

**REVERSE OSMOSIS DISCHARGE FACILITIES
OPERATION AND MAINTENANCE AGREEMENT**

This Reverse Osmosis Discharge Facilities Operation and Maintenance Agreement ("Agreement") is entered into as of October 27, 2020 (the "Effective Date") by and between the City of Antioch, a municipal corporation ("City"), and Delta Diablo, a county sanitation district formed and existing under the County Sanitation District Law ("District"). The City and the District are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties".

RECITALS

A. The District operates a wastewater treatment plant ("WWTP") located at 2500 Pittsburg-Antioch Highway in Antioch, California ("Property").

B. The City is constructing a brackish water desalination project ("Project"). A byproduct of the brackish water desalination process is a waste stream known as reverse osmosis concentrate ("RO Concentrate"). As part of the legally required process to obtain the Permit and to allow the District to accept the RO Concentrate and to discharge it from the Outfall, the City and the District submitted to the Regional Board studies and other evidence, including a reasonable potential analysis, that demonstrated the feasibility of compliance with the Permit effluent limits calculated as a results of accepting the discharge of RO Concentrate to the Outfall. In addition, as required by the Permit, the City and the District have prepared and submitted to the Regional Board an RO Concentrate Mixing Zone Study that demonstrates that the discharge of RO Concentrate alone (*i.e.*, with no blending with other waste streams) will receive a minimum initial dilution of at least 10:1. Based on these studies and evidence, the Parties believe that the discharge of RO Concentrate that meets the concentration assumptions of these studies and evidence will allow the District to satisfy the requirements of the Permit with or without blending of the RO Concentrate with other waste streams.

C. As part of the Project, and in accordance with a Reverse Osmosis Discharge Facilities Design and Construction Access Agreement between the City and the District, dated July 22, 2020, ("Access Agreement"), the City will construct a new pipeline to convey RO Concentrate

from the Project to the Property for discharge through the District's existing outfall at the WWTP. The facilities constructed by the City at the Property include a new 12-inch RO Concentrate disposal pipeline, new monitoring and sampling equipment, power supply and communications system connections between the new facilities and the District's existing system. These facilities are collectively referred to in this Agreement as the "Discharge Facilities," which are more particularly described in Section 2 of this Agreement.

D. The Parties have determined that the District is in the best position to most efficiently and effectively operate and maintain the Discharge Facilities. This Agreement establishes the terms and conditions under which the District will operate and maintain the Discharge Facilities and under which the City will compensate the District for such operations and maintenance. The purpose of this Agreement is to set forth the Parties' obligations related to the operation and maintenance of the Discharge Facilities following the acceptance of the Discharge Facilities under Section 5 of the Access Agreement. The District is authorized to enter into this Agreement pursuant to Health and Safety Code section 4742.1. The City is authorized to enter into this Agreement pursuant to its general authority to enter into contracts to carry out its necessary functions and the specific authority in Government Code sections 37103, 40602 and 53060 and in the City of Antioch Municipal Code.

E. Although this Agreement will be effective for a 50-year term, if the City desires to continue operating the Project for its useful life beyond that term, the Parties intend to endeavor to negotiate a new agreement to replace this Agreement upon its expiration. Additionally, although this Agreement provides an aggrieved Party an opportunity to terminate this Agreement for cause following a required informal dispute resolution process, without waiving or limiting that right, the Parties intend to endeavor to work cooperatively to resolve disputes on mutually agreeable terms, to avoid termination of the Agreement for cause during its term.

F. For these reasons, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties desire to enter into this Agreement.

AGREEMENT

1. **RECITALS.** The Parties agree that the Recitals are true and correct and incorporate them into this Agreement.

2. **DEFINITIONS.** For the purposes of this Agreement, the following terms have the following meanings. Other defined terms are capitalized and in quotations in this Agreement.

2.1 Access Agreement. “Access Agreement” means the Reverse Osmosis Discharge Facilities Design and Construction Access Agreement between the City and the District, dated July 22, 2020.

2.2 Agreement. “Agreement” means this Reverse Osmosis Discharge Facilities Operation and Maintenance Agreement.

2.3 Capital Improvements. “Capital Improvements” means scheduled repairs and replacements to the Discharge Facilities that are intended to extend their useful life before they become inoperable.

2.4 City. “City” means the City of Antioch, a municipal corporation.

2.5 Discharge Facilities. “Discharge Facilities” means the facilities constructed by the City on or in the Property in accordance with the Access Agreement, including a portion of a new 12-inch RO Concentrate disposal pipeline, new monitoring and sampling equipment, power supply and communication system connections between these new facilities and the District’s existing system leading to the Outfall.

2.6 District. “District” means Delta Diablo, a sanitation district formed and existing under the County Sanitation District Law.

2.7 District Costs. “District Costs” means all the District’s direct and indirect costs for performing the District’s operation, maintenance (including Emergency Maintenance and Routine Maintenance), monitoring, and reporting obligations under this Agreement, and for performing any Capital Improvements in accordance with the Operations and Maintenance Plan and this

Agreement, all of which costs include but are not limited to District personnel costs (at fully-burdened, then-current hourly rates), consultant costs, actual utility costs, maintenance and repair costs, and other District costs and expense categories as may be required by the Operations and Maintenance Plan or this Agreement. The District Costs are limited to costs that are incurred because of this Agreement and do not include costs that are otherwise paid for by member agencies, including the City, for general wastewater treatment services.

