



TOWN OF DISCOVERY BAY CSD

President - Kevin Graves • Vice-President - Mark Simon • Director - Brian Dawson • Director – Chris Steele • Director - Ray Tetreault

NOTICE, CALL, AND AGENDA OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE TOWN OF DISCOVERY BAY CSD

Wednesday December 15, 2010 at 6:30p.m.
1800 Willow Lake Road, Discovery Bay, California

SPECIAL MEETING at 6:30p.m.

A. ROLL CALL

1. Call business meeting to order 6:30p.m.

B. PUBLIC COMMENTS (Public Comments will be limited to a 3-minute time limit)

The public may address the Board on any issue in the District's jurisdiction, which is not on the agenda. The public may comment on any item on the agenda at the time that item is taken up. Any person wishing to speak must come up and speak from the podium. There will be no dialog between the Board and the commenter. Any clarifying questions from the Board must go through the Chair.

C. CONSENT CALENDAR:

1. Month to Month Contract Extension with Veolia Water NA

D. CLOSED SESSION:

CONFERENCE WITH LABOR NEGOTIATOR **Government Code Section 54957.6**

Agency Designated Representative: Richard J. Howard

Unrepresented Employees: All

E. Return to Open Session; report on Closed Session.

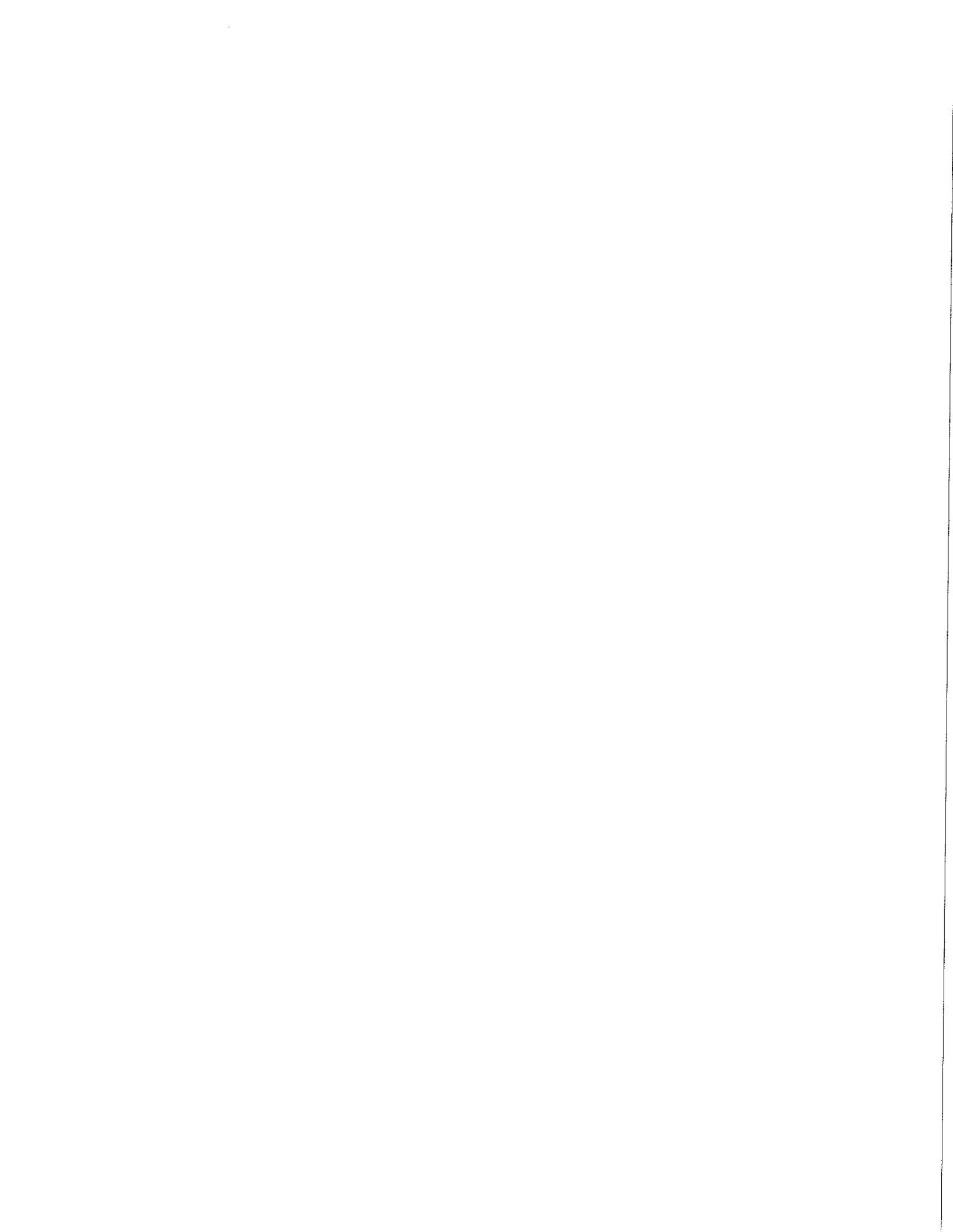
F. ADJOURNMENT

1. Adjourn to the next Regular Meeting of December 15, 2010 starting at 7:00p.m. at 1800 Willow Lake Rd – Located in back of the Delta Presbyterian Church.

