



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: February 4, 2025

TO: Mayor and Councilmembers

FROM: Water Resources Division, Public Works Department

SUBJECT: Second Amendment to Contract with IDE Americas for Charles E. Meyer Desalination Plant Operations [Agreement]

RECOMMENDATION:

That Council authorize the Public Works Director to execute Amendment 2 to the Design/Build/Operate Agreement with IDE Americas for the Charles E. Meyer Desalination Plant.

DISCUSSION:

The Charles E. Meyer Desalination Plant (Plant) is an integral part of the City of Santa Barbara's water supply plan. In 2014, the City issued a Request for Proposals (RFP) to reactivate the Plant. IDE Americas (IDE) proposal scored the highest and over several months, a Design, Build, Operate (DBO) contract was negotiated in good faith. In July 2015, the City Council unanimously approved a contract with IDE to design, build and operate the Plant.

The Plant was originally constructed with two intake structures which each house an intake pump to pump seawater onshore for treatment. As a part of the reactivation project, IDE designed and installed a new pump in each of the intake structures. The intent for redundant intake pumps was to provide reliability, however, since commissioning the treatment plant in 2017, the intake pumps have experienced multiple failures causing disruptions to the Plant's operations and at times leading to prolonged shutdowns.

The proposed Second Amendment (Amendment) to the DBO Contract aims to improve the reliability of the offshore pumps by authorizing the purchase of a third intake pump to serve as a spare pump, ensuring continuity in the event of a pump failure. The Amendment also further clarifies provisions in the initial DBO Contract related to operations, maintenance and warranties for the intake pumps.

BUDGET/FINANCIAL INFORMATION:

The estimated cost to fulfil the City's obligation under this Amendment is \$500,000. These additional costs were anticipated in the recently adopted water rates, and the City's Water Capital fund has sufficient funds to cover the City's portion under this agreement. Under the Water Supply Agreement, costs associated with this Amendment are proportionately shared between the City's Water Operating Fund and the Montecito Water District.

A copy of the contract amendment is attached.

ENVIRONMENTAL REVIEW:

The Amendment with IDE Americas for the Charles E. Meyer Desalination Plant Operations does not have any direct or indirect physical changes in the environment, therefore, this amendment falls outside of the definition of a "Project" under California Environmental Quality Act (CEQA) Guidelines § 15378 (b)(5) as administrative activities of governments that will not result in physical changes in the environment are not subject to CEQA environmental review.

WATER COMMISSION RECOMMENDATION:

This item was presented to the Water Commission at its meeting on January 16, 2025, and the Commission voted **X-X-X** in support of staff's recommendations.

PREPARED BY: Joshua Haggmark, P.E. Water Resources Manager/BR/sjc

SUBMITTED BY: Clifford M. Maurer, P.E., Public Works Director

APPROVED BY: Kelly McAdoo, City Administrator

Amendment Number 2

Design/Build/Operate Contract for the Charles Meyer Desalination Plant City of Santa Barbara, California

This Second Amendment, dated as of January ____, 2025, amends the Design/Build/Operate Contract for the Charles Meyer Desalination Plant (DBO Contract) that exists between the City of Santa Barbara (City), a charter city, and IDE Americas, Inc., a Delaware Corporation (IDE) related to the Charles Meyer Desalination Plant (Plant), which the City owns and IDE operates and maintains pursuant to the terms of the DBO Contract. Consistent with DBO Contract, Article 19.10, this amendment shall be referred to as DBO Contract Amendment Number 2 (Amendment). Except as expressly provided in this Amendment, all terms of the DBO Contract remain in full force and effect.

RECITALS

WHEREAS, the DBO Contract was entered into between the City and IDE (individually Party or collectively, Parties) with an effective date of July 28, 2015.

WHEREAS, the Initial Term of the DBO Contract expired on March 4, 2024, and the City exercised its option to renew the DBO Contract for an additional 5-year term pursuant to DBO Contract, Article 3.02.

WHEREAS, on December 10, 2024, the City and IDE entered into DBO Contract Amendment 1.

WHEREAS, the Plant's Raw Water intake system is offshore of the Plant.