2.8 Effective Date. “Effective Date” means the effective date of this Agreement first written above.

2.9 Emergency Maintenance. “Emergency Maintenance” means repairs, replacements or other maintenance activities needed to address or prevent failed portions of the Discharge Facilities that unexpectedly become inoperable and require immediate repair, replacement or require other maintenance activities, all as reasonably determined by the District.

2.10 Exceedance Notice. “Exceedance Notice” means the District’s written notice to the City stating that the District has determined that discharge of RO Concentrate to the Outfall is causing or contributing to a threatened or actual exceedance the constituent limits or toxicity requirements of the Permit.

2.11 Fiscal Year. “Fiscal Year” means the period that begins and includes July 1 of any year, and that ends and includes the following June 30.

2.12 General Manager. “General Manager” means the District’s General Manager, or a designee of the General Manager.

2.13 Increase Request. “Increase Request” means the City’s request to the District to increase the City’s maximum daily RO Concentrate discharge limit beyond 2.0 million gallons per day (“MGD”). An Increase Request must include information reasonably required by the District to enable the District to evaluate the request and the consistency of the request with the requirements of the Permit and potential amendments to the Permit.

2.14 Outfall. “Outfall” means the District’s outfall facility at the WWTP that discharges into New York Slough at discharge point 001 as described in the Permit.

2.15 Outfall Shutdown. “Outfall Shutdown” means the complete shutdown of the Outfall such that no discharges of RO Concentrate may occur through the Discharge Facilities to the Outfall.

2.16 Outfall Shutdown Protocol. “Outfall Shutdown Protocol” means the protocol agreed to between the City and the District that is intended to permit the District to reasonably schedule Outfall Shutdowns in a manner that will permit the City to plan operations of the Project to accommodate any such planned Outfall Shutdown by suspending Project operations and the generation of RO Concentrate in advance of the planned Outfall Shutdown.

2.17 Operating Budget. “Operating Budget” means the annual budget to fully compensate the District for the District’s Costs that the District incurs in any Fiscal Year, or portion thereof, during the term of this Agreement.

2.18 Operations and Maintenance Plan. “Operations and Maintenance Plan” means the plan approved by the City and the District for the operations and maintenance of the Discharge Facilities.

2.19 Party or Parties. “Party” means the City or District individually, and “Parties” means the City and the District collectively.

2.20 Permit. “Permit” means the National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038547 (Order No. R2-2019-0035) issued to the District for the discharge of pollutants to waters of the United States by the Regional Board, as the Permit currently exists or as it may be amended or reissued.

2.21 Project. “Project” means the City of Antioch Brackish Water Desalination Project.

2.22 Property. “Property” means the land and improvements located at 2500 Pittsburg-Antioch Highway in Antioch, California, on which the District operates the Delta Diablo Wastewater Treatment Plant.

2.23 Prudent Industry Practices. “Prudent Industry Practices” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist, are generally recognized and accepted as

prudent operations, maintenance, repair, replacement and monitoring practices in the municipal wastewater industry in the State of California.

2.24 Recitals. “Recitals” means the recited facts that are set out at the beginning of this Agreement and that serve as the factual basis for this Agreement.

2.25 Regional Board. “Regional Board” means the San Francisco Bay Regional Water Quality Control Board.

2.26 RO Concentrate. “RO Concentrate” means the waste stream that is the byproduct of the brackish water desalination process used in the Project and which will be conveyed by the City to the District for discharge through the Discharge Facilities and outfall. RO Concentrate generally has salinity levels that are four times as great as the source water, and it is anticipated that the RO Concentrate will contain total dissolved solids of 400 mg/L to 30,000 mg/L. As used in this Agreement, RO Concentrate includes filtered water that may from time to time be discharged through the Discharge Facilities as part of Project operations and maintenance.

2.27 Routine Maintenance. “Routine Maintenance” means those tasks necessary to maximize the useful life, integrity and appearance of the Discharge Facilities, including industry standard or manufacturers’ recommended activities such as testing, flushing, calibrating, exercising of valves, repairs and replacement of parts or other preventative actions.

2.28 WWTP. “WWTP” means the Delta Diablo Wastewater Treatment Plant operated by the District on the Property.

2.29 WWTP Shutdown. “WWTP Shutdown” means a full or partial shutdown of the WWTP that does not affect the ability of the Discharge Facilities to discharge RO Concentrate through the Outfall.

3. ACCEPTANCE OF RO CONCENTRATE BY DISTRICT.

3.1 Conditions for Acceptance. Subject to the terms of this Agreement, the District shall accept from the Project up to 2.0 million gallons per day (“MGD”) (daily total) of RO Concentrate, all meeting the requirements of the Permit, for discharge through the Discharge Facilities to the Outfall. The City may not convey any other material or effluent, including wastewater, to the District for discharge through the Discharge Facilities without the District’s prior written approval, which shall be within the District’s sole discretion to provide. Nothing in this Agreement changes, in any way, the any other obligations of the District regarding the conveyance of wastewater from within the City, to the District’s WWTP, through existing wastewater collection facilities. The City shall not discharge RO Concentrate into wastewater conveyed to the District’s WWTP through facilities other than the Discharge Facilities.

