

**OPTION AGREEMENT
FOR
FIRST AMENDMENT TO
GROUND LEASE AND PROPERTY USE AGREEMENT**

This Option Agreement for First Amendment to Ground Lease and Property Use Agreement (the “**Agreement**”) is effective the date fully executed (“**Effective Date**”) by and between the City of San José, a municipal corporation (“**San Jose**”) and City of Santa Clara, a municipal corporation (“**Santa Clara**” and with San Jose, the “**Owners**”) and the Santa Clara Valley Water District, a California Special District (“**Valley Water**”). Owners and Valley Water are referred to herein collectively as “**Parties**” or individually as “**Party**.”

RECITALS

A. Owners are co-owners of that certain real property and improvements located at the east side of Zanker Road, north of State Route 237, in the City of San Jose, as more particularly depicted on Exhibit A attached hereto and made a part hereof (the “**Property**”).

B. San Jose is the administering agency for the San Jose/Santa Clara Water Pollution Control Plant (more commonly known as Regional Wastewater Facility or RWF), which encompasses the wastewater treatment facility and the Property.

C. San Jose and Valley Water previously executed (i) a Ground Lease and Property Use Agreement dated March 2, 2010, and effective July 1, 2010, for a portion of the Property (the “**Lease**”); (ii) the Agreement for Operation and Maintenance of the Silicon Valley Advanced Water Distribution Center, dated October 23, 2012 (the “**O&M Agreement**”); and (iii) the Recycled Water Facilities and Program Integration Agreement, dated March 10, 2010, and effective July 1, 2010 (the “**Integration Agreement**”).

D. Valley Water is considering a proposed project for the construction and operation of a direct potable reuse demonstration facility for the production of purified water and an associated learning center (the “**Project**”) and has identified portions of the Property as a preferred site for review under the California Environmental Quality Act of 1970, as amended (“**CEQA**”).

E. Valley Water has requested and Owners have agreed to grant Valley Water an exclusive option to amend the Lease to modify the leased area to include approximately 94,740 square feet of ground space (the “**Premises**”), as more particularly described in Exhibit B, attached hereto and incorporated herein by reference upon the terms and conditions set forth in this Agreement.

F. Valley Water will be conducting environmental review for the Project as lead agency under CEQA. Entry into this Agreement shall not constitute any pre-approval of the Project by the Parties, does not commit the Parties to a definite course of action with regard to the Project, and shall in no way restrict the Parties’ exercise of their respective jurisdiction under CEQA following such environmental review including (i) considering other feasible alternatives and mitigation measures to avoid or minimize project impacts, (ii) making modifications deemed

necessary to reduce project impacts, or (iii) determining not to proceed with one or more components of the Project including accepting a no-project alternative.

G. Satisfaction of contingencies to the exercise of this Agreement shall in no way obligate Valley Water to exercise its option under this Agreement and shall not limit its exercise of discretion in any way.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement and for good and valuable consideration, the receipt and adequacy of which are acknowledged by the Parties, the Parties hereby agree as follows:

1. Grant of Option. Subject to the terms and conditions of this Agreement, Owners hereby grant to Valley Water the exclusive option (the “**Option**”) to amend the Lease to include the Premises and construct and operate the proposed Project on the terms and conditions set forth in the First Amendment to Ground Lease and Property Use Agreement attached hereto as Exhibit C (the “**Amended Lease**”).

2. Option Consideration. As consideration for the Option, Valley Water agrees to pay Owners, the sum of \$10.00, which Valley Water shall deliver to San Jose within 10 days from the Effective Date.

3. Term of Option.

a. The “**Term**” of the Option shall begin on the Effective Date and shall automatically expire on the earliest to occur of (i) the date that is three (3) years from the Effective Date, unless the Term is extended as provided below in this Section 3, (ii) the date on which Valley Water has delivered to Owners written notice of the termination of this Agreement, and (iii) the Closing Date (as defined in Section 6 below).

b. Notwithstanding the foregoing, if all of the Option Conditions (as defined in Section 4 below) and the Valley Water Conditions Precedent (as defined in Section 7 below) have not been satisfied prior to the initially scheduled Term expiration date, the Parties may mutually agree to extend the Term for an additional period of one (1) year.

4. Option Conditions. The following conditions must be satisfied before Valley Water may exercise the Option (the “**Option Conditions**”):

a. **Compliance with CEQA.**

(i) Completion of environmental review for the Project to the extent required under CEQA and the satisfaction of the obligations with respect thereto; and

(ii) Approval of CEQA determinations by Valley Water Board of Directors as lead agency, the San Jose City Council for San Jose as a responsible agency, and the Santa Clara City Council for Santa Clara as a responsible agency.

b. **Approval of Plans for Project.** Valley Water shall have received necessary approvals for the plans and specifications for the Project.

c. **Integration Agreement.** San Jose and Valley Water shall have executed the First Amendment to Recycled Water Facilities and Programs Integration Agreement, in the form attached hereto as Exhibit D (the “**Amended Integration Agreement**”), before or concurrently with Valley Water’s exercise of the Option.

d. **O&M Agreement.** San Jose and Valley Water shall have executed the Amended and Restated Operations and Maintenance Agreement, in the form attached hereto as Exhibit E (the “**Amended O&M Agreement**”), before or concurrently with Valley Water’s exercise of the Option.

5. **Meet and Confer for Amendment.** The Parties acknowledge that prior to Valley Water’s exercise of the Option, as a result of the planning process or environmental review for the Project, either Party may provide written notice to the other of its request to amend this Agreement for purposes of amending the Amended Lease, the Amended O&M Agreement, and the Amended Integration Agreement; and the Parties shall reasonably meet and confer with respect to the proposed amendments.

6. **Exercise of Option.** Valley Water shall have the right to exercise the Option or terminate the Option at any time during the Term. If Valley Water desires to exercise the Option, Valley Water must deliver on or before the expiration of the Term (as the same may be extended), written notice to Owners (the “**Option Exercise Notice**”) stating that the Option Conditions have been satisfied and that Valley Water is exercising the Option and proceeding with the Closing (as defined below). If Valley Water delivers the Option Exercise Notice to Owners on or before the expiration of the Term, Owners shall thereupon become obligated to consummate the Closing (subject to the covenants and conditions set forth in this Agreement).

7. **Closing.** Unless otherwise mutually agreed by Owners and Valley Water, and provided that all conditions contained in this Agreement are satisfied or waived, the closing for the Amended Lease (the “**Closing**”) shall occur on the date (the “**Closing Date**”) specified in Valley Water’s Option Exercise Notice. On or before the Closing Date, Valley Water shall execute and deliver the Amended Integration Agreement and Amended O&M Agreement to San Jose and the Amended Lease to the Owners. No later than the Closing Date, San Jose shall execute the Amended Integration Agreement and Amended O&M Agreement and the Owners shall execute the Amended Lease. The Closing may be conducted electronically and the Parties may execute the agreements with digital signatures in accordance with Government Code section 16.5.

8. **Conditions Precedent to Closing**

a. **Conditions Precedent to Valley Water’s Obligation to Close.** After Valley Water delivers the Option Exercise Notice to Owner, Valley Water’s obligation to consummate the Closing is subject to satisfaction on or before the Closing Date (as the same may be extended) of the following conditions (the “**Valley Water Conditions Precedent**”), any of which may be waived in writing by Valley Water, in Valley Water’s sole and absolute discretion.

(i) **Title Insurance.** A title company shall be prepared to issue to Valley Water at the Closing an ALTA 2006 extended coverage leasehold owner’s policy of title insurance by an issuer acceptable to Valley Water in an amount specified by Valley Water insuring

Valley Water's leasehold interest in the Premises under the Amended Lease, subject only to the Permitted Exceptions (as defined in Section 9 below), and with such additional endorsements as Valley Water may reasonably request. Valley Water shall pay for its own title insurance policy covering its leasehold interest under the Amended Lease.

(ii) **Covenants, Representations and Warranties.** Owners shall not be in material breach of any of covenants, representations, and warranties Owners have made in this Agreement. All representations and warranties of Owners set forth in this Agreement shall be true and correct in all material respects as if made on the Closing Date.

b. **Failure of a Condition.** If any of the foregoing conditions precedent has not been satisfied on or before the Closing Date, then Valley Water may give written notice to the Owners of the condition or conditions that are not satisfied. If the conditions specified in such notice are not satisfied within ten (10) business days after receipt of such notice (or by the Closing Date, if earlier), then Valley Water may terminate this Agreement by written notice to the Owners, whereupon neither Party shall have any further rights or obligations hereunder (other than any obligations of the Parties that expressly survive termination).

9. Due Diligence; Approvals; Title

a. **License to Enter and Perform Inspections.** Valley Water's access to the Premises shall be governed by the Right of Entry dated August 21, 2024. Valley Water shall pay for all costs associated with Valley Water's due diligence studies and investigations of the Premises during the Term.

b. **Right to Pursue Approvals.** Valley Water may, during the Term, to seek approvals, entitlements and financing for the Project, to submit applications, make appearances at hearings, negotiate contracts and other agreements, and otherwise take actions in furtherance of such Project, provided that no such approvals, entitlements, financing, applications or contracts shall be binding on Owners or the Premises if Valley Water does not exercise the Option. Owners shall reasonably cooperate with Valley Water in seeking such approvals, entitlements, and financing, provided that Owners shall not be required to incur any out-of-pocket costs or expenses.

c. **Title.** Following the Effective Date, Valley Water may obtain a preliminary title report and, at its election, a survey, for the Premises. Valley Water shall have the right to object to title exceptions and other title matters identified in the preliminary title report and survey (if a survey is obtained). If Owners do not remove such objectionable items, Valley Water shall have the right, at its election, to terminate the Option or waive its objection to the items Owners were not able to remove. Owners shall deliver the Premises to Valley Water at Closing subject only to such title exceptions as Valley Water shall approve in writing (the "**Permitted Exceptions**").

10. No Encumbrances. During the Term, Owners will not convey any interest in the Premises to any party or otherwise encumber the Premises without the prior written consent of Valley Water. The foregoing restriction shall apply to, but is not limited to, any lease or license of the Premises. Owners will be responsible, at their expense, for delivering the Premises to Valley Water free and clear of all tenants, licensee, and occupants.

11. Representations and Warranties.

a. **Representations and Warranties of Owners.** Owners make the following representations to Valley Water, which shall be true and correct as of the Effective Date and as of the Closing Date:

(i) **Authority/Consent.** Owners possess all requisite power, authority and consents, and have taken all actions required by applicable law, to execute and deliver this Agreement and consummate the transactions contemplated by this Agreement.

(ii) **Title.** San Jose currently owns fee title to the Premises and San Jose has not created or granted any options or rights of offer, refusal, lease, or purchase to any third parties.

(iii) **Contracts.** As of the Closing, there will be no contracts to which Owners are bound relating to the Premises. Owners shall cause to be discharged any mechanic's liens caused by or on behalf of Owners and arising prior to the Closing.

(iv) **Litigation.** To Owners' knowledge, except as expressly disclosed in writing to Valley Water, no litigation or other proceedings are pending or threatened against the Premises, its operation or Owners relating to the Premises.

(v) **Liens.** There are no monetary liens (except for the Permitted Exceptions) that will not be removed by Owners prior to or concurrent with the Closing.

(vi) **No Conflicts.** The execution and delivery of this Agreement by Owners and the consummation by Owners of the transactions contemplated hereby will not (i) violate any law, judgment, order, injunction, or decree to which Owners or the Premises are subject, or (ii) conflict with, result in a breach of, or constitute a default under any mortgage, loan agreement, covenant, or other agreement or instrument to which Owners are a party or by which Owners are bound.

b. **Representations and Warranties of Valley Water.** Valley Water makes the following representations to Owners, which shall be true and correct as of the Effective Date and as of the Closing Date:

(i) **Organization.** Valley Water is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization.

(ii) **Authority/Consent.** Valley Water possesses all requisite power, authority and consents, and has taken all actions required by its organizational documents and applicable law, to execute and deliver this Agreement and consummate the transactions contemplated in this Agreement.

(iii) **No Conflicts.** The execution and delivery of this Agreement by Valley Water and the consummation by Valley Water of the transactions contemplated hereby will not (i) violate any law, judgment, order, injunction, or decree to which Valley Water is subject, or (ii) conflict with, result in a breach of, or constitute a default under any mortgage, loan agreement,

covenant, or other agreement or instrument to which Valley Water is a party or by which Valley Water is bound.

12. As-Is Condition. The Premises is being conveyed to Valley Water “AS IS,” and Owners makes no representations or warranties with respect to the Premises, other than those representations and warranties expressly contained in this Agreement. Valley Water acknowledges that it is being provided a full opportunity to conduct any and all investigations, studies or tests it sees fit to perform. In no event shall Owners be obligated to clean up or remediate the Premises. If contamination is found upon or beneath the Property, Valley Water’s sole and only remedy against Owners (and prior owners related to Owners or beneficiaries of Owners) shall be to terminate the Agreement pursuant to Section 3 or to accept the Premises in its “AS IS” condition and undertake responsibility for its remediation.

13. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement, which will be undertaken promptly and initially by the representatives of the Parties in the following manner:

a. If a dispute should arise, an authorized representative for each of the Parties will meet or teleconference within ten (10) calendar days of written notification of the dispute to resolve the dispute. Prior to such meeting or teleconference, the Party bringing the dispute will draft and submit to the other Parties a written description, including any factual support, of the disputed matter. After receiving this written description, the other Parties will provide a written response to such written description within a reasonable period of time.

b. If no resolution of the dispute occurs at this meeting or teleconference, the issue will be elevated to an executive-level manager of each Party (i.e., executive level manager for Valley Water and Assistant City Manager or higher-level executive for Owners). Each Party’s executive-level manager will meet or teleconference as soon as practical, but, in no event, later than twenty-one (21) calendar days after the matter has been referred to them, with the initial meeting to occur at a location to be selected by the Parties.

c. In the event resolution is unsuccessful, any Party may pursue other remedies available at law including filing an action in any state or federal court within the County of Santa Clara.

