

Operating Agreement (WCW and City of Richmond Joint Assets)

This Operating Agreement (“**Agreement**”) is effective as of _____, 2024 (“**Effective Date**”) and is between the West County Wastewater District, a sanitary district organized and existing pursuant to the provisions of California Health and Safety Code Sections 6400 *et seq.* (“**WCW**”), the City of Richmond, a municipal corporation (“**City**”), and the Richmond Municipal Sewer District, a public corporation and a sewer district organized and existing pursuant to the provisions of California Health and Safety Code Sections 4600 *et seq.* in the State of California (“**RMSD**”). WCW and Richmond/RMSD are each referred to as a “**Party**,” and together as the “**Parties**.”

A. WCW, the City, and RMSD are all members of the West County Agency (“**WCA**”) as established by the Joint Exercise of Powers Agreement (the “**JPA Agreement**”), executed by the Parties on February 15, 1977; amended the Agreement on August 11, 1981, amended and restated the agreement on June 15, 1984, and further amended the Agreement on April 2, 1990, November 23, 1992, December 21, 1993, August 6, 1996, and July 21, 2020. The Parties executed an Amended and Restated Joint Powers Agreement on November 7, 2023.

B. Section 20.1 of the JPA Amendment, as restated on November 7, 2023, provides that upon termination of the JPA, “the assets of the Agency will be divided among the [parties] in a manner that is equitable and consistent with the use and operation of the Facilities and in compliance with discharge permit requirements. Upon dissolution of the Agency, the Parties will mutually determine ownership of the Facilities and may enter into Joint Use Agreements or other agreements to share costs and liabilities associated with continued joint use of any Facility.”

C. As of December 31, 2024, the Parties have agreed to dissolve WCA pursuant to Section 20.1 of the JPA Agreement. Concurrently with this Agreement, the Parties have entered into the *West County Agency Dissolution Agreement* (the “**Dissolution Agreement**”) which sets forth the terms and conditions of the dissolution and the allocation of WCA assets between the Parties.

D. This Agreement provides the terms and conditions of the continued joint operation of the WCA assets following dissolution of the WCA, as further described herein.

The Parties therefore agree as follows:

1. **Joint Facilities.**

1.1 Ownership. Pursuant to Section 5.2(A-C) of the Dissolution Agreement, ownership of the SBS Dechlorination Facility, Transmission Pipeline, Submarine Outfall, Outfall Diffusers, and AtoN Buoys (together, the “**Joint Facilities**”) are vested in the City.

1.2 WCW Right to Use. WCW shall have a perpetual, irrevocable right to use the Joint Facilities for wastewater effluent treatment and discharge for the duration of this Agreement. WCW’s discharge capacity shall remain the maximum amount allowed under the NPDES permit CA0038539, as amended from time to time.

1.3 Joint Facility Maintenance. Richmond shall be responsible for operating and maintaining the Joint Facilities in good repair and according to industry best practices. Richmond shall be responsible for performing, or contracting for the performance, of all required inspections, routine maintenance, and repair costs for the Joint Facilities. Specifically, Richmond shall perform or ensure the performance of the following:

- A. Quarterly inspections for the AtoN buoys.
 - (i) Repairs as required by inspection findings
- B. Inspection of the diffuser system every 5 years.
 - (i) Repairs as required by inspection findings
- C. Inspection of the transmission line and submarine outfall, per recommendations of the study to be completed by Carollo Engineers, Inc., and at a frequency thereafter to be determined based on the Carollo study and/or best practices.

1.4 Cost Sharing. Richmond shall account for all costs associated with the operation and maintenance of the Joint Facilities that are necessary for the treatment and disposal of effluent from the Richmond Plant (“**Joint Expenses**”). WCW will be responsible for 35% and Richmond will be responsible for 65% of the Joint Expenses, except as otherwise provided in subsection (e) or elsewhere in this Agreement.

