



# East Bay Municipal Utility District Applicant-Installed Water Main Extension Agreement

ESTIMATE NO. 18-019  
DATE 4/5/18

AGREEMENT NO. EA  
DATE \_\_\_\_\_

For the purpose of making water service available to certain premises of:

City of Alameda

950 West Mall Square, Alameda, CA 94501

(Applicant) which premises are described more particularly in Section 6 hereof, Applicant and East Bay Municipal Utility District (District) mutually agree as follows:

1. Except as otherwise provided herein, for the sum of **One Million One Hundred Twenty Two Thousand Five Hundred Ninety Seven Dollars (\$1,122,597.00)** paid in advance by the Applicant, the District will furnish certain engineering and inspection services for the installation by the Applicant of the water main extensions, fire hydrants and/or other appurtenances specified below and described and located on the attached estimate sketch which is incorporated herein by this reference. The District shall also supply valves, blowoffs and minor appurtenances essential to said installation, as more particularly described in the District's "Standard Specifications for Installation of Water Mains 20" and Smaller" forms, instructions and all drawings attached thereto or to be issued thereunder, which specifications, forms, instructions and drawings are incorporated herein by this reference. If steel pipe is specified for the installation, the steel pipe and fittings shall be supplied by the District, unless otherwise noted, and the cost included in the sum set forth above.

If polyvinyl chloride pipe is specified for the installation, the pipe and fittings shall be supplied by the Applicant, at the Applicant's expense, which cost shall be in addition to the sum specified above. Pipe and fittings supplied by the Applicant shall comply with specifications and drawings furnished by the District and shall be subject to inspection by the District. In the case of conflict between the specifications and this Agreement, this Agreement shall govern.

### WATER MAINS

- +/- 1,960 feet of 8-inch Steel pipeline
- +/- 3,685 feet of 12-inch Steel pipeline
- +/- 3,190 feet of 16-inch Steel pipeline

### FIRE HYDRANTS

Twenty (20) public hydrants

### SPECIAL CONDITIONS

Filed map required.

Final improvement plans required.

San Francisco Bay lies near proposed development. Best field management practices will be used for flushing operations.

Right of way required.

No meter to be located in driveways or the travelled right of way.

Except for Building 611, all other active buildings bounded by W. Midway Avenue, Pan Am Way, W. Tower Avenue, and Main Street to be temporarily served by two meters as shown on this estimate sketch and Adaptive Reuse Water System Plan-Phase 1, Dated March 10,2018. Existing Alameda Point water system pipelines within the bounded area to be severed by applicant at applicant's expense at locations shown and to be operated and maintained by the City of Alameda.

Except for existing Alameda Point water system pipelines identified in Note 6 of estimate sketch, all existing Alameda Point pipelines within Reuse Area (Phase 1) boundary (fire suppression and potable system) are to be killed by applicant at locations shown on the sketch and Adaptive Reuse Water System Plan-Phase 1 dated February 12, 2019 at applicant's expense. Per EBMUD standard specifications for salvage or abandonment of existing facilities (Spec 02511.1(3.9)), any pipeline that remains in the ground must be filled with cellular concrete or similar material.

Installation of 8-inch meter is required to maintain existing level of service and fire flows to the existing potable Alameda Point system. Meter installation at Applicant's expense. No System Capacity Charge credit will be given since the capacity of the abandoned service will be relocated to the new service.

Removal of existing 8-inch meter contingent upon installation and placement in service of pipelines and meters to be installed under this estimate.

Active buildings that require water service are identified on this sketch (see legend). All other buildings are unoccupied with no water service planned and/or will be demolished by the applicant. Active buildings are to be served as follows:

- Buildings 8, 9, 40, 41, 73A, 77, 91, 92, 607, and 611 to be served by new mains to be installed under this estimate.
- Buildings 459, 613, 805-812, and 816-822 bounded by W. Midway Avenue, Pan Am Way, W. Tower Avenue, and Main Street to be served by temporary meters (see note 6).

At least six months prior to any prior to any new water main extension being placed into service, the City must notify all existing and new property owners of the requirement to transfer water services from the City's private water system to the new EBMUD water system, including applying for water service to become EBMUD customers and paying all applicable water and wastewater related fees as determined by EBMUD.

Installation of pipeline and hydrants under this WSE is contingent upon the installation and placement in service of the water mains under WSE15-037.

Applicant shall provide proof in the form of environmental documentation and exceeding completion reports that the public utility easement is clear of contamination exceeding established clean up goals prior to release of design drawings. This proof shall demonstrate that the chemical of concern (COCS) documented in the record of decision at this site are not located within the proposed utility alignments and will not harm the health and safety of District customers or workers through direct contact with the COCS or through infiltration of the District's water main through future operation and maintenance of the water main.

Applicant to kill existing Alameda Point pipelines under the field supervision of EBMUD construction inspectors.

EBMUD is not responsible for operations of the deluge (fire suppression) system or any potential impacts to the deluge system due to the construction of Phase 1, which includes severing and/or removal of all of the existing deluge system pipelines within the boundaries of Phase 1 by the City of Alameda. The City of Alameda is required to make backflow protected connections between the existing potable system and the existing deluge system.

The offer to provide District services and materials for the sum specified above shall automatically expire, and is thereby revoked, ninety (90) days from the date this Agreement is provided to Applicant for signature. An Agreement sent by U.S. mail service is "provided to Applicant" on the day it is deposited in the mail by District.

Prior to expiration of the ninety (90) day period, Applicant may accept District's offer by signing and returning this Agreement to District with the required down payment in the amount set forth in Section 2. No other action shall constitute acceptance of District's offer. Notwithstanding the District's offer, the sum specified above may be adjusted as otherwise provided in this Agreement.