14. Valley Water’s Remedies. If Owners fail to deliver the Premises to Valley Water in accordance with this Agreement upon an exercise by Valley Water of the Option, Valley Water shall be entitled to seek any remedy available at law or in equity, including, without limitation, seeking injunctive relief and/or specific performance.

15. Miscellaneous.

a. **No Brokers’ Commission.** The Parties each warrant to the others that no person or entity can properly claim a right to a commission, finder’s fee, or other compensation with respect to the transaction contemplated by the Agreement.

b. **Successors and Assignment.** The Agreement is binding upon Owners, its administrators, legal representatives, successors-in-interest, executors, or assignees.

Valley Water may not assign this Agreement, or any rights or obligations hereunder, without first having obtained the written consent of Owners; such consent shall not be unreasonably withheld.

c. **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section 15(c). All such notices shall be sent by personal delivery, in which case notice is effective upon delivery, certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt, or nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City of San José
200 East Santa Clara Street, 10th Floor
San José, CA 95113
Attention: Assistant Director of Environmental Services

With a copy to:

City of San José
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113

Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118
Attention: Chief Operating Officer

With a copy to:

Santa Clara Valley Water District
Office of the District Counsel
5750 Almaden Expressway
San José, CA 95118

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention:

With a copy to:

City of Santa Clara
City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

Notices shall be addressed as appears herein, provided that if any Party gives notice of change of name or address, notices to the giver of that notice shall thereafter be given as demanded in that notice.

d. **Invalidity of Any Provision.** If any provision or portion of a provision of the Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction under present or future laws effective during the term of the Agreement, the legality, validity, and enforceability of the remaining provisions or the balance of such provision shall not be affected thereby.

e. **Applicable Law.** This Agreement shall be governed by the laws of the State of California.

f. **Entire Agreement.** The Agreement contains the entire agreement of the Parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. Any amendment to the Agreement must be reduced to writing and signed by both Parties before it will be effective.

g. **Time of the Essence.** Time is of the essence to this Agreement and its provisions.

h. **Attorney's Fees.** If any action is brought to interpret or enforce this Agreement, each party shall bear the entirety of its own costs and expenses including but not limited to attorneys' fees.

i. **Memorandum of Agreement.** This Agreement shall not be recorded. Concurrently with the execution of this Agreement, the Parties shall duly execute and acknowledge the Memorandum of Option Agreement (the "**Memorandum of Option**") in the form of Exhibit F attached hereto. Valley Water will record the Memorandum of Option in the official records of Santa Clara County. If Valley Water terminates this Agreement, it agrees to execute and deliver to Owners a quitclaim deed relinquishing its interest in the Premises and acknowledging that the Memorandum of Option is of no further force and effect.

j. **Drafting.** This Agreement has been drafted through a cooperative effort of all Parties, and all Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the cause shall apply to the interpretation or enforcement of this Agreement.

k. **Further Assurances.** Each Party agrees to sign such additional documents and take such further actions as may be reasonably necessary to effectuate the terms of this Agreement.

l. **Counterparts.** This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

m. **Indemnity.**

(i) Valley Water hereby expressly agrees to defend, indemnify, and hold harmless Owners and their elected and appointed officials, officers, attorneys, employees and agents (collectively, "Owner Parties") from any and all claim(s), action(s), demand(s), suit(s), loss(es), injury(ies), liability(ies) or proceeding(s) (collectively referred to as "Proceeding") brought against the Owner Parties to challenge, attack, set aside, void, or annul the Owners' approval and execution of this Agreement alleging failure to comply with the CEQA.

(ii) Valley Water's indemnification includes, but is not limited to, damages, fees and/or costs awarded against or incurred by Owners, and costs of suit, claim, or litigation, including without limitation reasonable attorneys' fees and other costs, liabilities and expenses incurred in connection with such Proceeding.

(iii) Valley Water agrees to indemnify Owners for all of Owners' reasonable costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement, excluding costs, fees, and damages incurred by the Parties during the dispute resolution process under Section 11 (Meet and Confer for Amendment; Dispute Resolution) of this Agreement.

(iv) The Owners shall promptly notify Valley Water of any Proceeding. If Valley Water is required to defend Owners in connection with such Proceeding, Owners shall have and retain the sole and exclusive authority to approve:

1. The counsel to so defend Owners; and
2. Whether the City Attorney's Office participates in the defense; and
3. All significant decisions concerning the manner in which the defense is conducted; and
4. Any and all settlements, which approval shall not be unreasonably withheld, as long as such settlement does not require Owners to pay any funds or create any limitations on Owners' use of their real property unless agreed to in writing by Owners.

(v) If Owners elect to participate in the defense, Valley Water shall pay Owners' reasonable City Attorney fees and costs incurred by Owners to manage Owners' approved counsel for the Proceeding.

(vi) Owners shall also have and retain the right to not participate in the defense, except that Owners agree to reasonably cooperate with Valley Water in the defense of the Proceeding.

(vii) Valley Water's defense and indemnification of Owners set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the Proceeding, and shall survive the termination or expiration of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date.

APPROVED AS TO FORM:

CITY OF SAN JOSE

By: _____
Leanne C. Bolaño
Deputy City Attorney

By: _____
Toni Taber, MMC
City Clerk

APPROVED AS TO FORM:

SANTA CLARA VALLEY WATER DISTRICT

By: _____
E. Ray Ruiz
Assistant District Counsel

By: _____
Melanie Richardson
Interim Chief Executive Officer

APPROVED AS TO FORM:

CITY OF SANTA CLARA

By: _____
Glen Googins
City Attorney

By: _____

EXHIBIT A
PROPERTY



EXHIBIT B
PREMISES

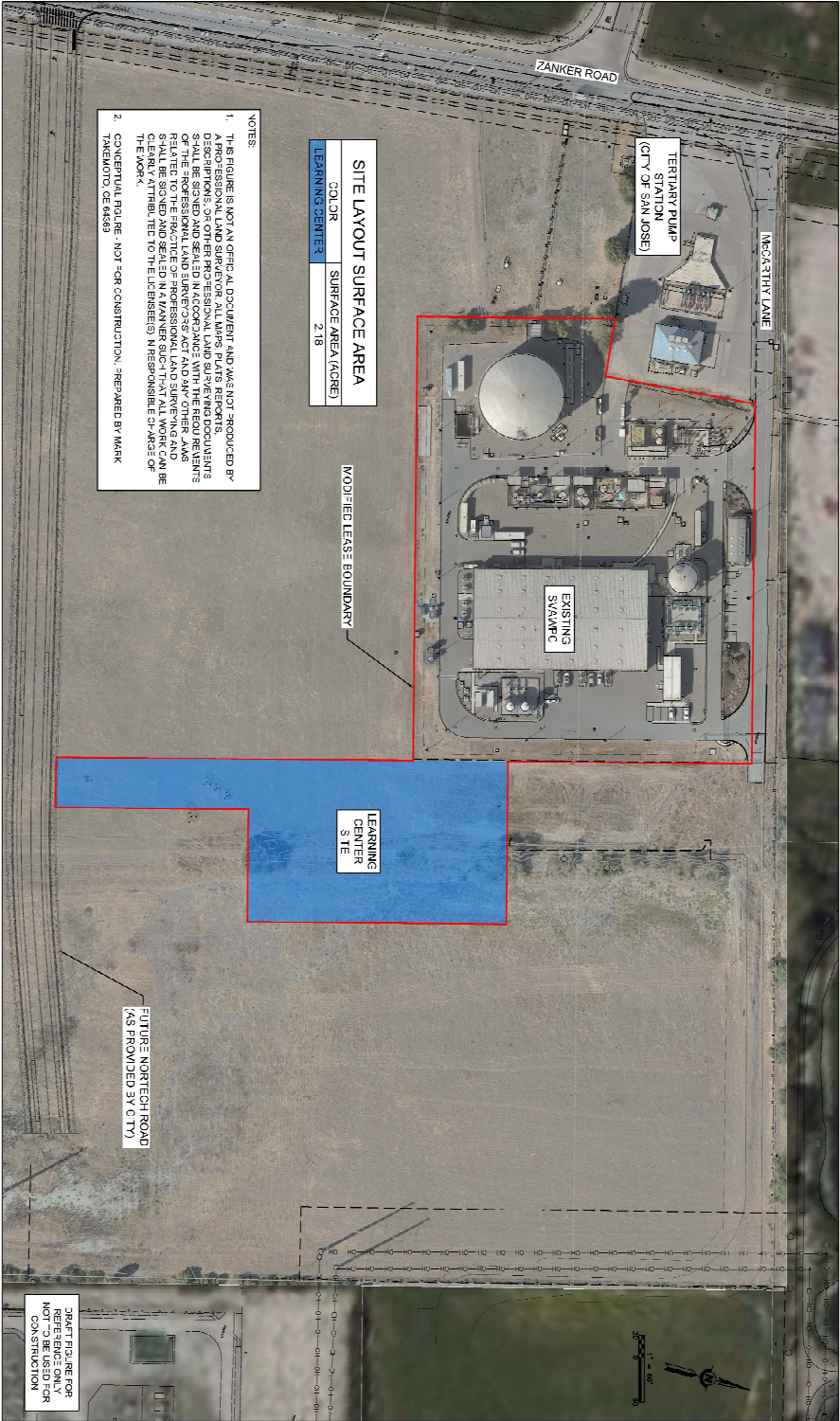


EXHIBIT B

EXHIBIT C
FORM OF AMENDED LEASE

**FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND THE SANTA CLARA VALLEY WATER
DISTRICT FOR ADVANCED WATER TREATMENT FACILITY**

THIS FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE

AGREEMENT ("Amendment") is entered into this ____ day of ____, 2025, by the CITY OF SAN JOSE ("CITY"), a charter city and municipal corporation, as Administering Agency for the San José/Santa Clara Water Pollution Control Plant ("City" or "Landlord") and the SANTA CLARA VALLEY WATER DISTRICT, a California special district ("District"). The District and Landlord are each a "Party" and collectively, the "Parties".

RECITALS

WHEREAS, the Parties entered into that certain Ground Lease and Property Use Agreement (the "Agreement"), dated March 2, 2010, but effective July 1, 2010, for District to lease the Premises and the Ancillary Property to construct and operate the Advanced Water Treatment Facility, or "AWTF" (formally named Silicon Valley Advanced Water Purification Center "SVAWPC");

WHEREAS, the SVAWPC started operations in March 2014 to treat up to twelve (12) million gallons per day ("mgd") of Regional Wastewater Facility ("RWF") secondary effluent, to increase the production of non-potable recycled water through microfiltration; enhance the quality of non-potable recycled water quality through the provision of up to eight (8) mgd reverse osmosis treated water for blending with the RWF's existing recycled water; and offset the demand for development of new sources of water supply for Santa Clara County;

WHEREAS, District desires to construct and operate a direct potable reuse demonstration facility and learning center (the "DPR Demonstration Facility") on a portion of the Property as depicted on the attached Revised Exhibit A;

WHEREAS, the proposed DPR Demonstration Facility will treat up to half (0.5) mgd from a portion of the twelve (12) mgd RWF secondary effluent diverted to the SVAWPC;

WHEREAS, Microsoft Corporation ("Microsoft") is proposing to build a data center at 1657 Alviso-Milpitas Road which would involve expanding McCarthy Lane (North Access Road) into a portion of the Property, and Microsoft has agreed to relocate District's Visitor's Center among other actions as consideration for the Valley Water agreeing to the relocation to accommodate the proposed expansion of North Access Road ("Relocation Project");

WHEREAS, the Parties and Microsoft intend to memorialize its respective actions and obligations in a three-party Relocation Agreement as a condition precedent to Microsoft's expansion of North Access Road;

WHEREAS, on [insert date], District [insert environmental clearance];

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and District hereby agree as follows:

SECTION 1. Defined Terms. Unless otherwise defined in this Amendment, capitalized terms have the meaning set forth in the Agreement.

SECTION 2. SECTION 1, "DEFINITIONS" is amended to read as follows:

Each reference in the body of this Agreement to specific terms or phrases set forth in this Section shall have the specific meanings and/or contain the respective express information set forth below.

"Agreement" means Ground Lease and Property Use Agreement between the City of San José and the Santa Clara Valley Water District for Advanced Water Treatment Facility, and any amendments.

"Ancillary Property" means the property described in **Section 2.2.**

"Advanced Recycled Water Treatment Facility" or **"AWTF"** means the facility constructed on the Premises in 2014 as described in the Plans & Specifications ("AWTF") also known as the **Silicon Valley Advanced Water Purification Center ("SVAWPC").**

"City" means the City of San José, a charter city, as Administering Agency for the San José/Santa Clara Water Pollution Control Plant.

"Days" unless otherwise specified, means calendar days.

"Director" means the person designated Director of Environmental Services by City, or such other person, division, department, bureau, or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of General Services. The term also includes any person expressly designated by the Director of Public Works to exercise rights and/or obligations empowered in the "Director" under this Agreement.

"District" means the Santa Clara Valley Water District, a California special district.

"DPR Demonstration Facility" means a direct potable reuse demonstration facility and learning center that the District will construct and operate on the Premises.

"Effective Date" shall mean July 1, 2010 for Premises and Ancillary Property described in Exhibit B, and the effective date of the First Amendment to Ground Lease and Property Use Agreement for the Premises and Ancillary Property described in Revised Exhibit B.

“Environmental Laws” shall mean and include the California Environmental Quality Act, to the extent applicable, the National Environmental Policy Act and all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

“Hazardous Materials” means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste. Secondary treated water provided by the Plant to the AWTF or DPR Demonstration Facility for treatment shall not be considered a Hazardous Material.

