

## **AGREEMENT ON CONTRIBUTION TO CONSTRUCTION COSTS AND RELEASE OF CLAIMS**

This Agreement on Contribution to Construction Costs and Release ("Agreement") is made and entered into by and between **EAST BAY MUNICIPAL UTILITY DISTRICT** ("District") and **THE CITY OF SAN PABLO** ("the City") with reference to the following (the District and the City are collectively referred to as the "Parties"):

### **RECITALS**

A. In December of 2011, a District 60-inch water main located in El Portal Drive in the City of San Pablo, suffered a circumferential break ("Pipe Break"). The Pipe Break occurred on a section of pipe located approximately 150 feet east of the intersection of El Portal Drive and Fordham Street.

B. Since December 2011, the Parties have, from time-to-time, met to attempt to come to a mutually agreeable resolution to various disputed issues concerning conditions of the street, sidewalk, storm water pipe, erosion and scouring below the storm water pipe outfall, the possible need for creek restoration, the retaining wall in the southern portion of the intersection of El Portal Drive and Fordham Street in San Pablo, California, and the foundation of the bridge from the Oakland Dioceses/St. Joseph Cemetery arising out of District activities taking place prior to the execution of this agreement ("Disputed Items").

C. The City has now conducted construction related to the El Portal Drive Road Settlement Project (Project) which included District facilities at that location. The District has agreed to contribute to these construction costs.

D. Without admitting or conceding any liability, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is the mutual intention of the Parties that all claims and disputes between them of any kind or nature whatsoever with respect to the Pipe Break and the Disputed Items be fully and finally settled as set forth below.

### **AGREEMENT**

1. **Recitals.** The recitals set forth in this Agreement are made solely for the purpose of understanding and defining the scope of this Agreement, and are not to be considered evidence, or admission, of any fact, and are not intended to be used for any purpose other than interpreting and enforcing this Agreement.

2. **Compromise.** This Agreement affects claims and demands that are disputed, and by executing this Agreement, no Party admits or concedes any of the claims, defenses, or allegations which were raised or could be raised by any other party or any third party. Each Party expressly denies liability for any and all claims or demands.

3. **Payment by District.** In consideration of the work performed previously by the City in and around District facilities at the intersection of El Portal Drive and Fordham Street and in exchange for the release set forth below, the District will pay to the City \$90,000. Payment is

to be made by the District within 30 days of delivery of a copy of this Agreement, executed by the City, to the District.

4. Release. By signing below, the City, on behalf of itself, its council members, its employees, contractors, agents and assigns, agrees to waive any and all claims known or unknown it has or may have against the District, the District's Directors, employees, contractors, agents and assigns, resulting from or arising from the Pipe Break and the Disputed Items. This waiver specifically includes all rights and benefits the City, its council members, its employees, contractors, agents and assigns may have in the future under the provisions of California Civil Code section 1542. Civil Code section 1542 provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

5. Knowledge of Parties. The City and District, respectively, understand and agree to this Agreement and enter into it knowingly and voluntarily. The Parties have relied upon their judgment, belief, knowledge, understanding and expertise after consultation with their counsel concerning the legal effect of this Agreement. By signing this Agreement, the Parties signify their full understanding, agreement, and voluntary acceptance of the Agreement.

6. Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter of this agreement and shall constitute the final understanding between the Parties hereto. All prior negotiations made or which have occurred prior to the date of this Agreement are merged into this Agreement.

7. Warranty of Non-Assignment. The Parties warrant that they have not assigned any of the claims or portions of the claims that are the subject of this Agreement.

8. Authority to Execute. Each Party hereto warrants to the other Party that it has the full power and authority to execute, deliver and perform under this Agreement and that any needed consent or approval from any other person has been obtained.

10. Interpretation and Construction. Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this document, on the understanding that the Parties participated equally in the negotiation and preparation of the Agreement, or have had equal opportunity to do so. The headings used herein are for reference only and shall not affect the construction of this Agreement.

11. Governing Law and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. To the extent that any Party brings an action to enforce the terms of this Agreement, such action shall be filed and prosecuted in a court of competent jurisdiction in Contra Costa County, California.

12. Execution. This Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument.

13. Effective Date. This Agreement shall become effective immediately following execution by all of the PARTIES, on the latest date appearing below.

14. The tolling agreement currently in effect between the City and the District shall be considered terminated upon the effective date of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement.

**CITY OF SAN PABLO**

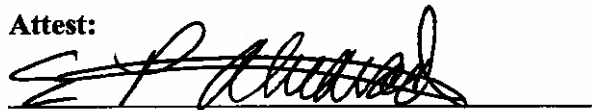
By:   
Matt Rodriguez, City Manager

Date: 5/9/18

**Approved as to Form:**

By:   
Lynn Tracy Nerland, City Attorney

**Attest:**

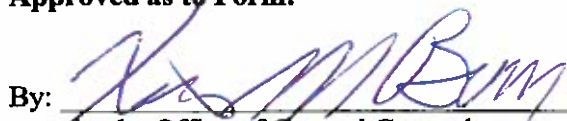
  
Elizabeth Pabon-Alvarado, City Clerk

**EAST BAY MUNICIPAL UTILITY DISTRICT**

By:   
Clifford C. Chan  
Director of Operations & Maintenance

Date: 5/22/18

**Approved as to Form:**

By:   
for the Office of General Counsel