"This agenda shall be made available upon request in alternative formats to persons with disability, as required by the American with Disabilities Act of 1990 (42 U.S. C. § 12132) and the Ralph M. Brown Act (California Government Code § 54954.2). Persons requesting a disability related modification or accommodation in order to participate in the meeting should contact the Town of Discovery Bay, at (925) 634-1131, during regular business hours, at least twenty-four hours prior to the time of the meeting."

"Materials related to an item on the Agenda submitted to the Town of Discovery Bay CSD after distribution of the agenda packet are available for public inspection in the District Office located at 1800 Willow Lake Road during normal business hours."

"The public may comment on any item on the agenda at the time the item is taken up by the Board of Directors."





Town of Discovery Bay CSD

AGENDA REPORT

Meeting Date

December 15, 2010

Prepared By: Rick Howard, General Manager
Submitted By: Rick Howard, General Manager *R.H.*

Agenda Title

Month to Month Contract Extension with Veolia Water NA

Recommended Action

Authorize the General Manager to negotiate a month to month contract extension with Veolia Water NA pursuant to its terms

Executive Summary

In January 2009, the Town of Discovery Bay CSD entered into a two year emergency services contract with Veolia Water NA to provide water and wastewater services for the Town. That contract is set to expire on December 31, 2010.

As the Board is aware, the Town has distributed a RFP and five firms' submitted a proposal to provide water and wastewater services for the Town. The RFP Review Committee has narrowed the firms from five to two. In an effort to obtain the most relevant information and receive the best service for the Town, the process has taken longer than anticipated as the Committee has reviewed all proposals, met with the final two firms on two different occasions, and visited their facilities. As a result of this extensive review, the new (or existing) contractor has not been identified as of this time and will not be in a position to transition services effective January 1, 2011.

Consequently, a month to month contract extension with Veolia is appropriate at this time.

It is anticipated that a contract will be forwarded to the Board for consideration of a new five year contract once the contractor selection process has been completed. At that time, the Board will make the final determination and selection.

Veolia Water NA is agreeable to this contract extension.

Fiscal Impact:

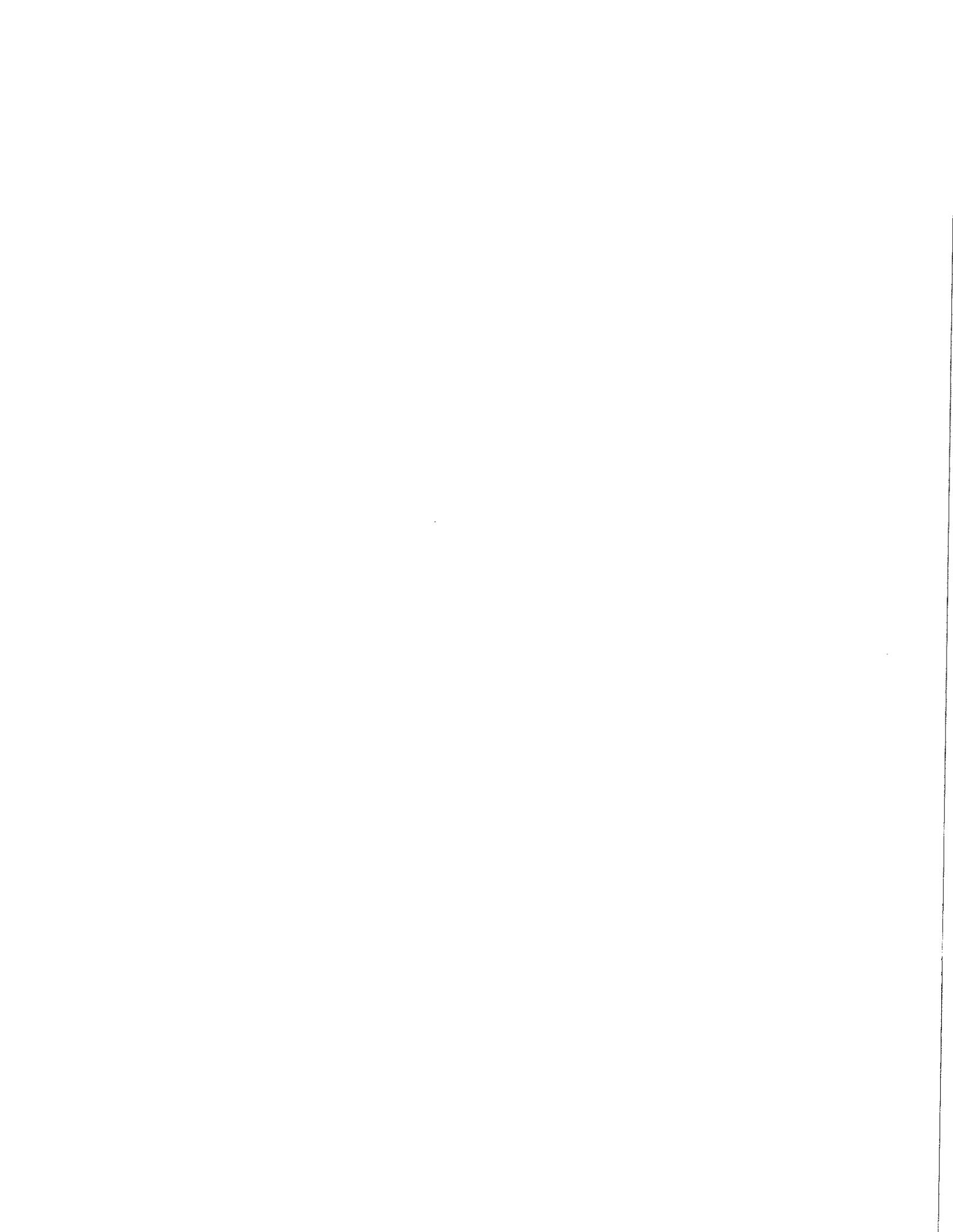
Amount Requested \$
Sufficient Budgeted Funds Available?: (If no, see attached fiscal analysis)
Prog/Fund # Category: Pers. Optg. Cap. -or- CIP# Fund#