“Improvements” means the AWTF and Related Facilities and all Subsequent Alterations and Improvements.

“Integration Agreement” means the “Recycled Water Facilities and Programs Integration Agreement Between the City of San José and the Santa Clara Valley Water,” dated July 1, 2010, as amended by the Parties.

“Laws” means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, City rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities, including without limitation, city, state, municipal, county, federal agencies or the federal government, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

“mgd” means million gallons per day.

“Municipal Code” means the San José Municipal Code, as amended from time to time.

“Operations & Maintenance Agreement” or “O&M Agreement” means the Agreement Between the City of San Jose and the Santa Clara Valley Water District for Operation and Maintenance of the Silicon Valley Advanced Water Purification Center executed October 23, 2012, as amended by the Parties.

“Person” means an individual, a corporation, a partnership, a joint venture or any other form of business association.

“Plans & Specifications” means collectively, (a) the 60% Final Plans and Specification for Construction of AWTF, prepared by Black and Veatch, District Project No. 91184008, and approved by City and District prior to execution of the Agreement; and (b) the final plans and specifications for the DPR Demonstration Facility approved by the City and District pursuant to Section 8 of the Agreement.

“Plant”, “WPCP” or “RWF” means the San José/Santa Clara Water Pollution Control Plant commonly known as the Regional Wastewater Facility.

“Premises” means the property described in Revised Exhibit B.

“Recycled Water Policy Advisory Committee” means the policy advisory committee formed by the Parties pursuant to the Integration Agreement.

“Related Facilities” means the facilities needed to integrate the AWTF into the operation of the Plant and to provide utility services for the AWTF, as depicted in **Exhibit A**.

“South Bay Water Recycling” or “SBWR” means the assets owned and operated by City, and the program conducted by the City, as administering agency for the Plant for the wholesale distribution of recycled water.

“Subsequent Alterations and Improvements” means any improvement, alteration, addition or construction of improvements on the Premises or Ancillary Property including the DPR Demonstration Facility, other than with the AWTF and Related Facilities as shown in the Plans & Specifications, and furniture, trade fixtures and equipment which are and remain movable and unattached to the Premises or Property.

“Technical Working Group” means the staff level working group formed by the Parties pursuant to the Integration Agreement.

SECTION 3. SECTION 2, “LEASE OF PREMISES AND RIGHT TO USE ANCILLARY PROPERTY” is amended to read as follows:

2.1. Premises.

Landlord hereby leases, transfers and demises to District, and District hereby leases and takes from Landlord, the Premises for the terms and upon the agreements, covenants and conditions set forth in this Agreement, the Premises depicted on **Revised Exhibit B** attached hereto and incorporated by reference herein.

2.2. Ancillary Property.

Landlord hereby grants to District, the right to use the Ancillary Property for the Related Facilities depicted on **Exhibit A and Revised Exhibit B**, for the terms and upon the agreements, covenants, and conditions set forth in this Agreement.

2.3 Ingress and Egress.

2.3.1 District shall have a terminable nonexclusive license to use the access roadway to the Premises shown as North Access Road, as shown on **Revised Exhibit C**, but title to such roadway and the underlying property shall at all times remain with City and shall not be deemed to be part of the Premises under this Agreement. City reserves the right to terminate the license to use the access road upon the offer to provide land for substitute access at no cost to District. Upon the offer of such substitute access, District shall be responsible for all costs and expenses of developing such substitute access, and shall promptly submit Plans & Specification therefore to City, pursuant to the provisions of **Section 8**.

2.3.2 District has negotiated with Microsoft for Microsoft to complete certain actions as consideration for relocation of the District's Visitor Center to accommodate Microsoft's expansion of the North Access Road. These actions will be memorialized in the Relocation Agreement between District, City and Microsoft. Fulfilling the terms of the Relocation Agreement shall be a condition precedent to Microsoft's expansion of the North Access Road and modification of the District's interest in the site as set forth in Revised Exhibit B.

(a) Following District's written acceptance of the Relocation Project, the Premises will be as depicted in the Revised Exhibit B-1 attached to this Amendment and references in the Agreement to Revised Exhibit B shall refer to Revised Exhibit B-1. A portion of the Premises to be used by District for vehicle parking shall be subject to a non-exclusive easement granted to Microsoft as depicted in Revised Exhibit B-1. If there is a conflict between the Relocation Agreement and this Agreement concerning the Relocation Project, the terms of the Relocation Agreement shall prevail.

(b) The Parties agree that the representations and warranties in Sections 5.1 and 5.2 of the Agreement concerning the Premises: (1) as depicted in the attached Revised Exhibit B are made as of effective date of the First Amendment to Ground Lease and Property Use Agreement and (2) as depicted in the attached Revised Exhibit B-1 are made as of the date the District accepts the Relocation Project.

SECTION 4. Section 3 "TERM" is amended to read as follows:

The term of this Agreement shall commence on the July 1, 2010, and, unless sooner terminated or extended as herein provided, shall terminate at 11:59 on June 30, 2065.

SECTION 5. Section 5.1 “Authorized Use” is amended to read as follows:

Use of the Premises and Ancillary Property shall be strictly limited to construction and operation of the AWTF, DPR Demonstration Facility and Related Facilities, and public tours of the AWTF and DPR Demonstration Facility. Neither District, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Agreement. Use of the Ancillary Property is further subject to the “Special Terms and Conditions for Use of Ancillary Property” set forth in Exhibit D attached hereto and incorporated by reference herein.

SECTION 6. Section 6.1 “Inspections” is amended to read as follows:

District shall ensure that its employees and agents make regular inspections of the Premises and Ancillary Property for the purpose of maintaining the degree of cleanliness, condition of repair and operational ability of the AWTF, DPR Demonstration Facility and Related Facilities required under this Agreement.

SECTION 7. Section 6.3 “AWTF Operational Parameters” is amended to read as follows:

District shall operate the AWTF, DPR Demonstration Facility and Related Facilities so as to provide microfiltration for up to 12 mgd of secondary treated wastewater produced by the Plant and up to 8 mgd reverse osmosis product water to SBWR, in accordance with the additional operational parameters set forth in Revised Exhibit E.

SECTION 8. Section 7.1 “Maintenance” is amended to read as follows:

District shall be obligated, at all times, throughout the term of this Agreement, without cost to City, to maintain the Premises, AWTF and Related Facilities and all Subsequent Alterations or Improvements including the DPR Demonstration Facility in good appearance, repair, and safe condition, except for ordinary wear and tear, and in a condition otherwise satisfactory to Director. District shall maintain all improvements on the Premises, whether installed by District or City. All maintenance shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, and all work shall be subject to the prior written approval of Director, which approval shall not be unreasonably withheld. When used in this Agreement, the term “maintenance” shall include all repairs, alterations, maintenance and/or removals reasonably deemed necessary by Director in order to ensure that the AWTF, DPR Demonstration Facility and Related Facilities will consistently operate pursuant to the operational parameters set forth in Exhibit E. Landlord may enter the Premises at any time during regular business hours, to determine if District is in

compliance with the requirements of this Section 7. If, following any such inspection by Landlord, Landlord delivers notice of any deficiency to District; District shall promptly prepare and deliver to Landlord, District's proposed plan for remedying the indicated deficiencies. Landlord's failure to deliver, following any Landlord's inspection, any notice of deficiency to District, shall not be deemed to be Landlord's approval of the then condition of the Improvement, nor Landlord's waiver of any default by District under this Section 7.

SECTION 9. Section 8.1 "Construction of AWTF and Ancillary Facilities" is amended to read as follows:

Construction of AWTF, DPR Demonstration Facility and Related Facilities

District shall construct an AWTF and DPR Demonstration Facility on the Premises, and Related Facilities on the Ancillary Property, pursuant to and in compliance with all the terms and conditions set forth in this Section 8. District will construct the AWTF, DPR Demonstration Facility and Related Facilities in a manner that includes no Material Change from the Plans & Specifications (except with Landlord's written approval of any such Material Change as provided below). A "Material Change" means any material change from the AWTF, DPR Demonstration Facility and Related Facilities as shown in the Plans & Specifications that (i) use, (ii) density, (iii) building area, (iv) location and dimension of improvements, (v) number and size of filtrations units, (vi) exterior elevations and appearance, (vii) quality of construction materials, finishes and designs, (viii) any other change in the Plans & Specifications that would impact the ability of the AWTF and DPR Demonstration Facility to meet the operational parameters set forth in Exhibit E or otherwise have a material adverse impact on the Plant. In the event District proposes to make a Material Change from the Plans & Specifications, District first must obtain the written consent of Landlord, which Landlord may not unreasonably withhold or delay. Landlord shall have no obligation to approve any change: (i) which shall materially increase or decrease the floor area to be built upon the Premises, (ii) increase or decrease the number of filtration units to be built upon the Premises, (iii) materially increase or decrease the size of the filtration units to be built upon the Premises, (iv) to the uses which are permitted upon the Premises or Ancillary Property or (v) impact the ability of the AWTF and DPR Demonstration Facility to meet the operational parameters set forth in Exhibit E or otherwise have a material adverse impact on the Plant.

SECTION 10. Section 8.2 "AWTF and Related Facilities Construction Schedule" is amended to read as follows:

District agrees to use commercially reasonable efforts to cause the AWTF and Related Facilities to be commenced by October 1, 2010 and completed by September 30, 2012.

SECTION 11. Section 8.5 “Construction Standards” is amended to read as follows:

- (a) General Construction Standards. Once commenced, construction of the AWTF and Related Facilities and any approved Subsequent Alterations and Improvements shall be diligently prosecuted to completion, subject to Unavoidable Delays, by a licensed contractor selected by District selected by District pursuant to public competitive bidding process.
- (b) Compliance with Construction Documents and Laws. District shall construct or cause to be constructed the AWTF and Related Facilities and any Subsequent Alterations and Improvements on the Premises and Ancillary Property in substantial compliance with any documents relating thereto which have been approved by Landlord and in compliance with all applicable local, state, and federal laws and regulations. Without limiting the generality of the foregoing, District shall comply with the Mitigation Monitoring and Reporting Programs that are contained in the Mitigated Negative Declaration for the AWTF and Related Facilities and with any subsequent environmental mitigation and/or monitoring program adopted by the District Board for any Subsequent Alterations and Improvements. As between Landlord and District, District shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.
- (c) Governmental Approvals. District shall obtain, at its sole cost and expense, all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses, and permits which are, or may be, required and are necessary to install any improvements and to conduct the Authorized Activities, including, but not limited to, all plans and specifications approvals, site development reviews, development permits, and building permits. The Director’s approval shall not be deemed to include the approval of any other City department or governmental or public entity, which District may be required to obtain.
- (d) Hazardous Materials. District shall incorporate into any Construction Contract for the AWTF and Related Facilities and any Subsequent Alterations and Improvements, and shall require its contractor to incorporate into any subcontracts or contracts for materials or equipment: the requirements related to prevention and mitigation of Hazardous Materials releases in conformity with Exhibit F.
- (e) Prevailing Wages. District shall incorporate into any Construction Contract for the AWTF and Related Facilities and any Subsequent Alterations and Improvements, and shall require its contractor to incorporate into any subcontracts, the Prevailing Wage requirements set forth in Revised Exhibit G.
- (f) Bonding Improvements. At least ten (10) business days prior to the commencement of construction of the AWTF and Related Facilities or any Subsequent Alterations and Improvements having a value in excess of Twenty-Five Thousand Dollars (\$25,000), District shall provide to Landlord, copies of

payment and performance bonds, be in a sum of not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the Premises or Ancillary Property and/or Improvements, naming Landlord as an additional obligee, in such form as may be satisfactory to and approved by City's Risk Manager and Director, and be approved as to form by the City Attorney for City. At the discretion of City's Director and upon approval of City Attorney for City, the performance bond requirement may be waived.

(g) Insurance. At least ten (10) business days prior to the commencement of construction of the AWTF and Related Facilities or any Subsequent Alterations and Improvements, District shall provide City with certificates of insurance acceptable to City, Insurance Coverage shall meet, at a minimum, the requirements set forth in Section II of Revised Exhibit H attached hereto and incorporated herein.

(h) Asbestos Containing Materials. No asbestos-containing materials will be installed for any purposes on or as part of the Premises or Ancillary Property, whether as part of District's or District's Parties' business operations or as District improvements, unless specifically identified on the Plans & Specifications or approved in advance in writing by Landlord.

(i) Underground Storage Tanks. District shall not install or use any aboveground or underground storage tanks on the Premises or Ancillary Property unless specifically shown in the Plans & Specifications approved in advance, in writing, by Landlord, which approval may be withheld in Landlord's sole discretion. If Landlord approves District's installation or use of aboveground or underground storage tanks, District will be responsible for compliance with all applicable requirements and Environmental Laws, including, but not limited to, financial assurance requirements, and must furnish evidence satisfactory to Landlord of that compliance. District will also test the soil for settling and conduct appropriate tests of the tank and associated piping and equipment at the time of installation to assure that the tank has been properly installed.

(j) No Landlord Duty. Landlord's approval, review or modification of any plans, specifications or other construction documents with regard to Improvements (or any other work by District) is for Landlord's internal purposes only. Any Landlord review or approval specifically shall exclude review for the purpose of determining whether the reviewed documents contain any defects in the design, construction, or installation of improvements and Landlord shall have no liability or responsibility for any loss, damage, or injury arising out of or in any way connected with the design, construction, or installation of the any improvements on the Premises. Likewise, Landlord's review shall specifically exclude any review for purposes of determining whether the reviewed documents comply with laws, ordinances, rules or regulations applicable to the proposed work. By approving, reviewing, modifying or otherwise commenting on any of District's plans, specification or other construction documents, Landlord shall not be deemed to make any express or implied warranty of the reviewed matters for

any intended use or purpose. The scope and breadth of any review by Landlord is at Landlord's sole discretion and cannot be relied upon, or deemed for the benefit of, any other party.

