

FIRST AMENDMENT TO THE
REVERSE OSMOSIS DISCHARGE FACILITIES DESIGN
AND CONSTRUCTION ACCESS AGREEMENT

This First Amendment (“Amendment”) to the Reverse Osmosis Discharge Facilities Design and Construction Access Agreement dated July 22, 2020, (“Agreement”) is entered into as of November 18, 2020, by and between the City of Antioch, a municipal corporation (“City”), and Delta Diablo, a sanitation district formed and existing under the County Sanitation District Law (“District”). The City and the District are sometimes individually referred to as a “Party,” and together as the “Parties.” Capitalized words and phrases used in this Amendment are defined in this Amendment or in the Agreement.

Recitals

- A. The City is planning for the construction of its Project. A portion of the Project – the Discharge Facilities – will be constructed on the District’s Property. The Parties entered into the Agreement to define their obligations regarding the design and construction of the Discharge Facilities on the Property.
- B. Since December 11, 2019, the District has incurred staff time and expenses, and consultant charges, to cooperate with the City during the planning and design phases of the Project. The Parties anticipate that the District will incur additional staff time, consultant expenses, and other related expenses during the remainder of the Project design phase and during the Project construction phase. The Parties now wish to amend the Agreement to provide that the City will reimburse the District for those expenses, as more particularly set forth herein.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

- 1. Addition of New Section 4.7. The Agreement is hereby amended to add new Section 4.7 (Reimbursement of Eligible District Costs), to read:

“4.7 Reimbursement of Eligible District Costs.

4.7.1 The City shall reimburse the District for certain District costs to review and coordinate the design and construction of the Discharge Facilities on the Property during the period from December 11, 2019, through the date that the District accepts the Discharge Facilities in accordance with Section 5.4 of this Agreement (the “Eligible District Costs”). The Eligible District Costs include, but are not limited to, District staff and consultant time and charges, and other related expenses, in connection with (i) reviewing and commenting on Project design submittals, and the Project construction workplan, among other Project documents, (ii) evaluating operations, maintenance, and laboratory testing impacts of the Project, (iii) coordinating Project construction activities with the City, (iv) any District activities included in Sections 5.1



through 5.4, and (v) performing other related work in connection with the design, construction, testing, startup, and commissioning of the Discharge Facilities.

4.7.2 Before District consultant charges incurred after November 17, 2020, will be eligible for reimbursement under this Agreement, the District shall provide the City advance written notice of the anticipated scope and charges for the consultant's work and obtain the City's advance approval of the consultant work and charges. If the City does not respond within ten (10) business days after receiving the District's written notice regarding the District's proposed consultant work and charges, the consultant work and charges specified in that notice will be deemed approved by the City. District staff charges will be calculated based on the then-current fully burdened hourly rates of the District employees that perform the work.

4.7.3 Within 30 days after receiving an invoice from the District, the City shall reimburse the District for Eligible District Costs that the District incurred during the period from December 11, 2019, through November 17, 2020. For Eligible District Costs that the District incurs on and after November 18, 2020, the District will invoice the City for those costs no more often than once per calendar month. Each invoice will include an itemized list of Eligible District Costs that the District incurred during the month covered by the invoice. Within 30 days after receiving an invoice from the District, the City shall pay the District the amount of Eligible District Costs stated on the invoice. The City's obligations under this Section 4.7 shall survive the expiration or termination of this Agreement."

2. Remainder of Agreement Unchanged. Except as expressly modified by this Amendment, the Agreement remains unchanged and in full force and effect.

The duly authorized representatives of the Parties are executing this Amendment on behalf of the Parties as of November 18, 2020.

DELTA DIABLO

CITY OF ANTIOCH

By: Vince De Lange

By: Ron Bernal

Name: Vince De Lange

Name: Ron Bernal

Title: General Manager

Title: City Manager