3.2 Limits of RO Concentrate. The District shall only be required to accept from the City up to a maximum of 2.0 MGD (daily total) of RO Concentrate from the Project. If the City wishes to increase the RO Concentrate rate of discharge above the 2.0 MGD maximum amount, the City shall submit an Increase Request to the District. The District will consider such a request, and the District shall have sole discretion to approve, modify, or reject the Increase Request. The Parties acknowledge that any increase in the rate of discharge above 2.0 MGD will require an amendment to the Permit or other approval by the Regional Board. If the District approves, with or without modification, the Increase Request, the City shall cooperate with the District to seek any required modification to the Permit. The City shall be solely responsible for paying all reasonable District expenses associated with pursuing any proposed change to the discharge rate, including but not limited to, District staff costs and consultant costs incurred to evaluate the Increase Request, costs charged by the Regional Board to consider an amendment to the Permit to allow the approved or modified Increase Request, and District staff costs and attorney’s fees required to pursue the approved or modified Increase Request with the Regional Board. The City shall reimburse the District for any such reasonable expenses that the District incurs under this Section 3.2 following an Increase Request within 30 days following receipt of a District invoice identifying those expenses.

3.3 Quality of RO Concentrate.

3.3.1 *City Responsible.* To protect the District's ability to comply with the Permit, the City shall be solely responsible for ensuring that the quantity and quality of the RO Concentrate meets the requirements of the Permit and this Agreement.

3.3.2 *Monitoring, Permitting, and Compliance.* To ensure that the quantity and quality of the RO Concentrate meets the requirements of the Permit and this Agreement, the quantity and quality of the RO Concentrate shall be monitored at the point of discharge to the Outfall. Unless the Permit is subsequently amended following an Increase Request under Section 3.2, the quantity of RO Concentrate discharged to the Outfall shall not exceed 2.0 MGD (daily total). The City shall not commence the discharge of RO Concentrate from the Project to the Outfall until the General Manager has issued the City an Industrial Wastewater Discharge Permit that specifies the discharge limitations for the RO Concentrate. The City shall comply with the Industrial Wastewater Discharge Permit and the applicable requirements of Chapter 2.28 of the District Code. If there is any conflict between any term of this Agreement and either the Industrial Wastewater Discharge Permit or any applicable requirement of Chapter 2.28 of the District Code, the more restrictive requirement shall apply. Nothing in this Agreement waives the applicable requirements of Chapter 2.28 of the District Code. The point of compliance for discharge limitations specified in the Industrial Wastewater Discharge Permit shall be at the RO Concentrate sampling location prior to discharge to the Outfall, at the approximate location shown on Exhibit 1, attached hereto. The Industrial Wastewater Discharge Permit's discharge limitations will be consistent with the discharge levels that were assumed in the studies and other evidence that was submitted to the Regional Board to obtain the Permit. The District is not obligated to accept RO Concentrate that does not meet the quantity or quality requirements of this Agreement, the Permit, or the Industrial Wastewater Discharge Permit.

3.3.3 *Notification.* The City shall not commence the discharge of RO Concentrate from the Project to the Outfall until the District provides written notice to the City that the requirements of Section VI.C.5.c.i-v of the Permit have been satisfied, and that the discharge of RO Concentrate may commence. The Parties will jointly cooperate to satisfy the requirement of

Section VI.C.5.c.i-v of the Permit in a timely manner that will allow for discharges of RO Concentrate from the Project to the Outfall in compliance with the Permit.

3.3.4 *Exceedance Notice.* The Parties anticipate that RO Concentrate that meets the requirements of this Agreement and the Permit can be discharged at the Outfall without causing or contributing to an actual or threatened exceedance of the constituent limits and toxicity requirements in the Permit. However, if the District determines that the discharge of RO Concentrate is causing or contributing to an actual or threatened violation of the Permit's requirements, the District shall provide an Exceedance Notice to the City. If an Exceedance Notice identifies an actual violation of the Permit's requirements, the City shall immediately take all corrective action specified in the notice, which may include, at the District's sole discretion, reducing, modifying, or suspending discharges of RO Concentrate through the Discharge Facilities. If the City fails to take such corrective action within the time specified in an Exceedance Notice, the District may take any action it determines to be necessary to reduce, modify, or suspend discharges through the Discharge Facilities, including but not limited to physically blocking discharges of RO Concentrate through the Discharge Facilities. Within five (5) days following the date the District gives the City an Exceedance Notice, the Parties' authorized representatives will meet and confer to determine the basis for the Exceedance Notice, and to identify a process to determine whether the RO Concentrate is causing or contributing to an actual or threatened violation of the Permit's requirements. As part of this process, the Parties shall discuss operational changes or other efforts within their control that might be implemented to determine whether the discharge of the RO Concentrate is causing or contributing to the actual or threatened exceedances of the requirements of the Permit; and the Parties shall identify actions to correct such actual or threatened exceedances caused or contributed to by the RO Concentrate. In the event that the Parties cannot agree on a method to determine whether the discharge of RO Concentrate is causing or contributing to an actual or threatened exceedance of the requirements of the Permit, or agree to operational changes to address that potential, the Parties shall pursue the dispute resolution process in Paragraph 8 of this Agreement. Notwithstanding anything to the contrary in Paragraph 8, where an Exceedance Notice is in response to an actual violation of the Permit's requirements, the corrective action specified in the notice, whether implemented by the City or by the District, shall remain in place throughout the dispute resolution process in Paragraph 8 and until the District determines that the corrective action is no longer required.

4. OPERATIONS AND MAINTENANCE.

4.1 Operations. In exchange for the City's payment of District Costs under this Agreement, the District shall operate and maintain the Discharge Facilities in accordance with the Operations and Maintenance Plan and this Agreement, shall conduct all required monitoring in accordance with the Permit, and shall provide any reports as required by the Permit or this Agreement.