(k) Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Improvements without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Agreement. Landlord's access shall be reasonably exercised to minimize interference with District's construction and/or operations. In any site visits, Landlord shall comply with all safety rules and requirements of the contractor.

(l) Preconstruction Meetings. Prior to beginning construction, District shall arrange one or more meetings among Landlord, District, the general contractor and District's other construction professionals and consultants as Landlord shall reasonably request be included to discuss construction matters, including construction hours, truck access, dust abatement, marshalling and storage areas and any other matters that may be of concern to Landlord or which may be of concern to neighbors.

(m) Protection of Landlord. Nothing in this Agreement shall be construed as constituting the request of the Landlord, express or implied, for the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Improvements or any part thereof for Landlord's account or benefit by any contractor, subcontractor, laborer or materialman. Landlord shall have the right, at all reasonable times, to post, and keep posted on the Premises, any notices which Landlord may deem necessary for the protection of Landlord and of the Premises, and the Improvements thereon from mechanics' liens or other claims. District shall give Landlord ten (10) days prior written notice of the commencement of any work to be done on the Improvement to enable Landlord to post such notices. In addition, District shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to District or any of its contractors or subcontractors in connection with the Premises and the improvements thereon.

(n) Mechanics Liens. Although Landlord believes that California law prohibits any mechanics' lien from attaching to the Premises, nevertheless, District shall keep the Premises, and the Improvements free and clear of all claims for mechanics' liens and other liens on account of work done for District or persons claiming under it. District agrees to and shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material suppliers or others for work performed or materials or supplies furnished to District or persons claiming under it. In the event any lien is recorded and is not removed or discharged within 30 days, without reference to its validity District shall, upon demand, furnish the bond described in California Civil Code Section 3143, or any

other applicable or successor statute, which results in the removal of such lien from the Improvement.

(o) Notice of Completion. Upon completion of construction of any improvements, District shall file, or cause to be filed, in the Official Records of the County of Santa Clara, a Notice of Completion (the "Notice of Completion") with respect to that Improvement.

(p) As Built Drawings. Upon completion of each improvement, District shall provide to Director two (2) completed sets of as-built drawings, a pdf and CAD files on flash drive if District produces drawings on disks, and a break-down which shows all costs incurred for completing such improvement. District agrees that, upon the request of Director, District will inspect the Premises jointly with Director to verify the as-built drawings.

SECTION 12. Section 8.6 "No Right to Demolish" is amended to read as follows:

Notwithstanding any other provisions of this Section 8, District shall have no right to demolish Improvements, once built, unless District shall have received the prior written consent of Landlord, it being agreed that Landlord has entered into this Agreement in material reliance on District's covenants to construct the AWTF, DPR Demonstration Facility and Related Facilities in accordance with the Plans & Specifications and to operate and maintain the AWTF, DPR Demonstration Facility and Related Facilities in accordance with the provisions of this Agreement.

SECTION 13. Section 10 "UTILITY SERVICES" is amended to read as follows:

10.1 General.

Except as provided in Sections 10.2 and 10.3 below, District shall secure and directly pay for any electrical, gas, water, sewer, and telephone services to the Premises utilized by the District as it may require, upon prior approval of Director. Installation of such additional utility connections shall be at District's sole cost and expense and are subject to the provisions of Section 8 regarding District improvements. The location, relocation and coordination of all utilities and telephone facilities to service the Premises shall be subject to the prior written approval of the Director. District shall, upon request by the Director, cap off all utility connections installed by District and restore the affected areas to their original condition upon expiration or earlier termination of this Agreement.

10.2 Electrical Service.

At City's option, City may provide electrical services to District through City's existing electrical connection meter for the SBWR transmission pump station. In the event City opts to provide such electrical service, District shall be responsible for all costs and expenses associated with installing such connection and for paying rated share of the electrical bill associated with such service.

10.3 Microfiltration Return Water and Reverse Osmosis Reject.

Microfiltration return water from the AWTF and DPR Demonstration Facility shall be treated by the Plant and reverse osmosis reject (brine concentrate) shall be either blended with Plant effluent in the Plant's chlorine contact basin prior to discharge to San Francisco Bay, or treated by the Plant.

SECTION 14. Section 13 "ASSIGNMENT OR TRANSFER" is amended to read as follows:

13.1 No Transfer Without Landlord Consent.

District shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Agreement, the Premises or any part thereof, or any rights or obligation of District hereunder, whether voluntarily or by operation of law, without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion.

13.2 Definition of Transfer.

A transfer within the meaning of this Section shall include, but is not limited to, the contracting or subcontracting for operation and maintenance of the AWTF, DPR Demonstration Facility or Related Facilities to any entity other than Landlord.

13.3 Consideration for Approval of Transfer.

In determining whether to consent to such a transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Premises; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to City associated with such proposed transfer. In addition, City's consent to any proposed transfer under this Agreement may be conditioned upon, among other things, the express written assumption by the proposed transferee of District's obligations under this Agreement and/or performance of required or necessary repairs or maintenance to the Premises. City agrees that it will in good faith consider such encumbrances in favor of state or federal agencies as may be necessary to secure the grants for construction of the AWTF, DPR Demonstration Facility and Related Facilities that are referenced in the Integration Agreement.

13.4 Consent Not Waiver.

The consent of City to any transfer described in this Section shall not relieve District of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void, and shall constitute an Event of Default.

SECTION 15. Section 14 "TERMINATION OF AGREEMENT" is amended in its entirety to read as follows:

14.1 Breach and Events of Default.

An Event of Default shall occur under this Agreement upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

- (a) District shall have failed to perform the following and failed to cure the same within thirty (30) days after written notice from City; provided, however, that if the nature of District's default is such that more than thirty (30) days are reasonably required for its cure, then District shall not be deemed to be in default if District commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director:
 - (i) Pay when due any rent, fee, charge or obligation of District requiring the payment of money under the terms of this Agreement; or
 - (ii) Commence construction of the AWTF and Related Facilities by September 30, 2012; or
 - (iii) Maintain any insurance required under Section 17.
- (b) District shall have failed to perform any term, covenant, or condition of this Agreement related to the City's ability to comply with regulatory requirement and meet the operational needs of the Regional Wastewater Facility.
- (c) Any representation or warranty made by District hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- (d) District shall have made a general assignment of its assets for the benefit of its creditors; or
- (e) District shall have assigned or otherwise transferred its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law; or
- (f) District shall have failed to occupy the Premises or to maintain continuous operations at the Premises, in each case, for any thirty (30) consecutive days, without approval by City, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Premises; or
- (g) A court shall have made or entered any decree or order: (i) adjudging District to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of District or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee

or assignee of District in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of District and such decree or order shall have continued for a period of sixty (60) days; or (v) District shall have voluntarily submitted to or filed a petition seeking any such decree or order; or

- (h) The sequestration or attachment of or execution or other levy on District's interest in this Agreement or the Premises or any improvements located thereon shall have occurred and District shall have failed to obtain a return or release of such property within sixty (60) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- (i) The revocation or termination of any certificate, permit, franchise, approval, authorization or power necessary for District to lawfully conduct the operations which District is required or permitted to conduct on the Premises; or
- (j) Any lien shall be filed against the Premises because of any act or omission of District, and shall not be discharged or contested by District in good faith by proper legal proceedings within thirty (30) calendar days after receipt of notice thereof by City.

14.2 Remedies for Default.

Upon an Event of Default, City shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Agreement, to which City may resort cumulatively, or in the alternative:

- (a) City may, at any time without notice and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the District, and without a waiver of such breach, perform any act which if performed by District would otherwise cure the breach. If in so doing City is required or elects to pay any monies or do any acts which will require the payment of any monies or the incurring of any costs or expenses, District covenants to pay to City upon demand by City the sum or sums of money paid or incurred by City, together with interest at the rate of one percent (1%) per month plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows City's demand therefore. The demand for any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of District.
- (b) In addition to any other remedy that City may have, City may, at its election, terminate this Agreement upon written notice of termination in which event this Agreement shall terminate on the date set forth in such notice. Any termination under this paragraph shall not relieve District from the payment of any sums then due to City or from any claim for damages or rent previously accrued or then accruing against District. In no event shall any one or more of the following actions by City, in the

absence of a written election by City to terminate this Agreement, constitute a termination of this Agreement:

- (i) Appointment of a receiver or keeper in order to protect City's interest hereunder; or
 - (ii) Any other action by City or its agents intended to mitigate the adverse effects of any breach of this Agreement by District, including, without limitation, action to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof for the account of District and in the name of District
- (c) This Agreement shall not terminate following an Event of Default and an abandonment of the Premises unless City gives District written notice of its election to terminate this Agreement. No act by or on behalf of City intended to mitigate the adverse effect of such breach, including those described by the immediately preceding subparagraphs (i) and (ii), shall constitute a termination of District's right to possession unless City gives District written notice of termination.
- (d) In the event City terminates this Agreement, City shall be entitled to damages in the following sums:
- (i) The worth at the time of award of all unpaid rental fees and other fees which have been earned at the time of termination;
 - (ii) The worth at the time of award of the amount by which the unpaid rental fees and other fees which would have been earned after termination until the time of award exceeds the amount of such rental fee or other fee loss that District proves could have been reasonably avoided;
 - (iii) Any other amount necessary to compensate City for all detriment or damage to the Premises proximately caused by District's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, to fulfill its obligation to return the Premises to the City in the condition existing as of the date this Agreement was entered into, reasonable wear and tear excepted;

The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the rate of twelve percent (12%) per annum. The "worth at the time of award" of the amount referred to in subparagraph (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

- (e) No payment by District, or receipt by City, of a lesser amount than any rent, fee, charge or other amount due by District hereunder shall be deemed to be other than on account of the earliest rent, fee, charge or other amount due, nor shall any endorsement or statement on any

check from District, or letter accompanying any check or payment, be deemed an accord and satisfaction. City may accept any such check or payment without prejudice to City's right to recover the balance of such rent, fee, charge or other amount or to pursue any other right or remedy available to City.

- (f) No option, right, power, remedy or privilege of City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

14.3 Automatic Termination.

Intentionally Deleted.

SECTION 16. Section 16.2 "Assumption of Risk" is amended to read as follows:

District agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of District, its directors, officers, employees, agents, and contractors which may occur in, on, or about the AWTF, DPR Demonstration Facility, Related Facilities, the Premises or Ancillary Property as a result of natural conditions that exist on the Premises, and conditions associated with the operation of the Plant, except such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of City, its officers, employees or agents. Nothing contained in this Section 16.2 is intended to impede District from pursuing any claims against third parties.

SECTION 17. Section 17.1 "Insurance Requirements" is amended to read as follows:

District agrees to have and maintain the policies set forth in **Revised Exhibit G**, entitled "Insurance", which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to review and approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. These insurance requirements shall be subject to periodic review by City's Risk Manager. Should the Risk Manager recommend any change in any coverage such recommendation shall be discussed by the Technical Working Group and reviewed by the Recycled Water Policy Advisory Committee.

SECTION 18. Section 19 "RIGHT TO ENTER" is amended to read as follows:

City reserves and shall have the right by its officers, employees, agents and contractors, and co-owner and Plant contract agency representatives to enter into and upon the Premises at all reasonable times (and in emergencies at all times), and will provide notice to District whenever practicable:

- (a) To make any inspection, Director may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Agreement;
- (b) To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Premises;
- (c) To otherwise maintain the Premises, the building in which the Premises is located and the Premises, or to do any other repair, maintenance, alteration or removal under the conditions set forth herein; or
- (d) To post notices of nonresponsibility for improvements, alterations or repairs if and when City shall desire to do so.

SECTION 19. Section 34.4 “Exhibits and Addenda” is amended to read as follows:

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

The Exhibits attached to this Agreement are:

Revised Exhibit A	WPCP Property
Exhibit A-1	WPCP Property (Microsoft Alternative)
Revised Exhibit B	AWTF and DPR Demonstration Facility Premises
Exhibit B-1	AWTF and DPR Demonstration Facility Premises (Microsoft Alternative)
Revised Exhibit C	Ancillary Property
Revised Exhibit D	Special Terms and Conditions for Use of Ancillary Property
Revised Exhibit E	Operational Parameters
Revised Exhibit F	Hazardous Materials
Revised Exhibit G	Insurance Requirements
Revised Exhibit H	Prevailing Wage
Revised Exhibit I	Memorandum of Ground Lease

SECTION 20. A new Section 34.21 is added to the Agreement to read as follows:

34.21 Pursuant to Section 34.11 of the Agreement, the Parties shall execute and the District shall record the short form of memorandum attached hereto as Exhibit I with Santa Clara County Clerk Recorders Office.

SECTION 21. A new Section 34.22 is added to the Agreement to read as follows:

34.22 This Amendment may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

SECTION 22. A new section 34.23 is added to the Agreement to read as follows:

34.23 This Amendment shall be governed by the laws of the State of California.

SECTION 23. Section 35 “NOTICES” is amended to read as follows:

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed as follows or to such other place as City or District, respectively, may notify the other in writing.:

If to City, the same shall be addressed to:

Jeff Provenzano
Director of Environmental Services
City of San José 200 East Santa Clara Street, 10th Floor Tower
San Jose, CA 95113

If to District, the same shall be addressed to:

Aaron Baker
Chief Operating Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118

All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as may be amended or modified.

