

FORM OF UTILITIES AGREEMENT

1. Purpose

- 1.1. The purpose of this Utilities Agreement (“Agreement”) is to describe the transitions in utility ownership and operational roles and responsibilities that will occur as surplus property at the former Naval Station Treasure Island (“NSTI”) is conveyed by the Department of the Navy (“Navy”) to the Treasure Island Development Authority (“TIDA”) in accordance with the terms and conditions of the Economic Development Conveyance Memorandum of Agreement (“EDC MOA”).
- 1.2. This Agreement is part of and additive to the terms and provisions of the EDC MOA. Nothing in this Agreement is intended to supersede, limit, alter or conflict with the terms or provisions of the EDC MOA or the Base Caretaker Cooperative Agreement dated March 1997, as amended (“Caretaker Agreement”). This Agreement shall expire or terminate simultaneously upon the expiration or termination of the EDC MOA, expiration or termination of the Caretaker Agreement, or transfer of all the Existing Utility Infrastructure (as defined in paragraph 3.2) whichever occurs earliest.

2. Parties to the Agreement

- 2.1. Navy: The Navy owns portions of the NSTI, a former military base that consists of property on two islands connected by a causeway: (1) Treasure Island comprising approximately 409 acres of level filled land and (2) approximately 90 acres of Yerba Buena Island, a natural rock outcropping in San Francisco Bay, and (3) approximately 589 acres of submerged lands surrounding both Treasure and Yerba Buena Islands. NSTI was designated for closure and disposition in 1993 by the Base Realignment and Closure Commission acting under Public Law 101-510 and its subsequent amendments.
- 2.2. TIDA: TIDA is a nonprofit public benefit corporation established to act on behalf of the City and County of San Francisco as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of NSTI. The Department of Defense subsequently designated the City and County of San Francisco (“City”), and later TIDA, as the Local Reuse Authority responsible for the conversion of NSTI under the federal disposition process. TIDA assumed the caretaker responsibilities for the utility systems on NSTI in 1997 under the terms of the Caretaker Agreement.

3. Background

- 3.1. During the military operation of the NSTI, the Navy operated electric, natural gas, sanitary sewer, sewage treatment, potable water and storm water systems on Treasure Island and Yerba Buena Island.

- 3.2. Under the Caretaker Agreement, TIDA has served as the Caretaker for the Navy's utility infrastructure ("Existing Utility Infrastructure") since 1997. In accordance with the Caretaker Agreement, TIDA is responsible for the operation and maintenance of utilities, roads, and facilities, including compliance with environmental permits covering the wastewater, storm water, and drinking water systems. The Navy provided funding to the Caretaker during the first 3 years of the Caretaker Agreement to supplement the operational costs while the leasing program was developed. The Caretaker Agreement has been modified at least annually with the no cost extensions starting in 2002.
- 3.3. TIDA has provided utility services to residents and businesses located on NSTI. These residents and businesses are sub-lessees under master leases from the Navy to TIDA. TIDA has also provided utility services to Federal property holders Job Corps on Treasure Island and the United States Coast Guard on Yerba Buena Island.
- 3.4. Within property owned by the Navy, TIDA shall continue to serve as the Caretaker in accordance with the terms and conditions of the Caretaker Agreement as it may be amended from time to time so long as the Caretaker Agreement is in effect.
- 3.5. NSTI included two federal properties under the jurisdiction of the Job Corps and the United States Coast Guard which are not intended to be transferred to TIDA. TIDA shall provide utility service to these Federal properties consistent with the terms and conditions of the Caretaker Agreement as long as it remains in effect or until the applicable responsibility under the Caretaker Agreement is assumed by a utility provider(s).
- 3.6. Subject to all applicable requirements of the EDC MOA, the Caretaker Agreement, and the Utilities Agreement, TIDA shall, at its sole discretion, determine whether and how to provide utility services within property transferred to TIDA.

4. Property Ownership and Transfers

- 4.1. Pursuant to the EDC MOA, certain lands comprising the former NSTI are to be transferred in multiple phases by the Navy to TIDA. TIDA intends to further subdivide these lands and transfer certain portions of them to its master developer for the redevelopment of NSTI.

5. Utility Ownership

- 5.1. With the exception of certain Key Infrastructure described in section 9.5 of the EDC MOA, ownership of Existing Utility Infrastructure within property conveyed to TIDA by the Navy will be transferred with the property.
- 5.2. Except as set forth in Paragraph 6.1 through 6.3 and Section 8, the provisions of this Agreement will terminate for all Existing Utility Infrastructure transferred to

TIDA.

- 5.3. The provisions of this Agreement will terminate for any utility infrastructure dedicated to and accepted by a utility provider.

