

**SHORT TERM AGREEMENT TO PROVIDE SERVICES FOR THE
CITY OF ALAMEDA'S POTABLE WATER SYSTEM AT ALAMEDA POINT**

This Short Term Agreement to Provide Services for the City of Alameda's Potable Water System at Alameda Point for up to 6 months between EAST BAY MUNICIPAL UTILITY DISTRICT (District) and the CITY OF ALAMEDA (City), (collectively, the Parties) is effective as of April 19, 2017 or the date of the last required signature, whichever is later.

RECITALS

- A.** The Alameda Point Potable Water System has at all times been the property of the United States Department of the Navy (Navy) or the City. The system was neither built nor maintained to District standards. In expectation that the system would be upgraded and turned over to the District, on or about May 2, 1997, the District and the City entered into a five-year Joint Exercise of Powers Agreement(JPA) under which the District agreed to provide specified services to assist the City in meeting its potable water system related custodial responsibilities at Alameda Point. This JPA was subsequently modified, updated and replaced. It now terminates on March 31, 2017.
- B.** The City continues to require services for the Alameda Point Potable Water System, and the District has agreed to provide such services for a limited term, on the conditions and to the extent set forth below.

NOW, THEREFORE, it is mutually agreed by the City and the District that in consideration of the promises contained in this Agreement, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. Purpose and Acknowledgements.

1.1. Site Scope: The Alameda Point Potable Water System for which specified services will be provided by the District pursuant to this Agreement is as shown in the map labeled Attachment A2 and attached as part of Exhibit A.

1.2. Field Operations Chief: City agrees to assign and designate a field operations position to act as the operations and maintenance liaison to the District.

1.3. NPDES Permit Coverage: The City acknowledges that its full compliance with all requirements set forth in the Notice of Acceptability is a requirement under the State Water Resources Control Board (SWRCB) adopted Statewide General National Pollutant Discharge Elimination System Permit CAGI 140001 (NPDES Permit) to regulate drinking water system

discharges from community water systems across California. The City will remain in compliance with the terms of this Agreement and its NPDES permit, as a condition precedent to the District's obligation to provide the services specified by this Agreement.

1.4. NPDES Permit Compliance: The District will implement the same BMP program in the Alameda Point that it implements throughout its service area, with the exception of regulatory reporting. The District will provide discharge notifications and data to the City and other required parties as prescribed in the NPDES Permit Attachment E – Monitoring & Reporting, Sections IV & V. All other reporting required by the NPDES Permit is the sole responsibility of the City. Any and all enforcement action, including associated fines and penalties, due to non-compliant discharges from the Alameda Point are the sole liability of the City. The District will provide all available data to the City as requested to respond to any enforcement action.

2. Specified Services.

2.1. Scope: The District shall provide services for the Alameda Point Potable Water System as set forth in Exhibit B to this Agreement (Specified Services). The District shall have unlimited and unimpeded access to the Infrastructure to enable the District to perform the Specified Services in accordance with this Agreement, subject only to the requirement to first notify the City where it is anticipated that the cost to provide Specified Services will exceed the limits set forth in this Agreement.

2.2. Supervision and Control: The District shall have sole and exclusive supervision and control over its services under this Agreement, including but not limited to the size and makeup of crews providing Specified Services, the type and level of Specified Services provided, and the timing and scheduling of said Specified Services. It is understood and agreed that the time of work provided pursuant to this Agreement shall be determined by District on the basis of its overall scheduling requirements and needs, taking into account such factors as the availability of work crews, materials, equipment, other commitments and contracts of District, and emergency jobs or installations.

2.3. Emergency and Non-Routine Notice: The District will advise the City as soon as practicable whenever Emergency or Non-Routine Services will be, or have been performed by the District. Except for the notice required under Paragraph 2.1 and Exhibit B, no other notice of District performance of Specified Services is required to be given to the City. To the extent

possible, the District will notify affected tenants of any planned interruption of water service due to the provision of Specified Services.

3. Costs.

3.1. Actual Costs: City shall compensate the District for all of its Actual Costs to provide the Specified Services called for in this Agreement. For the purposes of this Agreement the term Actual Costs includes materials, labor, use of equipment, all District standard overhead charges, subcontractor services and all other costs incurred by the District to provide the Specified Services.

3.2. Routine Maintenance Services Cost Caps: The District will limit its routine maintenance services under this Agreement to those that can be provided at a cost of \$10,000 per month.