SECTION 24. All of the terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

“CITY”

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

LEANNE BOLANO
Deputy City Attorney

TONI TABER, MMC
City Clerk

“DISTRICT”

APPROVED AS TO FORM

SANTA CLARA VALLEY WATER DISTRICT, a special district

BRIAN HOPPER
Senior Assistant District Counsel

RICK CALLENDER
Chief Executive Officer

REVISED EXHIBIT A

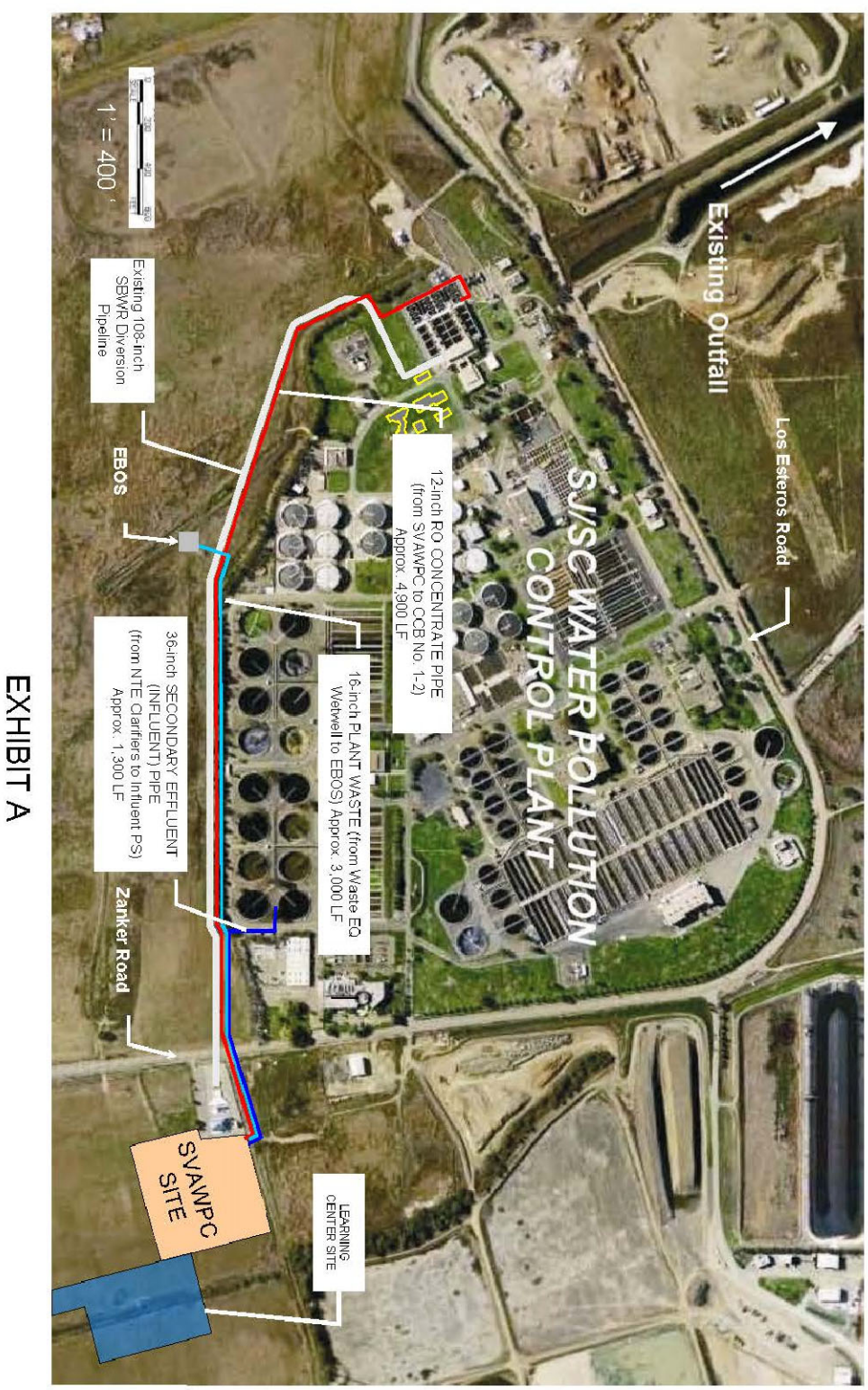


EXHIBIT A

EXHIBIT A-1



EXHIBIT A-1

REVISED EXHIBIT B



EXHIBIT B-1

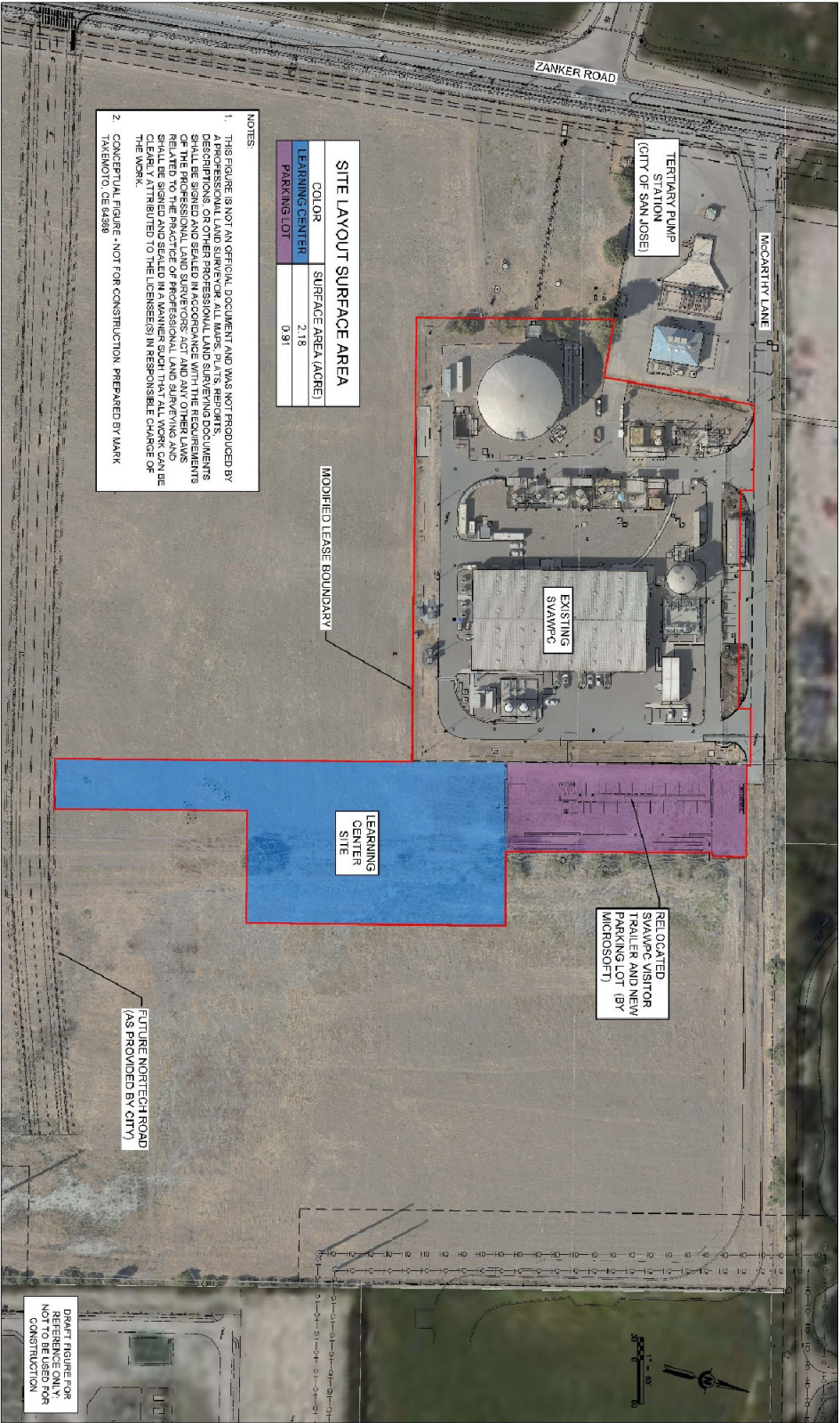


EXHIBIT B-1

REVISED EXHIBIT C

[INSERT LEGAL PLAT MAP]

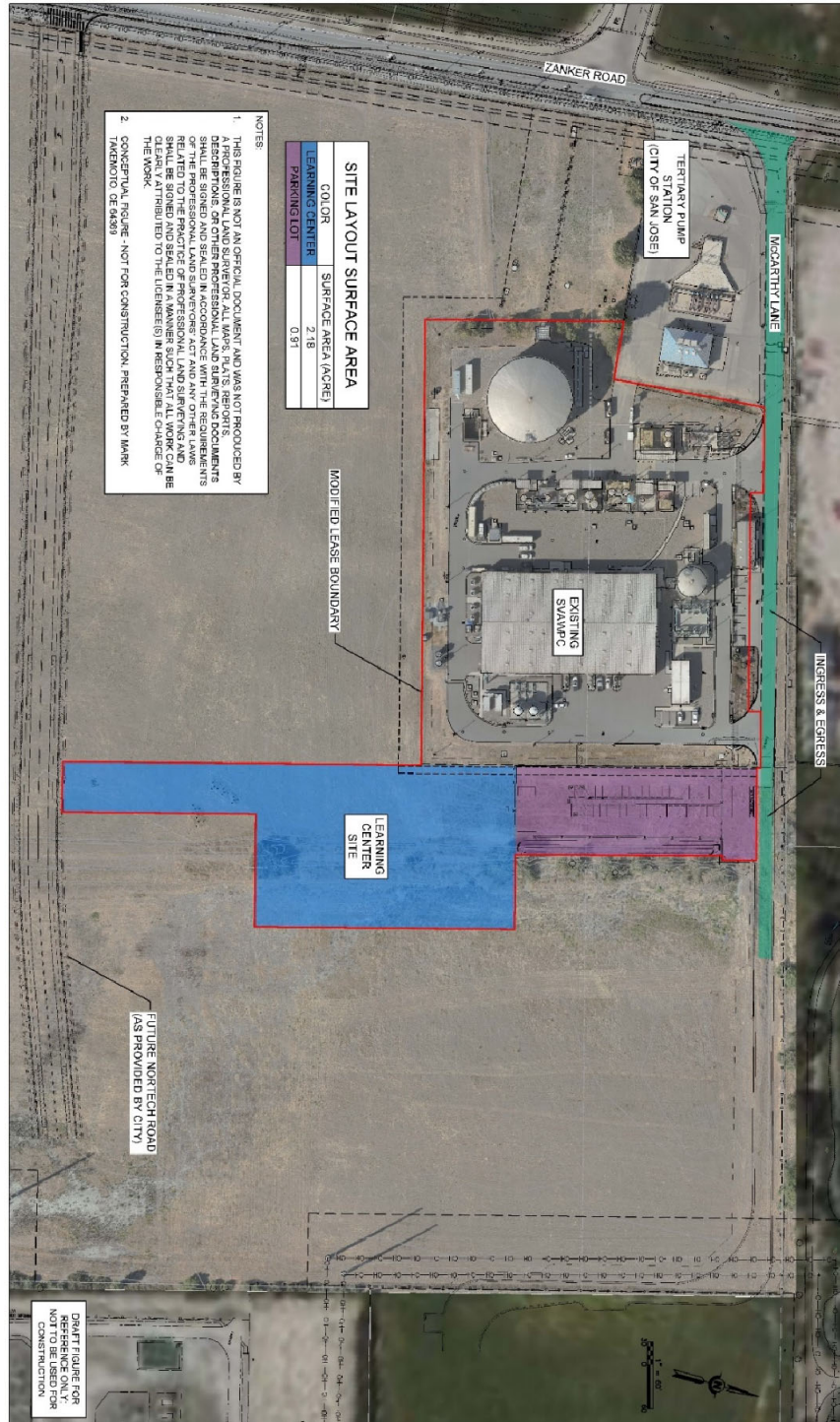


EXHIBIT C

REVISED EXHIBIT D

SPECIAL TERMS AND CONDITIONS FOR USE OF ANCILLARY PROPERTY

1. The Related Facilities shall be located on the Ancillary Property so as to avoid conflict and interference with existing and planned Plant facilities, improvements and uses. Final location of the Related Facilities and the boundaries of the Ancillary Property shall be subject to approval of City's Director.
2. Use of the Ancillary Property is subject to all prior unexpired permits, agreements, easements, privileges, or other rights, whether recorded or unrecorded, in the area specified in this permit. District shall make arrangements with holders of such prior rights.
3. The right to use the Ancillary Property is valid only as to the District and is not transferable.
4. No access shall be made until City has received a schedule for the proposed access, and a list of the names of all DISTRICT employees and contractors who will be entering the City Property under this Agreement.
5. DISTRICT shall be responsible for location and protection of all underground utilities and for avoiding any conflicts with any Plant facilities and/or operations. All underground utilities will be located by the DISTRICT and communicated to the City, and the method of filling the borehole will be disclosed. The final location of the borehole and method of drilling shall be approved by City's Wastewater Facility General Manager or designee on behalf of the City before drilling is to commence. As required by law, Underground Service Alert will be notified a minimum of 48 hours before any field work begins.
6. The right to use the Ancillary Property may be revoked, modified or canceled at any time by the City when required for Plant purposes; provided that City shall make all reasonable efforts to identify an alternate location on City property for any affected the Related Facilities.
7. Upon written notice of cancellation or revocation of the right to use the Ancillary Property, District shall restore City's Property to the condition prior to the granting of the right to use the Ancillary Property and then shall vacate City property. Should District neglect to restore the premises or structures to a satisfactory condition, the City may perform such work or have work performed, and District agrees to reimburse the City for all costs of the work so performed upon receipt of a statement therefore.
8. Trench safety has not been checked and is not implied with this grant of right to use. Compliance with Section 6705 of the Labor Code concerning trench excavation and the obtaining of a "Permit to Excavate" issued by the Division of Occupational Safety and Health as required by Labor Code Section 6500 shall be the responsibility of District.