4.1.1 *Development of Operations and Maintenance Plan*. Before the City discharges RO Concentrate to the Outfall, the Parties shall negotiate and approve in writing a mutually acceptable Operations and Maintenance Plan for the Discharge Facilities. The Operations and Maintenance Plan must not conflict with the requirements of the Permit or the requirements of this Agreement. Upon approval by the Parties, the Operation and Maintenance Plan, and any amendments thereto, shall be deemed to be incorporated into and made a part of this Agreement. The Operations and Maintenance Plan will generally describe the District's operational obligations for the Discharge Facilities, and it may be the same as the O&M Manual and Contingency Plan required by the Permit. Among other provisions, the Operations and Maintenance Plan must include requirements for monitoring and reporting as needed to satisfy Permit requirements related to discharge of RO Concentrate. The Parties may from time to time amend the Operations and Maintenance Plan through a writing signed by both Parties. The provisions of the Operations and Maintenance Plan must be consistent with Prudent Industry Practices, and with District WWTP operations.

4.1.2 *Operations Pursuant to Operations and Maintenance Plan*. Upon acceptance of the discharge of RO Concentrate under this Agreement, the District shall operate the Discharge Facilities in accordance with the Operations and Maintenance Plan and this Agreement.

4.1.3 *Outfall Shutdowns and Outfall Shutdown Protocol*. From time to time, the District may need to suspend all discharges through the Outfall. The Parties acknowledge that, historically, planned Outfall Shutdowns have been rare, but that a planned Outfall Shutdown would have a significant impact on the Project because the City has no holding capacity for the RO Concentrate and would require suspension of Project operations. The Parties acknowledge that the City requires a reasonable amount of time to plan for any planned Outfall Shutdown.

Therefore, before the City discharges RO Concentrate to the Outfall, the Parties shall negotiate and approve in writing a mutually acceptable Outfall Shutdown Protocol. The Outfall Shutdown Protocol must not conflict with the requirements of the Permit or the requirements of this Agreement. The Parties may, from time to time, amend the Outfall Shutdown Protocol through a writing signed by both Parties. Upon approval by the Parties, the Outfall Shutdown Protocol, and any amendments thereto, shall be deemed to be incorporated into and made a part of this Agreement. At a minimum, the Outfall Shutdown Protocol must include all of the following:

4.1.3.1 *Discharges Prohibited During Shutdown.* For the duration of any Outfall Shutdown, the City shall not discharge RO Concentrate through the Discharge Facilities.

4.1.3.2 *Notice Prior to Shutdown.* The District shall use reasonable efforts to give the City at least six (6) months advance notice of any planned Outfall Shutdown. The City acknowledges that 6 months advance notice may not always be feasible, and the District acknowledges that providing the City with as much advance notice of an Outfall Shutdown as is feasible is important to the City's ability to effectively operate the Project.

4.1.3.3 *Avoiding Operational Season Shutdowns.* The Parties wish to avoid an Outfall Shutdown, if feasible, during operation of the Project or at least during the mid-point of the City's operation of the Project. To the extent the District deems feasible, the District shall use reasonable efforts to avoid an Outfall Shutdown during the Project operational season (generally during the summer and fall when salinity in the source water is highest and the City's need for the Project operations is greatest). If an Outfall Shutdown during the Project operational season cannot be avoided, the District shall use reasonable efforts to coordinate with the City to schedule the Outfall Shutdown in the beginning or the end of the Project operational season.

4.1.3.4 *Emergencies.* The Parties acknowledge that the District, at its discretion, may determine that, due to an emergency, an unplanned Outfall Shutdown will need to occur. The Outfall Shutdown Protocol will include procedures that are designed to provide the City with as much advance notice as the District deems feasible during such an emergency so that the City may suspend Project operations and address any required discharge of existing RO Concentrate. The General Manager may provide advance notice of emergency by telephone, with written notice to follow.

4.1.4 *WWTP Shutdowns*. The District may suspend operations of the WWTP from time to time for routine maintenance or similar activities. Because the District does not treat the RO Concentrate, and because such suspended operations will not impair the discharge of RO Concentrate through the Outfall, any such WWTP Shutdowns shall not affect the Parties' obligations under this Agreement.

4.2 Monitoring. The District shall conduct all monitoring as required by the Permit, and additional monitoring agreed to by the Parties, to assess quality of RO Concentrate, and the quality of effluent, discharged at the Outfall. The District's monitoring obligations may be further defined in the Operations and Maintenance Plan.

4.3 Reporting. The District shall prepare and submit any reports required by the Permit or by this Agreement. The District's reporting obligations may be further defined in the Operations and Maintenance Plan.

4.4 Maintenance. In exchange for the compensation provided to the District under this Agreement, the District shall be responsible for all maintenance of the Discharge Facilities, including Routine Maintenance, Emergency Maintenance and Capital Improvements, except as otherwise provided in this Agreement. The District's maintenance obligations will generally be set forth in the Operations and Maintenance Plan, and the anticipated annual maintenance will be set forth in the Operating Budget. The District's maintenance obligations shall include:

4.4.1 *Routine Maintenance*. The District shall be responsible for all Routine Maintenance, except as otherwise provided in this Agreement. Routine Maintenance costs and expenses will be set forth in the Operating Budget on an annual basis.

4.4.2 *Emergency Maintenance*. The District shall be responsible for all Emergency Maintenance. The Operating Budget will include an estimate of the costs and expenses for Emergency Maintenance, but the City will compensate the District for its actual costs for such Emergency Maintenance.