2. The Applicant shall pay to the District the sum specified in Section 1 prior to commencement of the installation work and release of any materials for said extension. **Two Hundred Twelve Thousand Seventy-Two Dollars (\$212,072.00)** is payable as a down payment upon receipt of this Agreement by the District, and the balance is payable when the work orders have been completed and the District-supplied materials are ready for release from the District's warehouse and the Applicant has notified the District that he or she is ready to proceed with the installation.

**If within twelve (12) months from the date of this Agreement the Applicant fails to make payment in full as herein provided and commence the installation of the water mains, the District may, at its option, cancel and terminate this Agreement and it shall be released from any obligation to furnish materials and engineering and inspection services as provided in Section 1. In the event of cancellation, it is agreed that the District shall retain all of said down payment as liquidated damages.**

3. Notwithstanding any other provision of this Agreement, it is understood and agreed that if Applicant fails to commence installation of the water mains within twelve (12) months from the date of this Agreement, or to complete installation within twelve (12) months of commencement, the sum specified in Section 1 shall be adjusted to reflect applicable charges for District provided services and materials in effect at the time said services or materials are provided, unless this Agreement is terminated as provided in Section 2. It is further understood and agreed that the sum specified in Section 1 includes the cost of one cycle of flushing, sampling, and analyzing water from the completed main installation. Applicant agrees to pay the cost of any additional flushing and testing that District determines to be necessary.

Applicant further agrees that water service shall not be made available to the premises, and District has no obligation to accept the water mains or to perform work or provide any materials pursuant to this Agreement, until Applicant has paid in full the adjusted sum as provided herein and in Section 9 and has paid the costs of any additional flushing and testing.

4. Other Amounts: Other amounts, referred to and more fully explained in paragraphs 5a, 11a, and 12a respectively, are:

- a. Amount of Performance bond: Three Million Two Hundred Eighteen Thousand Dollars  
\$3,218,000.00
- b. Amount of Payment bond: Three Million Two Hundred Eighteen Thousand Dollars  
\$3,218,000.00
- c. Front foot charge: None
- d. Limit of refunds: None

5. Prior to the release of work orders by the District and as soon as practicable following execution of this Agreement:

- a. Bonds: The Applicant shall provide the District with a payment bond, as required by Civil Code sections 9550 and 9554 in the sum stated in Section 4b as well as a bond in the same sum conditioned on the Faithful Performance by the Applicant of all the terms of this Agreement. The surety or sureties must be qualified to do business in the State of California and the bonds must be satisfactory to the District. If any of the sureties, in the sole opinion of the District, are or become irresponsible, the District may require other or additional sureties which the Applicant shall furnish to the satisfaction of the District within ten (10) days from notice. In default thereof, the District shall be released from all obligations under this Agreement. No prepayment or delay in payment and no change, extension, addition or alteration of any provision of this Agreement or in said specifications and drawings agreed to between the Applicant and the District and no forbearance or acceptance by or on the part of the District shall operate to release any surety from liability on a bond.
- b. Insurance: The Applicant shall take out and maintain during the life of the Agreement all the insurance required by this section and shall submit Certificates for review and approval by the District. The Certificates shall be on the forms provided by the District. The work orders shall not be released and the Applicant shall not commence work, until the Certificates have been received and accepted by the District. Acceptance of the Certificates shall not relieve the Applicant of any of the insurance requirements, nor decrease the liability of the Applicant.

The District reserves the right to require the Applicant to provide Insurance Policies for review by the District.

(1) Worker's Compensation Insurance: The Applicant or his Contractor shall take out and maintain during the life of the Agreement, Worker's Compensation Insurance for all of his employees on the project. In lieu of evidence of Worker's Compensation Insurance, the District will accept a Self-Insuring Certificate from the State of California. The Applicant shall require any contractor to provide him and the District with evidence of Worker's Compensation Insurance, all in strict compliance with California State Laws.

(2) Public Liability Insurance: The Applicant or his Contractor will take out and maintain during the life of the Agreement Comprehensive Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. The Applicant shall require any contractor to provide him and the District with evidence of the same liability insurance coverages. The amount of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage-Automobile Liability

\$2,000,000/Occurrence, Bodily Injury, Property Damage-General Liability

(3) The following endorsements/coverages must be indicated on the certificate:

- (a) The District, its Directors, Officers and Employees are Additional Insureds in the policy(ies) as to the work being performed under this Agreement.
- (b) The coverage is Primary and non-contributory to any other applicable insurance carried by the District.
- (c) The policy(ies) covers contractual liability.
- (d) The policy(ies) is written on an occurrence basis.
- (e) The policy(ies) covers District's Property in Consultant's care, custody and control.
- (f) The policy(ies) covers personal injury (libel, slander, and wrongful entry and eviction) liability.
- (g) The policy(ies) covers explosion, collapse, and underground hazards.
- (h) The policy(ies) covers products and completed operations.
- (i) The policy(ies) covers the use of owned, non-owned and hired automobiles.
- (j) The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
- (k) The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

6. The premises owned by the Applicant at the date of execution of this Agreement and which premises the main extension is originally designed to serve are described as follows:

Alameda Point Adaptive Reuse Phase 1, Alameda, California, as delineated on the attached Estimate Sketch which is part of the Agreement.

7. The Applicant shall give written notice to the District at least five (5) days before initially starting work under this Agreement. The District shall be notified when work is stopped and again started.

8. Applicant shall use materials and services supplied by the District solely for the installations and locations described in Section 1. All work performed by the Applicant shall be in accordance with the specifications and drawings furnished by the District and shall be subject to inspection by the District at all times and must meet District standards prior to the acceptance of Applicant work.

