESIGN LOAD CAPACITY	16
D. MONITORING OF AND RECOMMENDATIONS REGARDING INFLUENT FLOWS AND LOADS	16
E. BLUE PLAINS SERVICE AREA (BPSA) PEAK FLOW LIMITATIONS – GENERAL CONDITIONS	17
TABLE 4-B - PEAK FLOW LIMITATIONS FOR WSSC, FAIRFAX COUNTY, & NON-PARTY USERS FOR THE POTOMAC INTERCEPTOR & OTHER INTERCEPTORS OPERATED BY DC WATER	18
TABLE 4-C - PEAK FLOW LIMITATIONS FOR WSSC FOR OTHER INTERCEPTORS OPERATED BY DC WATER	19
TABLE 4-D - PEAK FLOW LIMITATIONS FOR THE DISTRICT FOR OTHER INTERCEPTORS OPERATED BY WSSC	19
F. ADDITIONAL BPSA PEAK FLOW LIMITATIONS – POTOMAC INTERCEPTOR (PI) CONDITIONS	21
G. DERIVATIVE AGREEMENT	22
SECTION 5. FINANCIAL RESPONSIBILITIES OF PARTIES	23
A. ASSIGNMENT OF RESPONSIBILITIES	23
B. DETERMINATION OF MULTI-JURISDICTION USE FACILITIES (MJUFs)	23
C. CAPITAL COST RESPONSIBILITIES	24
D. OPERATING AND MAINTENANCE (O&M) COST RESPONSIBILITIES	25
E. USER FEE RESPONSIBILITIES	26
F. FINES, PENALTIES AND CLAIMS RESPONSIBILITIES	26

SECTIONS	PAGE
G. ESTIMATES, BILLINGS, PAYMENTS, AND RECONCILIATION PROCEDURES	27
H. DERIVATIVE AGREEMENT	28
SECTION 6. FLOW AND LOAD MEASUREMENT AND MANAGEMENT	29
A. WASTEWATER FLOW AND LOAD MEASUREMENT, REPORTING AND MANAGEMENT	29
B. CONTROL OF INFLOW AND INFILTRATION (I/I)	30
C. DERIVATIVE AGREEMENT	30
SECTION 7. WASTEWATER PROJECTED FLOW CAPACITY NEEDS AND FUTURE OPTIONS	31
A. RATIONALE FOR CONDUCTING ANALYSIS OF PROJECTED FLOW CAPACITY NEEDS	31
B. CONDUCTING PROJECTED FLOW CAPACITY NEEDS ANALYSIS	31
C. DETERMINATION OF PROJECTED FLOW CAPACITY NEEDS	32
D. DETERMINATION OF OPTIONS	33
E. COST CONSIDERATIONS	34
F. IMPLEMENTATION OF PLAN TO ADDRESS PROJECTED FLOW CAPACITY NEEDS	35
G. DERIVATIVE AGREEMENT	35
SECTION 8. PRETREATMENT AND OPERATIONAL REQUIREMENTS	36
A. PRETREATMENT PROGRAM REQUIREMENTS	36
B. OPERATIONAL REQUIREMENTS	36
C. DERIVATIVE AGREEMENT	37
SECTION 9. BIOSOLIDS MANAGEMENT COMMITMENTS	38
A. BIOSOLIDS UTILIZATION AND DISPOSAL	38
B. EMERGENCY CONDITIONS	38
C. DERIVATIVE AGREEMENT	39
SECTION 10. ADMINISTRATIVE PROVISIONS AND PROCEDURES	40
A. DURATION OF AGREEMENT	40
B. SEVERABILITY	40
C. AUTHORITY	40
D. AMENDMENTS TO THIS IMA	40
E. DISPUTE RESOLUTION	41
F. NOTICES	42
G. PRIOR AGREEMENTS	43
H. ANTI-DEFICIENCY ACTS PROVISIONS	43
SECTION 11. DERIVATIVE AGREEMENTS UNDER THIS IMA	45
A. USE AND PROCESS FOR DERIVATIVE AGREEMENTS	45
B. OPERATING AGREEMENTS	45
C. SERVICE AGREEMENTS	46
D. LIMITED PARTY AGREEMENTS	46
SECTION 12. GLOSSARY	48
SIGNATORIES	53
APPENDIX - HISTORICAL AGREEMENTS	55

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.

-END OF PAGE-

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.

-END OF PAGE-

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

BLUE PLAINS ALLOCATED FLOW CAPACITY	
ENTITIES	ALLOCATIONS (MGD)¹
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
District of Columbia – Total	169.40
WSSC² (for Prince George’s County & Montgomery County), Maryland – Total	169.60
Fairfax County, Virginia³ - Total	31.00
Grand Total – Blue Plains Design Flow Capacity	370.00

¹ Flows represent Annual Average Hydrologic Conditions.

² 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.

³ 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 LIMITATIONS¹
FOR WSSC, FAIRFAX COUNTY & NON-PARTY USERS
FOR THE POTOMAC INTERCEPTOR & OTHER INTERCEPTORS
OPERATED BY DC WATER, FAIRFAX AND WSSC**

Jurisdiction / Agency Points of Connection	Flow Capacity (Annual Average in MGD)	Peak Flow Limitation (MGD)	Peak/ Average Ratio
WSSC			
Cabin John (to MUPI) ²	10.3	23.3	2.3
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
Subtotal to PI	21.6	87.4	
WSSC Total to PI & UPI³	31.9	110.7	3.5
Fairfax County			
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 ⁴	8.7	30.0	3.4
Scotts Run	2.9	10.2	3.5
Subtotal to PI	21.6	73.6	
Pimmit Run	9.4	35.0	3.7
Fairfax Total to PI & Pimmit Run	31.0	108.6	3.5
Loudoun County Sanitation Authority to PI	13.8	31.9	
Other Non-Party Users to PI	3.1	7.2	
Grand Total to PI	60.1	200.1	

-END OF PAGE-

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

² MUPI - Maryland Upper Potomac Interceptor

³ UPI - Upper Potomac Interceptor

⁴ 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**

Jurisdiction / Agency Points of Connection	Flow Capacity (Annual Average in MGD)	Peak Flow Limitation (MGD)
WSSC		
Little Falls Trunk Sewer	7.6	20.8
Rock Creek Main Interceptor ¹ 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
TOTAL	137.7	N/A

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

Jurisdiction / Agency Points of Connection	Flow Capacity (Annual Average in MGD)	Peak Flow Limitation (MGD)
DISTRICT		
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.

¹ 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-