Previous Relevant Board Actions for This Item

Attachments

Existing Veolia Water NA Contract

AGENDA ITEM: C-1





Rick's
COPY

TOWN OF DISCOVERY BAY
2-4-09
VK/DC
ca/ca

February 2, 2009

Virgil Koehne, General Manager
Town of Discovery Bay CSD
1800 Willow Lake Road
Discovery Bay, CA 94505-9376

Dear Mr. Koehne:

Please find enclosed one (1) fully executed **Town of Discovery Bay Community Service District Service Contract** between the Town of Discovery Bay Community Services District and Veolia West Operating Services, Inc.

This has been signed by Philip Ashcroft, President, Veolia West Operating Services, Inc.

Thank you very much.

Sincerely,

Allison Hill
Administrative Assistant to
Philip Ashcroft

**TOWN OF DISCOVERY BAY COMMUNITY SERVICE DISTRICT
SERVICE CONTRACT**

This Professional Service Contract ("CONTRACT") is entered into as of this 1st day of January, 2009 by and between the Town of Discovery Bay Community Services District ("CLIENT") and Veolia West Operating Services, Inc., a Delaware limited liability company, holding California State Contractors License Number 866429 ("Veolia").

I. RECITALS

CLIENT operates and has all applicable permits for:

(a) a wastewater collection and treatment system located in and around the community of Discovery Bay, consisting of approximately 47 miles of sewer lines, 7 miles of force-mains, 15 lift stations, two biological wastewater treatment facilities, and related equipment; and

(b) a water supply and distribution system located in and around Discovery Bay, consisting of two iron and manganese water treatment plants located at 1800 Willow Lake Drive and 1800 Newport Drive, 5 wells that produce about 6,500 gallons per minute in the aggregate, approximately 5,400 connections, approximately 47 miles of distribution lines, and related equipment.

CLIENT affirms that all such facilities are built in accordance with all applicable local, state, and federal regulations, and that the facilities are in good working order, do not contain any known defective equipment, and are suitable and adequate for the reasonable needs of its expected operations.

The foregoing in existence as of the beginning date of this CONTRACT shall be collectively known hereinafter as "FACILITY".

II. STATEMENT OF PURPOSE

This CONTRACT provides for Veolia to furnish to CLIENT certain services necessary for the proper maintenance and operation of FACILITY; and to receive compensation from CLIENT for those services rendered in accordance with the below-presented terms and conditions.

III. TERM OF AGREEMENT

This CONTRACT shall remain in effect from the date first written above for a two (2) year period thereafter subject to the right of the parties to terminate or renew as set forth herein.

IV. SCOPE OF SERVICES

Unless otherwise specifically stated, all costs for the below listed services are to Veolia's account and included as part of the base CONTRACT price.

A. Certified Personnel. Veolia affirms that the FACILITY shall be operated by adequate and experienced personnel, who possess valid operator certifications as required by the State of California.