- A. Richmond will invoice WCW quarterly for its share of Joint Expenses, which will include a report or description of all costs included in that invoice. WCW will pay undisputed invoices within 60 days of receipt.
- B. If Richmond encounters a non-routine Joint Expense in excess of \$100,000, the Parties agree to meet and confer prior to making the expenditure.
- C. If one or both Parties believe an expense should not be considered a Joint Expense, or that expenses should be allocated in a different ratio than provided in Section 1(d), the Parties will meet and confer to resolve the matter.
- D. The Parties shall meet and confer and mutually agree to undertake a permanent (life-extending) repairs to the Joint Facilities, or make the decision to remove or permanently abandon one or more of the Joint Facilities.
- E. The City shall not abandon one or more of the Joint Facilities without obtaining WCW’s consent, and providing WCW the opportunity to take over maintenance and ownership of that asset.

1.5 SBS Dechlorination Station.

A. The City shall be responsible for operation and maintenance (“O&M”) of the SBS Dechlorination Station, and will bill WCW quarterly for the costs associated with said O&M. Costs associated with the SBS Dechlorination Station will be allocated in proportion to each Party’s use of the facility. For example, the facility was constructed in a manner that includes two chemical feed skids, one dedicated to dechlorinating WCW effluent, and the other, effluent from the City’s treatment facility. Quarterly billing will include all

documented O&M and repair costs related to the WCW skid and all SBS fed by that skid (as measured by the associated flow meter). Any major maintenance and repair of the dechlorination building and its systems (for example, electrical, plumbing or air handling) will be billed at the same ratio as agreed when the project was constructed (68 percent to the City and 32 percent to WCW).

B. To allow WCW to effectively plan and budget, the City will provide prompt notification upon becoming aware of a necessary major maintenance expense. In the event of significant damage (caused by storm, fire, vandalism, landslide, operational incident or other) occurring to the SBS Dechlorination Station, the City will provide immediate notification to WCW management.

C. O&M and periodic replacements for the Dechlorination Station will be performed per industry standards or OEM recommendations.

D. If one or both Parties believe an expense should be allocated in a different ratio, the Parties will meet and confer to resolve the matter.

2. Cathodic Protection System.

2.1 Pursuant to Section 4.2(D), ownership of the Cathodic Protection System protecting the 6" and 36" pipelines between the WCW plant and the Richmond plant is vested in WCW. The Cathodic Protection System is more fully described in the *2019 Cathodic Protection system Testing and Evaluation Technical Report* by Alisto Engineering Group, and is depicted in the CP System Survey Locations Plan in Figure 1 of the Technical Report, attached hereto as Exhibit A.

2.2 WCW shall be responsible for the operation and maintenance of the Cathodic Protection System, and will bill Richmond quarterly for 50% of the costs associated with the maintenance and operation of the Cathodic Protection System. WCW may contract out the maintenance work on an annual or semiannual basis. Should the maintenance work be contracted, WCW will confer with the City in advance, on selection of the contractor and total costs to be billed.

2.3 If one or both Parties believe an expense should be allocated in a different ratio, the Parties will meet and confer to resolve the matter.

2.4 WCW shall not abandon the Cathodic Protection System without obtaining the City's consent, and providing the City the opportunity to take over maintenance and ownership of that asset.

3. Duties of the Parties.

3.1 The Parties will meet periodically, in intervals not less than bi-annually, to meet and confer on the operation, maintenance, and management of the Joint Facilities. The Parties may mutually agree to cost sharing ratios that differ from those described in Section 1 and 2 as necessary to reflect true operational costs and principles of fairness. Each Party shall promptly share information relating to the Joint Facilities and costs to operate and maintain said facilities.

3.2 Both Parties shall comply with permit conditions and all other legal or regulatory requirements imposed by any local, state, or federal regulatory body.

3.3 Both Parties shall maintain records relating to the Joint Facilities and shall make all records available for review by the other Party upon request.