9. District shall be responsible for compliance with California Labor Code Section 6300 (and following).
10. All backfill on the Ancillary Property shall be compacted to at least 90 percent relative compaction which shall be determined using maximum dry density based on ASTM D1557 laboratory test procedure. Field dry density and water content of soil should be determined following the ASTM D1556 or ASTM D2922 / ASTM D3017 standard procedure as applicable.
11. District will be responsible for verifying the location of the proposed work and facilities in the field.
12. District will be responsible to adjacent property owners for disturbances, including but not limited to noise and dust, caused by operations permitted hereunder.
13. District shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
14. District will be responsible to return the City's Property to its original condition or better upon completion of the construction activity.
15. If weather or other adverse circumstances cause a public hazard or would interfere with Plant operations, use of the Ancillary Property shall be immediately discontinued.
16. No access will be allowed during or after storm events when the City Property is prone to damage. Before entering City Property, District shall assess the structural condition of any access roads/soil to ascertain whether or not the roadway/soil can support vehicles. Only if it is determined that the material is sound can vehicular traffic enter City property. If damage occurs, the District is required to report the damage to the City's Inspector within 48 hours of it occurring. District shall submit a work plan and schedule outlining the repair measures to be installed within one week of the damage occurring.
17. Construction materials and wastes, including drill cuttings shall be hauled offsite.
18. District shall submit to the City a fully completed "Import Material Certification Form" for any soils that will be placed or stored on City Property that do not originate from within the legal boundaries of such right of way.
19. Any damage caused to Plant structures, improvement, vegetation or landscaping including, but not limited to, fencing, maintenance road surfacing, and pipelines by reason of exercise of the right to use the Ancillary Property shall promptly be repaired at the cost of District to the satisfaction of the City. If the repair is not so performed by District, City shall have the right (but not the obligation) to perform the necessary repair. Upon receipt of the notice of repair costs, District agrees to promptly reimburse City for the repair costs incurred, plus an additional amount equal to ten

percent (10%) thereof for administrative overhead. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of District.

20. District shall implement all measures necessary to mitigate environmental impacts of its activities, including but not limited to: dust control measures to avoid air quality impacts from fugitive dust; specific measures to avoid burrowing owl habitat and biological impacts, including but not limited to, conducting no more boring activities within fifty-(50) feet of any existing owl burrow; specific measures to avoid impacts to cultural resources, including but not limited to, having a qualified archaeologist onsite during the testing to examine any materials exposed during testing and make specific recommendations regarding appropriate mitigation that the District shall perform. In the event that any archaeological artifacts or human remains are encountered, all work shall stop immediately within fifty-(50) feet of the find, the City shall be contacted, and the archaeologist consulted. In the event of the discovery of any human remains, the County Coroner shall also be contacted to determine the appropriate disposition of the remains (to ensure there will be no impact on Native American or early historic era burials); and all measures identified in District mitigated negative declaration.
21. District agrees to waive, release, defend, indemnify and hold harmless City and its officers, agents, and employees against all claims for loss, damage, or liability arising out of the exercise of rights granted hereunder by District, its employees, agents, or contractors, whether for loss of or damage to property, or injury to or death of persons, including but not limited to any claims related to Hazardous Materials generated, stored, used, or disposed of by the Plant, provided however, DISTRICT shall not be responsible for any cleanup of Hazardous Materials not generated, stored, used, or disposed of, by DISTRICT. **DISTRICT ACKNOWLEDGES THAT IT IS AWARE THAT EXERCISE OF THE RIGHTS GRANTED MAY EXPOSE ITS EMPLOYEES, AGENTS, AND CONTRACTORS TO INHERENTLY DANGEROUS ACTIVITIES CONDUCTED BY THE CITY ON THE CITY PROPERTY AND DISTRICT IS VOLUNTARILY EXERCISING THE RIGHTS HEREBY GRANTED WITH KNOWLEDGE OF THE DANGER INVOLVED.**
22. NOTHING CONTAINED IN THIS PERMIT SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE CITY.

REVISED EXHIBIT E

OPERATIONAL PARAMETERS

Treatment strategies and operational requirements for the DPR Demonstration Facility are specified in the Amended and Restated Agreement between the City of San José and the Santa Clara Valley Water District for Operation and Maintenance of the Silicon Valley Advanced Water Purification Center.

TREATMENT STRATEGY

Two different strategies were developed to provide additional flexibility for the SBWR system and to increase the tertiary filter capacity at the SJ/SC WPCP during winter periods. The summer period is defined from May through November and the winter period from December through April.

Summer Operation

Under the summer operation mode, the AWTF would utilize the microfiltration/reverse osmosis/ultraviolet (MF/RO/UV) treatment train to produce high-purity recycled water, which would be blended with SJ/SC WPCP tertiary effluent to meet the summer recycled water demands and the target SBWR TDS goal of 500 mg/L. The recycled water supply sources for the SBWR system during summer operations are summarized in Table 1.

Table 1: SBWR Supply Sources – Summer Operation

Supply Source	Projected Year 2010 Flows, mgd		Projected Year 2015 Flows, mgd		Projected Year 2020 Flows, mgd	
	Avg.	Max Day	Avg.	Max Day ¹	Avg.	Max Day ¹
ARWTF MF/RO/UV	6.50	8.00	8.00	8.00	8.00	8.00
SJ/SC WPCP Tertiary Effluent	6.70	12.70	9.50	19.40	13.80	26.10
Total Combined Flow	13.20	20.70	17.50	27.40	21.80	34.10

¹ ARWTF MF/RO/UV capacity may be less than desired to meet target SBWR TDS.

For summer operations, nitrified secondary effluent from SJ/SC WPCP conveyed to the AWTF would be pretreated by MF/UF, then demineralized through the RO process, and disinfected through UV disinfection. The AWTF product water would be stored in a 2.25 MG (useable volume) Product Water Storage Tank and flow paced, using a flow control valve, to the SBWR Transmission Pump Station (“TPS”) to blend with SJ/SC WPCP tertiary effluent.

Winter Operation

The low recycled water demand during the winter period (December-April) would enable the AWTF to meet this demand on its own, without blending with the SJ/SC WPCP

tertiary effluent and also capable of generally meeting a lower SBWR TDS goal of 400 mg/L. This would increase the tertiary filter capacity at the SJ/SC WPCP during winter periods. The recycled water supply sources for the SBWR system during winter operations are summarized in Table 2.

Table 2: SBWR Supply Sources – Winter Operation

Supply Source	Projected Year 2010 Flows, mgd		Projected Year 2015 Flows, mgd		Projected Year 2020 Flows, mgd	
	Avg.	Max Day	Avg.	Max Day ¹	Avg.	Max Day ¹
ARWTF MF/UV	1.00	4.20	2.00	4.00	2.50	4.60
ARWTF MF/RO/UV	2.00	4.10	2.00	5.40	2.40	4.80
SJ/SC WPCP Tertiary Effluent	0.00	0.00	0.00	1.60	0.00	4.30
Total Combined Flow	3.00	8.30	4.00	11.00	4.90	13.70

¹ ARWTF capacity may be sufficient to meet entire maximum day recycled water demand.

As indicated above in Table 2, the initial AWTF treatment capacities alone may not be sufficient to meet projected maximum day winter demands for year 2015 and 2020. If so, tertiary effluent from the SJ/SC WPCP would supplement flows from the AWTF.

During winter operations, nitrified secondary effluent from SJ/SC WPCP would be treated by the MF/UF membranes at the AWTF, but only a portion of the MF/UF filtrate would be demineralized by the RO process. The remainder of the MF/UF filtrate would be bypassed around the RO membranes and conveyed directly to the UV disinfection process. Bypass piping and isolation valves would be provided in the UV Disinfection System to dedicate a section of the UV System for disinfection of the MF/UF filtrate, and the remaining section of the UV System for disinfection of the RO permeate. The recommended flow split would result in a blended TDS in the range of 400 mg/L to 500 mg/L. During the summer, the entire RO permeate flow would be treated by the UV System.

BRINE DISCHARGE STRATEGY

A brine stream up to 2 million gallons per day (mgd) with 10,000 mg/L dissolved solids or comparable mass discharge consisting of the reject water from the reverse osmosis component of the Advanced Water Treatment Facility may be returned to a selected location in the chlorine contact facility or other specified location at the San Jose/Santa Clara Water Pollution Control Plant (Plant) designated for direct discharge to the effluent outfall channel facilities, provided that the discharge of such material is compatible with the ability of the Plant to meet its National Pollutant Discharge Elimination System (NPDES) permit as administered by the San Francisco Bay Regional Water Quality Control Board or the State Water Resources Control Board. In the event that the quality of water discharged from the Plant fails to meet required limits or is anticipated to fail to meet required limits based on current trends, CITY will investigate the source of the water quality problem. CITY's investigation will include but

will not be limited to tests to determine the source of constituent concentration or toxicity contributing to the Plant's failure to meet regulatory limits, including tests of various influent sources of flow into the Plant including the AWTF brine stream. In the event that the AWTF brine stream is determined to be the source of constituent concentration or toxicity contributing to the Plant's failure to meet regulatory limits, CITY will discuss alternatives with DISTRICT prior to taking corrective actions which may include interrupting or suspending discharge of the brine stream to the Plant, or requiring District to make other arrangements for brine disposal in order to continue to operate the Advanced Water Treatment Facility.

LIMITATIONS ON PROVISION OF SECONDARY TREATED WASTEWATER AND AWTF PRODUCT WATER

District understands and acknowledges that City is charged with the responsibility to operate the Plant and its City's sewage systems in a manner which it determines to be most beneficial to the users thereof and that factors beyond the control of City could cause operational difficulties at the Plant or in the sewage system resulting in the need to temporarily reduce or suspend the provision of secondary effluent to District. The rights of District to secondary effluent under this Agreement pertain only to the secondary treated effluent which actually is provided by the Plant to the AWTF. Nothing contained herein shall be construed to qualify in any manner City's right to operate the Plant at such level as it determines, in its absolute discretion to be appropriate, or to discontinue the operation of the Plant. Any right of District to secondary treated effluent pursuant to this Agreement shall be subordinate to the rights and responsibilities of City as herein set forth. In the event that City temporarily reduces or suspends provision of secondary effluent to District, City shall use its best efforts to re-establish the production of secondary effluent of a suitable quality and quantity as soon as reasonably possible and shall re-establish District's supply of such water accordingly.

City recognizes that factors beyond the control of District could cause operational difficulties at the AWTF resulting in the need to temporarily reduce or halt the production of AWTF product water. In such cases, District may temporarily reduce or suspend provision of AWTF product water to City. District shall use its best efforts to re-establish the production of AWTF product water of a suitable quality and quantity as soon as reasonably possible and shall re-establish City's supply of such water accordingly.

REVISED EXHIBIT F

HAZARDOUS MATERIALS

In addition to complying with the provisions set forth earlier in this Ground Lease, District agrees to the following provisions:

1. Notification Requirements. District shall be solely and fully responsible for:
 - (a) notifying the appropriate public agencies of any Hazardous Material release which occurs on the Premises, or is caused by or results from the activities of District, District's officers, agents, employees, contractors, permittees or invitees on the Land other than the Premises;
 - (b) immediately after learning thereof, notifying City of any Hazardous Material release which occurs on the Premises, regardless of whether the release was caused by or results from District's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Land other than the Premises and is caused by or results from the activities of District. District's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.;
 - (c) giving immediate written notice to Landlord of:
 - (i) any enforcement, remediation, or other regulatory action or order, taken or threatened, by any Agency regarding, or in connection with, the presence, release or threat of release any Hazardous Material on, under, about, or from the Premises, or any tanks on the Premises, or otherwise resulting from District's use of the Premises;
 - (ii) all demands or claims made or threatened by any third party against District or District's Parties or the Premises relating to any liability, loss, damage, or injury resulting from the presence, release, or threat of release any Hazardous Materials on, under, about, or from the Premises or otherwise resulting from District's use of the Premises;
 - (iii) all incidents or matters where District and District's Parties are required to give notice to any Agency pursuant to applicable Environmental Laws.
 - (d) promptly providing Landlord with copies of all materials, reports, technical data, Agency inspection reports, notices and correspondence, and other information or documents relating to incidents or matters subject to notification hereunder; and
 - (e) promptly furnishing to Landlord copies of all permits, approvals, and registrations District receives or submits with respect to District's operations on the Premises, including, without limitation, any underground storage tank registrations, installation permits, and closure permits.

2. Liability. District shall be solely and fully responsible and liable for:
 - (a) any Hazardous Material Release which is caused by or results from the activities of District, District's officers, agents, employees, contractors, or subcontractors on the Land.
 - (b) any Hazardous Material Release which is caused by or results from the activities of permittees or invitees on the Land if the same was caused by the negligent or intentional misconduct of District.
 - (c) any Hazardous Material release that commences during the term of the Ground Lease on the Premises, unless District establishes through investigation, sampling, testing and analysis acceptable to the City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises from a source off the Premises.
3. Prevention of Release. District shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Land, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.
4. Obligation to Investigate and Remediate. District, at District's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:
 - (a) any release or danger of release of Hazardous Material on the Land other than the Premises, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which was caused, or results, in whole or in part from the activities of District, District's officers, agents, employees, contractors, and subcontractors;
 - (b) any Hazardous Material release which is caused by or results from the activities of permittees or invitees on the Land if the same was caused by the negligent or intentional misconduct of District;
 - (c) any release or danger of release of Hazardous Materials which commenced during the term of this Ground Lease and which is discovered on the Premises, unless District establishes through investigation, sampling, testing and analysis acceptable to City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises from a source off the Premises.