6. Damage to Utility Lines.

- 6.1. If TIDA or its agents, in connection with its redevelopment activities or otherwise, damage any utility infrastructure that is used or relied upon by the Federal Government, TIDA shall promptly repair any such damage at its sole cost. If the Government or its agents, in connection with remediation or other activities, damage any utility infrastructure that is used or relied upon by TIDA, the Government shall promptly repair any such damage at its sole cost.
- 6.2. In the event that it becomes necessary for either Party to relocate an existing utility due to development or remediation activities or for other purposes, the Party causing the relocation shall be responsible for the cost of the relocation, and there shall be no material interruption or decrease in service to the other Party (other than temporary interruptions consistent with infrastructure repair and replacement projects) as a result of such work.
- 6.3. Neither Party shall have the right to remove or modify any utility infrastructure that is needed to provide utility service to the other Party without replacing the infrastructure as needed to prevent interruptions in service or obtaining the prior written consent of the other Party.

7. Environmental Issues

- 7.1. The Parties' agreement as to environmental investigations, remediation, and related responsibilities and liabilities is set forth in the EDC MOA. Nothing in this Agreement shall invalidate or conflict with such provisions of the EDC MOA, which are incorporated herein by this reference. The provisions in this Section 7 supplement the requirements of the EDC MOA.
- 7.2. All excavations in Navy owned property, as required by TIDA to perform the utility responsibilities of this Agreement and the Caretaker Agreement, shall be permitted by the Navy subject to appropriate controls and requirements.
- 7.3. When issuing an excavation permit, the Navy shall indicate whether the site requires radiological screening before or during the course of excavation, the institutional controls applicable to excavation (if any), and other environmental information for the proposed excavation site. Any disposal of soil is the responsibility of the excavating party, including classification and appropriate disposal; provided, if radiological screening indicates the presence of radiological contamination, TIDA shall immediately inform the Navy and the Navy shall take appropriate actions to address any radiological contamination allowing TIDA to complete the permitted work.

- 7.4. If an emergency excavation is required in a radiologically controlled area, the excavation shall be coordinated with the Navy.
- 7.5. Where screening or disposal of materials is required in areas that are not radiologically controlled, the cost of screening, disposal and other controls shall be the responsibility of the excavator subject to the Navy's CERCLA obligations under the EDC MOA.

8. Permits and Regulatory Compliance

- 8.1. Subject to the requirements of the Caretaker Agreement, the owner of the utility infrastructure has the obligation to ensure compliance with all applicable environmental laws and regulations, including obtaining coverage under and complying with necessary operating permits as described below.
- 8.2. TIDA shall acquire new permits, as may be necessary, for any utility infrastructure transferred to TIDA by the Navy under the provisions of Section 5. The transfer of utility operating permits, if required, shall be subject to regulatory approval.
- 8.3. Should either Party become aware of a discharge or potential discharge of pollutants from utility infrastructure owned by either Party that has potential to cause or contribute to a violation of any operating permit (hereinafter "Discharge"), that Party shall promptly inform the other Party. The Parties shall provide timely notification to each other upon receipt of information related to any such Discharge, including any monitoring reports and correspondence with any regulatory agency with jurisdiction to enforce the operating permits.
 - 8.3.1. For utilities owned by TIDA, TIDA shall be responsible, at no cost to the Navy (subject to subsections 8.3.3 and 8.3.4), for all of the following: investigating any Discharge; reporting and responding to regulators as required by any operating permit; identifying the source of the pollutants; containing or otherwise controlling the pollutants; identifying and implementing appropriate cleanup or other control measures; generating information about the Discharge required by any regulatory agency; and paying any penalties or charges assessed by a regulatory agency (collectively, the "Response Actions").
 - 8.3.2. For utilities owned by the Navy, TIDA shall be responsible, at no cost to the Navy (subject to subsections 8.3.3 and 8.3.4) for the Response Actions under the Cooperative Agreement, so long as it remains in effect.
 - 8.3.3. Nothing in the above shall be construed to transfer to TIDA any Navy obligations or responsibilities under CERCLA or the Navy's remediation obligations as set forth in the EDC MOA.
 - 8.3.4. TIDA shall perform the Response Actions to regulatory closure subject to the following:

8.3.4.1. If in performing the Response Actions TIDA traces the origin of and responsibility for the Discharge to a current activity on NSTI or an activity that arose after the date of lease of the applicable property from the Navy to TIDA, or otherwise relates to an existing occupant or resident at NSTI other than the Navy, the Government or their agents, TIDA will continue to perform the Response Actions to regulatory closure but will seek recovery against the responsible party and otherwise take action against that party in accordance with applicable law.

8.3.4.2. If in performing the Response Actions TIDA traces the responsibility for the Discharge to the Navy, the Government or their agents, or to a contaminant that the Navy is responsible for remediating under CERCLA, then TIDA shall notify the Navy of such fact together with supporting information. Upon determination that the Navy, the Government or its agents is responsible for the Discharge, the Navy shall, at no cost to TIDA, assume responsibility for all further required Response Actions to obtain regulatory closure, subsequent to the time of TIDA's notification.

8.3.4.3. In the event of a dispute regarding the Navy's responsibility for a Discharge, either Party may invoke the dispute resolution procedures in Article 27 of the EDC MOA.