3.4 Both Parties shall carry adequate insurance to perform all acts and obligations under this Agreement.

4. Remedies

4.1 Either Party may perform temporary or emergency repairs to the Joint Facilities or the Cathodic Protection System reasonably necessary to prevent harm to the facilities, third parties, or the environment, with prior written notice to the other Party. If time does not permit advanced notice, the Party engaging in the work will provide notice as soon as possible after the emergency situation has abated.

4.2 Third Party Liability. Richmond shall require any contractor performing work on the Joint Facilities to name WCW as an additional insured, and include indemnity and liability provisions protecting Richmond and WCW, as well as their employees, directors, and agents.

5. **Indemnity.** Each party will indemnify, defend, and hold harmless the other from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"): (1) to the extent arising out of the indemnifying party's negligence or willful misconduct in the operation or maintenance of the Joint Facilities or the Cathodic Protection System, except to the extent of Losses are caused by the indemnified party's negligence or willful misconduct; and (2) each Party's share of any claims that arise while the Party is a co-permittee under the NPDES permit and that are shared liabilities deemed the responsibility of all permittees.

6. **Dispute Resolution.** In the event of any dispute, the Parties will promptly meet and confer, first at a staff level and then elevated to the Parties' governing bodies, in a good faith attempt to resolve the dispute. In connection with such negotiations, the Party asserting the dispute must provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the west Contra Costa area. The cost of mediation will be shared equally. In the alternative, a Party may choose to resolve questions or disputes arising under this Agreement through arbitration or judicial determination.

7. **Term; Termination.** This Agreement is effective as of the Effective Date and will continue until terminated by mutual agreement of the Parties.

8. Miscellaneous.

8.1 *Integration, Governing Law, Amendment.* This Agreement represents the entire understanding of the Parties as to their interests and obligations relating to the Joint Facilities. To the extent that it contradicts or varies from this Agreement, no prior oral or written understanding will be of any force or effect with respect to the matters covered by this Agreement. This Agreement is governed by the laws of the State of California and will be

construed as if drafted by all Parties. This Agreement may not be modified except in writing, approved and executed by the Parties.

8.2 *Third Parties.* This Agreement does not create any third-party beneficiary or any rights in any person or party other than the Parties.

8.3 *Signing Authority.* Each Party represents and warrants that each person or persons executing this Agreement on its behalf is duly authorized to do so by the respective Party and that this Agreement binds the Parties.

8.4 *Notices.* Any written notice required by this Agreement will be made by U.S. mail or by reliable overnight courier and delivered to the following address, together with a courtesy copy by email:

To WCW: West County Wastewater District
 2910 Hilltop Drive
 Richmond, CA 94806
 Attn: General Manager

To RMSD/ the City: City of Richmond Public Works Department
 450 Civic Center Plaza
 Richmond, CA 94804
 Attn: City Manager

Either party may, by written notice to the other, designate a different address or addressee, which will be substituted immediately for that specified above.

8.5 *Severability.* If any provision of this Agreement, for any reason, is held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, but this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been set forth herein, and the remainder will be enforceable to the fullest extent permitted by law.

8.6 *Successors & Assigns.* The terms of this Agreement are binding upon and will inure to the benefit of and be enforceable by the respective successors and assigns of the Parties.

8.7 *Counterparts.* This Agreement may be executed in counterparts, each of which is an original, but all of which together will constitute one and the same instrument.

The Parties are signing this Agreement as of the Effective Date.

WEST COUNTY WASTEWATER DISTRICT

Dated: _____

By: _____

Name
Title

Approved as to Form:
Hanson Bridgett, LLP

By: _____

District Counsel

THE CITY OF RICHMOND

Approved as to Form:

By: _____

Pam Christian, City Clerk

By: _____

Dave Aleshire, City Attorney

Dated: _____

By: _____

Shasa Curl
City Manager

RICHMOND MUNICIPAL SEWER DISTRICT

Dated: _____

By: _____

Shasa Curl
City Manager

EXHIBIT A

Diagram of Cathodic Protection System