WHEREAS, the DBO Contract called for IDE to provide two Raw Water intake pumps, the City and IDE wish to add an additional Raw Water intake pump as a Capital Modification to add to the Plant's reliability.

WHEREAS, the Plant's two existing Raw Water intake pumps have not always been reliable, causing disruptions to the Plant's operations. To increase the reliability of the Plant, one or more Raw Water intake pumps are to be acquired as a Capital Modification of the Plant.

WHEREAS, the City and IDE wish to enter into this Amendment No. 2 to address mutually agreeable adjustments in the DBO Contract related to the Raw Water intake pumps.

WHEREAS, the City and IDE entered into a Tolling Agreement on November 17, 2022, and amended on July 6, 2023, that tolled and suspended the running of any applicable statute or period of limitations covering past and prospective claims between the City and IDE under the DBO Contract ("Tolling Agreement").

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and conditions contained herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. DEFINED TERMS

All capitalized terms used in this Amendment are either defined in this Amendment or have the same definition as defined in the DBO Contract, Articles 1.01 and 1.02.

1.1 CAM. Refers to a Contract Administration Memorandum, as defined by the DBO Contract in Articles 1.01(37) and 19.09(C).

1.2 Indar Intake Pump. Refers to the offshore intake pump manufactured by Indar that is currently part of the Plant's Raw Water intake system.

1.3 Xylem Intake Pump. Refers to the offshore intake pump manufactured by Xylem, as modified by IDE, that is currently part of the Plant's Raw Water intake system.

1.4 Third Intake Pump. Refers to the new, third, offshore Raw Water intake pump to be acquired by mutual agreement of the parties, as a Capital Modification of the Plant.

1.5 Replacement Intake Pump. Refers to a new Raw Water intake pump to be acquired at a future date by mutual agreement of the parties, as a replacement to either the Xylem Intake Pump or Indar Intake Pump, or both, pursuant to this Amendment, as a Capital Modification of the Plant.

1.6 Plant. The Plant refers to the Charles Meyer Desalination Plant in the City of Santa Barbara.

1.7 Strategic Plan. The Strategic Plan referenced in this Amendment in Section 2 refers to DBO Contract Amendment 1, Attachment A.

2. STRATEGIC PLAN AND THIRD INTAKE PUMP

2.1. IDE provided the City with a Strategic Plan, that, among other things, outlines the steps IDE will take to improve both short and long-term performance of the Plant, and includes provisions related to the Third Intake Pump.

2.2. As stated in the Strategic Plan, discussions about the proper type, size and pump specifications of the Third Intake Pump are ongoing between the City and IDE.

- 2.3.** The Parties agree that once the discussions described in Section 2.2 result in mutual agreement of the Parties, the Third Intake Pump will be procured within 180 days after the Parties have reached mutual agreement. Assuming the Third Intake Pump manufacturer agrees to include a provision consistent with Section 7.1 in the procurement agreement, the Third Intake Pump will be procured by IDE, otherwise, the Third Intake Pump will be procured by the City. In all circumstances, the Third Intake Pump shall be in accordance with the specifications established by IDE and shall be installed, operated and maintained by IDE and become part of the Plant consistent with the terms of the DBO Contract, except as otherwise expressly provided for in this Amendment 2.
- 2.4.** The Parties agree in good faith to diligently and timely implement the Strategic Plan as it relates to the Third Intake Pump, consistent with the terms of the DBO Contract and this Amendment.
- 2.5.** Once the type, size and pump specifications of the Third Intake Pump are identified and mutually agreed upon by the Parties, the Parties shall purchase the Third Intake Pump as a Capital Modification at City Request consistent with DBO Contract, Article 17.06. The Parties shall execute a CAM to complete the purchase of the Third Intake Pump.
- 2.6.** Except as expressly provided in this Amendment, IDE's responsibilities for design, procurement, installation, operation, and maintenance of the Third Intake Pump under this Amendment are the same as IDE's responsibilities for the Indar Intake Pump and the Xylem Intake Pump under the DBO Contract.
- 2.7.** The City will pay the acquisition cost of the Third Intake Pump as a lump sum payment, consistent with the manufacturer's invoice (plus 10% overhead) plus the cost of shipping from the manufacturer to the 525 East Yanonali Street in Santa Barbara, California. The installation, operation, and maintenance of the Third Intake Pump is part of the annual Service Fee, consistent with the terms of the DBO Contract, and the DBO Contract Amendment 1, except as otherwise provided in this Amendment, Section 5.