9. Change Orders. It is understood and agreed that the sum specified in Section 1 may be adjusted when the main installation requires that District supply services and/or materials not included in the said sum. In such event, District will issue a change order to Applicant specifying the additional cost of said services and/or materials. Payment of such additional cost is due within thirty (30) days of billing, but in no event any later than seven (7) days after the main extension has been inspected and approved for service. Delay beyond said seven (7) day period will necessitate another cycle of flushing sampling and analysis of water from the completed main extension, at additional cost to Applicant.

Payment for change orders and the costs of additional flushing and testing are due before any water services may be connected to the main extension. **It is understood and agreed that District is under no obligation to install the water main extension facilities provided for by this Agreement and, further, that water service shall not be made available to the premises until Applicant has paid in full the sum specified in Section 1, as adjusted by the provisions of this Agreement.**

The circumstances giving rise to the issuance of change orders as provided herein include, but are not limited to, the following:

- a. Changes in the proposed use of development of Applicant's premises after the final detailed design plans have been issued.
  - b. Contaminated soils or hazardous materials are encountered which District determines require remediation.
  - c. Unusual construction restrictions or conditions are encountered that will significantly increase the cost of engineering or inspection services, or the cost of materials provided by the District.
10. Upon completion of all installations and work and acceptance thereof by the District, all mains, facilities, and appurtenances installed pursuant to this Agreement shall become the property of the District and part of its system, to be operated, maintained and managed by it as part of such system under the rules and regulations and subject to the rates and charges of the District as amended from time to time.
11. Guarantee: The Applicant hereby guarantees, for a period beginning from the in-service date to within one year after written acceptance of the work completed under contract that any work performed by it under this contract will be performed in accordance with the drawings and specifications; that any material furnished by it will be in accordance with the drawings and specifications provided with this agreement; and that both work and materials will fully meet the requirements of the specifications.

Prior to the in-service date, the Applicant hereby agrees to promptly reinstall, at its own expense, any part of the water main or any appurtenance which has not been installed in accordance with said specifications and drawings.

Once the pipeline is placed into service, the District has sole responsibility for making any repairs to the newly installed pipeline and appurtenances. The Applicant agrees that if, from the time that the pipeline is placed into service, any portion of the work furnished, installed, or constructed by the Applicant fails to fulfill any of the requirements of the contract, the Applicant shall reimburse the District for all costs of said repairs (including overhead) beginning from the in-service date to within one year after written acceptance of the work completed under contract.

The Applicant shall be responsible for the full expense incidental to fulfilling any and all of the above guarantees and agreements. The above guarantees and agreements are covenants, the performance of which shall be binding upon the Applicant and its sureties. Any bonds used to secure the payment or performance of work under this agreement will remain in full force and effect throughout the period of performance, including any warranty or guarantee period.

12. When the Applicant has fully complied with all the terms and conditions of this Agreement and the main or mains have been received into the District's water distribution system:
- a. Collection of front foot charges: The District will collect a front foot charge at the rate per front foot stated in Section 4c from any person for the first connection of either a standard service or a private fire service to any main extension described in Section 1 hereof if such connection is for premises ( 1) other than the premises described in Section 6; (2) which lie along and may be served directly from said main extension, and (3) which were not served from another main at the date of the installation of said main extension. However, under unusual conditions, determinable by the District, certain premises already served at the date of installation may, nevertheless, be subject to the front foot charge. The front foot charge is determined by dividing the charge to the Applicant of a District-installed main extension by the front footage of those premises which lie along and may be served directly from said main extension.  
  
In the event that the main extension is installed within a group of premises forming a "cul-de-sac", the front foot charge is determined by dividing the charge to the Applicant of a District-installed main extension by the number of premises with frontage on the main extension. A cul-de-sac is defined as a street or passage closed at one end.
  - b. Refunds: The District will refund the collected front foot charges to the Applicant once collected. The District is not responsible for any delay in refunding front foot charges due to customer failure to pay.

- c. "Standard service" as used herein shall mean a service for immediate and permanent use, other than private fire service, which is installed within the District directly adjacent to the premises to be served.

13. The payment of said refunds by the District is limited as follows:

- a. Amount Limitations: The total amount of all refunds payable by the District to the Applicant under this Agreement shall not exceed the sum stated in Section 4d, which sum was computed as if the installation of the water mains described in Section 1 (exclusive of fire hydrants and water services) were made by the District .
- b. Time Limitations: Any refunds due to the Applicant under Section 11b will be paid within ninety (90) days following the date of collection but no front foot charge refunds will be made twenty (20) years after the date of the execution of this Agreement except those which have accrued during such twenty (20) year period.

14. And further as to performance hereunder by the District:

- a. Time: The time of, and performance of, engineering and inspection services or the transfer and furnishing of materials to the Applicant by the District shall be determined by the District on the basis of its overall scheduling requirements of work crews, materials and equipment, other commitments and contracts of the District, and emergency jobs or installations. Questions of overall District priorities shall be determined by the District. **It is expressly agreed that the District shall not under any circumstances be responsible or liable for costs or damages incurred by Applicant related directly or indirectly to the timing of said performance by the District.**
- b. Materials: This Agreement is subject to any present or future superior obligation of the District to divert and use any or all of the materials covered hereby prior to installation. It is also subject to any present or future governmental regulations, Federal or State, regulating the use of, or establishing priorities for, any of the materials hereunder.