3.3. Emergency Services: The District shall have the right, at its sole discretion to determine if emergency services are needed and to provide such emergency services to \$40,000 per emergency repair event, unless the City provides oral approval to perform services above said amount which oral approval shall be verified in writing within 24 hours.

4. Monthly Billing.

The District will determine the Actual Costs incurred in performance of the Specified Services pursuant to this Agreement.

4.1. Invoice: On a monthly basis, the District shall prepare an itemized invoice, for the preceding month, detailing the Actual Costs incurred in providing Specified Services. Invoices shall be submitted to:

City of Alameda
Attention: Erin Smith, Acting Deputy Public Works Director
950 West Mall Square
Alameda, CA 94501
(510) 747-7900

Invoice inquiries should be directed to:

East Bay Municipal Utility District
Attention: Antonio Martinez
Manager of Distribution Maintenance and Construction
375 11th Street, MS #608
Oakland, CA 94607-4240
(510) 287-0859

The City shall pay the amount of the invoice within thirty (30) days following receipt of District's written invoice. District's determination of all costs shall be final and binding, provided that such determination shall be made in accordance with generally accepted accounting principles.

4.2. Water Consumption Charges: Water consumption charges are not covered by this Agreement. The City shall pay all of the District's standard billed water consumption charges for water delivered to Alameda Point in the ordinary course of business. These consumption charges shall not be included as part of the Cost Caps described in Section 3.

5. Indemnification.

To the fullest extent permitted by law, the City shall defend, indemnify, and hold harmless the District and its Directors, officers, associates, agents, contractors, subcontractors, and employees (indemnified party) from any and all claims, demands, suits, costs, fines, penalties, expenses, and liability for any claims, threatened claims, damages, consequential damages, injuries, sickness, or death, violation of state or federal law, regulations or ordinance, as well as any and all attorneys' fees, expert witness costs, and legal costs arising from or related to the performance of this Agreement, inverse condemnation, nuisance, trespass, lost profits, interruption of water service, or liability under any state or federal law or regulation governing the handling and disposal of contaminated soil or hazardous waste, and/or any other act or omission to act, regardless of any contributory fault or negligence of the indemnified party, but not as to any indemnified party's gross negligence or willful misconduct. The District shall have the right to approve any legal counsel retained to defend any indemnified party under this Agreement. This indemnity agreement shall survive any cancellation, suspension, or termination of this Agreement. In the event action is brought against the City, the City shall provide its own defense at the sole cost and expense of the City.

6. Soil Management.

6.1. Excavated Soil Management: In the course of performing the Specified Services, the District may encounter soil and/or groundwater that may contain contaminants, such as volatile organic compounds, fuels, heavy metals, radium, and/or other hazardous materials. In order to effectively and safely manage excavated soils on the Alameda Point site, the City agrees to designate a transfer facility for centralized stockpiling of soil. The District will deposit spoils into the transfer station for disposal by the City. The City shall be responsible for the handling,

maintenance and disposal of excavated soils in accordance with all applicable state, federal and local regulations. The City is responsible for obtaining any necessary excavation permit¹. The City understands and agrees that, if contaminants are encountered, such that District personnel cannot safely perform the Specified Services, the Specified Services will be delayed or stopped during the removal, treatment, or disposal of said contaminants and water service at Alameda Point may be interrupted. The District shall timely call the City and notify the City in writing of the presence of such contaminants and be available to discuss options for contaminated soil removal and transporting to the transfer station such that Specified Services can be completed.

6.2. Contaminated Soils: In the event contaminated soils are identified and/or characterized as hazardous waste and removal of such materials requires a HAZWOPER certified contractor to be called onsite to manage the hazardous soil; it is the full responsibility of the City to make the necessary arrangements with the contractor, including selecting, hiring, managing, paying and funding, and to make any appropriate regulatory notifications. The District may choose not to remove contaminated soils at any excavation required to perform the Specified Services. If the District chooses not to remove contaminated soils at any excavation site, the District will promptly notify the City of this decision. Once notified the City has full responsibility to remove the soils. The District will not perform any work until such time that the District is satisfied that a certified HAZWOPER contractor has secured the site to adequately protect worker safety.