3. REPLACEMENT INTAKE PUMP(S)

- 3.1.** In addition to the acquisition of the Third Intake Pump, IDE may acquire, based on mutual agreement of the Parties, a Replacement Intake Pump for either or both the Xylem Intake Pump and/or the Indar Intake Pump sooner than they would otherwise be replaced based upon their respective projected replacement dates at

the time of their initial placement into service under the DBO Contract.

- 3.2.** Once the type, size and pump specifications of the Replacement Intake Pump(s) are identified and mutually agreed upon by the Parties, the Parties shall purchase the Replacement Intake Pump(s) as a Capital Modification at City Request consistent with DBO Contract, Article 17.06 and Section 3.4 of this Amendment. The Parties shall execute a CAM to complete the purchase of the Replacement Intake Pump(s). Assuming the Replacement Intake Pump manufacturer agrees to include a provision consistent with Section 7.1 in the procurement agreement, the Replacement Intake Pump(s) will be procured by IDE, otherwise, the Replacement Intake Pump(s) will be procured by the City.
- 3.3.** Except as expressly provided in this Amendment, IDE's responsibilities for establishing the pump specifications, procurement, installation, operation, and maintenance of the Replacement Intake Pump(s) under this Amendment are the same as IDE's responsibilities for the Indar Intake Pump and the Xylem Intake Pump under the DBO Contract.
- 3.4.** The City and IDE agree to equally share (50% - 50%) the acquisition cost of any Replacement Intake Pump(s). The installation, operation, and maintenance of the Replacement Intake Pump(s) is part of the annual Service Fee, consistent with the terms of the DBO Contract, and DBO Contract Amendment 1, except as otherwise provided in this Amendment, Section 5.

4. OPERATION AND MAINTENANCE OF THE THIRD AND REPLACEMENT INTAKE PUMPS

- 4.1.** The Parties agree that the Third Intake Pump and any Replacement Intake Pump(s) will be operated and maintained in accordance with the DBO Contract, including, but not limited to, the provisions of Articles 8 through 10.
- 4.2.** The Parties agree that consistent with the DBO Contract, IDE specifically shall:

 - 4.2.1.** Operate and maintain the Third Intake Pump and any Replacement Intake Pump(s) according to the manufacturer's manuals and specifications.
 - 4.2.2.** Document and record the steps it takes to operate and maintain the Third Intake Pump and any Replacement Intake Pump(s) and provide a report to the City on a monthly basis that details the prior month's operations and maintenance of each Pump. The monthly operations and maintenance report will include daily data readings from pump sensors and monitors as defined

herein as DBO Contract Amendment 2, Attachment A.

- 4.3.** The report described in Section 4.2.2 shall be submitted to the City as part of the Monthly Operations and Maintenance Report, required by DBO Contract, Attachment J, section J.3.15.1, which is due within 15 days after the end of each month. For example, the report for the month of September is due to the City no later than October 15.
- 4.4.** IDE may submit to the City a request for an extension of time to provide the monthly maintenance report required by the DBO Contract and this Amendment. The extension request shall be made by IDE no later than three business days prior to the due date of the report. The extension request shall contain the following information: (i) a description of the reason an extension of time is needed; (ii) documentation to support the request; (iii) the date when the report will be submitted to the City, which shall be no later than fifteen days beyond the original due date. Upon receipt of an extension request, City will evaluate the request and may approve or deny the extension request, in its sole discretion, within ten business days of the City's receipt of the extension request. IDE shall bear the burden of proof in establishing entitlement to an extension.
- 4.5.** A failure to deliver the report required by this Amendment Sections 4.2.2 and 4.3, either on-time or within the timeframe of an approved extension pursuant to Section 4.4, will establish a rebuttable presumption that IDE did not operate and maintain the Third Intake Pump and/or the Replacement Pump(s) in accordance with the requirements of the DBO Contract and Section 4.2.1. submission of the report required by this Amendment sections 4.2.2 and 4.3 after the required timeline will serve as a way to rebut the above presumption. After 30 days, the presumption shall no longer be rebuttable.