Unless an emergency situation exists that requires immediate action, Landlord's written approval of these actions will first be obtained, and the approval will not be unreasonably withheld. Landlord's right of prior approval of these actions includes, but is not limited to, the selection of any environmental consultant to perform work on or related to the Premises, the scope of work, and sampling activities to be performed by the consultant before the report is final. District will provide Landlord with at least three (3) business days' advance notice of any sampling, and upon request of Landlord, will split samples with Landlord. District will also promptly provide Landlord with the results of any test, investigation, or inquiry conducted by or on behalf of District or District's Parties in connection with the presence or suspected presence of Hazardous Materials on, under, about, or

from the Premises. District must notify Landlord in advance and give Landlord the right to participate in any oral or written communications with regulatory agencies concerning environmental conditions on or arising from the Premises. Within thirty (30) days after District's completion of any remediation of the Premises, District must deliver to Landlord a letter from the applicable Agency stating that the remediation was undertaken in accordance with all applicable Environmental Laws and that any residual contamination remaining after the remediation does not pose a threat to human Health or the environment.

The failure to promptly commence remediation and provide City with a schedule for diligent completion of the remediation which thirty (30) days after discovery of such release, or danger of release, of Hazardous Material (or such additional time period of time that is reasonably necessary under the circumstances) shall constitute prima facie evidence of failure to promptly commence remediation. In addition to all other rights and remedies of City hereunder, if District does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay to have same remediated and District shall reimburse City within fifteen (15) business days of City's demand for payment. The reasonable payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of District.

5. Landlord's Right of Entry and Testing. Landlord and Landlord's representatives have the right, but not the obligation, at any reasonable time to enter onto and to inspect the Premises and to conduct reasonable testing, monitoring, sampling, digging, drilling, and analysis to determine if Hazardous Materials are present on, under, or about the Premises and to review and copy any documents, materials, data, inventories, financial data, or notices or correspondence to or from private parties or governmental authorities (collectively, "Inspection"). If the Investigation indicates the presence of any environmental condition that occurred during the Term as a result of District's or District's Parties' activities, or failure to act where District had a duty to act, in connection with the Premises, District will reimburse Landlord for the cost of conducting the tests.
6. Environmental Assessment. Landlord may require District to retain a duly licensed environmental consultant acceptable to Landlord that will perform an environmental compliance audit of the Premises and District's business activities and compliance with the provisions of this Exhibit F. Landlord may require District to cause the environmental compliance audit to be conducted on an annual basis, the cost of which will be the sole responsibility of District. If the results of the environmental compliance audit indicate that District is or may be in violation of this Exhibit F, District will be responsible for the cost of any additional testing required by Landlord. District must promptly provide a copy of the report from the consultant to Landlord upon receipt, and upon request must promptly provide to Landlord a copy of all data, documents, and other information prepared or gathered in connection with the report. District acknowledges that District has been provided an adequate opportunity to conduct District's own environmental investigation of the Premises with independent environmental experts and consultants.

7. Indemnification. District shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:

- (a) any Hazardous Material release on the Property other than the Premises, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results directly from the activities of District, District's officers, agents, employees, contractors, and subcontractors; or
- (b) District's breach of any prohibition or provision of this Exhibit F.
- (c) The presence of any Hazardous Materials on or under the Premises during the Term or any Hazardous Materials on or from the Premises which commenced during the Term, including, but not limited to any release into soil or groundwater, except a release which District establishes, through investigation, sampling, testing and analysis acceptable to the City, was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Premises from an identified source off the Premises.

This obligation by District to indemnify, protect, defend, and hold harmless Landlord Indemnities includes, without limitation, costs and expenses incurred for or in connection with any investigation, cleanup, remediation, monitoring, removal, restoration, or closure work required by the Agencies because of any Hazardous Materials present on, under, or about the Premises; the costs and expenses of restoring, replacing, or acquiring the equivalent of damaged natural resources if required under any Environmental Law; all foreseeable consequential damages; all reasonable damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; all reasonable sums paid in settlement of claims; reasonable attorney's fees; litigation, arbitration, and administrative proceeding costs; and reasonable expert, consultant, and laboratory fees. Neither the written consent of Landlord to the presence of Hazardous Materials on or under the Premises, nor the strict compliance by District with all Environmental Laws, will excuse District from the indemnification obligation.

This indemnity will survive the expiration or termination of this Agreement. Further, if Landlord detects a deficiency in District's performance under this indemnity and District fails to correct the deficiency within ten (10) days after receipt of written notice from Landlord, or such other period of time that is deemed reasonable by the parties under the circumstances, Landlord has the right to join and participate in any legal proceedings or actions affecting the Premises that are initiated in connection with any Environmental Laws. However, if the correction of the deficiency takes longer than ten (10) days, Landlord may

join and participate if District fails to commence corrective action within the ten (10) day period and after that diligently proceeds to correct the deficiency.

8. Release of Claims Against City. District releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which District may now have, or which may hereafter accrue on account of or in any way growing out of all known or unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material for which District is responsible and liable under this Ground Lease. District understands and agrees that District is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

“1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

9. (a) Cessation of Activities. District shall cease its activities on the Premises to the extent reasonably requested by City, if City determines, in its reasonable opinion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. District shall not recommence its activities on the Premises until notified by City that such release or danger of release of Hazardous Material has been investigated, cured, and remediated in a manner satisfactory to the City.

(b) Abatement of Fees and Charges on Premises. District shall not be entitled to an abatement of any fees or charges due under this Ground Lease after District has been requested to cease activities for investigation, cure, or remediation of Hazardous Materials on the Premises, except if District establishes, through investigation, sampling, testing and analysis that the presence of Hazardous Materials on the Premises was due to any event for which District is not responsible and liable under this Ground Lease.

10. Records and Inspections.

(a) District shall maintain, during the term of this Ground Lease and for a period of not less than four (4) years after the expiration or termination of this Ground Lease, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by District, District's officers, agents, employees, contractors, permittees or invitees on or from the Land.

(b) Upon request by City, District shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this Ground Lease, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by District, District's

officers, agents, employees, contractors, permittees or invitees on or from the Land.

(c) On the date that is one year from the commencement of the Term and annually after that, District must provide Landlord with a letter certifying that District has complied with all applicable Environmental Laws and the requirements of all applicable Agencies and that to the best of District's knowledge no soil or groundwater contamination has occurred on or originated from the Premises.

(d) After the expiration of four (4) years following the termination of this Ground Lease, District may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by District, District's officers, agents, employees, contractors, permittees or invitees on or from the Land, provided, however, that District shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty (30) days after such notice is received.

11. No Third Party Beneficiaries. Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this Ground Lease, nor as creating any right in any person not a party to this Ground Lease to enforcement of any obligations created under this Ground Lease.

12. Survival of Obligations. Each party's obligations under this Ground Lease shall survive the expiration or earlier revocation or suspension of this Ground Lease.

REVISED EXHIBIT G

INSURANCE REQUIREMENTS

DISTRICT, at DISTRICT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by DISTRICT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Commercial Form Number CG 0001 on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate; and
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles with a limit no less than \$5,000,000 per accident for bodily injury and property damage; and
3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease; and
4. Pollution Liability with limits no less than \$5,000,000 per contamination incident and \$5,000,000 in the aggregate. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions; and
5. Property insurance covering the AWTF, the Related Facilities, and all Subsequent Alterations and Improvements upon the Premises on an "all risk" basis with limits at full replacement cost. Coverage is to include the flood peril with minimum limits of \$5,000,000.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

Any limit requirement may be met with any combination of primary and excess coverage, so long as the excess coverage is written on a follow form or Umbrella basis.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to CITY's Risk Manager.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

- a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, DISTRICT; products and completed operations of DISTRICT; premises owned, leased or used by DISTRICT; and automobiles owned, leased, hired or borrowed by DISTRICT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees and agents.
- b. DISTRICT's insurance coverage shall be primary and non-contributory insurance as respects CITY, its officers, employees, and agents.
- c. Any failure to comply with reporting provisions of the policies by DISTRICT shall not affect coverage provided CITY, its officers, employees, or agents.
- d. Coverage shall state that DISTRICT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, and agents.

2. Property and Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the CITY, its officers, employees, and agents.

3. Property

Policy shall contain a loss payable clause in favor of CITY as its interest may appear.

4. Claims Made Coverages

If coverage is obtained on a “claims made” policy form, the retroactive date shall precede the date services were initiated with the CITY and the coverage shall be maintained for a period of five (5) years after termination of services under this Agreement.

5. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium. If insurer will not provide 30 days' notice, DISTRICT will be responsible for providing notice to the City within the same time frames described.

D. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

E. Verification of Coverage

DISTRICT shall furnish CITY with certificates of insurance and copies of endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose
Finance Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113

F. Subcontractors

DISTRICT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. Self-Insurance

The Pollution Liability requirement of this section may be satisfied by the provision of similar coverage through self-insurance program and such self-insurance shall be certified in writing with an “Affidavit of Insurance.”

REVISED EXHIBIT H
PREVAILING WAGE REQUIREMENTS

I. Remedies For District's Breach Of Prevailing Wage/Living Wage Provisions.

A. General. District acknowledges that it has read and understands that, pursuant to the terms and conditions of this Ground Lease, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") District further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
3. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
4. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

B. Withholding of Payment. District agrees that the Documentation Provision is critical to the City's ability to monitor District's compliance with the Wage Provision and to ultimately achieve the Goals. District further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Provision.

In light of the critical importance of the Documentation Provision, the City and District agree that District's compliance with this Provision, as well as the Wage Provision, is an express condition of this Ground Lease, and that failure to comply with this provision is a breach of this Ground Lease.

C. Liquidated Damages for Breach of Wage Provision. District agrees its breach of the Wage Provision would cause the City damage by

undermining the Goals, and City's damage would not be remedied by District's payment of restitution to the workers who were paid a substandard wage. District further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and District mutually agree that making a precise determination of the amount of City's damages as a result of District's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, District shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

- D. Audit Rights.** All records or documents required to be kept pursuant to this Ground Lease to verify compliance with the Wage Provision shall be made available for audit at no cost to the City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at District's address indicated for receipt of notices in this Ground Lease.

II. Instructions to Obtain Prevailing Wage Determination

A copy of the current General Prevailing Wage Determination made by the Director of Industrial Relations may be obtained from the Office of Equality Assurance at:

Office of Equality Assurance
200 E. Santa Clara Street
San José, CA 95113
Phone: 408.535.8430
Fax: 408.292.6270

For internet access to current wage rates and benefit information, you may contact the California Department of Industrial Relations web site at <http://www.dir.ca.gov/>. To access and print current prevailing wage rates directly, go to <http://www.dir.ca.gov/DLSR/PWD>. On the General Prevailing Wage Determination screen, scroll down and follow the directions until you locate the trade applicable to your contract. Prevailing wages for City of San José contracts will be found under:

- Step One Statewide,
- Step Two (A) Northern California, or
- Step Four for Santa Clara County

Effective Dates of Determination and of Rates within Determination

Contractors are advised that rates determined by the Department of Industrial Relations are subject to change during the term of this contract as described below.

Effective date of determination. All determinations issued by the Director of the Department of Industrial Relations will be effective ten (10) days after issuance. Determinations issued by the Director will show an issue date and will ordinarily show an expiration date. All determinations will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the Director. Contractors are advised to note the expiration date on the prevailing wage classification identified for this solicitation and the asterisk (*) as explained in the paragraph below.

Meaning of single and double asterisks. Prevailing wage determinations with a single asterisk (*) after the expiration date (which are in effect on the date of advertisement for bids) remain in effect for the life of the project. Prevailing Wage determinations with double asterisks (**) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payment to be paid for work performed *after* this date have been predetermined. If work is to be extended past the rate expiration date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates (415) 703-4774.

All determinations that do not have the double asterisks (**) after the expiration date remain in effect for the life of the contract.

EXHIBIT I

Recording Requested by:
City of San José, a
municipal corporation of
the State of California

When recorded, return to:
City Clerk's Office
200 East Santa Clara Street
San José, CA 95113-1905

MEMORANDUM OF FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE AGREEMENT

THIS MEMORANDUM OF FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE AGREEMENT ("Memorandum") is made and entered into this _____ day of _____, 2025 (the "Effective Date"), by and between the City of San José, a charter city, as administering agency for the San José/Santa Clara Water Pollution Control Plant ("Landlord") and the SANTA CLARA VALLEY WATER DISTRICT, a California special district ("District").

1. Lease. The provisions set forth in a written Ground Lease and Property Use Agreement between the parties hereto, dated March 2, 2010, but effective July 1, 2010, as amended by the First Amendment to Ground Lease and Property Use Agreement, dated _____, (as amended, the "Amended Lease") are incorporated by reference into this Memorandum. The Amended Lease is on file with the City Clerk's Office of the City of San José.
2. Premises. The Premises that are the subject of the Amended Lease are as more particularly described in Exhibit A attached hereto.
3. The Amended Lease term commenced on July 1, 2010, and shall terminate at 11:59 pm on June 30, 2065, subject to early termination in accordance with the Amended Lease.
4. The purpose of this Memorandum is to give notice of the existence of the Amended Lease, which itself constitutes the agreement between the parties.

EXHIBIT D
FORM OF AMENDED INTEGRATION AGREEMENT

**FIRST AMENDMENT TO RECYCLED WATER FACILITIES AND PROGRAMS
INTEGRATION AGREEMENT
BETWEEN
THE CITY OF SAN JOSE AND
THE SANTA CLARA VALLEY WATER DISTRICT**

This FIRST AMENDMENT to AGREEMENT is entered into on the date that it is fully executed by the Parties, by the City of San José (“City”) and Santa Clara Valley Water District (“District”). The District and the City are sometimes collectively referred to in this Agreement as the “Parties”, and individually referred to as “Party”.