15. And further as to performance hereunder by the Applicant:

- a. Fire Hydrants: The installation of and payment for one or more hydrants under this Agreement by the Applicant and the acceptance thereof by the District give the Applicant no new individual right or interest as to any such hydrant; and the Applicant's position, rights or interests as to any hydrant are the same as though public fire protection agency or other responsible public or governmental agency had contracted, and paid for, or made said installation. On transfer to and acceptance by the District said hydrants shall be District property and shall be used for public fire protection.
- b. Accounting for Materials: Any materials or supplies issued by the District to the Applicant for installation and work under this Agreement which are not installed by the Applicant nor returned to the proper service center or storage area of the District and accepted by an authorized agent of the District shall be billed to, and paid for, by the Applicant.
- c. Contaminated Soil: In the event that contaminants are known to be present or encountered during installation or maintenance of the main extension facilities, Applicant shall provide all related documentation available to Applicant, including site sampling results. If the District determines that the contamination could pose a hazard to District employees, adversely affect water quality or subject the District to extra cost and liability related to trench spoils disposal, the Applicant shall remediate the site. The District will require a legally sufficient, complete and specific written remedial plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of all identified soil and/or water contaminants, including hazardous substances and/or petroleum products or by-products, prior to accepting the application, and the remediation plan must be carried out before installation of the main extension facilities. Applicant shall be solely responsible for the costs of all activities related to said removal, treatment, and disposal.

Applicant expressly agrees to indemnify, defend, and hold the District, its Directors, officers and employees free and harmless from and against any and all loss, liability, expense, costs, claims, suits and damages, including attorneys' fees related to the removal, treatment, and/or disposal of soil and/or water, contaminants, including hazardous substances and/or petroleum products or by-products, and any additional construction costs related to or resulting from the removal, treatment, and disposal of contaminated soil.

- d. Use of Engineering and Survey Data: Applicant shall provide engineering and survey drawings and data as required by the District to provide engineering and inspection services and to maintain the water main extensions described in Section 1 hereof. The Applicant also agrees to obtain from its engineer/surveyor, and to transmit to the District, permission for the District to use, copy and compile copyrighted or copyrightable maps, drawings and surveys. Such permission shall include the District's right to provide such compilations as necessary to other public entities.
- e. Archaeological Resources: "Archeological resources" consist of prehistoric and historic-era archaeological resources. Prehistoric archaeological resources consist of Native American village sites, temporary camps, lithic scatters, roasting pits/hearths, milling features, petroglyphs, rock features, and burials. Associated artifacts include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil ("midden") containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs). Historic-era archaeological resources consist of townsites, homesteads, agricultural or ranching features, mining-related features, refuse concentrations, and features or artifacts associated with early military and industrial land uses.

In the event that archaeological resources are known by Applicant to be present prior to installation or maintenance of the main extension facilities, Applicant shall provide the District with all related documentation available to Applicant, including archaeological resource documentation and records search results. The District will require Applicant to submit a legally sufficient, complete and specific written archaeological management plan prior to beginning design of the main extension. The archaeological management plan must be developed and implemented by the Applicant under the supervision of an archaeologist before or during the main extension installation, as required.

In the event that archaeological resources are encountered during installation or maintenance of the main extension facilities by the Applicant, all activities shall immediately cease at the location of discovery and within 100 feet of the discovery. The Applicant shall be responsible for retaining a qualified archaeologist to inspect the findings within 24 hours of discovery. If it is determined that continuing the pipeline installation could damage a historical resource as defined by CEQA (or a historic property as defined by the National Historic Preservation Act of 1966, as amended), construction shall cease in an area determined by the archaeologist until an archaeological management plan has been prepared and implemented to the satisfaction of the archaeologist and, in the event the site is a Native American heritage site, any Native American representative identified by the Native American Heritage Commission. The archaeologist (and Native American representative) will determine when construction can resume.

Applicant shall be solely responsible for the costs of all activities related to the discovery, disturbance, removal and/or relocation of any archeological resources.

Applicant expressly agrees to indemnify, defend, and hold the District, its Directors, officers and employees free and harmless from and against any and all loss, liability, expense, costs, claims, suits and damages, including attorneys' fees related to the discovery, disturbance, destruction, removal, and/or relocation of archaeological resources, including Native American human remains and culturally significant artifacts, and any additional construction costs related to or resulting from the discovery, disturbance, removal, and/or relocation of archaeological resources.

16. **Real Property Rights:** No portion of the installation of mains, facilities or appurtenances provided for or required hereunder shall be made unless the areas of installation are within dedicated streets and/or rights-of-way, which have been furnished to, and accepted by, the District.

The Applicant understands and acknowledges that the water main extension facilities required for service under this Agreement may be designed for installation in privately-owned real property.

- a. **In-Tract Property Rights:** If the District requires rights within real property owned by Applicant in order to provide service under this Agreement, Applicant agrees to convey those rights to the District, in a form acceptable to District. Applicant further agrees to pay any title and escrow costs associated with said conveyance of rights.
- b. **Out of Tract:** If the District requires rights-of-way within real property owned by persons other than Applicant, the Applicant agrees to acquire all necessary rights and provide these to the District in a form acceptable to the District. The Applicant further agrees that all costs related to said acquisition of property rights are the sole responsibility of the Applicant. The District shall not, by virtue of this Agreement, be obligated to use its powers of eminent domain to acquire any property rights on Applicant's behalf. Further, the District shall not be obligated to install facilities within property designated as public utility easements or within any easements owned by Applicant as appurtenant to Applicant's property.

17. **Indemnification:** The Applicant hereby expressly agrees to indemnify, defend and hold the District, its directors, officers, and employees, free and harmless from and against any and all loss, liability, expense, claims, costs, suits, damages, including attorneys' fees, arising out of or related to the installation of water mains, fire hydrants, and other appurtenances under this Agreement by the Applicant or the Applicant's contractors, subcontractors, agents, or employees.

18. This Agreement shall inure to the benefit of and be binding upon any heirs, administrators, successors and assigns of the respective parties.

