

**FIFTH AMENDMENT TO THE CITY OF RICHMOND WASTEWATER TREATMENT FACILITY CAPITAL
IMPROVEMENTS, OPERATIONS, MAINTENANCE AND MANAGEMENT AGREEMENT**

This Fifth Amendment (“**Amendment**”) is entered into as of April 17, 2018 (“**Effective Date**”) between Veolia Water West Operating Services, Inc. (hereafter, “**Veolia**” or “**Company**” fka US Filter Operating Services, Inc.) and the City of Richmond, California (hereafter, “**City**”). Veolia and the City are sometimes referred to collectively as “**the Parties**”.

RECITALS

A. WHEREAS, the City and Veolia are Parties to The City of Richmond Wastewater Treatment Facility Capital Improvements, Operations, Maintenance, and Management Agreement dated as of May 15, 2002, as amended (the “**Agreement**”) by which the City has contracted to operate its Water Pollution Control Plant (“**Facility**”); and

B. WHEREAS, the City and Veolia entered into Amendment One to the Agreement on or about September 7, 2004, which provides that Veolia shall operate, maintain and manage, and perform construction management responsibilities with respect to the City's Sanitary Collection System and Storm Water Collection System as defined in Amendment One (collectively “**Collection System(s)**”); and

C. WHEREAS, the City has completed negotiation of a Settlement Agreement entered with San Francisco Baykeeper and West County Toxics Coalition in the matter of *Baykeeper and West County Toxics Coalition v. City of Richmond*, United States District Court for the Northern District of California, Civil Case No. 05-03829 MMC; and

D. WHEREAS, the Settlement Agreement obligates the City to undertake certain enhanced operational activities, Capital Improvements and other efforts to bring the Collections System into compliance with Applicable Law; and

E. WHEREAS, the Parties now desire to (i) extend the term of the Agreement; (ii) clarify the scope of Veolia’s Services in relation to the Collection System; (iii) adjust Veolia’s compensation in relation to the planning, design, construction and execution of Capital Improvements, and (iv) make certain other adjustments to the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the City and Veolia agree as follows:

1. Capitalized Terms. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given in the Agreement, as amended. The following definitions are hereby modified, amended and included in the Agreement:

(a) “2018 Settlement Agreement” means the Settlement Agreement entered concurrently with this Amendment by and between the City and San Francisco Baykeeper and West County Toxics Coalition in the matter of *Baykeeper and West County Toxics Coalition v. City of Richmond*, United States District Court for the Northern District of California, Civil Case No. 05-03829 MMC.

(b) "Liability Cap" means Twenty-Five Million Dollars (\$25,000,000).

(c) "Services" means the Capital Improvements to, and operations, maintenance, and management of the Facility and Collection System to be provided by the Company in accordance with the terms and provisions of the Agreement.

2. Term. The Term of the Agreement is hereby extended through the first Renewal Term and will expire May 15, 2027, unless further extended under Article X of the Agreement.

3. Collection System Services. As of the Effective Date and continuing through the Term, Veolia's Services or third party services evidenced by Task Authorization (TA) approval shall include providing all labor, materials and resources necessary to support the City in the performance of the following Collection System commitments under the 2018 Settlement Agreement:

(a) Risk Assessment Analysis described in paragraphs 23-25 and 28 of the 2018 Settlement Agreement;

(b) Cleaning and CCTV work described in paragraph 35 of the 2018 Settlement Agreement;

(c) Updated Hot Spot Cleaning List described in paragraph 38 of the 2018 Settlement Agreement;

(d) Flow Monitoring Program and System Evaluation and Capacity Assurance Plan (SECAP), including hydraulic analysis described in paragraph 17 of the 2018 Settlement Agreement;

(e) Revised O&M Plan described in paragraphs 33 and 34 of the 2018 Settlement Agreement;

(f) Cleaning QA/QC program and post-cleaning CCTV inspection described in paragraph 33.d of the 2018 Settlement Agreement;

(g) Quantitative analysis of the effectiveness of the root foaming program described in paragraph 36 of the 2018 Settlement Agreement;

(h) SSO reporting and response described in paragraphs 47-49 of the 2018 Settlement Agreement: and

(i) Timely delivery of information associated with such tasks as necessary to include in required reports to Baykeeper.

The failure to perform these Services to the reasonable satisfaction of the City shall entitle the City to exercise any, or all, of its rights and remedies under the Agreement subject to relief for Uncontrollable Circumstances.

4. Capital Improvements. During the remaining Term of the Agreement, Veolia will continue to act as the City's exclusive contractor and program manager for Capital Improvements for the Facility and Collection System. As of the Effective Date, the Agreement is hereby amended and modified as follows:

(a) Capital Improvements executed at the Facility will be executed, to the maximum extent possible, on a design-build or equivalent method of delivery, and the Parties will jointly evaluate and select contractors for such projects.

(b) The Veolia Markup on Approved Third Party Work defined by any future Task Authorization (TA) will be sixteen and one-half percent (16.5%).

5. Liability Cap. As of the Effective Date, the Liability Cap included in Sections 7.4.1 and 7.5 of the Agreement is reduced to Twenty-Five Million Dollars (\$25,000,000).

6. Restatement of Agreement. The Parties agree to use reasonable efforts to restate, combine and confirm the terms and conditions of the Agreement, including all amendments thereto, by the end of calendar year. The Parties' intent is to combine the obligations set forth in the various documents comprising the Agreement into a single instrument to promote the effective and efficient administration of the contract by the Parties. The Parties will use their reasonable efforts to accomplish this objective, but shall have no obligation to modify existing material terms, conditions, rights, duties and obligations under the Agreement, or assume any new or more burdensome obligations than currently exist under the Agreement, as modified.

7. Conflicts. This Amendment is intended to modify and supplement the Agreement in accordance with Article XII thereof. To the extent that this Amendment conflicts with the Agreement, the terms of this Amendment shall prevail. With respect to all other matters, the terms of the Agreement as previously amended shall remain in full force and effect.


8. Choice of Law. This Amendment shall be construed in accordance with California State Law.

9. Integration. This Amendment constitutes the entire agreement between the Parties hereto regarding its subject matter. There have been no additional oral or written representations or agreements. Except as expressly modified or amended herein, the provisions, conditions and terms of the Agreement shall remain unchanged, are in full force and effect, and are hereby ratified by the Parties.

10. Counterparts. This Amendment may be executed in counterparts, and by fax, and all so executed shall constitute an agreement which shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties' designated representatives do not appear on the same page.

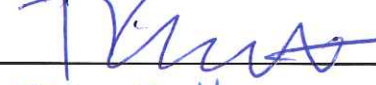
IT IS SO AGREED:

VEOLIA WATER WEST OPERATING SERVICES, INC.:



By: John C. GIBSON
Its: EVF & COO

CITY OF RICHMOND:




By: TOM BUTT
Its: MAYOR

ATTEST:



CITY Clerk

APPROVED AS TO FORM:



CITY Attorney
Bruce Reed Goodmiller