

**RESOLUTION NO. 61-20**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA,  
TO AUTHORIZE THE CITY MANAGER TO ISSUE A LETTER TO WEST  
COUNTY WASTEWATER DISTRICT OF ITS INTENT TO EXERCISE ITS  
OPTION TO EXTEND THE GROUND LEASE (COMMONLY KNOWN AS  
WEST COUNTY WASTEWATER DISTRICT'S EAST SITE SLUDGE  
LAGOONS) FOR AN ADDITIONAL FIVE (5) YEARS  
UNTIL DECEMBER 31, 2025**

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**WHEREAS**, effective January 1, 2010, the West County Wastewater District (WCWD) and the City of Richmond (City) entered into that certain Ground Lease (the "Lease") whereby WCWD leased sludge lagoons to the City; and

**WHEREAS**, said sludge lagoons will hereinafter be referred to as the "Property" and is the same Property described in the Lease; and

**WHEREAS**, the City leased from WCWD, that certain real property located in Contra Costa County, California, commonly known as WCWD's East Site Sludge Lagoons (a.k.a. Sludge Lagoons 1-4 & 11); and

**WHEREAS**, the Lease provides for an Initial Term from January 1, 2010, to December 31, 2012, a First Extended Term from January 1, 2013, to December 31, 2015, and a Second Extended Term from January 1, 2016, to December 31, 2017; and

**WHEREAS**, the City's right to extend the Lease was conditioned upon the City providing timely written notice and the City meeting certain milestones specified in the Lease; and

**WHEREAS**, the City has performed its obligations under the Lease and has paid, or is paying, the correct monthly rent payable under the Lease; and

**WHEREAS**, upon the City providing written notice to WCWD that is received by WCWD on or before July 1, 2020, of the City's intent to exercise its option to extend the Lease, and upon the City's payment in advance of Annual Rent as set forth in this Subsection 2.2.4 of the land lease agreement, the City will have the right to use the Property for an additional five (5) year term in accordance with this Lease (the "Fourth Extended Term"); and

**WHEREAS**, the annual Rent for the fourth extended term shall be paid to WCWD, in advance, on or before the first (1st) day of each lease year; and

**WHEREAS**, the rent shall be calculated as follows:

January 1, 2021 – December 31, 2021: \$232,704.00 (\$219,532.00 x 1.06 rounded)  
January 1, 2022 – December 31, 2022: \$246,666.00 (\$232,704.00 x 1.06 rounded)  
January 1, 2023 – December 31, 2023: \$261,466.00 (\$246,666.00 x 1.06 rounded)  
January 1, 2024 – December 31, 2024: \$277,154.00 (\$261,466.00 x 1.06 rounded)  
January 1, 2025 – December 31, 2025: \$293,783.00 (\$277,154.00 x 1.06 rounded); and

**WHEREAS**, in no case shall the Annual Rent be reduced; and

**WHEREAS**, at any time after the commencement of the Fourth Extended Term, in addition to the right of either Party to terminate this Lease in the event of a material breach, either WCWD or the City may terminate this Lease in their discretion upon one-year written notice to the non-terminating party; and

**WHEREAS**, the Lease shall terminate and the City shall vacate the Premises at the expiration of one year after service of such written notice; and

**WHEREAS**, a true and correct copy of the ground lease and amendments are attached hereto as Exhibit A.

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Richmond hereby authorizes the City Manager to issue a letter to the West County Wastewater District requesting to extend the ground lease agreement for an additional five (5) years until December 31, 2025.

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I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held June 16, 2020, by the following vote:

AYES:	Councilmembers Choi, Johnson, Martinez, Myrick, Willis, Vice Mayor Bates, and Mayor Butt.
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

PAMELA CHRISTIAN  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

TOM BUTT  
Mayor

Approved as to form:

RACHEL SOMMOVILLA  
Interim City Attorney

State of California            }  
County of Contra Costa        }       : ss.  
City of Richmond               }

I certify that the foregoing is a true copy of **Resolution No. 61-20**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 16, 2020.

  
\_\_\_\_\_  
Pamela Christian, Clerk of the City of Richmond

CLERK'S CERTIFICATE

I, Pamela Christian, City Clerk of the City of Richmond, do hereby certify as follows:

The foregoing resolution is a full, true and correct copy of **Resolution No. 61-20** duly adopted at a regular meeting of the City Council of said City duly and regularly held at the regular meeting place thereof on the 16<sup>th</sup> day of June, 2020, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present; and that at said meeting said resolution was adopted by the following vote:

AYES: Councilmembers Choi, Johnson, Martinez, Myrick, Willis,  
Vice Mayor Bates, and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

An agenda of said meeting was posted before said meeting at City Hall, 450 Civic Center Plaza in the City of Richmond, California, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original on file and of record in my office, and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting.

Said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

Dated: June 23, 2020.