8.4. Wastewater Treatment Plant:

8.4.1. The Navy currently owns the Treasure Island Wastewater Treatment Plant (WWTP), the operation of which is permitted by RWQCB NPDES Permit No. CA0110116, which incorporates Permit Nos. R2-2011-0012 and R2-2007-0077; and BAAQMD Permit to Operate Air Emissions Sources for Plant # 479.

8.4.2. The Navy shall remain the permittee of the WWTP until the WWTP is conveyed in accordance with the terms of the EDC MOA or until December 31, 2020 whichever is earlier.

8.4.3. RWQCB NPDES Permit No. CA0110116 shall be transferred from the Navy to TIDA consistent with the procedures required by 40 C.F.R. § 122.61. Accordingly, the Parties must notify the RWQCB at least 90 days in advance of the transfer, and the notice must include a specific date for transfer of permit responsibility, coverage, and liability.

8.4.4. No later than 90 days before the transfer, the Parties shall also notify the Bay Area Air Quality Management District of the change in ownership of

the WWTP and complete, as necessary, a Facility Information Update form.

- 8.4.5. TIDA shall be responsible for permitting any new Waste Water Treatment Plant, when constructed, unless the permit is established by a utility provider.

8.5. Wastewater Collection System:

- 8.5.1. The Navy currently owns the entire wastewater collection system serving NSTI and has obtained coverage for it under the SWRCB Statewide Waste Discharge Requirements for Wastewater Collection Agencies, Order No. 2006-0003-DWQ (Waste Discharger Identification No. 2SSO10207) (SSS WDR) as part of the NPDES permit.
- 8.5.2. Subject to the provisions of Section 8.3 and the Caretaker Agreement, the owner of any sanitary sewer collection infrastructure shall be responsible for permitting and compliance of the infrastructure under the SSS WDR.
- 8.5.3. Coverage under the SSS WDR is not transferable except after written notice to the SWQCB, submitted at least 90 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new permittee containing a specific date for the transfer of permit responsibility and coverage between the existing permittee and the new permittee.
- 8.5.4. TIDA will establish a new permit under the SSS WDR for portions of the sanitary sewer collection system transferred to TIDA. No later than 90 days in advance of the first transfer of property from the Navy to TIDA, TIDA shall file a notice of intent (NOI) for coverage under the SSS WDR for the utility infrastructure to be transferred. No later than 90 days in advance of subsequent future transfers, the Parties will jointly submit updated maps to the SWRCB showing the infrastructure owned by the Parties respectively.
- 8.5.5. Subject to the Caretaker Agreement, the owner of any sanitary sewer collection infrastructure shall also be responsible for any discharge of waste to waters of the United States in violation of the Clean Water Act, 33 U.S.C. § 1311(a).

8.6. Storm Water Collection System:

- 8.6.1. The Navy currently owns the entire storm water collection system serving NSTI and has obtained coverage under the SWQCB General NPDES Permit for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities, No. CAS000001 (WDID No. 238S012140) (IGP).

- 8.6.2. Subject to the Caretaker Agreement and the provisions of Section 8.3, the owner of any storm water collection infrastructure shall be responsible for its permitting and compliance.
- 8.6.3. Notwithstanding the responsibilities established in 8.6.2, storm water collection infrastructure owned and separately permitted by the Parties may be interconnected and discharge through a single outfall. Wherever the Parties infrastructure is interconnected and storm water flows are combined, the Parties shall coordinate operations and permit compliance to ensure mutual compliance under their respective permits.
- 8.6.4. No later than 90 days in advance of the first transfer of property including stormwater infrastructure from the Navy to TIDA, TIDA shall contact the RWQCB to obtain coverage under the appropriate permit for discharges of stormwater from TIDA-owned stormwater infrastructure.
- 8.7. Potable Water Supply Distribution System:
- 8.7.1. The Navy currently owns the water distribution system serving NSTI beginning at the point of supply to the storage reservoirs and has obtained coverage under State of Calif. – Health and Welfare Agency, Water Supply Permit No. 02-04-96P-3810702.
- 8.7.2. Subject to the provisions of Caretaker Agreement, the owner of any potable water distribution infrastructure shall be responsible for its permitting and compliance.
- 8.7.3. Notwithstanding the responsibilities established in 8.7.2, the water distribution infrastructure owned and separately permitted by the Parties will be interconnected and compliance with permit requirements, particularly water quality requirements, will depend upon the operation and maintenance of both Parties’ infrastructure, and the Parties shall coordinate operations and permit compliance to ensure mutual compliance under their respective permits.
- 8.7.4. Key Infrastructure retained by the Navy contains major components of the water distribution system. These components will be upgraded by TIDA and its agents during Phase 1 of the development process. TIDA and its agents will dedicate these components of the potable water distribution system at the earliest opportunity.
- 8.7.5. No later than 180 days in advance of the Initial Closing, as defined in the EDC MOA, TIDA shall contact the California Department of Public Health to obtain a permit for the non-Navy owned portions of the water supply distribution system.