19. **This Agreement is made under and subject to the regulations of the District governing water service as adopted and amended from time to time by its Board of Directors.**

Executed in triplicate on the day and year first written above

CITY OF ALAMEDA

Applicant

EAST BAY MUNICIPAL UTILITY DISTRICT

BY

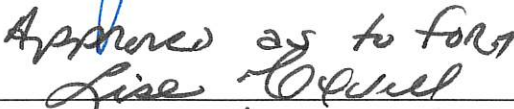


NAME (please print) Eric J. Levitt

BY

Customer Services Manager,  
New Business Office

BY

Approved as to form  


NAME (please print) Lisa Maxwell





# East Bay Municipal Utility District Applicant-Installed Water Main Extension Agreement

ESTIMATE NO. <u>18-045</u>	AGREEMENT NO. <u>EA</u>
DATE <u>9/21/18</u>	DATE _____

For the purpose of making water service available to certain premises of:

City of Alameda

950 West Mall Square, Alameda, CA 94501

(Applicant) which premises are described more particularly in Section 6 hereof, Applicant and East Bay Municipal Utility District (District) mutually agree as follows:

1. Except as otherwise provided herein, for the sum of **Eight Hundred Nine Thousand Six Hundred Thirty Seven Dollars (\$809,637.00)** paid in advance by the Applicant, the District will furnish certain engineering and inspection services for the installation by the Applicant of the water main extensions, fire hydrants and/or other appurtenances specified below and described and located on the attached estimate sketch which is incorporated herein by this reference. The District shall also supply valves, blowoffs and minor appurtenances essential to said installation, as more particularly described in the District's "Standard Specifications for Installation of Water Mains 20" and Smaller" forms, instructions and all drawings attached thereto or to be issued thereunder, which specifications, forms, instructions and drawings are incorporated herein by this reference. If steel pipe is specified for the installation, the steel pipe and fittings shall be supplied by the District, unless otherwise noted, and the cost included in the sum set forth above.

If polyvinyl chloride pipe is specified for the installation, the pipe and fittings shall be supplied by the Applicant, at the Applicant's expense, which cost shall be in addition to the sum specified above. Pipe and fittings supplied by the Applicant shall comply with specifications and drawings furnished by the District and shall be subject to inspection by the District. In the case of conflict between the specifications and this Agreement, this Agreement shall govern.

### WATER MAINS

- +/- 970 feet of 8-inch Steel pipeline
- +/- 2,315 feet of 12-inch Steel pipeline
- +/- 2,790 feet of 16-inch Steel pipeline

### FIRE HYDRANTS

Sixteen (16) public hydrants

### SPECIAL CONDITIONS

- Filed map required.
- Final improvement plans required.
- San Francisco Bay lies near proposed development. Best field management practices will be used for flushing operations.
- Right of way required.
- No meter to be located in driveways or the travelled right of way.
- Installation of 8-inch meter is required to maintain existing level of service and fire flows to the existing potable Alameda Point system. Meter installation at Applicant's expense. No System Capacity Charge credit will be given since the capacity of the abandoned service will be relocated to the new service.
- Removal of existing 8-inch meter contingent upon installation and placement in service of pipelines and meters to be installed under this estimate.
- At least six months prior to any new water main extension being placed into service, the City must notify all

existing and new property owners of the requirement to transfer water services from the City's private water system, including applying for water service to become EBMUD customers and paying all applicable water and wastewater related fees as determined by EBMUD.

Active buildings that require water service are identified on this sketch (see legend on sketch). All other buildings are unoccupied with no water service planned and/or will be demolished by the applicant. Active buildings are to be served as follows:

Buildings 5, 42-44, 102, 62, 614, 405, 23, 24, 19, 400, 11, 12, and 39 to be served by the new mains to be installed under this estimate.

Applicant shall provide proof in the form of environmental documentation and exceeding completion reports that the public utility easement is clear of contamination exceeding established clean up goals prior to release of design drawings. This proof shall demonstrate that the chemical of concern (COCS) documented in the record of decision at this site are not located within the proposed utility alignments and will not harm the health and safety of EBMUD customers or workers through direct contact with the COCS or through infiltration of EBMUD's water main through future operation and maintenance of the water main.

Applicant to kill existing Alameda Point pipelines under the field supervision of EBMUD construction inspectors.

EBMUD is not responsible for operations of the deluge (fire suppression) system or any potential impacts to the deluge system due to the construction of Phase 2 which includes severing and/or removal of all of the existing deluge system pipelines within the boundaries of Phase 2 by the City of Alameda. The City of Alameda is required to make backflow protected connections between the existing potable system and the existing deluge system.

New temporary 10-inch water meter to serve buildings 25 and 29 to be installed at Applicant's expense. Future main extension at the Applicant's expense required to serve buildings 25 and 29.

Estimate is contingent upon the installation of and placement in service of mains installed under WSE18-019.

All existing Alameda Point pipelines within reuse area (Phase 2) boundary (fire suppression and potable system) are to be killed by Applicant at locations shown on the Adaptive Reuse Water System Plan-Phase 2 dated February 12, 2019 at Applicant's expense. Per EBMUD Standard Specifications for Salvage or Abandonment of Existing Facilities (Spec 02511.(3.9)), any pipelines that remain in the ground must be filled with cellular concrete or similar material.

The offer to provide District services and materials for the sum specified above shall automatically expire, and is thereby revoked, ninety (90) days from the date this Agreement is provided to Applicant for signature. An Agreement sent by U.S. mail service is "provided to Applicant" on the day it is deposited in the mail by District.

Prior to expiration of the ninety (90) day period, Applicant may accept District's offer by signing and returning this Agreement to District with the required down payment in the amount set forth in Section 2. No other action shall constitute acceptance of District's offer. Notwithstanding the District's offer, the sum specified above may be adjusted as otherwise provided in this Agreement.

2. The Applicant shall pay to the District the sum specified in Section 1 prior to commencement of the installation work and release of any materials for said extension. **One Hundred Fifty-Three Thousand Eight Hundred Eighty-Five Dollars (\$153,885.00)** is payable as a down payment upon receipt of this Agreement by the District, and the balance is payable when the work orders have been completed and the District-supplied materials are ready for release from the District's warehouse and the Applicant has notified the District that he or she is ready to proceed with the installation.