5. ENHANCED MAINTENANCE OF THE THIRD AND REPLACEMENT INTAKE PUMPS

- 5.1.** IDE shall, as part of its operation and maintenance obligations, perform maintenance of the Third Intake Pump and any Replacement Intake Pump(s) in strict compliance with the manufacturer's instructions for maintenance of each pump in the environment and under the operational conditions known at the time of acquisition.
- 5.2.** If IDE has complied with the DBO Contract and this Amendment, Sections 4 and 5.1, and IDE and the City agree that additional maintenance beyond what is stated in the manufacturer's instructions is required to ensure reliable performance of the Third Intake Pump and/or the Replacement Pump(s), the Parties shall execute a

CAM to memorialize any agreement on additional maintenance and additional fee, if any, to be paid to IDE.

6. THIRD AND REPLACEMENT INTAKE PUMP FAILURE

6.1. If the Third Intake Pump or any Replacement Intake Pump breaks or fails to operate because of an Uncontrollable Circumstance, the DBO Contract provisions shall apply. Any claim of an Uncontrollable Circumstance by IDE shall be made, and processed by the City, consistent with the DBO Contract, Article 15.09.

6.2. If the Third Intake Pump or any Replacement Intake Pump breaks or fails to operate due to the failure of IDE to operate, maintain or repair the Pump consistent with DBO Contract, Articles 8 through 10, or the provisions of this Amendment, all DBO Contract remedies may apply, including, without limitation, Articles 8, 9, 10, 18, 19 and 20.

6.3.

Provided: (1) IDE is in full compliance with the provisions of the DBO Contract, including, but not limited to Articles 8 through 10, and this Amendment, Section 4, (2) the Intake Pump's specifications established by IDE have not rendered the Third Intake Pump or any Replacement Intake Pump defective, , and (3) the Third or Replacement Intake Pump(s) break or fail to operate, then the City shall be responsible for the costs associated with repairing or replacing the Third Intake Pump and/or any Replacement Pump(s).

7. CITY AS THIRD-PARTY BENEFICIARY

7.1. The City shall be identified as a third-party beneficiary in the procurement contract for the Third Intake Pump and any Replacement Intake Pump. IDE will include the following provision in any pump procurement contract:

“The City of Santa Barbara is an intended third-party beneficiary of this contract. The [pump manufacturer] agrees that all provisions of this contract relating to performance, quality, warranty, and delivery of services or goods shall be enforceable by the City as if it were a direct party to this contract. IDE and [pump manufacturer] agree to copy City on all correspondence and notices related to the performance of this contract.”

8. LIMITATION OF CITY’S LIABILITY RELATED TO XYLEM AND INDAR INTAKE PUMPS

8.1. The Parties agree that any future costs related to the Xylem Intake Pump or Indar Intake Pump, other than those associated with routine maintenance performed

pursuant to DBO Contract, including Article 10, are the sole responsibility of IDE. This paragraph does not apply if the Xylem Intake Pump or Indar Intake Pump is replaced by a Replacement Intake Pump.

9. ENFORCEMENT OF AMENDMENT TERMS; DBO CONTRACT REMEDIES

9.1. The terms of this Amendment shall be enforceable in accordance with applicable terms in the DBO Contract, including, without limitation, Articles 8, 9, 10, 18, 19 and 20. At all times during the Amendment Term, the Parties shall retain the right to exercise any and all remedies consistent with the DBO Contract.

10. NO OTHER CHANGES TO THE DBO CONTRACT TERMS; NO IMPACT TO THE TOLLING AGREEMENT

10.1. Except as expressly provided herein, nothing in this Amendment shall alter, change, adjust or modify any rights, obligations or remedies as set forth in the DBO Contract. To the extent that the terms and conditions of this Amendment conflict with the DBO Contract, then the terms of this Amendment shall control.

10.2. Nothing in this Amendment shall constitute a waiver, release or limitation upon the exercise by either Party of any of its rights under the DBO Contract or waive the required performance of any provision of the DBO Contract. The failure at any time of any Party to require strict performance by the other Party of any provision of this Amendment, or of the DBO Contract, shall not affect the right of any Party thereafter to demand strict compliance and performance. Nothing in this Amendment shall limit any right or remedy available under the DBO Contract, as amended.