4.4.3 *Capital Improvements*. The District shall be responsible for installing all Capital Improvements. The Operating Budget shall include an estimate of the costs and expenses for Capital Improvements, if any, planned for the year.

4.4.4 *Pipeline Cleaning (i.e., Pigging)*. The City shall be responsible for the cleaning of the pipeline component of the Discharge Facilities to the point of connection to the outfall at the WWTP. The District grants the City the right of ingress and egress to the Property as necessary to perform this pipeline cleaning, and also grants the City the right to maintain the equipment necessary for this pipeline cleaning on the Property for the Term at an agreed upon location. Such access shall be coordinated with the District so as not to interfere with WWTP operations.

5. **COMPENSATION FOR DISTRICT SERVICES.**

5.1 General Obligation of the City to pay the District's Operating Costs. As a condition of the District's obligation to accept RO Concentrate in any fiscal year, the City and the District shall agree to an Operating Budget for the fiscal year, or begin the dispute resolution process, as more particularly described in this paragraph 5.

5.2 Annual Operating Budget. Prior to the City first discharging RO Concentrate from the Project, and annually thereafter, the District and the City shall jointly establish the Operating Budget in accordance with this Paragraph 5 to fully compensate the District for the District Costs incurred in the fiscal year, or portion thereof, covered by the Operating Budget.

5.3 Development of Operating Budget.

5.3.1 *Initial and Subsequent Operating Budgets*. Before the City first discharges any RO Concentrate through the Discharge Facilities under this Agreement, the City and the District must mutually agree on the Operating Budget for the first Fiscal Year, or portion thereof, that the City will discharge RO Concentrate under this Agreement. For each subsequent Fiscal Year, at least 90 days prior to the start of the Fiscal Year, the District will submit to the City a draft Operating Budget for the upcoming Fiscal Year.

5.3.2 *Draft Operating Budget*. Within two (2) weeks of the City's actual receipt of the draft Operating Budget, the City shall respond in writing either (a) that it accepts the draft Operating Budget, or (b) with comments on the draft Operating Budget. If the City does not provide either response within two (2) weeks of its receipt of the draft Operating Budget, this shall be deemed to be the City's acceptance of the draft Operating Budget. The District will reasonably

consider timely comments by the City on the draft Operating Budget, and, within two weeks after receiving timely comments from the City, the District will provide the City an updated Operating Budget.

5.3.3 *Approval or Dispute of Operating Budget.* At least 30 days before the start of a Fiscal Year, each Party shall either (a) approve the Operating Budget for the Fiscal Year, which approval shall not unreasonably be withheld, or (b) provide the other Party written notice that the Party is initiating the dispute resolution process in paragraph 8 of this Agreement.

5.4 Timing of Payments.

5.4.1 *Timing of Payments.* Except as provided in paragraph 5.4.2, on the first day of each quarter of each Fiscal Year, or portion thereof, (*i.e.*, on each July 1, October 1, January 1, and April 1) the City shall pay the District one-fourth (1/4th) of the approved Operating Budget for that Fiscal Year.

5.4.2 *Payment Prior to Approved Operating Budget.* If the Parties have not approved an Operating Budget by the start of a Fiscal Year, the City shall pay fifty percent (50%) of one-fourth (1/4th) of the draft Operating Budget proposed by the District, starting on July 1 of the Fiscal Year and continuing thereafter on the first day of each quarter of the Fiscal Year, until such time as the Parties agree on the Operating Budget for the Fiscal Year. Within 30 days after the approval of the Operating Budget, the City shall either pay to the District any additional amounts then due under the Operating Budget for all prior months of the Fiscal Year, or the City shall take a credit against the next quarterly payment for any overpayments to the District for the period of the dispute.

5.5 Fiscal Reconciliation. Within 30 days after the end of each Fiscal Year (*i.e.*, within 30 days after June 30), and within 30 days after the expiration or termination of this Agreement, the District's and the City's authorized representatives will meet to review the actual District Costs during the prior Fiscal Year, or portion thereof, with the payments made by the City during that prior Fiscal Year, or portion thereof, to determine whether the City made any overpayment or underpayment to the District during that Fiscal Year, or portion thereof. If the Parties' representatives determine that the City has overpaid the District during the prior Fiscal Year, or

portion thereof, the District will reimburse the City in the amount of the overpayment within 30 days after the meeting. If the Parties' representatives determine that the City underpaid the District during the Fiscal Year, or portion thereof, the City shall pay the District the amount of such underpayment within 30 days after the meeting. The Parties' obligations under this Section 5.5. shall survive the expiration or termination of this Agreement.

6. **INSURANCE AND INDEMNITY.**

6.1 District Insurance. The District shall obtain and maintain during the term of this Agreement insurance coverage that is at least as broad and in the amounts specified in this section and shall submit certificates of insurance for review and approval by the City. Acceptance of the certificates by the City does not relieve the District of any of the insurance requirements, nor decrease the liability of the District under this Agreement.

The District shall obtain and maintain in full force and effect workers' compensation insurance as required by the State of California with statutory limits and employer's liability insurance (for all employees engaged in services or operations at the Property) with limits no less than \$1 million per accident for bodily injury or disease.

The District shall obtain and maintain Automobile and Commercial General Liability Insurance that provides protection from claims that may arise from operations or performance under this Agreement.

The District shall cause the insurance to be not less than the following:

\$1,000,000/Occurrence, Bodily Injury, Property Damage — Automobile.

\$1,000,000/Occurrence, Bodily Injury, Property Damage — Commercial General Liability.