Veolia will ensure that its safety program meets or exceeds all state and federal requirements (including OSHA) and that training and education opportunities for its employees continues at the levels that will afford them the opportunity for advanced certification from the California State Water Resources Control Board and the California Department of Public Health.

B. Scope. Veolia will pay all necessary expenses, as herein defined, required for the normal Operation (except as specifically set forth in this CONTRACT) and Preventive and Corrective maintenance of the FACILITY. Subject to the CLIENT providing the FACILITY with groundwater (raw water) and/or influent sewage which meets the quality and/or parameters identified in this CONTRACT, Veolia will operate the FACILITY in a manner that shall meet the finished water and wastewater requirements specified on Attachment A hereto.

C. Maintenance.

1.) For purposes of this CONTRACT, the following definitions shall apply:

"Preventive Maintenance" shall mean periodic scheduled maintenance in accordance with industry standards and/or manufacturers' recommendations.

"Corrective Maintenance and Repairs" shall mean any non-preventive maintenance or repair, including repairs to water and sewer mains, which cost up to two thousand dollars (\$2,000.00) per event. Extensions or expansions of the FACILITY are not included in this CONTRACT price and shall be treated as a change in scope.

"Capital Maintenance, Repairs, or Replacements" shall mean (1) capital improvements to the FACILITY which are not preventive maintenance or repair, and (2) corrective maintenance or repair which costs over two thousand dollars (\$2,000.00) or which is caused by Force Majeure.

2) To the limit of \$42,413.00 per year, Veolia will provide Preventive Maintenance and Corrective Maintenance or Repairs for the FACILITY, consistent with good preventive maintenance practice or manufacturer's specifications. Veolia on-site labor costs shall not be included when calculating such annual FACILITY

maintenance amounts. CLIENT will be responsible for and pay all Capital Maintenance, Repair, and Replacement costs as defined above.

3) The annual maximum that Veolia shall be required to pay (per C.2 above) shall be adjusted annually on the CONTRACT anniversary date, using the percentage change in the Consumer Price Index described in Attachment A.

4) If, in any annual period, the above limit is not exceeded, Veolia will rebate to CLIENT, within sixty (60) days of the end of said period, the difference between such annual limit and the amount expended by Veolia. CLIENT shall be responsible for and pay all Preventive and Corrective Maintenance or Repair costs exceeding said annual limit, but Veolia will not make such excess expenditures without the prior consent of CLIENT.

Veolia shall annually submit to CLIENT an updated list of recommended Capital Maintenance, Repair, or Replacement expenditures for FACILITY. CLIENT is not obligated to make such capital improvements, nor does their failure to do so alter the other performance obligations in this CONTRACT. Emergency items needed for the safety of personnel will be given first priority.

D. Operational Testing. All sample collection and analyses required for reporting on FACILITY as of the effective date of this CONTRACT shall be performed by Veolia at its cost; the cost of collection and analysis for any changes in these regulatory requirements shall be per Paragraph 2 of Attachment A. All regulatory reports will be approved and signed by the Veolia operator of record. Veolia shall submit and file all such reports and communications (if such are required) will be sent to CLIENT each month. Veolia will, at its expense, sample and perform additional laboratory tests it deems necessary for the successful operation of the FACILITY.

E. Chemical Inventory. Veolia will maintain an inventory of chemicals routinely used in the operation of FACILITY. Chemical inventories will be stored at the site in compliance with OSHA and Contra Costa County Division of Environmental Health and in quantities sufficient to assure continuous operation of FACILITY. CLIENT shall reimburse Veolia for all chemical costs.

F. Client Interaction. Representatives of Veolia shall attend scheduled meetings by CLIENT, if requested. Veolia shall respond to all correspondence and/or inquiries from CLIENT in a prompt and professional manner. The Veolia Facility Manager or his representative shall attend all CLIENT Board meetings and provide a monthly operations summary if and as requested. All such attendance and responses are included as part of the contract price.

G. Emergency Response. Veolia shall provide on-site response to emergency calls regarding FACILITY emergency calls within one (1) hour from the time of notification, or when reasonably able to do so, whichever is earlier. Veolia will respond to such calls twenty-four (24) hours per day, seven days per week.

H. Sludge Disposal. CLIENT shall retain ownership of and responsibility for any and all FACILITY sludge (water and wastewater). Veolia shall, at its cost, provide plans for sludge management, including required testing pursuant to State and Federal law. Subject to CLIENT approval, Veolia will effect sludge disposal and/or re-use as needed; CLIENT shall pay for all costs of sludge removal, hauling, re-use and disposal. Veolia shall use its best efforts to obtain the best price for such disposal.