7. Environmental Contamination.

The City agrees to supply the District with updated remediation information, such as but not limited to, "hot zone" maps, sampling results, and the status of environmental remediation efforts every six months generally in March and September of each year. The City shall provide the name and contact number of the responsible Party for current remediation records for purposes of determining hazardous conditions before necessary work commences. The Parties acknowledge that much of the City's environmental information concerning Alameda Point was supplied by the Navy. The City has specified the following as the current environmental remediation contact:

Peter Russell, PhD, PE
Russell Resources, Inc.
(415) 902-3123
peter@russell-resources.com

¹ Navy is presumed to be the generator of all excavated soil.

Doug DeLong
NAVY
(510) 772-8832
douglas.delong@navy.mil

8. Term of Agreement.

District shall provide Specified Services pursuant to this Agreement until (1) this Agreement terminates 180 days after the effective date of the Agreement, (2) the City or the District terminates this Agreement upon 30 days advanced written notice to the other, or (3) the City fails to notify the District of a fee title transfer as required in Paragraph 10 of this Agreement. In the event of termination, the District shall be entitled to compensation for all Specified Services performed to the effective date of the termination.

9. Communications.

The Project Managers for this Agreement are as listed below. Any communication, demand or notice to be given shall be given to the Project Manager and shall be deemed to have been given within three (3) business days of such communication, demand or notice being deposited in the United States mail and sent postage prepaid and addressed as follows:

Marc Carradine, Construction and Maintenance Superintendent
East Bay Municipal Utility District, MS #82
375 - 11th Street Oakland, CA 94607
(510) 287-1690 or (510) 287-0855
marc.carradine@ebmud.com

Erin Smith, Acting Deputy Public Works Director 950 West Mall Square
Alameda, CA 94501
(510) 747-7900
esmith@alamedaca.gov

If a designated Project Manager changes, the appropriate Party shall notify the other Party of the name, address, phone number, and email address of the new Project Manager within 30 days.

Email addresses in this Agreement are given for informational purposes but do not satisfy the U.S. mail or telephone notice requirements of this Agreement.

10. Alameda Point Development

The Parties recognize that it is in their mutual interest to work together in planning for proposed changes in uses within Alameda Point. Portions of Alameda Point are being developed in conformance with District Regulations. These portions will be removed from the City of Alameda's water system at Alameda Point and integrated into the District's water system. As such, they do not need to be the subject of this Agreement. The purpose of this Agreement is to provide the Specified Services on a short term basis to the portions of Alameda Point owned by the City and that have not yet been removed from the City of Alameda's water system at Alameda Point and integrated into the District's water system. The portions of Alameda Point that are not covered by this Agreement are distinguished from the portions that are covered in the map of Alameda Point attached as part of Exhibit A to this Agreement. As additional portions of Alameda Point are upgraded and integrated into the District's water system those portions will be removed from coverage under this Agreement and the map will be updated accordingly. The City shall notify the District at least 30 days in advance of transferring fee ownership of property in Alameda Point, and shall reserve all appropriate utility easements. The Parties recognize that the District intends to provide the Specified Services under this Agreement only to the City. Where the City is transferring a fee interest to property in Alameda Point that does not connect to an EBMUD mainline, the City shall, prior to transferring that interest, provide advance notice to the purchaser important information concerning water usage, including information in substantial conformity with the following: "You, the new water user at Alameda Point, are not automatically a customer of the East Bay Municipal Utility District (EBMUD). Alameda Point is currently served by 3 master water meters on a grid system which serves other customers, and you may experience water service outages during repairs to infrastructure. To become a customer of EBMUD, please notify EBMUD at your earliest feasible convenience."

When fee ownership of a portion of Alameda Point is transferred to a private property owner, the City shall notify the District in writing no later than 30 days after transfer and shall submit to the District a copy of the deed that includes a precise description of the location and a map delineating the area deeded or transferred, and the mapped parcel shall be removed from all maintenance responsibilities of the District specified in Exhibit B. The Parties agree that the map

of each such parcel(s) so identified shall be added as an Exhibit to this Agreement and serve as the record of the reduction in the area of District responsibility for maintenance under this Agreement. Failure of the City to notify the District as required above, including in advance of any fee title transfers of any portion of Alameda Point depicted in Exhibit A to this Agreement is a material breach of this Agreement and will be considered to be an immediate termination of this Agreement.

11. Entire Agreement.

This instrument including its exhibits and attachments, contains the entire Agreement of the parties relating to the rights granted, obligations assumed, and supersedes all prior written and oral discussions or representations and is not intended to create any third Party rights. All referenced Exhibits and Attachments are incorporated into this Agreement by reference.

