

AMENDMENT NO. 2

TO O&M SUPPORT AGREEMENT – STORMWATER CAPTURE FACILITY

(Carriage Crest Park)

THIS AMENDMENT TO THE O&M SUPPORT AGREEMENT – STORMWATER CAPTURE FACILITY (“**Amendment No. 2**”) by and between the CITY OF CARSON, a California municipal corporation (“**City**”) and COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY (“**District**”), is effective as of the 30th day of September, 2023.

RECITALS

A. City and District entered into that certain O&M Support Agreement – Stormwater Capture Facility (“**O&M Agreement**”), whereby District agreed, on a time and materials basis and at the City’s direction, to provide City with interim operations and maintenance support (“**O&M Services**”) to support the startup of the Water Capture Facility at Carriage Crest Park in the City of Carson (“**Facility**”).

B. The intent of the O&M Agreement was for the Districts to provide operation and maintenance (O&M) support for a portion of the Facility, in order to provide a bridge between Facility startup and operation by City-contracted O&M service providers or contractors.

C. District and City entered into a Stormwater Project Services Agreement dated July 19, 2016 (“**Project Agreement**”) in connection with City’s desire to construct the Facility (“**Project**”). To facilitate construction of the Project, City requested District, and District agreed, to provide certain support planning, design, and construction management services under the Project Agreement. Under the terms of the Project Agreement, the District was required to hire and oversee a design and construction management consultants for the Project, and the City was to pay District to cover related costs. The City was to then retain a contractor to construct the Facility in accordance with completed designs. The District contracted with Tetra Tech to perform preliminary engineering and site investigations, design services, and construction management services for the Project; the City retained OHL USA (“**Contractor**”) as the general contractor for the Project.

D. Construction of the Facility by Contractor commenced in May 2018. During the course of construction the Project encountered multiple construction challenges that significantly affected project completion. Those delays included, but were not limited to, rain delays, soil that required additional testing and handling, and Contractor productivity issues.

E. Although the City did not accept the Contractor-installed ballfield turf until March 2022, the structural, mechanical, and electrical portions of the Facility were essentially completed as of October 2021. Facility startup and equipment testing began around that time and were expected to be completed in December 2021 or January 2022.

F. Functional testing was suspended in April 2022 due to damage to electrical components caused by stormwater runoff entering below-ground vaults through access hatches.

The damage appears to have been caused primarily as a result of alleged errors and omissions in Tetra Tech’s designs and construction management services which resulted in Contractor constructing a Project that contains deficiencies.

G. Due to the anticipated time to obtain replacement parts and otherwise remediate the deficiencies in the Project, the City suspended the project work on April 29, 2022, which consisted primarily of demonstration of the functionality of the control program and providing O&M training to City staff, in addition to performing minor “punch list” items and correcting “as-built” drawings. The replacement valve actuators and associated uninterruptible power supply to be installed for the Project have been received by the City and are available for installation.

H. The City subsequently attempted via an extra work process to have the Contractor replace the damaged equipment and make minor modifications designed to prevent future equipment damage, with the expectation that the Contractor would resume the suspended work after replacing the failed equipment. That extra work process was based on revised drawings prepared by Tetra Tech and furnished to Contractor by the City.

I. However, due to a lack of timely response from the Contractor, the City has decided to terminate that contract and instead have the District perform activities necessary to make the Facility operational. The City accepted the work completed by Contractor and authorized the District to perform the remaining work at its July 16, 2024 City Council meeting.

J. In order to expedite the work required to place the Facility into proper operation, the City and District desire to reactivate and extend the term of the O&M Agreement; and to expand the scope of the Agreement to allow the District to replace or repair the damaged equipment/instrumentation to allow the Facility to be placed into operation, and make related modifications or improvements to reasonably protect the equipment from future damage.

K. The City is in possession of the four (4) replacement actuators and one (1) uninterruptible power supply to be installed at the Facility and will provide them to the District for installation at the Facility.

L. Since Project startup will be achieved under this Agreement and not City’s prior contract with Contractor, both Parties intend to work collaboratively to achieve the diversion of dry weather runoff and stormwater from the LACFC storm drain in Figueroa Street to the Facility during the 2024-2025 wet-weather season, which is generally understood to be October 15 through April 15.

M. The initial timeframe for District to provide the interim O&M Services to the City was initially anticipated to be approximately 3-4 months, ending no later than April 30, 2022 with the overall term of the O&M Agreement to expire June 30, 2022. Those dates were extended to June 30, 2023 and September 30, 2023 via **Amendment No. 1** to the O&M Agreement.