I. Reports. Veolia shall submit to CLIENT (including the General Manager and Board) a monthly operations report including, but not limited to, the following information: total wastewater treated, maintenance and repair work conducted, maintenance costs year-to-date, effluent quality reports, compliance summary, total water produced, and product water quality reports. Additional information will be supplied as mutually agreed.

Veolia will prepare a summary report of operations at the close of each Contract year (or more or less frequently, as the CLIENT may reasonably require). Veolia shall promptly prepare and submit all operational and compliance reports as may be required by the State of California, the USEPA, or any other local, state or federal agency having jurisdiction over the FACILITY.

J. Management Systems. Veolia shall use manual and computerized systems to manage and monitor FACILITY's operation. Veolia's Computerized Maintenance Management System shall be used to schedule and document the completion of FACILITY maintenance requirements, and maintain records of such work and FACILITY inventories (as appropriate). Veolia's Computerized Operations Control System shall be used to provide process monitoring and reporting.

CLIENT shall have access to any and all reports generated by said system upon demand.

K. Sewer Collection System. Veolia will regularly clean one-quarter (25%) of the system every year using its own equipment. Veolia will utilize CLIENT equipment for emergency responses. Emergency response line cleaning shall be in addition to the regular line cleaning noted above.

L. Water Customer Service. Veolia will work closely with CLIENT's staff and furnish all necessary information to CLIENT to enable the Client to provide for timely customer service including turn-ons, turn-offs, water quality investigations, leak response and other customer requests. Veolia shall respond, as needed, to

customer service requests which occur after CLIENT's normal business hours and/or during emergencies, provided, however, that Veolia shall notify the CLIENT within a reasonable period of time following such response by Veolia.

Veolia will maintain a back-flow device and cross-connection control program in accordance with applicable regulatory requirements (Federal, State and local) in effect as of January 1, 2009. Veolia will exercise valves and include line flushing in the preventive maintenance program. Meter Reading is not part of this contract, and will be handled per Paragraph 2 of Attachment A if requested by CLIENT.

M. Water and Sewer Line Repairs. Repairs to the water and sewer lines, including breaks, may be done as needed by Veolia. Both parties agree that the cost for this work is sporadic and not covered in the price quoted herein. Any such costs may, however, be charged to the Maintenance and Repair fund (Article IV.C.2) by mutual agreement. Any costs not charged to said fund will be reimbursed to Veolia by CLIENT, such reimbursement to occur quarterly for such costs incurred during the previous quarter, "quarterly" being defined by reference to the CONTRACT anniversary date.

N. Vehicles. Veolia will provide its own vehicles as needed for the proper execution of the work under this contract and will utilize CLIENT specialty and other equipment and vehicles as available and will coordinate this use with the CLIENT.

O. Electricity. The CLIENT shall pay for electricity for all of their FACILITIES. However, Veolia shall operate all facilities in an energy efficient manner and shall utilize all available automation to operate facilities in an energy efficient manner. Prior to the first anniversary date of this CONTRACT, Veolia and CLIENT will meet and negotiate, in good faith, a mutually acceptable program wherein Veolia will receive an incentive for electricity consumption savings versus the baseline usage established in the first year of the CONTRACT. Such baseline will be established on the actual FACILITY parameters including, but not limited to, wastewater flow/loadings, water consumption, and utility rates. In the event no such mutual agreement is reached, there shall be no other affect on this CONTRACT.

Veolia shall not use increased energy usage paid by CLIENT to compensate for lack of maintenance or to otherwise reduce maintenance cost which may be incurred by Veolia under this CONTRACT.

P. Other. Veolia shall be responsible for operating FACILITY 24 hours per day, 365 days per year, and will provide staffing at least Monday through Friday for eight (8) hours a day, with weekend and holiday work as necessary. At all times Veolia will use its best efforts to control noise and odors and ensure that no avoidable disruption of neighbors will occur.

V. CLIENT'S RESPONSIBILITIES

A. Payment. CLIENT shall pay to Veolia the base monthly sum of \$86,292.00 due on the fifteenth day of the month after the month for which service is rendered. Late payments will be subject to a service charge of one and one-half (1.5%) per month or the maximum legal rate, whichever is less. Interest shall accrue from the 31st day following the date of invoice until the payment is received by Veolia. Price adjustments shall be made in accordance with Attachment A.

B. Licenses. CLIENT will maintain existing or necessary easements, access, licenses, and warranties for the mutual benefit of both parties.

C. Insurance. CLIENT shall purchase and ensure that standard fire insurance policies are maintained including extended coverage for the replacement cost of FACILITY. Such policies shall name Veolia as an additional insured according to its insurable interest under these policies during the term of the CONTRACT.

D. Permits. CLIENT shall remain the named permittee on any and all permits that may be required, and shall meet all regulatory requirements not specifically assumed herein by Veolia as its responsibility.