Pamela Christian  
City Clerk of the City of Richmond

[SEAL]

**EXHIBIT A**

**FIRST AMENDMENT TO GROUND LEASE**

This First Amendment To Ground Lease is made and entered effective January 1, 2017 (the Effective Date), by and between West County Wastewater District, a public agency and sanitary district organized and existing pursuant to California Health and Safety Code Section 6400 et seq (“Landlord”), on the one hand, and the City of Richmond, a municipal corporation and charter city duly organized and existing under a freeholder’s charter in the State of California, and the Richmond Municipal Sewer District, a public corporation and sewer district organized and existing pursuant to the provisions of California Health and Safety Code Section 4600 et seq., on the other hand. The City of Richmond and Richmond Municipal Sewer District will be referred to in this First Amendment To Lease collectively as “Tenant”.

**RECITALS**

- A. Effective January 1, 2010, Landlord and Tenant entered that certain Ground Lease (the “Lease”) whereby Landlord leased to Tenant, and Tenant leased from Landlord, that certain real property located in Contra Costa County, California, as more particularly described in Exhibit A to the Lease, commonly known as the Landlord’s East Site Sludge Lagoons (a.k.a. Sludge Lagoons 1-4 & 11), which sludge lagoons will hereinafter be referred to as the “Property” and is the same Property described in the Lease. A true and correct copy of the Lease is attached hereto.
- B. The Lease provides for an Initial Term from January 1, 2010 to December 31, 2012, a First Extended Term from January 1, 2013 to December 31, 2015 and a Second Extended Term from January 1, 2016 to December 31, 2017.
- C. Tenant’s right to extend the Lease for the First Extended Term and Second Extended Term was conditioned upon Tenant providing timely written notice and Tenant meeting certain milestones specified in the Lease.
- D. There is a dispute between Landlord and Tenant regarding whether Tenant met the milestones specified in the Lease and whether Tenant provided timely written notice, and therefore whether Tenant performed its obligations under the Lease and has paid, or is paying, the correct monthly rent payable under the Lease.
- E. Landlord and Tenant have determined to execute this First Amendment To Ground Lease to resolve all pending disputes between them and extend the Ground Lease on the terms and conditions of this Amendment.

**AGREEMENT**

NOW, THEREFORE, LANDLORD AND TENANT HEREBY AMEND THE LEASE AS FOLLOWS:

1. Incorporation Of Recitals. The foregoing recitals are true and correct and are hereby incorporated by this reference.

2. Lease Of The Property. Section 1 of the Lease is amended to read as follows:

1. Lease of Property. Upon and subject to the terms and conditions hereof, Landlord hereby leases the Property to Tenant and Tenant hereby hires the same from Landlord. Upon written notice to Tenant, Landlord shall have the right, at Landlord's discretion, to substitute any of the Sludge Lagoons leased to Tenant for comparable Sludge Lagoons on Landlord's land at no additional cost to Tenant.

3. Rent For Second Extended Term. Lease §2.2.2.1 is modified so Annual Rent for the period January 1, 2016 – December 31, 2016 shall be \$175,547.00 (\$167,188.00 [2015 Annual Rent] x 1.05 = \$175,547.00 (rounded)) and rent for the period January 1, 2017 – December 31, 2017 shall be \$184,324.00 (\$175,547.00 x 1.05 = \$184,324.00 (rounded)). This change in Annual Rent reflects an annual increase of five percent (5%) instead of the three percent (3%) provided for in the Lease for the Second Extended Term.

4. Third Extended Term: Subsection 2.2.3 is hereby added to the Lease as follows:

2.2.3 Third Extended Term. Upon Tenant providing written notice to Landlord that is received by Landlord on or before July 1, 2017 of Tenant's intent to exercise its option to extend the Lease, and upon Tenant's payment in advance of Annual Rent as set forth in this Subsection 2.2.3, Tenant will have the right to use the Property for an additional three (3) year term in accordance with this Lease (the "Third Extended Term"). Annual Rent for the Third Extended Term shall be paid to Landlord, in advance, on or before the first (1st) day of each Lease year and shall be calculated as follows. In no case shall the Annual Rent be reduced.

January 1, 2018 – December 31, 2018: \$195,383.00 (\$184,324.00 x 1.06 rounded)

January 1, 2019 – December 31, 2019: \$207,106.00 (\$195,383.00 x 1.06 rounded)

January 1, 2020 – December 31, 2020: \$219,532.00 (\$207,106.00 x 1.06 rounded).

5. Fourth Extended Term: Subsection 2.2.4 is hereby added to the Lease as follows:

2.2.4 Fourth Extended Term. Subject to the mutual right of Landlord and Tenant to terminate this Lease in their discretion as provided in Section 2.3, upon Tenant providing written notice to Landlord that is received by Landlord on or before July 1, 2020 of Tenant's intent to exercise its option to extend the Lease, and upon Tenant's payment in advance of Annual Rent as set forth in this Subsection 2.2.4, Tenant will have the right to use the Property for an additional five (5) year term in accordance with this Lease (the "Fourth Extended Term"). Annual Rent for the Fourth Extended Term shall be paid to Landlord, in advance, on or before the first (1st) day of each Lease year and shall be calculated as follows. In no case shall the Annual Rent be reduced.