N. A draft O&M Manual for the Project was provided to the City in December 2023 and revised based on City comments received in March 2024.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (deletions shown in ~~strike through~~ and additions shown in ***bold italics***).

A. Recital R of the Agreement is hereby amended to read in its entirety as follows:

“The Parties intend that ***with the exception of work performed under Section 1.7***, all work performed under this Agreement will be paid for by the City, which will apply for reimbursement from the County of Los Angeles under the County MOU and the Safe Clean Water Program.”

B. Section 1 (Scope of Services) of the Agreement is hereby amended to read in its entirety as follows:

“1. Scope of Services. The District shall, on a time and materials basis, assist the City, at the City’s direction, in providing operations and maintenance (“***O&M***”) support ***and construction services*** for the Water Capture Facility at Carriage Crest Park in the City of Carson. The District shall perform the following services for the City in connection with the Water Capture Facility:”

C. Section 1.4 (Interim O&M Services) of the Agreement is hereby amended to read in its entirety as follows:

“ 1.4 Interim O&M Services. If required due to the timing of the project startup and the City’s contracting for O&M services, the District shall perform, or hire and manage the work of contractors to perform operation and maintenance services at the Water Capture Facility on a short term basis. ~~The timeframe for direct O&M services provided by the District shall end no later than June 30, 2023 unless extended by mutual agreement.~~ All portions of the Project that are not directly related to the Water Capture Facility, such as lighting, fencing, irrigation, landscaping, or ball fields, shall be understood to be outside the scope of this Agreement.”

D. Section 1.7 is hereby added to the Agreement to read in its entirety as follows:

“1.7 Replacement, Repair, or Modifications of Facility. The District shall provide City construction services to replace or repair damaged equipment/instrumentation to allow the Water Capture Facility at Carriage Crest Park to be placed into operation and make related modifications or improvements to reasonably protect the equipment from future damage.

1.7.1 The scope of work has been identified as consisting primarily of: replacement of actuators, sensors, and other equipment damaged or subject to damage by water intrusion; installing area drains and drain piping in the vicinity of the vaults; minor grading work associated with the area drains; and other minor work intended to manage water entering

the vaults, as shown on the Tetra Tech drawings provided to the City's Contractor. However, those drawings are not made a part of this O&M Agreement. Both Parties intend for the District to use its expertise in determining the appropriate modifications.

1.7.2 The District will provide City with an opportunity to review the proposed modifications to allow City to conduct a reasonable review to ensure there are no significant issues. The City's review time shall be a maximum of five (5) working days.

1.7.3 The District may either directly perform this work, or hire and manage the work of contractors in accordance with the Public Contract Code and the applicable sections of the 2021 Edition of the Standard Specifications for Public Works Construction (Greenbook) as modified by District amendments.

1.7.4 The City shall furnish to the District the four (4) valve actuators and one (1) uninterruptible power supply to be installed at the Facility within ten (10) working days from District's request.

1.7.5 The City agrees to allow the District sole access to the work area outside of the ball fields, including a reasonable area for construction staging, as needed to perform the work. The de minimis amount of work inside the ball field area will be coordinated with the City to minimize impact to the construction schedule while minimizing impacts to events conducted by City's Parks and Recreation Department. The City shall be responsible for reseeding ballfields turf, or landscaped areas after the work is completed, as needed.

1.7.6 The work performed to address the equipment flooding as detailed on the revised drawings prepared by Tetra Tech or per plans and designs the District otherwise determines are appropriate for the work, including District staff time, will be at no cost to the City. The City will reimburse the District for the cost of other modifications or improvements at the facilities, provided that the City Engineer has approved those modifications.

1.7.7 The City shall accept the work after a demonstration period in which the Facility operates to divert dry-weather and/or stormwater runoff to the sanitary sewer system. A successful Facility Demonstration shall be defined as operating for a period of five (5) days after a rainfall amount of at least 0.89 inches in a single 24-hour period or after a cumulative depth of 3.25 inches received during the wet weather season, defined as the period between October 15, 2024 through April 15, 2025. Rainfall depths shall be the greater of that measured at the Warren Resource Recovery Facility or the closest Los Angeles County Department of Public Works ALERT precipitation gauge.