10.3. Exercise of by either Party of a right or remedy under the DBO Contract or this Amendment to enforce an obligation of the other Party relating to the Third Intake Pump or a Replacement Intake Pump will not be subject to the Tolling Agreement. Except as expressly provided here, this Amendment is not intended to and does not affect the mutually agreed terms in the Tolling Agreement in any way.

11. EFFECTIVE DATE AND AMENDMENT TERM

11.1. The Effective Date of this Amendment is the date the Amendment is fully executed and signed by both Parties, unless otherwise provided in this Amendment. The Amendment Term coincides with the remaining Term of the DBO Contract. Nothing herein prohibits the Parties from extending the term of this Amendment or agreeing to further DBO Contract amendments, which the Parties

may do by mutual agreement in writing, consistent with DBO Contract, Article 19.10.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

IDE Americas, Inc.

City of Santa Barbara

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT

DBO CONTRACT AMENDMENT 2 – ATTACHMENT A

Required Content of Monthly Operations and Maintenance Report for Intake Pumps

Intake Pump Operating Data

This General Information Shall Be Included In Each Monthly Report:

- All data shall be submitted in imperial units.
- Report shall be consistent with the asset identification for both pumps and sensor tags.
- Report and graphs must identify any malfunctioning sensors or equipment, with sufficient detail to allow for identification of date, time and duration of malfunction.
- Report shall include a written description of the cause of the malfunctioning sensor or equipment.
- Report shall identify what steps were taken to resolve the malfunction, if any, and if the equipment or sensors returned to normal operation.
- Report shall identify long-term proposed solution to any ongoing equipment or sensor malfunction.

Pump Health Data shall be submitted in 15-minute intervals. Monthly submittal shall include a table and graph in excel:

- Winding temperatures
- Bearing temperatures
- Pump vibration
- Pump Status
- Pump Hours (since last deployed)
- Power
- Pump Flow
- Discharge pressure
- Deviation from observed and modeled flow and pressure.

A separate table and graph shall be attached to each monthly report that includes historic information and trends going back to when the asset was placed in service. The monthly report shall include a written narrative identifying any equipment or sensor malfunctions, the resolutions to those issues and any other anomalies or concerns.

Maintenance Data

This Maintenance Data Shall Be Included In Each Monthly Report:

DBO Contract Amendment 2
Attachment A

Report shall include information that comes directly from the CMMS (Maintenance Connection), and identifies all onshore and offshore maintenance activities. Data shall include:

- Work Order Data from CMMS
 - Date of work order issuance/creation
 - Date when work order was completed
 - Time to completion (duration of time from when work order was issued to when it was completed)
 - Log of all activities/tasks completed under the work order, including:
 - Labor – with identity of all individuals who completed the work
 - Equipment - all equipment used to complete the work
 - Materials - all Parts and materials used to complete the work
 - Status on any outstanding repair or parts
- Onshore Maintenance Reports
 - Any inspections shall include:
 - pictures and narratives highlighting observations of key pump elements (seals, bearings, shaft, electrical components, impeller and volute, etc.)
 - A greater level of detail shall be provided on any unusual conditions.
 - All damage (which shall be stored within the CMMS), shall be documented as described above.
 - The testing reports shall include:
 - an explanation of any unusual conditions and manufacturer’s suggested repairs.
 - If the pump is onshore due to a failure, the report shall include a root cause analysis performed by a qualified technician (from the manufacturer or a qualified third party, as agreed by the Parties).
- Offshore (Overwater) Maintenance Report (in addition to the work order data above):
 - Report shall include “as discovered” photos and narratives documenting the conditions of intake pumps in the water (before removal) and on the boat before any cleaning and maintenance is performed.
 - Report shall include a narrative description of the conditions of the intake structure, piping, and screens “as discovered” and before any cleaning or maintenance is performed.
 - Report shall include a post cleaning conditions report and photos with narrative descriptions before the pump(s) are returned to operation.
- In the event no maintenance is performed, IDE shall provide an affirmative statement to that effect along with a description of the next scheduled maintenance activity.