**If within twelve (12) months from the date of this Agreement the Applicant fails to make payment in full as herein provided and commence the installation of the water mains, the District may, at its option, cancel and terminate this Agreement and it shall be released from any obligation to furnish materials and engineering and inspection services as provided in Section 1. In the event of cancellation, it is agreed that the District shall retain all of said down payment as liquidated damages.**

3. Notwithstanding any other provision of this Agreement, it is understood and agreed that if Applicant fails to commence installation of the water mains within twelve (12) months from the date of this Agreement, or to complete installation within twelve (12) months of commencement, the sum specified in Section 1 shall be adjusted to reflect applicable charges for District provided services and materials in effect at the time said services or materials are provided, unless this Agreement is terminated as provided in Section 2. It is further understood and agreed that the sum specified in Section 1 includes the cost of one cycle of flushing, sampling, and analyzing water from the completed main installation. Applicant agrees to pay the cost of any additional flushing and testing that District determines to be necessary.

Applicant further agrees that water service shall not be made available to the premises, and District has no obligation to accept the water mains or to perform work or provide any materials pursuant to this Agreement, until Applicant has paid in full the adjusted sum as provided herein and in Section 9 and has paid the costs of any additional flushing and testing.

4. Other Amounts: Other amounts, referred to and more fully explained in paragraphs 5a, 11a, and 12a respectively, are:
  - a. Amount of Performance bond: Two Million Three Hundred Forty Seven Thousand Dollars  
\$2,347,000.00
  - b. Amount of Payment bond: Two Million Three Hundred Forty-Seven Thousand Dollars  
\$2,347,000.00
  - c. Front foot charge: None
  - d. Limit of refunds: None
5. Prior to the release of work orders by the District and as soon as practicable following execution of this Agreement:
  - a. Bonds: The Applicant shall provide the District with a payment bond, as required by Civil Code sections 9550 and 9554 in the sum stated in Section 4b as well as a bond in the same sum conditioned on the Faithful Performance by the Applicant of all the terms of this Agreement. The surety or sureties must be qualified to do business in the State of California and the bonds must be satisfactory to the District. If any of the sureties, in the sole opinion of the District, are or become irresponsible, the District may require other or additional sureties which the Applicant shall furnish to the satisfaction of the District within ten (10) days from notice. In default thereof, the District shall be released from all obligations under this Agreement. No prepayment or delay in payment and no change, extension, addition or alteration of any provision of this Agreement or in said specifications and drawings agreed to between the Applicant and the District and no forbearance or acceptance by or on the part of the District shall operate to release any surety from liability on a bond.
  - b. Insurance: The Applicant shall take out and maintain during the life of the Agreement all the insurance required by this section and shall submit Certificates for review and approval by the District. The Certificates shall be on the forms provided by the District. The work orders shall not be released and the Applicant shall not commence work, until the Certificates have been received and accepted by the District. Acceptance of the Certificates shall not relieve the Applicant of any of the insurance requirements, nor decrease the liability of the Applicant.

The District reserves the right to require the Applicant to provide Insurance Policies for review by the District.

(1) Worker's Compensation Insurance: The Applicant or his Contractor shall take out and maintain during the life of the Agreement, Worker's Compensation Insurance for all of his employees on the project. In lieu of evidence of Worker's Compensation Insurance, the District will accept a Self-Insuring Certificate from the State of California. The Applicant shall require any contractor to provide him and the District with evidence of Worker's Compensation Insurance, all in strict compliance with California State Laws.

(2) Public Liability Insurance: The Applicant or his Contractor will take out and maintain during the life of the Agreement Comprehensive Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. The Applicant shall require any contractor to provide him and the District with evidence of the same liability insurance coverages. The amount of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage-Automobile Liability

\$2,000,000/Occurrence, Bodily Injury, Property Damage-General Liability

(3) The following endorsements/coverages must be indicated on the certificate:

- (a) The District, its Directors, Officers and Employees are Additional Insureds in the policy(ies) as to the work being performed under this Agreement.
- (b) The coverage is Primary and non-contributory to any other applicable insurance carried by the District.
- (c) The policy(ies) covers contractual liability.

- (d) The policy(ies) is written on an occurrence basis.
- (e) The policy(ies) covers District's Property in Consultant's care, custody and control.
- (f) The policy(ies) covers personal injury (libel, slander, and wrongful entry and eviction) liability.
- (g) The policy(ies) covers explosion, collapse, and underground hazards.
- (h) The policy(ies) covers products and completed operations.
- (i) The policy(ies) covers the use of owned, non-owned and hired automobiles.
- (j) The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
- (k) The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

6. The premises owned by the Applicant at the date of execution of this Agreement and which premises the main extension is originally designed to serve are described as follows:

Alameda Point Adaptive Reuse Phase 2, Alameda, California, as delineated on the attached Estimate Sketch which is part of the Agreement.

- 7. The Applicant shall give written notice to the District at least five (5) days before initially starting work under this Agreement. The District shall be notified when work is stopped and again started.
- 8. Applicant shall use materials and services supplied by the District solely for the installations and locations described in Section 1. All work performed by the Applicant shall be in accordance with the specifications and drawings furnished by the District and shall be subject to inspection by the District at all times and must meet District standards prior to the acceptance of Applicant work.
- 9. Change Orders. It is understood and agreed that the sum specified in Section 1 may be adjusted when the main installation requires that District supply services and/or materials not included in the said sum. In such event, District will issue a change order to Applicant specifying the additional cost of said services and/or materials. Payment of such additional cost is due within thirty (30) days of billing, but in no event any later than seven (7) days after the main extension has been inspected and approved for service. Delay beyond said seven (7) day period will necessitate another cycle of flushing sampling and analysis of water from the completed main extension, at additional cost to Applicant.