E. Collection/Distribution System. CLIENT shall provide the necessary water for water line flushing and sewer line cleaning operations at no cost to Veolia.

F. Chemicals and Electricity. CLIENT shall, in addition to Article V.A:

- 1) Pay (directly to the utility) all electricity costs of FACILITY; and
- 2) pay Veolia for the actual cost of chemicals, including, without limitation, bleach, polymer, dechlorination chemicals, or UV cleaning chemicals which may be required for the proper operation or maintenance of the FACILITY and which are purchased for use at FACILITY.

The chemical costs shall be included on the next monthly invoice to CLIENT if purchased by Veolia.

VI. INSURANCE

Following execution of this CONTRACT, Veolia will have its insurance carrier(s) issue directly to CLIENT certificates of insurance for the following coverage, and shall provide those certificates of insurance to CLIENT within (30) days of such issuance:

- Worker's compensation as prescribed by law;
- Comprehensive general liability, including umbrella coverage of \$5,000,000;

- Vehicle liability coverage (for bodily injury and property damage, combined single limit) of not less than \$1,000,000;

Veolia affirms that the above referenced insurance will be maintained in force throughout the term of this CONTRACT.

VII. GUARANTEES, INDEMNITY, AND LIMITATIONS

A. Guarantees. Veolia shall use generally accepted business practices to procure materials and replacement equipment. Except for its negligence, Veolia shall not be responsible to CLIENT for any guaranty in connection with such materials or replacement equipment. Veolia shall, however, utilize its Computerized Maintenance Management System to maintain equipment purchased by CLIENT in accordance with the manufacturers' requirements in order to maintain the manufacturers' warranties, and assist CLIENT in enforcing existing equipment warranties and guarantees.

B. Damage to FACILITY. Veolia shall not be responsible for the repair of any portion of FACILITY damaged due to flood, fire, explosion, riot, revolution, civil disturbance, war, or other acts of God or any other cause whatsoever beyond the control of Veolia or due to the acts or omissions of any other entity or person(s) other than Veolia, its employees, agents, representatives, or sub-contractors. Veolia agrees to notify CLIENT of such damage, both orally and in writing, as soon as possible after the occurrence of the above crises or acts.

C. Indemnity. Except as otherwise set forth in this agreement, Veolia hereby agrees to indemnify and hold harmless CLIENT from any liability for damages or claims for personal injury (including death) or for property damages which directly arise from its intentional, or willful actions, or negligent operations under this CONTRACT, whether such operations be conducted by Veolia or any subcontractor of Veolia. Veolia shall not be liable to CLIENT and CLIENT shall indemnify and hold harmless Veolia, its officers, supervisors, employees, agents, and representatives from any claim, loss, liability, damage, injury, or expense, including attorneys' fees, which arise from any cause other than the intentional or willful actions, or negligent operations, of Veolia or any subcontractors of Veolia, however caused. The indemnification and hold harmless agreements provided in this paragraph shall apply whether the items to which they apply arise under contract, tort or otherwise. The indemnification and hold harmless agreements provided in this paragraph shall survive termination of this CONTRACT with respect to any events or occurrences to which such agreements otherwise apply, which events or occurrences predate the termination of this CONTRACT.

D. Abnormal Conditions. Notwithstanding any other provision of this CONTRACT, and except as otherwise provided by law, in the event that either raw water or influent to the wastewater system exceeds the FACILITY'S design parameters, or in the event either contains abnormal, toxic, or other substances

which cannot be removed or treated by FACILITY, Veolia will use its best efforts to maximize system performance, but shall not be responsible for associated effluent/product water characteristics or damages, fines, penalties, or claims resulting therefrom. Veolia shall advise CLIENT of an abnormal situation, at the first opportunity upon Veolia's knowledge of such abnormal situation, but at no time later than eight hours (8) after Veolia obtains knowledge of such situation. Veolia shall provide CLIENT with a planned course of corrective action within twenty-four (24) hours of occurrence.

E. Force Majeure. Veolia shall not be deemed to be in default if performance of the obligations required by this CONTRACT is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices (including changes in applicable law enacted or enforced by any of the foregoing), or any other cause beyond the control of the parties ("Force Majeure"). Upon occurrence of any such event, Veolia shall operate FACILITY on a "best reasonable effort" basis and shall not be responsible for damages, fines, penalties, or claims resulting therefrom. If any additional expense is incurred by Veolia in such operation, those expenses shall be reimbursed to Veolia by CLIENT.