12. No Discrimination.

There shall be no discrimination in the performance of this Agreement against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. Neither Party shall establish or permit any such practice(s) of discrimination with reference to this Agreement or any part of it. Parties determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

The Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

13. Modification of Agreement.

The Parties may agree to modifications, amendments, or additions to this Agreement only by mutual written consent sign by the Parties.

14. Severability.

Should any part of this Agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be reasonably interpreted to give effect to the intentions of the parties.

15. Controlling Law.

This Agreement shall be governed by the laws of the State of California.

16. District Right to Terminate Water Service.

It is understood and agreed that this Agreement shall in no way restrict or limit the District's right to terminate water service.

17. No Waiver.

The District's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. The District's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.

18. Signatories Authorized.

This Agreement has been executed by the respective Parties through their respective authorized personnel. Multiple copies of this Agreement may be executed by the Parties and the Parties agree that the Agreement on file at the District is the version of the Agreement that shall take precedence should any differences exist among counterparts of the Agreement.

19. Disputes.

Any disputes occurring under this Agreement shall first be reviewed and settled by the respective General Manager or City Manager of the affected Parties. In the event the Parties cannot resolve their disputes informally, then, upon thirty (30) calendar-days written notice, the aggrieved Party may seek judicial relief taking care to comply with any applicable requirements of California Government Code Sections 900, et seq., which requirements, if any there are, have not been waived by this Agreement.

20. Interpretation.

This Agreement shall be deemed to have been prepared equally by all of the Parties, and

the Agreement and its individual provisions shall neither be construed nor interpreted more favorably for one Party on the basis that the other Party prepared it.

21. Headings.

The headings used in this Agreement are for reference purposes only and do not constitute substantive matters to be considered in construing the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized personnel in _____, California, on this _____ day of March 2017.

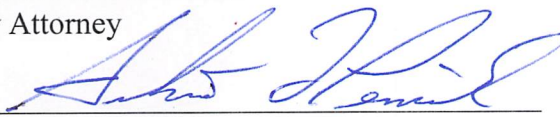
CITY OF ALAMEDA

By: _____
Jill Keimach, City Manager

Date: _____

Approved as to Form:

City Attorney

By: 

Andrico Q. Penick
Assistant City Attorney

Date: 4/6/17

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Clifford C. Chan
Manager of Maintenance and Construction.

Date: _____

Approved as to Form:

By: _____
for the Office of General Counsel

EXHIBIT A

Alameda Point Potable Water System

For purposes of this Agreement, the Alameda Point Potable Water System is defined as the water distribution piping and fire suppression water distribution piping owned by the City of Alameda and in service at Alameda Point. The Alameda Point Potable Water System includes the related valves and hydrants. Pursuant to this Agreement, and so long as the City is in compliance with the terms of this Agreement and its NPDES permit, the District will provide services to portions of the Alameda Point Potable Water System as shown in the attached map – Attachment A2 or subsequent maps, to the extent agreed in this Agreement. It is understood by the Parties to this Agreement that fee title to the area shown on Attachment A2 as “Site A Phase 1” is in the process of being transferred by the City to a developer. Until the transfer is completed Site A Phase 1 will receive the Specified Services pursuant to this Agreement. Once the transfer is completed the District will no longer provide the Specified Services to Site A Phase 1 under this Agreement. The transfer of Site A Phase 1 will be deemed completed upon fee title transfer and recordation of the attendant deed. It is agreed, however, that the District's responsibilities shall terminate at the point that any pipeline included in the Alameda Point Potable Water System passes beneath or connects to any building or structure as part of the water delivery system, or passes onto any pier or wharf. In the event a leak or failure occurs to the Alameda Point Potable Water System under a building or structure, the District will attempt to isolate the leak and contact the City as soon as possible for the City to determine how repairs should be effected. Additionally, where a building shutoff valve exists or at such time as a meter is installed for purposes of measuring water delivery to any residence or business situated at Alameda Point, the District's Specified Services responsibilities with respect to the water delivery system providing water service to said residence or business shall terminate at said shutoff valve or meter. Under no circumstances, shall the District repair or otherwise maintain water pipelines and appurtenances within buildings and other structures or on piers or wharves. In the event the District determines that work is beyond its responsibilities under this Agreement, the District will promptly notify the City.

