

**SECOND AMENDMENT
TO THE
CITY OF RICHMOND WASTEWATER TREATMENT FACILITY
CAPITAL IMPROVEMENTS, OPERATIONS,
MAINTENANCE AND MANAGEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF RICHMOND, CALIFORNIA
AND
VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC
(F/K/A U.S. FILTER OPERATING SERVICES, INC. AND
VEOLIA WATER NORTH AMERICA OPERATING SERVICES, INC.)**

THIS AMENDMENT is entered into on the 17th day of April 2007, by and between THE CITY OF RICHMOND, CALIFORNIA (the “City”) and VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC, (formerly known as U.S. FILTER OPERATING SERVICES, INC. and VEOLIA WATER NORTH AMERICA OPERATING SERVICES, INC.); VEOLIA WATER NORTH AMERICA-WEST, LLC; AND VEOLIA WATER CONSTRUCTORS, INC. (collectively referred to herein as “Veolia”).

WHEREAS, City and U.S. Filter Operating Services, Inc. entered into the City of Richmond Wastewater Treatment Facility Capital Improvements, Operations, Maintenance and Management Agreement dated May 15, 2002 (the “Agreement”), which provides, among other things, for Veolia to design and construct certain capital improvements at the City’s Wastewater Treatment Facility (the “Facility”) and for Veolia to operate, maintain and manage the Facility during the twenty-year (20) term of the Agreement; and

WHEREAS, the City and Veolia Water North America Operating Services, Inc. (formerly known as U.S. Filter Operating Services, Inc.) entered into Amendment One to the Agreement (“Amendment One”) 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 wastewater and stormwater collection systems (collectively “Collection Systems”); and

WHEREAS, under California law, a construction manager must hold a contractor’s license; and

WHEREAS, Veolia Water North America Operating Services, Inc. underwent a conversion from a corporation to a limited liability company in 2004 and thereby became Veolia Water North America Operating Services, LLC; and

WHEREAS, under Delaware and California law, a limited liability company that has been converted from a corporation retains all the rights, properties, privileges and liabilities of the corporation; and

WHEREAS, Veolia Water North America Operating Services, LLC created Veolia Water North America-West LLC, a wholly owned subsidiary; and

WHEREAS, under California law, a limited liability company may not hold a contractor's license; and

WHEREAS, Veolia Water North America-West LLC, created Veolia Water Constructors, Inc., a wholly owned subsidiary corporation which holds California State Contractor's License No. 866429; and

WHEREAS, the City and Veolia Water North America Operating Services, LLC, entered into an agreement in February 2007 assigning all of its rights and obligations under the Agreement and Amendment One that require performance by a licensed contractor; and

WHEREAS, Amendment One obligates Veolia to complete a comprehensive Capital Improvement Plan (CIP) for the Collection Systems by April 2006, including lift/pumping stations ("Pump Station Improvements"); and

WHEREAS, prior to entering into Amendment One, Veolia reviewed the condition of the Collection Systems and submitted a budget estimate of \$3.2 million dollars to complete the Pump Station Improvements; and

WHEREAS, Amendment One to the Agreement obligated Veolia to complete its due diligence necessary to finalize the scope and pricing of the Project by March 2005, and complete the project 18 months after the City approved this scope and pricing; and

WHEREAS, as of April 17, 2007, Veolia estimates that the Pump Station Improvements for which the City has paid \$5.5 million dollars are approximately sixty percent complete; and

WHEREAS, pursuant to the settlement agreement in *Baykeeper and West County Toxics Coalition v. City of Richmond et al.* (U.S. CAND Case No. C 05-03829) the Pump Station Improvements must be complete by December 1, 2007; and

WHEREAS, if the Pump Station Improvements are not completed by that date, the City will be subject to fines and penalties; and

WHEREAS, until the Pump Station Improvements are complete, it is possible that there will be an overflow or release event that could subject the responsible party to fines or penalties; and

WHEREAS, under Amendment One, Veolia assumes full risk for the operation, repair, and maintenance of the City's sanitary sewer and stormwater lift/pumping stations upon completion of the budgeted Pump Station Improvements; and

WHEREAS, Veolia has not completed the Pump Station Improvements within the budget and timeframe anticipated in Amendment One,

NOW, THEREFORE, Veolia and the City hereby agree as follows:

1. The effective date of this Second Amendment to the Agreement is April 17, 2007 (“Effective Date”).
2. On the Effective Date, Veolia assumes full responsibility for the operation, repair and maintenance of the City’s sanitary sewer and stormwater lift/pump stations as specified herein, in the Agreement and in Amendment One.
3. Veolia’s subcontractor Richlynn Contracting Company, Inc. (“Richlynn”) has completed approximately sixty percent of the Pump Station Improvements. If Veolia subcontracts out the remainder of the work to another subcontractor, Veolia, without waiving any of its rights against Richlynn, accepts liability to the City for any defects in the work performed by Richlynn, agrees that it will remedy any such defects at no additional cost to the City, and agrees to provide to the City its warranty of the work performed by Richlynn.
4. Veolia shall complete the Pump Station Improvements in accordance with the milestone dates (the “Milestone Dates”) outlined below, subject to the provisions of Section 7.3 (Uncontrollable Circumstances) of the Agreement:

Milestone 1: No later than **July 20, 2007** the following pump stations will be operational:

- Ferry Point Sewer Pump Station
 - ICI Sewer Pump Station
 - Nevin & A Street Sewer Pump Station
 - Enterprise Underpass Storm Water Pump Station
 - Marina & Ohio Storm Water Pump Station
 - Sunset Pointe Sewage Pump Station
- (Collectively, the “Milestone One Improvements”)