F. Fines and Penalties. While this CONTRACT is in force, and so long as FACILITY meets applicable regulatory or customary design criteria, and as long as CLIENT has not rejected Veolia's operational recommendations which would have prevented or corrected any violation of regulations resulting in action, Veolia will pay any and all fines or penalties against CLIENT, levied by any regulatory agency having jurisdiction, arising from Veolia's intentional, or willful actions, or negligent operation, including failure to comply with authorized regulations of the FACILITY. CLIENT will assist Veolia to contest any such fines or penalties in administrative proceedings and/or in court prior to any payment by CLIENT on behalf of Veolia. Veolia shall pay the cost of any such contest to the extent such fine or penalty is the result of the negligent operation, including failure by Veolia to comply with authorized regulations of the FACILITY. If any fine/s are paid by CLIENT on behalf of Veolia, CLIENT will invoice Veolia for payment within 30 days. Late payments will be subject to a service charge of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is less. Interest shall accrue from the 31st day following the date of invoice until the payment is received by CLIENT. In addition, the CLIENT has the right to withhold any monies due to Veolia to pay levied fines. Holding such money for the purpose of paying fines shall not be considered a breach of contract and shall not incur penalties under Section V.A and IX.B. The obligation to pay fines and penalties provided in this paragraph, notwithstanding any other language in this Contract, shall survive termination of this CONTRACT as to any fines or penalties which arise from, or are based on, events or occurrences which predate the termination of this CONTRACT.

G. Compliance with Applicable Laws. Veolia agrees to operate FACILITY in compliance with all applicable local, state, and federal laws, rules, and regulations and agrees to hold harmless and indemnify CLIENT from Veolia's failure to do so.

H. Independent Contractor. Veolia serves CLIENT as an independent contractor.

I. Limit of Liability. To the fullest extent permitted by law and notwithstanding any other provision of this Agreement, Veolia's liability for performance or non-performance of any obligation arising under this CONTRACT (whether arising under breach of contract, tort, strict liability, or any other theory of law or equity) including, but not limited to its indemnity obligations specified herein, shall be limited to: (i) general money damages in an amount equal to the amount of any proceeds of insurance received by the CLIENT or to which Veolia is entitled pursuant to any general liability insurance or automobile liability policy required to be maintained by Veolia hereunder as specified in Article VI (without regard to the amount of any deductible which may be applicable under any such general liability or automobile liability policy) with respect to such loss; or (ii) to the extent proceeds of insurance are not received and such general liability or automobile insurance is not applicable, a cumulative aggregate over the full initial term and any extended term(s) of this CONTRACT of an amount not to exceed the sum of a multiple of twelve (12) times the base monthly fee described in Article V.A. Provided, however, that the limitations set forth in this paragraph shall not apply to the payment obligations of Veolia set forth in Section VII.F of this contract, relating to fines and penalties for which Veolia may be liable in accordance with Section VII.F .

J. Consequential Damage Waiver. Neither party nor their affiliated companies, nor the officers, agents and employees or contractors of any of the foregoing, shall be liable to the other in any action or claim for consequential or special damages, loss of profits, loss of opportunity, loss of product or loss of use. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies which are inconsistent with these terms are waived.

VIII. MISCELLANEOUS

A. Record Drawings. CLIENT shall provide Veolia with a complete set of record drawings of FACILITY upon request. Veolia shall maintain these drawings in a manner which allows their efficient and effective use in solving system problems.

B. Modifications. Modification of this CONTRACT shall be made only by a

written document signed by both Veolia and CLIENT.

C. Assignability. This CONTRACT shall not be assigned by either party without the prior written consent (which shall not be unreasonably withheld) of the other, provided, however, that Veolia shall have the right to assign this Contract without the CLIENT's prior written consent to a Veolia affiliate or subsidiary entity that has the financial and technical capability to perform Veolia's obligations hereunder without the CLIENT's prior written consent.

D. Notice. Such notice as required under this CONTRACT shall be in writing and shall be sent by registered mail to the intended party's address of record. Notice shall be deemed to have been given when the notice was thus mailed to the following addresses of record:

ATTN: President
Veolia West Operating Services, Inc.
2300 Contra Costa Blvd., Suite 350
Pleasant Hill, CA 94523

ATTN: General Manager
Town of Discovery Bay Community Services District
1800 Willow Lake Road
Discovery Bay, CA 94505

E. Capital Financing. Veolia shall utilize its best efforts to arrange financing and make arrangements for the provision of the design and construction/installation of capital improvements as requested and approved by CLIENT, subject to mutually agreeable terms and conditions.

F. Choice of Law/Attorneys Fees. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Should any legal action arise between parties to this CONTRACT concerning the legal rights and duties of any party pursuant to, related to, or arising from, this CONTRACT, the prevailing party in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees and costs of such action as shall be determined by the court in such action, or in a separate action brought for this purpose.

G. CONTRACTOR NOTIFICATION. Pursuant to California Code, Business and Professions Code, Division 3, Chapter 9, Article 2, Section 7030(a), every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

"CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826."

H. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

IX. TERMINATION/RENEWAL

A. Renewal. This CONTRACT may be renewed for an additional term or terms, upon the price, terms and conditions as mutually agreed by CLIENT and Veolia.

B. Breach. For the duration of this contract, in the event of material breach by either party, providing that such dissatisfied party first provides written notice of such breach to the other party and such breach is not corrected within thirty (30) calendar days from the date of said notice, the dissatisfied party may terminate the CONTRACT. The thirty (30) calendar day correction period may be extended by mutual agreement of both parties. The party receiving such notices shall be given this time as an opportunity to correct the breach; provided, however, that if said breach is not corrected within said time period, the CONTRACT may be terminated and considered null and void, except that a breach by either party shall not absolve the breaching party of any liability incurred for violation of local, State or Federal regulations, laws, permits, or licenses for which the breaching party may be liable as specified herein, which occurred prior to the date of such termination. In the event of termination of this contract for breach, CLIENT shall have the right forthwith to take possession of all CLIENTS facilities, equipment and all applicable customer records of Veolia for the purpose of continuing the services which Veolia agreed to provide and to preserve and protect the public health and safety. Veolia shall cooperate with and assist CLIENT with such takeover and immediately deliver possession of all such facilities, equipment to CLIENT, and such records as soon as reasonably practical, but in no event later than two weeks after termination of this contract.

C. Payment. In the event of termination, CLIENT shall pay Veolia compensation pursuant to this CONTRACT up to the date of termination (pro rated for less than a full month, if necessary) and any unpaid expenses incurred by Veolia pursuant to this CONTRACT.

IN WITNESS WHEREOF, Veolia and CLIENT have caused this CONTRACT to be executed by their duly authorized officers:

For CLIENT (Town of Discovery Bay CSD)

By: 
Ray Tetreault, Board President

Date: 1-23-09

For Veolia West Operating Services, Inc.

President:  PHILIP G. ASHCROFT

Date: 2/2/09

ATTACHMENT A

1. Annual Adjustment. On each anniversary date of the beginning of the CONTRACT, the CONTRACT price specified in Article V herein shall be adjusted based on the accumulated percentage rate of increase, from the applicable prior anniversary date, of the most recent Consumer Price Index - All Urban Consumers, San Francisco-Oakland-San Jose, CA (CUURA422SA0), as published by the U. S. Bureau of Labor Statistics; however, in no case shall such increase be less than zero.

2. General Provision for Adjustments. If any changes in the scope of operations under this CONTRACT should occur, including, but not limited to, changes in governmental regulations, reporting requirements, monitoring requirements, water supply/wastewater treatment conditions or standards that change the cost of CONTRACT operations, Veolia may request a CONTRACT compensation adjustment. Such adjustment will be negotiated in good faith by CLIENT and Veolia within thirty (30) days of receiving such request from Veolia.

3. Additional Services. At the request of CLIENT and at the option of Veolia, Veolia shall provide additional services for CLIENT. Compensation for such services shall be negotiated on a base-by-case basis.

4. Routine Analysis Schedule.

Table 4 Water and Wastewater - Routine Analyses		
Test Name	Annual Frequency	
	Wastewater	Water
Temperature	128	
pH	140	
Dissolved Oxygen	8	
Free Chlorine Residual		550
Turbidity	24	
Total Coliform	116	200
Fecal Coliform	8	
BOD	156	
TSS	156	
Ammonia	52	
Nitrite		3 year cycle for 4 sources
Nitrate	36	Yearly for 4 sources
Chloride	73	
Total Hardness as CaCO ₃	24	
Standard Minerals	13	
Dioxin	2	
E Conductivity	97	
TDS	85	
Aluminum, Total	12	
Fe, Total	12	24
Mn, Total	12	24
Cu, Total	24	
Hg, Total	12	
Hg, Methyl	12	
TTHMs	4	4
HAA5s		4
Priority Pollutant Scan (USEPA Tables II & III)	2	
WET Acute (fathead minnows)	12	
WET Chronic (3 species, quarterly)	4	
Biosolids Metals & PCBs per 40CFR503	1	

Table 4 Water and Wastewater – Routine Analyses

Test Name	Annual Frequency	
	Wastewater	Water
VOCs (3 year cycle for 4 sources)		3 year cycle for 4 sources
SOCs (not required)		None due to full variance for SOCs
IOCs (3 year cycle for 4 sources)		3 year cycle for 4 sources
Secondary Water Standards		3 year cycle for 4 sources
Gross Alpha		4 year cycle for 4 sources
All radiological except Gross Alpha		None due to full variance

5. Wastewater Requirements.

Within the design capabilities and capacity of the wastewater treatment FACILITIES, Veolia will monitor for and comply with the provisions of NPDES Permit NO. CA0078590, with the exception of those related to Copper and the Ultra Violet disinfection system until upgraded by the CLIENT.