E. Section 2 (Duration of Agreement) of the Agreement is hereby amended to read in its entirety as follows:

“2. Duration of Agreement. This Agreement shall become effective on the Contract Date and shall be effective through *the later of Facility Demonstration or June 30, 2025* ~~September 30, 2023~~ unless terminated early. This Agreement may be extended by mutual written agreement *until a date that is no later than September 30, 2025* ~~for a period not to exceed three years from the Contract Date.~~”

F. Section 5 (Facility Ownership) of the Agreement is hereby amended to read in its entirety as follows:

“5. The Water Capture Facility is and will *continue to* be owned by the City. The City shall be responsible for *accepting* ~~reviewing and approving~~ the O&M Work plan and *preparing* bid documents for advertising, bidding, and awarding the City’s contracts for O&M service at the Water Capture Facility. The District will not own any part of the Water Capture Facility, such as the sewer junction structure at any time, unless otherwise specified in a separate agreement. *It shall be understood that the City is a third-party beneficiary of any modifications or improvements made to the Facility by the District or its contractor(s) and to that end, District shall ensure that any contract it enters into for such purpose pursuant to Section 1.7 will include a clause stating City will be a third-party beneficiary.*”

G. Section 7 (Costs) and 7.1 of the Agreement are hereby amended to read in their entirety as follows:

“7. Costs. Costs to be incurred by the District under this Agreement *for reimbursement by the City* may include any of the following:

7.1 District staff costs *for O&M support, including troubleshooting of the control system*, based on the Schedule of Fees provided in Exhibit 7 and subject to annual adjustment consistent with the District’s salary and cost increases. Staff charges incurred prior to the Contract Date are reimbursable under this Agreement.”

H. Section 8.2 (under Specific Exclusions) of the Agreement is hereby amended to read in its entirety as follows:

“8.2 Costs *including District staff costs* to modify, alter, or repair any part of the Water Capture Facility or its components *related to the work described in Section 1.7 above.*”

I. Section 9 (Invoices) of the Agreement is hereby amended to read in its entirety as follows:

~~“9. Invoices. The District shall maintain itemized and detailed work or job records covering the cost of all functions and services performed under this Agreement, including salary, wages and other compensation for labor, supervision and planning, plus overhead, the reasonable rental value of all District owned machinery and equipment, invoices for consultants, materials and supplies, reasonable handling charges, and all additional items of expense incidental to the performance of such function or service. The District shall furnish to the City an invoice for all work performed and *reimbursable* expenses incurred during each calendar month. The invoice shall be itemized to show subtotals for *time and material, organized by major work scopes. Invoices are not required for work performed at no cost to the City, as described in Section 1.7.6 above.* each task that was active during the invoice period. The invoice will reflect the current overall balance, the charges to date for each task, and a work progress statement for each task, any payments made by the City to date, any outstanding invoices and an amount due for replenishment of the balance the current balance of the initial deposit.”~~

J. Section 11 (Payment Terms) of the Agreement is hereby amended to read in its entirety as follows:

~~“11. Payment Terms. The City shall pay the District within 45 days after invoice. The City’s duty to pay the District is not contingent upon reimbursement from any other party. The City shall be solely liable for all charges incurred by the District for the Project.”~~

K. Section 12 (Termination) of the Agreement is hereby amended to read in its entirety as follows:

~~“12. Termination. Notwithstanding the provision of Section 2 of this Agreement, either the City or the District may terminate this Agreement at any time *after the Demonstration Period* by giving 30 days prior written notice of termination to the other Party.”~~

L. Section 13.1 (Indemnity) of the Agreement is hereby amended to read in its entirety as follows:

~~“13.1 Indemnity. The City shall indemnify, defend, and hold harmless the District and its elected and appointed officers, employees and agents from and against any demands claims, actions, fees, costs and expenses (including attorney and cost of expert witness fees and costs of litigation) arising out of or relating to the Project or Water Capture Facility. Such indemnification will not cover any claim due to the sole negligence or willful misconduct of the District or its agents. The District shall indemnify, defend, and hold harmless the City and its elected and appointed officers, employees and agents from and against any demands claims, actions, fees, costs and expenses (including attorney and cost of expert witness fees and costs of litigation) arising out of or relating~~

to any services provided under this Agreement, including, but not limited to, any services performed by its *District's* officers, employees, agents, *contractors*, subcontractors, or subconsultants. Such indemnification will not cover any claim due to the sole negligence or willful misconduct of the City or its agents.”