In addition, the District shall include the following coverages or endorsements in the policies: "The City of Antioch, its Council Members, Officers, and Employees are Additional Insureds in the policy(ies) as to obligations of Delta Diablo under the "Reverse Osmosis Discharge Facilities Operations and Maintenance Agreement," dated Oct. 27, 2020 " between Delta Diablo and the City of Antioch.

6.2 City Insurance. The City shall obtain and maintain during the term of this Agreement insurance coverage that is at least as broad and in the amounts specified in this section and shall submit certificates of insurance for review and approval by the District. Acceptance of the certificates by the District does not relieve the City of any of the insurance requirements, nor decrease the liability of the City under this Agreement.

The City shall obtain and maintain in full force and effect workers' compensation insurance as required by the State of California with statutory limits and employer's liability insurance (for all employees engaged in services or operations at the Property) with limits no less than \$1 million per accident for bodily injury or disease.

The City shall obtain and maintain Automobile and Commercial General Liability Insurance that provides protection from claims that may arise from operations or performance under this Agreement.

The City shall cause the insurance to be not less than the following:

\$1,000,000/Occurrence, Bodily Injury, Property Damage — Automobile.

\$1,000,000/Occurrence, Bodily Injury, Property Damage — Commercial General Liability.

In addition, the City shall include the following coverages or endorsements in the policies: "The District, its directors, officers, employees, and volunteers are Additional Insureds in the policy(ies) as to obligations of the City of Antioch under the "Reverse Osmosis Discharge Facilities Operations and Maintenance Agreement," dated Oct. 27, 2020" between Delta Diablo and the City of Antioch."

6.3 Mutual Indemnification.

6.3.1 *District's Defense and Indemnity Obligations.* To the fullest extent not prohibited by applicable law, the District shall indemnify, defend, and hold harmless the City, its officers, agents, employees, attorneys, divisions, related agencies and entities, successors and

assigns, and contractors and representatives (each a "City Party") against any and all damages (including foreseeable and unforeseeable consequential damages), liabilities, claims, suits, demands, judgments, orders, costs, fines, property damage, injuries, including death, penalties, attorney's fees, or expenses, of whatever character, (collectively, "Liabilities") to the extent that the Liabilities arise from, are connected with, or are caused by the negligence or willful misconduct of the District, its officers, employees, agents, and contractors while performing the District's obligations under this Agreement.

6.3.2 *City's Defense and Indemnity Obligations.* To the fullest extent not prohibited by applicable law, the City shall indemnify, defend, and hold harmless the District, its officers, agents, employees, attorneys, divisions, related agencies and entities, successors and assigns, and contractors and representatives (each a "District Party") against any and all Liabilities (a) to the extent that the Liabilities arise from, are connected with, or are caused by the negligence or willful misconduct of any City Party while performing any of the City's obligations under this Agreement, or (b) where the Liabilities arise from, are connected with, or are caused or contributed to by, in whole or in part, the volume or quality of the RO Concentrate discharged at the Outfall in violation of the Permit.

6.3.3 *Survival.* The obligations in paragraphs 6.3.1 and 6.3.2 shall survive the termination or expiration of this Agreement.

7. TERM AND RIGHT TO MAINTAIN DISCHARGE FACILITIES ON THE PROPERTY.

7.1 Term. The Term of this Agreement begins on the Effective Date, and it expires on ~~November~~ Oct. 27, 2070, unless the Term is subsequently amended or unless the Agreement is sooner terminated in accordance with paragraph 7.2. At least 180 days before the expiration of the Term of this Agreement, the Parties' designated representatives will meet to seek to negotiate terms of a new agreement that would enable the Discharge Facilities to remain on the Property for their useful life.

7.2 Termination. An aggrieved Party may terminate this Agreement only in accordance with Section 8.3.

7.3 Right to Maintain Discharge Facilities. This Agreement provides the City with the right to maintain the Discharge Facilities on the Property, at no cost to the City, during the Term of this Agreement.

7.4 Relocation of Discharge Facilities. The City's use of the Property is, at all times, subordinate and secondary to the District's use of the Property. If the District determines that the Discharge Facilities, or the City's use of the Property, in any way conflicts, or may conflict, with the District's use or planned use of the Property, the District, at its sole discretion, may require the City, at its sole expense, to relocate or protect the Discharge Facilities to enable the District to use the Property for the District's intended purpose. Within 30 days after receiving a written relocation notice from the District, the Parties' designated representatives will meet to discuss the required relocation or protection of the Discharge Facilities, and the time by which the District will require the Discharge Facilities to be relocated or protected. If the City fails or refuses to relocate or protect the Discharge Facilities within the time required by the District, the District may relocate or protect the Discharge Facilities without having to satisfy the requirements of Section 8, and the City shall reimburse the District for its costs to relocate or protect the Discharge Facilities immediately upon demand by the District.

7.5 Modification of District's Use of Its Property. In lieu of requiring the City to relocate or protect its Discharge Facilities under Section 7.4, the District may, but is not required to, propose modifying the planned use of its Property to avoid the need for the City to relocate or protect the Discharge Facilities. The General Manager will provide the City written notice of a proposed modification and any cost increases the District expects it will incur in connection with that modification. Within 30 days after receiving that notice, the City shall provide the District written notice stating whether the City will (a) relocate or protect the Discharge Facilities in accordance with Section 7.4, or (b) pay all cost increases attributable to the modification of the District's use of the Property. If the City elects to pay those cost increases, the District will incorporate the modification into its planned use of its Property, and the City shall pay the District the actual amount of the cost increase attributable to the modification, as determined by the District, within 30 days after receiving an invoice from the District.