Payment for change orders and the costs of additional flushing and testing are due before any water services may be connected to the main extension. **It is understood and agreed that District is under no obligation to install the water main extension facilities provided for by this Agreement and, further, that water service shall not be made available to the premises until Applicant has paid in full the sum specified in Section 1, as adjusted by the provisions of this Agreement.**

The circumstances giving rise to the issuance of change orders as provided herein include, but are not limited to, the following:

- a. Changes in the proposed use of development of Applicant's premises after the final detailed design plans have been issued.
- b. Contaminated soils or hazardous materials are encountered which District determines require remediation.
- c. Unusual construction restrictions or conditions are encountered that will significantly increase the cost of engineering or inspection services, or the cost of materials provided by the District.

10. Upon completion of all installations and work and acceptance thereof by the District, all mains, facilities, and appurtenances installed pursuant to this Agreement shall become the property of the District and part of its system, to be operated, maintained and managed by it as part of such system under the rules and regulations and subject to the rates and charges of the District as amended from time to time.
11. Guarantee: The Applicant hereby guarantees, for a period beginning from the in-service date to within one year after written acceptance of the work completed under contract that any work performed by it under this contract will be performed in accordance with the drawings and specifications; that any material furnished by it will be in accordance with the drawings and specifications provided with this agreement; and that both work and materials will fully meet the requirements of the specifications.

Prior to the in-service date, the Applicant hereby agrees to promptly reinstall, at its own expense, any part of the water main or any appurtenance which has not been installed in accordance with said specifications and drawings.

Once the pipeline is placed into service, the District has sole responsibility for making any repairs to the newly installed pipeline and appurtenances. The Applicant agrees that if, from the time that the pipeline is placed into service, any portion of the work furnished, installed, or constructed by the Applicant fails to fulfill any of the requirements of the contract, the Applicant shall reimburse the District for all costs of said repairs (including overhead) beginning from the in-service date to within one year after written acceptance of the work completed under contract.

The Applicant shall be responsible for the full expense incidental to fulfilling any and all of the above guarantees and agreements. The above guarantees and agreements are covenants, the performance of which shall be binding upon the Applicant and its sureties. Any bonds used to secure the payment or performance of work under this agreement will remain in full force and effect throughout the period of performance, including any warranty or guarantee period.

12. When the Applicant has fully complied with all the terms and conditions of this Agreement and the main or mains have been received into the District's water distribution system:

- a. Collection of front foot charges: The District will collect a front foot charge at the rate per front foot stated in Section 4c from any person for the first connection of either a standard service or a private fire service to any main extension described in Section 1 hereof if such connection is for premises ( 1) other than the premises described in Section 6; (2) which lie along and may be served directly from said main extension, and (3) which were not served from another main at the date of the installation of said main extension. However, under unusual conditions, determinable by the District, certain premises already served at the date of installation may, nevertheless, be subject to the front foot charge. The front foot charge is determined by dividing the charge to the Applicant of a District-installed main extension by the front footage of those premises which lie along and may be served directly from said main extension.

In the event that the main extension is installed within a group of premises forming a "cul-de-sac", the front foot charge is determined by dividing the charge to the Applicant of a District-installed main extension by the number of premises with frontage on the main extension. A cul-de-sac is defined as a street or passage closed at one end.

- b. Refunds: The District will refund the collected front foot charges to the Applicant once collected. The District is not responsible for any delay in refunding front foot charges due to customer failure to pay.
- c. "Standard service" as used herein shall mean a service for immediate and permanent use, other than private fire service, which is installed within the District directly adjacent to the premises to be served.

13. The payment of said refunds by the District is limited as follows:

- a. Amount Limitations: The total amount of all refunds payable by the District to the Applicant under this Agreement shall not exceed the sum stated in Section 4d, which sum was computed as if the installation of the water mains described in Section 1 (exclusive of fire hydrants and water services) were made by the District .
- b. Time Limitations: Any refunds due to the Applicant under Section 11b will be paid within ninety (90) days following the date of collection but no front foot charge refunds will be made twenty (20) years after the date of the execution of this Agreement except those which have accrued during such twenty (20) year period.

14. And further as to performance hereunder by the District:

- a. Time: The time of, and performance of, engineering and inspection services or the transfer and furnishing of materials to the Applicant by the District shall be determined by the District on the basis of its overall scheduling requirements of work crews, materials and equipment, other commitments and contracts of the District, and emergency jobs or installations. Questions of overall District priorities shall be determined by the District. **It is expressly agreed that the District shall not under any circumstances be responsible or liable for costs or damages incurred by Applicant related directly or indirectly to the timing of said performance by the District.**
- b. Materials: This Agreement is subject to any present or future superior obligation of the District to divert and use any or all of the materials covered hereby prior to installation. It is also subject to any present or future governmental regulations, Federal or State, regulating the use of, or establishing priorities for, any of the materials hereunder.

15. And further as to performance hereunder by the Applicant:

- a. Fire Hydrants: The installation of and payment for one or more hydrants under this Agreement by the Applicant and the acceptance thereof by the District give the Applicant no new individual right or interest as to any such hydrant; and the Applicant's position, rights or interests as to any hydrant are the same as though public fire protection agency or other responsible public or governmental agency had contracted, and paid for, or made said installation. On transfer to and acceptance by the District said hydrants shall be District property and shall be used for public fire protection.
- b. Accounting for Materials: Any materials or supplies issued by the District to the Applicant for installation and work under this Agreement which are not installed by the Applicant nor returned to the proper service center or storage area of the District and accepted by an authorized agent of the District shall be billed to, and paid for, by the Applicant.
- c. Contaminated Soil: In the event that contaminants are known to be present or encountered during installation or maintenance of the main extension facilities, Applicant shall provide all related documentation available to Applicant, including site sampling results. If the District determines that the contamination could pose a hazard to District employees, adversely affect water quality or subject the District to extra cost and liability related to trench spoils disposal, the Applicant shall remediate the site. The District will require a legally sufficient, complete and specific written remedial plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of all identified soil and/or water contaminants, including hazardous substances and/or petroleum products or by-products, prior to accepting the application, and the remediation plan must be carried out before installation of the main extension facilities. Applicant shall be solely responsible for the costs of all activities related to said removal, treatment, and disposal.

