

SECOND AMENDMENT TO EXTENDED MAINTENANCE AGREEMENT

THIS SECOND AMENDMENT TO EXTENDED MAINTENANCE AGREEMENT ("**Second Amendment**") dated as of _____, 2023 ("**Effective Date**") is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("**City**") and EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal water utility provider ("**District**"), collectively "the Parties", with reference to the following:

RECITALS

A. WHEREAS, in April 2017 City and District entered into a Short Term Agreement to Provide Services for the City of Alameda's Potable Water System at Alameda Point; as amended by that First Amendment dated October 2017, which changed the name of the Agreement to the Extended Maintenance Agreement (as amended, the "**Maintenance Agreement**"), in accordance with Paragraph 39 of the Ten-Year Water Infrastructure Agreement (the "**Infrastructure Agreement**"); and

B. WHEREAS, the Maintenance Agreement expired on June 14, 2022; and

C. WHEREAS, Paragraph 39 of the Infrastructure Agreement allows the parties to extend the term of the Maintenance Agreement for a five (5) year periods on specified terms and conditions; and

D. WHEREAS, the Parties agree that the City has satisfied the relevant terms and conditions of Paragraph 39 of the Infrastructure Agreement, and the Parties wish to retroactively extend the term of the Maintenance Agreement by another five (5) years; and

E. WHEREAS, the Parties wish to make additional substantive modifications to the Maintenance Agreement, as set forth below.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and District hereby agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are incorporated herein as though set forth in full herein.

2. Extension of Maintenance Agreement. The term of the Maintenance Agreement is hereby retroactively extended for five (5) years, commencing on June 14, 2022 and expiring on June 14, 2027. Pursuant to this extension, the District shall continue to provide the Specific Services set forth in the Maintenance Agreement to the City's private water system within the Alameda Point.

- a. The Parties agree to and will separately amend Paragraph 39 of the Infrastructure Agreement to allow for further extension of this Maintenance Agreement beyond June 14, 2027 with any extension premised on an agreed plan and timeline for continued reuse and redevelopment areas at Alameda Point and abandonment of the City's private water pipelines subject to the Specified Services (as that term is defined in Section 2 of the Maintenance Agreement) and an agreed plan for soils management.
- b. The Parties further agree to and will separately amend Paragraph 39 of the Infrastructure Agreement to clarify that the five-year term extension authorized by this Second Amendment, and any later extensions, are intended to maintain the District's Specified Services for the entirety of the City's private water system at Alameda Point until replaced by the Water Infrastructure Replacements pursuant to paragraph 10 of the Maintenance Agreement.

3. Soil Management. Section 6 of the Maintenance Agreement is modified to add the following language:

6.3 Transfer Facility: The City shall designate a transfer facility for District's stockpiling of soil related to operation and maintenance of District owned facilities at Alameda Point as covered by the September 30, 2022 Site Management Plan (SMP). Concrete and asphalt spoils associated with District-owned facilities do not require on-site characterization and are not included in this Second Amendment. The District shall transfer soil generated from work related to District-owned facilities within Alameda Point and deposit those soil in a transfer station designated by and on land managed by the City. The District shall call, and notify the City in writing, of soils deposited to this transfer station within 24 hours of such deposit, with said writing including the volume and origin of the deposited soil. The City shall then be responsible for handling and hauling the spoils in accordance with the SMP at the District's expense. The District will be the generator of waste on any waste manifest regarding these District spoils and District will provide City with any required EPA identification number required for hauling hazardous waste. The City will invoice the District for all costs related to handling and hauling of these soils to the District-provided contact.

4. Environmental Contamination. Section 7 of the Maintenance Agreement is replaced in its entirety with the following language:

The City and District agree that the SMP is the most current and comprehensive document of site investigation activities and the nature and extent of residual contamination in site soils and groundwater. The SMP's intent is to mitigate potential risks associated with redevelopment of Alameda Point. Both Parties are expected to comply with the most current version of the SMP. The City has specified the following as the current environmental remediation contact:

Andrew Romolo
Terraphase Engineering Inc.
510-645-1856
Andrew.romolo@terraphase.com

Doug Delong
NAVY
(510) 772-8832
Douglas.delong@navy.mil

5. Miscellaneous.

- a. This Second Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.
- b. Except as herein modified or amended, the provisions, conditions and terms of the Maintenance Agreement shall remain unchanged and in full force and effect.
- c. In case of any inconsistencies between the provisions of the Maintenance Agreement and this Second Amendment, the provisions of this Second Amendment shall govern and control.
- d. This Second Amendment may be executed in multiple counterparts each of which is deemed an original but together constitutes one and the same instrument. This Second Amendment may be transmitted in pdf format and each party has the right to rely upon a pdf counterpart of this Second Amendment signed by the other party to the same extent as if such party had received an original counterpart.

Signatures on following page

IN WITNESS WHEREOF, Parties have duly executed this First Amendment as of the Effective Date set forth above.

**EAST BAY MUNICIPAL UTILITY
DISTRICT**, a municipal water
utility provider

CITY OF ALAMEDA
a municipal corporation

David A. Briggs
Director of Operations and Maintenance

Jennifer Ott
City Manager

Approved:

Approved as to Form:

Derek T. McDonald
General Counsel

Len Aslanian
Assistant City Attorney

Recommended for Approval:

Erin Smith
Public Works Director