7.6 Removal of Discharge Facilities. Within a reasonable time after the termination or expiration of this Agreement, not to exceed 180 days, the City shall remove the Discharge Facilities from the Property. The District grants to the City a right of entry, not to exceed 180 days following the termination or expiration of this Agreement, to enter the Property and remove the Discharge Facilities. The City's removal of the Discharge Facilities must be coordinated with the District as not to interfere with WWTP operations. In lieu of the City's removal of the Discharge Facilities from the Property, the District, at its sole discretion, may allow the Discharge Facilities to remain on the Property, at which time they shall become the property of the District, provided that the City makes physical modifications to the Discharge Facilities to prevent any effluent from being released from the Discharge Facilities to the Outfall (e.g., capping the RO Concentrate disposal pipeline).

8. **DISPUTE RESOLUTION.**

8.1 Breach of Agreement. Either Party may terminate this Agreement if the other Party is in material breach of this Agreement and the breaching Party fails to cure the breach within sixty (60) calendar days (the "Cure Period") after receiving a written notice from the non-breaching party specifying the nature of the breach. If the breach cannot reasonably be cured within sixty (60) calendar days, the breaching Party may request a longer period of time to cure, provided (i) the breaching Party provides the non-breaching Party within such sixty (60) calendar day period a feasible plan that is capable of curing the breach, and (ii) the breaching party commences and diligently pursues such plan as soon as practicable.

8.2 Informal Dispute Resolution. In the event a Party, acting in good faith, believes that the other Party has violated, or threatens to violate, the terms of this Agreement, the aggrieved Party shall give written notice pursuant to notice and cure provisions of paragraph 8.1 of this Agreement. If the Party alleged to be in breach or threatening to breach this Agreement does not agree to cure the alleged violation, or seeks to cure the alleged violations in a manner that the aggrieved Party does not believe, in good faith, satisfies that Party's concern, the Parties shall first meet and confer to negotiate in good faith to resolve the dispute. This meet and confer shall take place during the cure period and shall include, at a minimum, the City Manager for the City and

the General Manager for the District. The Parties shall continue satisfying their remaining obligations under this Agreement during informal dispute resolution under this Section 8.2.

8.3 Mediation. In the event the Parties are unable to negotiate a mutually acceptable resolution through the informal dispute resolution process, the Parties shall submit the dispute to mediation before a mutually selected neutral mediator. The Parties shall continue satisfying their remaining obligations under this Agreement through the conclusion of mediation under this Section 8.3. If a dispute is not resolved at mediation, the aggrieved Party may, but is not required to, provide notice of intent to terminate this Agreement. Any such written notice of termination shall not be effective until at least one (1) year after the written notice is provided to the other Party. Until the effective date of the termination, the Parties shall continue satisfying their obligations under this Agreement.

8.4 Enforcement by Legal Action. If, after complying with the informal dispute resolution, paragraph 8.2, and mediation process, paragraph 8.3, the Parties are unable to resolve their dispute, the aggrieved Party, after providing thirty (30) calendar days written notice to the other Party, may initiate a legal or injunctive action to prevent a threatened breach or enforce the Agreement in response to a breach already committed. Unless an aggrieved party terminates this Agreement under paragraph 8.3, the Parties shall continue satisfying their obligations under this Agreement through any legal action seeking to prevent a threatened breach or to enforce the Agreement in response to a breach already committed.

9. GENERAL PROVISIONS.

9.1 Project Managers. In order to help facilitate communication between the Parties regarding the operation and maintenance of the Discharge Facilities, the Parties will each designate a project manager ("Project Manager") to be responsible for administering the terms and conditions of this Agreement and who will act as the primary point of contact for the other Party. If either Party elects to assign a different Project Manager to act on its behalf, that Party shall notify the other Party of the change in writing.

9.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the operation and maintenance of the Discharge Facilities. Any prior

agreements, promises, negotiations or representations are superseded by this Agreement. Any amendment to this Agreement must be in writing, reference the specific section(s) to be amended and be executed by the District and the City. The Parties acknowledge and agree that, notwithstanding anything to the contrary in the Access Agreement, following both the Effective Date of this Agreement, and the acceptance of the Discharge Facilities under the Access Agreement, this Agreement shall replace and supersede the Access Agreement, excepting only those provisions in the Access Agreement that expressly survive the termination or expiration of the Access Agreement, including but not limited to the insurance and indemnification obligations in paragraph 6 of the Access Agreement.

9.3 No Construction Against Drafter. Both Parties have participated in negotiating and drafting this Agreement. If an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.

9.4 Notices. All notices required or permitted under this Agreement are to be in writing and delivered personally, or sent by overnight delivery service, or registered or certified mail, postage prepaid and directed as follows:

If to the District:

Delta Diablo
Attn: General Manager
2500 Pittsburg-Antioch Highway
Antioch, CA 94509-1373
Phone: (925) 756-1920

If to the City:

City of Antioch
Attn: City Manager
200 "H" Street
Antioch, CA 94509-1005
Phone: (925) 779-7011

Either Party may, at any time or from time to time, designate in writing a substitute address for that above set forth, and thereafter notices are to be delivered to such substitute address

for that above set forth. Notices to either party are effective on the date of delivery, if delivered personally, on the next business day if sent by overnight courier, and three business days after depositing in the United States Postal Service system if sent via registered or certified mail.

9.5 No Assignment. Neither Party may assign, transfer, or otherwise substitute its interest in, or obligations under, this Agreement without the prior written consent of the other Party, which consent may not be unreasonable withheld or delayed.