Applicant expressly agrees to indemnify, defend, and hold the District, its Directors, officers and employees free and harmless from and against any and all loss, liability, expense, costs, claims, suits and damages, including attorneys' fees related to the removal, treatment, and/or disposal of soil and/or water, contaminants, including hazardous substances and/or petroleum products or by-products, and any additional construction costs related to or resulting from the removal, treatment, and disposal of contaminated soil.

- d. Use of Engineering and Survey Data: Applicant shall provide engineering and survey drawings and data as required by the District to provide engineering and inspection services and to maintain the water main extensions described in Section 1 hereof. The Applicant also agrees to obtain from its engineer/surveyor, and to transmit to the District, permission for the District to use, copy and compile copyrighted or copyrightable maps, drawings and surveys. Such permission shall include the District's right to provide such compilations as necessary to other public entities.
- e. Archaeological Resources: "Archeological resources" consist of prehistoric and historic-era archaeological resources. Prehistoric archaeological resources consist of Native American village sites, temporary camps, lithic scatters, roasting pits/hearths, milling features, petroglyphs, rock features, and burials. Associated artifacts include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil ("midden") containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs). Historic-era archaeological resources consist of townsites, homesteads, agricultural or ranching features, mining-related features, refuse concentrations, and features or artifacts associated with early military and industrial land uses.

In the event that archaeological resources are known by Applicant to be present prior to installation or maintenance of the main extension facilities, Applicant shall provide the District with all related documentation available to Applicant, including archaeological resource documentation and records search results. The District will require

Applicant to submit a legally sufficient, complete and specific written archaeological management plan prior to beginning design of the main extension. The archaeological management plan must be developed and implemented by the Applicant under the supervision of an archaeologist before or during the main extension installation, as required.

In the event that archaeological resources are encountered during installation or maintenance of the main extension facilities by the Applicant, all activities shall immediately cease at the location of discovery and within 100 feet of the discovery. The Applicant shall be responsible for retaining a qualified archaeologist to inspect the findings within 24 hours of discovery. If it is determined that continuing the pipeline installation could damage a historical resource as defined by CEQA (or a historic property as defined by the National Historic Preservation Act of 1966, as amended), construction shall cease in an area determined by the archaeologist until an archaeological management plan has been prepared and implemented to the satisfaction of the archaeologist and, in the event the site is a Native American heritage site, any Native American representative identified by the Native American Heritage Commission. The archaeologist (and Native American representative) will determine when construction can resume.

Applicant shall be solely responsible for the costs of all activities related to the discovery, disturbance, removal and/or relocation of any archeological resources.

Applicant expressly agrees to indemnify, defend, and hold the District, its Directors, officers and employees free and harmless from and against any and all loss, liability, expense, costs, claims, suits and damages, including attorneys' fees related to the discovery, disturbance, destruction, removal, and/or relocation of archaeological resources, including Native American human remains and culturally significant artifacts, and any additional construction costs related to or resulting from the discovery, disturbance, removal, and/or relocation of archaeological resources.

16. **Real Property Rights:** No portion of the installation of mains, facilities or appurtenances provided for or required hereunder shall be made unless the areas of installation are within dedicated streets and/or rights-of-way, which have been furnished to, and accepted by, the District.

The Applicant understands and acknowledges that the water main extension facilities required for service under this Agreement may be designed for installation in privately-owned real property.

- a. **In-Tract Property Rights:** If the District requires rights within real property owned by Applicant in order to provide service under this Agreement, Applicant agrees to convey those rights to the District, in a form acceptable to District. Applicant further agrees to pay any title and escrow costs associated with said conveyance of rights.
- b. **Out of Tract:** If the District requires rights-of-way within real property owned by persons other than Applicant, the Applicant agrees to acquire all necessary rights and provide these to the District in a form acceptable to the District. The Applicant further agrees that all costs related to said acquisition of property rights are the sole responsibility of the Applicant. The District shall not, by virtue of this Agreement, be obligated to use its powers of eminent domain to acquire any property rights on Applicant's behalf. Further, the District shall not be obligated to install facilities within property designated as public utility easements or within any easements owned by Applicant as appurtenant to Applicant's property.

17. **Indemnification:** The Applicant hereby expressly agrees to indemnify, defend and hold the District, its directors, officers, and employees, free and harmless from and against any and all loss, liability, expense, claims, costs, suits, damages, including attorneys' fees, arising out of or related to the installation of water mains, fire hydrants, and other appurtenances under this Agreement by the Applicant or the Applicant's contractors, subcontractors, agents, or employees.

18. This Agreement shall inure to the benefit of and be binding upon any heirs, administrators, successors and assigns of the respective parties.

19. **This Agreement is made under and subject to the regulations of the District governing water service as adopted and amended from time to time by its Board of Directors.**

Executed in triplicate on the day and year first written above

CITY OF ALAMEDA  
Applicant

EAST BAY MUNICIPAL UTILITY DISTRICT

BY



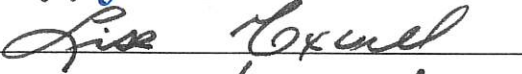
NAME (please print) Eric J. Levitt

BY

Customer Services Manager,  
New Business Office

Approved as to form:

BY



NAME (please print) Lisa Maxwell