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January 1, 2025 – December 31, 2025: \$293,783.00 (\$277,154.00 x 1.06 rounded).

6. Right To Terminate. Section 2.3 of the Lease is hereby amended as follows:

2.3 Right To Terminate. At any time after the commencement of the Fourth Extended Term, in addition to the right of either Party to terminate this Lease in the event of a material breach, either Landlord or Tenant may terminate this Lease in their discretion upon one-year written notice to the non-terminating party. The Lease shall terminate and Tenant shall vacate the Premises at the expiration of one year after service of such written notice.

7. 15.1 Notices. Section 15.1 of the Lease is amended to read as follows:

15.1 Notices. All notices must be in writing. Notice shall be given either (i) when delivered in person to the address(es) set forth below, (ii) when deposited in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended set forth below, (iii) when sent to such address by any courier service keeping records of deliveries and attempted deliveries, (iv) when sent by telecopy or similar facsimile transmission to the numbers set forth below, or (v) when sent by electronic mail to the addresses set forth below. The names, addresses, telecopy numbers and electronic mail addresses of the parties are:

If to the Landlord:

**E.J. Shalaby**  
District Manager  
West County Wastewater District  
2910 Hilltop Drive  
Richmond, CA 94806-1974  
(510) 222-6700 (voice)  
(510) 222-3277 (fax)  
[eshalaby@wcwd.org](mailto:eshalaby@wcwd.org)

With a copy to:

**Alfred A. Cabral, Esq.**  
Pelletreau, Alderson & Cabral  
P.O. Box 1000  
Grass Valley, CA 95945  
(510) 262-2100 (voice)  
(530) 478-0368 (fax)  
[Aacabral1954@gmail.com](mailto:Aacabral1954@gmail.com)

If to Richmond:

**Ryan Smith**  
Waste Water Manager  
City of Richmond  
450 Civic Center Plaza

With a copy to:

**Everett Jenkins, Esq.**  
Senior Assistant City Attorney  
City of Richmond

Richmond, CA 94804  
\_\_\_\_\_(voice)  
\_\_\_\_\_(fax)  
\_\_\_\_\_(email)

450 Civic Center Plaza  
Richmond, CA 94 804  
(510) 620-6509 (voice)  
\_\_\_\_\_(fax)  
Ejenkins@ci.richmond.ca.us

If any notice is served by registered or certified mail or courier in the manner provided, it shall be conclusively deemed received upon receipt or first attempted delivery, whichever is sooner. Notices given personally, by facsimile or by electronic mail shall be deemed given on receipt. Either party may, by notice given at any time or from time to time, change its address for notice. Notices given before actual receipt of notice of change shall not be invalidated by the change.

8. Execution in Counterparts. This First Amendment To Ground Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. Lease Otherwise Unmodified. The remainder of the Lease shall remain in full force and effect. If any of the provisions of the Lease are inconsistent with the provisions of this Amendment, then the provisions of this Amendment shall control to the extent necessary to resolve or interpret any such inconsistency. All pending disputes regarding the performance of either Party of its obligations under the Ground Lease are resolved by this Amendment.

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this First Amendment To Ground Lease as of the Effective Date.

TENANT

City of Richmond  
A Municipal Corporation

By: William Lindsay  
William Lindsay

Its: CITY MANAGER

Attest: Pamela Christ  
City Clerk

LANDLORD

West County Wastewater District

By: [Signature]  
Its: ~~President~~  
General Manager

By: \_\_\_\_\_  
Its: Secretary

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If to the Landlord:

**E.J. Shalaby**  
District Manager  
West County Wastewater District  
2910 Hilltop Drive  
Richmond, CA 94806-1974  
(510) 222-6700 (voice)  
(510) 222-3277 (fax)  
[eshalaby@wcwd.org](mailto:eshalaby@wcwd.org)

With a copy to:

**Alfred A. Cabral, Esq.**  
Pelletreau, Alderson & Cabral  
P.O. Box 1000  
Grass Valley, CA 95945  
(510) 262-2100 (voice)  
(530) 478-0368 (fax)  
[Aacabral1954@gmail.com](mailto:Aacabral1954@gmail.com)

If to Richmond:

**Ryan Smith**  
Waste Water Manager  
City of Richmond  
450 Civic Center Plaza

With a copy to:

**Everett Jenkins, Esq.**  
Senior Assistant City Attorney  
City of Richmond

Richmond, CA 94804  
\_\_\_\_\_(voice)  
\_\_\_\_\_(fax)  
\_\_\_\_\_(email)

450 Civic Center Plaza  
Richmond, CA 94 804  
(510) 620-6509 (voice)  
\_\_\_\_\_(fax)  
Ejenkins@ci.richmond.ca.us

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IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this First Amendment To Ground Lease as of the Effective Date.

TENANT

City of Richmond  
A Municipal Corporation

By: William Lindsay  
William Lindsay

Its: CITY MANAGER

Attest: Pamela Christ  
City Clerk

LANDLORD

West County Wastewater District

By: [Signature]  
Its: President  
General Manager

By: \_\_\_\_\_  
Its: Secretary