9.6 Not a Joint Venture. Any intention to create a joint venture or partnership relationship between the parties hereto is hereby expressly disclaimed. This Agreement may not be construed to convey to the City any rights, express or implied, to participate in any way in the operation of the District's wastewater treatment operations.

9.7 No Third-Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to, or does, confer upon any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

9.8 Waiver. No failure or delay by the District or the City to exercise any right under this Agreement may be construed as a waiver. The waiver of either Party of the performance of any covenant, condition, obligation, representation, warranty or promise in this Agreement does not invalidate this Agreement and may not be deemed to be a waiver of any other covenant, condition, obligation, representation, warranty or promise.

9.9 Governing Law. The laws of the State of California govern all matters arising from this Agreement.

9.10 Additional Acts. The Parties agree to perform such additional acts as may be necessary to implement the terms and conditions of this Agreement.

9.11 Authority. The Parties represent that the person signing this Agreement for each Party is legally authorized and has the authority to bind that Party to the terms and conditions of this Agreement.

CITY OF ANTIOCH, a municipal corporation DELTA DIABLO, a county sanitation district

By: Ron Bernal

Name: Ron Bernal

Title: City Manager

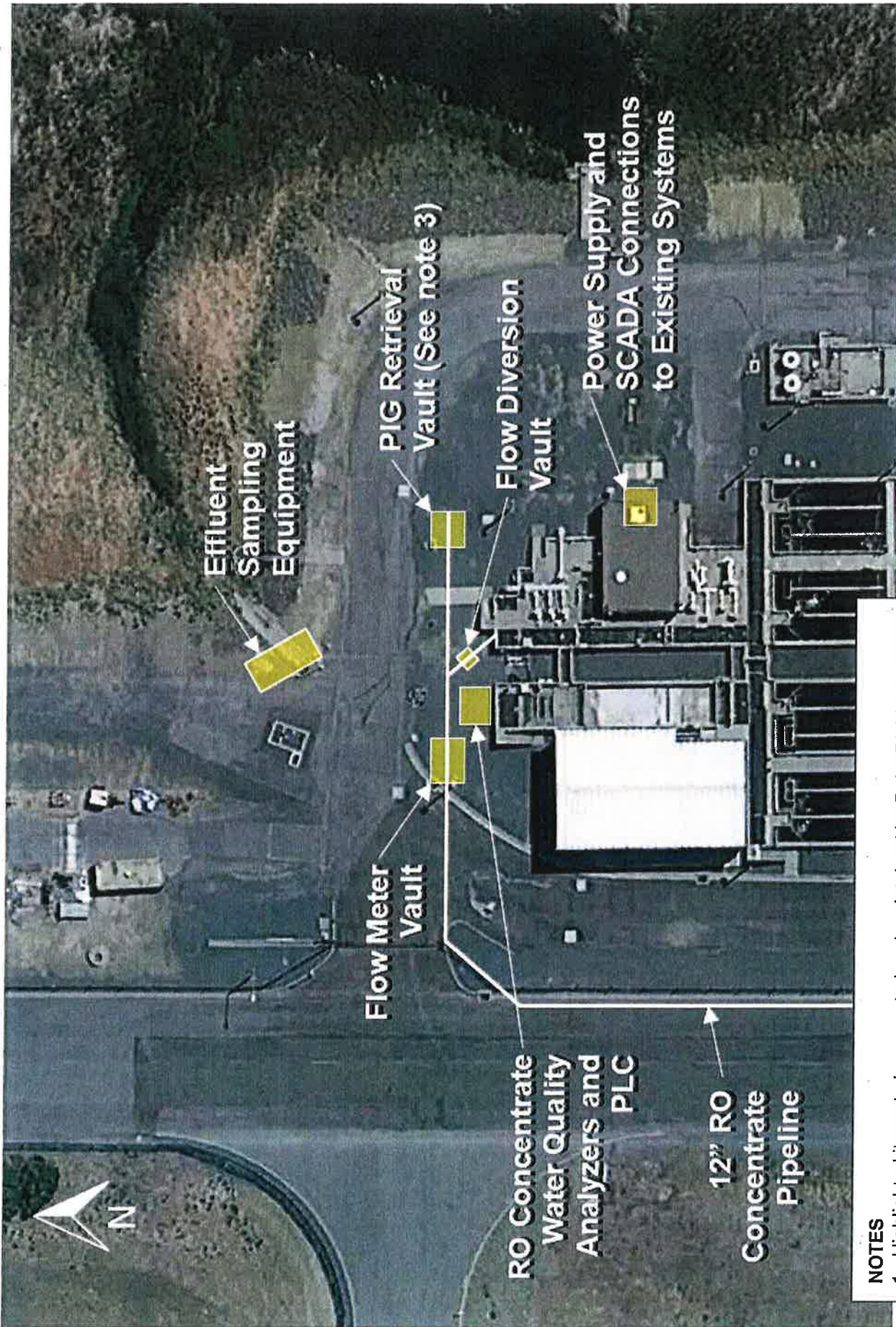
By: Vince De Lorge 10/23/2020

Name: Vince De Lorge

Title: General Manager

Exhibits

Exhibit 1 Map of District Property



NOTES

1. Highlighted items to be operated and maintained by Delta Diablo on behalf of City except for valves. City will operate and maintain valves.
2. City is responsible for 14" ROC pipeline cleaning and maintenance.
3. City is responsible for maintaining gravel in pig retrieval vault area.