Milestone 2: No later than **August 27, 2007**, the following pump stations will be operational:

- Canyon Estates 1 Sewer Pump Station
- Canyon Estates 2 Sewer Pump Station
- Canyon Estates 3 Sewer Pump Station
- Marina Bay Parkway Sewer Pump Station
- Keller Beach Sewage Pump Station
- Barrett Underpass Storm Water Pump Station
- Brickyard Cove Sewage Pump Station
- Brickyard Booster Sewage Pump Station
- 37th and Ohio Storm Water Pump Station
- Marina Bay Sewer Pump Station
- South West Annex Storm Water Pump Station

(Collectively, the “Milestone Two Improvements”)

Milestone 3: No later than **October 19, 2007**, the following pump stations will be operational:

- Macdonald Underpass Storm Water Pump Station
 - Port Sewer Pump Station
 - 23rd St Storm Water Pump Station
 - Boat Ramp Overflow Structure
 - Harbor Wright Overflow Structure
 - All final SCADA the Telemetry Upgrades and full system integration
- (Collectively, the “Milestone Three Improvements”)

5. Veolia shall complete all Pump Station Improvements, which is defined as a completed punch list, no later than **November 30, 2007**.
6. In the event that Veolia fails to complete the Milestone One Improvements by July 20, 2007; **or** the Milestone Two Improvements by August 27, 2007; **or** the Milestone Three Improvements by October 19, 2007; **or** all Pump Station Improvements by November 30, 2007, Veolia shall pay liquidated damages of \$5,000 per calendar day to the City from the date on which the improvements were to have been completed under this Second Amendment.
7. As of the Effective Date and to the fullest extent permissible by law Veolia shall defend, indemnify, and hold harmless the City of Richmond, its council, boards, commissions, agents, officers, employees, consultants, successors and assigns from and against any and all claims, demands, obligations, proceedings, actions, causes of action, suits, losses, judgments, fines, penalties, damages, liabilities, costs and expenses (including without limitation attorney’s fees, disbursements, and all other professional or expert fees and costs associated with the defense of such claims) (individually a “Claim,” collectively “Claims”) which may arise solely from or in connection with the operation and/or maintenance of any pump station or related facilities listed at Section 4 of this Second Amendment, which Claim is brought in accordance with all applicable laws related thereto and within the time period provided by law, including but not limited to any claim for private attorney general fees claimed by or awarded to any party from City. This indemnification includes indemnifying the City for any damages, fines or penalties that may be assessed against the City under the settlement agreement in *Baykeeper and West County Toxics Coalition v. City of Richmond et al.* (U.S. CAND Case No. C 05-03829), arising from any unexcused delay in the completion of the Pump Stations Improvements and shall survive termination of the Agreement, as amended. This indemnification does not extend to any liability of the City under the Settlement Agreement or otherwise that is not directly, solely, and proximately caused by Veolia’s unexcused failure to complete the Pump Station Improvements in accordance with this Second Amendment to the Agreement.

8. The City has paid Veolia approximately \$5.5 million and, in addition to the sums due to Veolia for services rendered through March 31, 2007, if any, the City shall pay an additional \$2.0 million for completion of the Pump Station Improvements. The City will pay the \$2.0 million as follows:
- (1) Upon accomplishment of the Milestone One Improvements, Veolia shall submit an invoice for one million dollars (\$1,000,000). Within ten (10) working days of the City's receipt of the invoice, the City shall either approve the invoice for payment or notify Veolia in writing of the specific tasks that must be completed in order for the Milestone One Improvements to be found complete and the invoice paid.
 - (2) After Veolia completes the Pump Station Improvements it will submit an invoice for the remaining one million dollars (\$1,000,000.00). Within ten (10) working days of the City's receipt of the invoice, the City will either submit the invoice for payment or notify Veolia in writing of the specific tasks that must be completed in order for the Pump Station Improvements to be found complete and the invoice paid. Immediately after execution of this Second Amendment, the parties will meet, confer and reach agreement upon a written statement of the objective criteria to be relied upon by the City in making its reasonable determination that the work is complete. The criteria shall be reasonable and shall be based upon standard practices in the industry.

This \$2.0 million includes any and all costs associated with any contract administration, construction, construction management, design and engineering, markups, and staff salaries and travel costs.

9. Veolia shall provide construction completion and performance bonds in the amount of \$2.0 million issued by a surety acceptable to the City.
10. All the terms of the Agreement and Amendment One not specifically amended or modified by this Second Amendment shall remain unmodified and in full force and effect. Any waiver, modification or amendment of the terms of this Second Amendment shall be effective only if in writing and signed by an authorized representative of each party hereto.
11. If any term or provision of this Second Amendment to the Agreement is found by the court to be illegal or unenforceable, such term or provision shall be stricken and the balance of this Second Amendment shall remain in full force and effect.

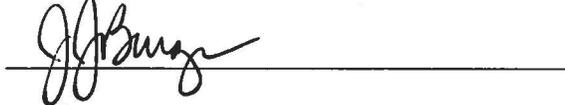
IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their duly authorized representatives as of the day and year set forth above.

CITY OF RICHMOND

By: 

Its: Mayor

VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC

By: 

Its: PRESIDENT

VEOLIA WATER NORTH AMERICA-WEST, LLC

By: 

Its: GENERAL MANAGER

VEOLIA WATER CONSTRUCTORS, INC.

By: 

Its: President