EXHIBIT A, Attachment A2

EXHIBIT B

Alameda Point Potable Water System Specified Services and Responsibilities

District will provide Specified Services to the portion of the Alameda Point Potable Water System identified in Exhibit A, Attachment A2, according to customary water utility standards of practice.

District will endeavor to provide a level of service as close as possible to the level of service provided for the District owned system. The Parties acknowledge that the level of service cannot be assured as the Alameda Point Potable Water System was not designed to District standards, was not constructed to District standards and was neither operated nor maintained to District standards., Further, there are portions of the Alameda Point Potable Water System that are not under the District's physical control and none of the Alameda Point Potable Water System is under the District's financial control, all of which limit the District's ability to ensure compliance with the DDW permit. Notwithstanding the above, the City acknowledges that it alone is fully responsible for all non-compliant events that cause impacts to beneficial uses, and that it alone is fully responsible for making all required regulatory notifications and reporting.

Specified Services to be provided by the District under this Agreement are:

- 1. WATER QUALITY MONITORING (sample collection, analysis and reporting)**
 - a. Preparation of a water quality sampling plan
 - b. Routine bacteriological testing and chlorine residual measurements
 - c. Water quality testing and analysis as needed in response to customer inquiries, main breaks, positive coliform bacterial results from the routine programs, etc.
 - d. Other water quality testing and analysis as directed by the State Water Resources Control Board Division of Drinking Water (DDW).
- 2. RESPONDING TO INQUIRIES BY CITY'S ALAMEDA POINT CUSTOMERS**

Inquiries regarding water quality, water pressure and water flow within the Potable Water System will be investigated and an appropriate response will be provided to the extent possible, given the limitations of the existing potable water system.
- 3. SYSTEM FLUSHING**
 - a. As required to address water quality issues, end user inquiries, pipe repairs

- b. The City shall pay for all water used for hydrant flushing, hydrant testing, unidirectional flushing, disinfection, and dechlorination.

4. DISINFECTION AND DECHLORINATION

- a. Disinfection of pipes and appurtenances as required in response to main breaks, main repairs, appurtenance installation, etc., to ensure sanitary condition of distribution system
- b. Perform dechlorination of potable water released to the Municipal Separate Storm Sewer System (MS4) or receiving waters as needed to prevent any adverse environmental impacts and to comply with storm water regulations

5. HYDRANT FLOW TESTS

Perform or coordinate with the City Fire Department to perform hydrant flow tests if needed for verification of fire flow or hydraulic model calibration.

6. WATER MAIN REPAIR

- a. Investigation, leak identification, excavation, repair, testing, backfill and resurfacing associated with broken or leaking water mains.
- b. Installation of service line valves at locations that facilitate for future meter installation and/or to facilitate repairs.
- c. The District shall request and obtain advance approval from the City for any planned repairs estimated to be in excess of \$10,000.
- d. If an emergency repair is required, the District may proceed to secure the emergency without approval, and fully repair if the repair is estimated to be less than \$40,000. Such caps are subject to escalation as set forth in Section 3.2. District shall use due diligence in responding and shall contact and advise City within 24 hours of an emergency repair. If the City does not approve expenditures over the then applicable cap, it shall so notify the District in writing. Thereafter, the District will secure the site and the City will accept full responsibility for making any necessary repairs and for any consequential damages. The City shall reimburse the District for all Actual Costs incurred in responding to the event and securing the site even if those costs exceed the then applicable cap.

7. APPURTENANCE REPLACEMENT AND REPAIR

- a. Replacement or repair of hydrants, valves, meters, as needed to maintain current

Alameda Point level of service

- b. Installation of blow-offs as needed to maintain water quality

8. POTABLE WATER SYSTEM SERVICES

Maintenance, replacement and repair of equipment as needed to meet the current level of service for the Alameda Point Potable Water System. The District will operate the distribution pipelines to maintain acceptable water quality in the distribution system to the extent possible given the limitations set forth above.

9. REPORT PREPARATION

If necessary, District will assist the City to prepare water quality reports as required to meet DDW requirements. These reports may include annual water quality reports, reports of maximum contaminant level violations, etc.

10. NOTIFICATION

District will provide notification to City regarding water quality problems and significant system outages so City can meet its responsibility to make all required regulatory notifications.

11. WATER SYSTEM MARKING

District will mark location of water system facilities in response to Underground Service Alert requests. Such markings will be based solely on available maps, supplied by City to District. District accepts no responsibility as to the accuracy of said maps.