M. Section 13.2 (Warranty and Limitation of Liability) of the Agreement is hereby amended to read in its entirety as follows:

“13.2 Warranty and Limitation of Liability. The District warrants that all services will be provided in accordance with industry professional standards by similarly-qualified professionals. The City shall notify the District within 30 days if any services are claimed to be deficient. For any breach of this warranty, the City’s exclusive remedy will be the District’s re-performance and correction of the deficiency at District’s cost. In no event will the District be liable to the City for the payment of any indirect, incidental, special, punitive, or consequential damages. The District’s maximum liability for any damages arising out of or related to this Agreement shall be the amount paid by City to the District for the District’s staff time and materials under this Agreement.

Without limiting the generality of the foregoing, for work performed under Section 1.7, District agrees to correct defective equipment or work provided by the District for a period of one year from the date of Facility Demonstration. The determination of defective equipment or work, and the appropriate corrective action, shall be as reasonably agreed upon between the City and District, and shall not include normal equipment failures. For any work so corrected, District’s obligation to correct additional defective work for that portion of the work only shall be reinstated for an additional one year period.”

N. Section 25 (Delegation to Chief Engineer) of the Agreement is hereby amended to read in its entirety as follows:

“25. Delegation to the Chief Engineer. The District’s Chief Engineer is authorized to take all actions on behalf of the District in connection with any approvals, consents, or actions required of or by the District under this Agreement, including modifying the agreement ~~duration~~ or amendments thereto.”

O. Exhibit 7 (Hourly Rates) of the Agreement is hereby removed in its entirety and replaced with the Attached Exhibit 7.

2. Continuing Effect of Agreement. Except as amended by this Amendment No. 2 and Amendment No. 1, all provisions of the O&M Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 2, whenever the term “Agreement” appears in the O&M Agreement, it shall mean the O&M Agreement, as amended by this Amendment No. 2 and Amendment No. 1.

3. Affirmation of Agreement; Warranty Re Absence of Defaults. City and District each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement and Amendment No. 1. Each party represents and warrants to the other that there

have been no written or oral modifications to the Agreement other than as provided herein and Amendment No. 1. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

District represents and warrants to City that, as of the date of this Amendment No. 2, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to District that, as of the date of this Amendment No. 2, District is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

5. Authority. The persons executing this Amendment No. 2 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 2 on behalf of said party, (iii) by so executing this Amendment No. 2, such party is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which said party is bound.

6. Counterparts. This Amendment No. 2 may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, whether the signatures are originals, electronic, facsimiles or digital. All such counterparts shall together constitute but one and the same Amendment No. 2.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 on the date(s) and year written below.

CITY:

Date: _____, 2024

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes
Lula Davis-Holmes, Mayor

ATTEST:

K. Bradshaw
Dr. Khaleah R. Bradshaw, City Clerk



APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani
Sunny K. Soltani, City Attorney
[rjl]

DISTRICT:

Date: _____, 2024

COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY

By: _____
Chairperson

ATTEST:

Secretary to the Board

APPROVED AS TO FORM:
LEWIS BRISBOIS BISGAARD & SMITH, LLP

District Counsel

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 on the date(s) and year written below.

CITY:

Date: _____, 2024

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah R. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[tjl]

Date: _____, 2024

DISTRICT:

COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY

By: _____
Chairperson

ATTEST:

Secretary to the Board

APPROVED AS TO FORM:
LEWIS BRISBOIS BISGAARD & SMITH, LLP

District Counsel

Exhibit 7. Districts' Cost Schedule for FY 202421-2522

<u>Position</u>	<u>Hourly Rate (\$/hr)</u>
Division Engineer	<i>225228</i>
Supervising Engineer	<i>204196</i>
Senior Engineer	<i>183177</i>
Civil Engineer	<i>165160</i>
Engineering Associate	<i>156150</i>
Engineering Technician	<i>106101</i>
Secretary	<i>8883</i>
Senior SCADA Coordinator	<i>152148</i>
Senior Electrical and Instrumentation Technician	<i>138132</i>
Electrical and Instrumentation Technician	<i>129125</i>
Asset Management Technician	<i>131122</i>
Senior Mechanic	<i>123120</i>
Lead Maintenance and Construction	<i>117113</i>
Vacuum Truck Driver	<i>10097</i>
Maintenance & Construction Worker	<i>9490</i>
Treatment Plant Operator I	<i>111108</i>
Treatment Plant Operator II	<i>125120</i>
Supervising Treatment Plant Operator	<i>150146</i>

Labor billing rates are subject to readjustment by the Sanitation Districts' Chief Engineer and General Manager no more frequently than annually to reflect the cost of such service. Revised rates will become effective on the first day of the month following notification that rates have been revised.