RECITALS

- A. On March 2, 2010, the Parties entered into an agreement entitled “Recycled Water Facilities and Programs Integration Agreement” (“Agreement”) to coordinate financial support for the production and use of recycled water in Santa Clara County.
- B. The Advanced Water Treatment Facility (“AWTF”) formally named the Silicon Valley Advanced Water Purification Center (“SVAWPC”), started operations in March 2014 to treat up to twelve (12) million gallons per day (mgd) of Regional Wastewater Facility (“RWF”) secondary effluent, to increase the production of non-potable recycled water through microfiltration; enhance the quality of non-potable recycled water quality through the provision of up to eight (8) mgd of reverse osmosis treated water for blending with the RWF’s existing recycled water; and offset the demand for development of new sources of water supply for Santa Clara County.
- C. District wishes to construct and operate a Direct Potable Reuse (“DPR”) Demonstration Facility to demonstrate safety and feasibility of DPR, to eventually construct and operate a Full-Scale DPR Facility to provide benefits for the potable water supply to the City and to the County of Santa Clara.
- D. The DPR Demonstration Facility will have a projected capacity production of up to half (0.5) mgd of purified water that may be blended with existing recycled water produced by the RWF. The DPR Demonstration Facility will result in the production of reverse osmosis concentrate (“ROC”) which the Parties intend to be comingled with the current ROC stream from the AWTF and discharged through the outfall of the RWF.
- E. The Parties desire to financially support the production and use of recycled water in Santa Clara County consistent with each Party’s separate and distinct interests, namely wastewater treatment and disposal for City and water quality

and supply for District. The Parties further wish to coordinate and cooperate to achieve the most cost effective, environmentally beneficial utilization of recycled water to meet both water supply and wastewater treatment and disposal needs.

- F. The Parties desire to amend the cost share arrangement for the District's operations and maintenance of the AWTF, now known as the Silicon Valley Advanced Water Purification Center, beginning fiscal year 2030-2031 but still provide for the cost to be reimbursed from the net revenues from the sale of recycled water by the SBWR program.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. ARTICLE 2, "TERM", is amended to read as follows:

The term of this Agreement shall commence on the first day of July 2010, if the Parties have negotiated and executed a mutually acceptable Ground Lease and Property Use Agreement by that date, and, unless earlier terminated or extended as herein provided, shall terminate at 11:59 p.m. on June 30, 2065. The expiration of the Term, or the earlier termination of this Agreement pursuant to the provisions contained herein, shall be referred to as "Agreement Termination".

SECTION 2. ARTICLE 3, "RECYCLED WATER POLICY ADVISORY COMMITTEE", is amended to read as follows:

A. Creation; Membership. It is mutually agreed that a recycled water policy advisory committee, consisting of six (6) members, shall be immediately created, said committee to be designated and to be known as the "Recycled Water Policy Advisory Committee" ("Committee"). The Board of Directors of the Santa Clara Valley Water District shall appoint three of its members to serve at the pleasure of the Board on the Committee. Three of the members of said Committee shall be from cities and/or agencies with voting membership on the San José/Santa Clara Treatment Plant Advisory Committee, as appointed by the City Council of the City of San José, and shall serve at the pleasure of said Council, with one (1) of such members being a member of the City Council of the City of San José and one (1) of such members being a member of the City Council of the City of Santa Clara.

B. Alternate Members. The Board of Directors of the Santa Clara Valley Water District may appoint an alternate member to serve in the place of any District regular member of the Committee. The City of San José and the City of Santa Clara may appoint alternate members for each of their respective members on the Committee. Said alternate members shall serve in the place and stead of either of the regular members appointed by the said Council or Board whenever said regular member should be absent from a meeting of the Committee, and when so serving shall have the same powers and duties as a regular Committee member.

C. Chair. At its first meeting in each fiscal year, the members of the Committee shall elect one member to serve as Chair of the Committee. The Chair shall serve until the election of a successor in the next fiscal year, or no longer a member of the Committee, whichever is earlier. Mid-fiscal year vacancies in the office of the Chair occurring in between regular elections will be filled by the Committee electing a chairperson to serve until the next regular election. The chairperson shall preside at all meetings of the Committee. In the event of the chairperson's absence from any meeting, the members of the Committee may elect a chair pro-tem to serve as chair during the latter's absence.

D. Secretary. City shall provide a secretary/clerk for the Committee in even numbered years and District shall provide secretary/clerk in odd numbered years. Said staff member shall, during the one-year term, keep minutes of the Committee's proceedings, and shall also maintain custody of all books, records, and papers of the Committee during his/her term.

E. Meetings. The meetings of the Committee shall be subject to the requirements of the Brown Act. The first meeting of the Committee shall be noticed and held on September 16, 2010, at the San José City Hall, 200 East Santa Clara Street, San José, CA 95113. Regular meetings of the Committee shall thereafter be noticed and held on the third Thursday of April beginning at 10 AM at the San José City Hall in even numbered years and at District Headquarters, 5700 Almaden Expressway, San José, CA, in odd numbered years. Special meetings may be called at any time by the chairperson or if requested by one member appointed by each Party. The notice calling the special meeting shall identify the time and place of the meeting. Notice of all meetings shall conform to applicable requirements of law, including but not limited to, noticing requirements adopted by the Parties for their respective advisory committees, boards, and commissions.

F. Quorum, Voting and Procedure. A majority of the total number of member seats, filled or vacant, including at least two members appointed by each Party, shall be necessary for the Committee to take action, although a lesser number may adjourn. Except as may otherwise be provided by resolution of the Committee, Robert's Rules of Order will be followed. The Committee may act by resolution or motion; a motion duly passed by the Committee and entered at length on the Committee's minutes shall be deemed to be a resolution.

G. Powers and Duties. The Committee shall have the following powers and duties:

1. Tender its advice to the Board of Directors of the Santa Clara Valley Water District and the City Council of the City of San José with respect to policy matters under consideration by those legislative bodies relating to the production, distribution and use of recycled water.
 - (a) Examples of matters on which the City Council and District Board agree to consider the recommendation of the Committee include:

- (i) Recommendations related to cost sharing for special studies, technical investigation, and master planning related to recycled water.
 - (ii) Recommendations related to pursuit of future grant funding for Parties' recycled water projects.
 - (iii) Recommendations related to expansion of the non-potable system and/or AWTF expansion or additional AWTF facilities with the exception of the expansion of the DPR Demonstration Facility on property leased by District at the time of expansion.
 - (iv) Recommendation related to expenditure of any Project Costs Savings.
- (b) While the following matters will not be subject to Committee review as expansion projects, they may be subject to review for other issues, such as water quality:
- (i) Pipeline extension projects for which funding has been approved or secured prior to the Effective Date.
 - (ii) Pipeline extension projects that are completely developer funded.
 - (iii) Customer or public agency facility or irrigation system improvements for use of recycled water, including customer laterals to connect to the installed SBWR pipeline distribution system.
2. Tender its advice to the legislative bodies of both Board of Directors of the Santa Clara Valley Water District and the City Council of the City of San José with respect to amendments to this Agreement.
3. Annually, on or before the first day of May each year beginning on May 1, 2011, the Recycled Water Policy Advisory Committee shall review and make recommendations to the Board of Directors of the Santa Clara Valley Water District and the City Council of the City of San José on their respective proposed budgets for the ensuing fiscal year for the maintenance, expansion, replacement, improvement and operation of the SBWR and the AWTF.

SECTION 3: ARTICLE 4, "SUBMISSION OF PROPOSED BUDGETS TO RECYCLED WATER ADVISORY COMMITTEE", is amended to read as follows:

- A. Budget Submission and Contents. On or before April 1 of each calendar year beginning April 1, 2011, City and District shall provide draft budgets to the Recycled Water Advisory Policy Committee. City's budget shall include a complete financial plan for the budget year, for the maintenance, repair, expansion, replacement, improvement, and operation of SBWR. District's budget shall include a complete financial plan for the budget year, for the maintenance, repair, expansion, replacement, improvement, and operation of the AWTF. The draft budgets shall include the following information:
- 1. An itemized statement of estimated income and revenues from the sale of recycled water, any revenue from third parties related to operation of SBWR or the AWTF, together with a comparative statement of income and revenues for the

last complete fiscal year and the year in progress, plus a statement of estimated unencumbered balances at the beginning of the budget year.

2. An itemized statement of proposed expenditures and reserves for the budget year, together with a comparative statement of the expenditures and revenues for the last complete fiscal year and the year in progress, with the proposed expenditures and reserves for “operating costs” and the proposed expenditures and reserves for “future capital assets” separately stated.

3. Such other information as may be deemed essential or advisable.

B. Budget Adoption. The City Council of the City of San José and the Board of Directors of the Santa Clara Valley Water District shall consider any recommendation tendered by the Recycled Water Policy Advisory Committee on their respective proposed budgets for the ensuing fiscal year for the maintenance, expansion, replacement, improvement and operation of the SBWR or the AWTF. District acknowledges that the budget for the SBWR is also subject to review by the City Council of the City of Santa Clara and the Treatment Plant Advisory Committee, which advises the City Council of the City of San José and the City Council of the City of Santa Clara on certain matters related to the F. If the City Council of the City of San José or the Board of Directors of the Santa Clara Valley Water District adopts a budget for the ensuing fiscal year for the SBWR or the AWTF that is materially different than the budget that was recommended by the Recycled Water Policy Advisory Committee, or if said Council or Board fails to materially implement the budget recommendation of the Recycled Water Policy Advisory Committee, the City or District as applicable shall forward a statement of the reasons for such action to the Recycled Water Policy Advisory Committee.

SECTION 4: ARTICLE 5, “CONSTRUCTION OF ADVANCED WATER TREATMENT FACILITY”, is amended to read as follows:

ARTICLE 5. CONSTRUCTION OF ADVANCED WATER TREATMENT FACILITY AND DPR DEMONSTRATION FACILITY

A. Site Preparation. On or before July 1, 2010, City shall have completed the Work described in “Specification for South Bay Advanced Recycled Water Treatment Facility Project – Early Earthwork” which is further referenced as SCVWD Project No. 91184008, January 2010 (B&V Project No. 14607) on land owned by City as the Administering Agency for the Plant that is being leased to District pursuant to the Ground Lease and Property Use Agreement.

B. Design and Construction of AWTF. District shall design and construct an AWTF in accordance with the Ground Lease and Property Use Agreement. District estimates the total cost of construction of the AWTF to be \$42,250,000 - \$47,250,000.

C. City Cash Contribution To AWTF Construction Cost. City will contribute towards the cost of constructing the AWTF in the amount of Eleven Million Dollars (\$11,000,000.00), minus such reasonable costs as have been or are incurred by City for

laboratory toxicity testing done to support design of the AWTF, or for design and completion of the Work described in **Exhibit B** ("City Construction Cost Share Payment").

D. Invoicing and Payment for City's Share of AWTF Construction Cost. City shall make payment to District for AWTF construction costs as follows:

1. Within forty-five (45) calendar days after Award of the Construction Contract for the AWTF, District shall submit to City a projected construction progress payment schedule for such contract. Within fifteen (15) days after receipt of the projected construction progress payment schedule, City shall make an advance payment to District in an amount equal to thirty percent (30%) of City's Construction Cost Share Payment.
2. District shall update the construction progress payment schedule monthly to reflect any anticipated changes in the schedule.
3. Progress payments by City to District for work performed on the AWTF by District's Construction Contractor shall be based on Construction Progress Payment Estimate Sheets provided by District and approved by the Construction Contractor. District shall provide copies of Construction Progress Payment Estimate Sheets to City within twenty-four (24) hours of approval by the Construction Contractor. City shall make a first progress payment to District in an amount equal to thirty percent (30%) of City's Construction Cost Share Payment upon receipt of approved Construction Project Payment Estimate Sheets showing that the AWTF construction is at least twenty five percent (25%) complete. City shall make a second progress payment to District in an amount equal to thirty percent (30%) of City's Construction Cost Share Payment upon receipt of approved Construction Project Payment Estimate Sheets showing that the AWTF construction is at least fifty percent (50%).
4. City shall make a final payment to District in the amount of ten percent (10%) of City's Construction Cost Share Payment within sixty-five (65) days from and after the filing of Notice of Completion on the Contract, provided, however, that if the Construction Contractor elects to substitute securities for withheld funds in accordance with the provisions of Section 22200 Public Contract Code, City shall make its final payment within thirty days after receipt of written notice from District of such substitution of securities.
5. If District does not award the construction contract for the AWTF on or before September 30, 2011, District shall reimburse City for all costs incurred by City for laboratory toxicity testing done to support the AWTF, or for design and completion of the Work described in Article 5, Section D, plus interest on the sum of such costs as calculated from the date such costs were incurred by City to the date of payment by District, based on the yearly average return of City's investment portfolio.
6. Routing and account instructions for electronic payment may be provided in writing by District. District and City shall coordinate so that progress payments can be made to Construction Contractors as required by law.

7. District agrees that if the final net cost to construct the AWTF, after consideration of all grant funding, is less than \$30,000,000 the difference between the final net cost and \$30,000,000 shall be treated as Project Cost Savings. The District shall hold such Project Cost Savings subject to disposition as set forth in Article 6, Section D.

E. Design and Construction of DPR Demonstration Facility. District's design and construction of a DPR Demonstration Facility must be in accordance with the First Amendment to Ground Lease and Property Use Agreement between the City of San José and the Santa Clara Valley Water District for Advanced Water Treatment Facility.

SECTION 5: ARTICLE 6, "INTEGRATED MANAGEMENT OF RECYCLED WATER PROGRAMS AND FACILITIES", is amended to read as follows:

- A. Technical Working Group. Staff from each of the Parties shall meet at least quarterly to discuss work related to recycled water that is being done at a staff level, and to identify matters that should be reviewed by the Recycled Water Policy Advisory Committee pursuant to this Agreement.
1. The Chief Executive Officer of the District or their designee shall designate at least three (3) members of District staff to be members of the Technical Working Group. The City Manager of City shall designate three (3) staff members to be members of the Technical Working Group from the cities and/or agencies with voting membership on the San José/Santa Clara Treatment Plant Advisory Committee, with one (1) of such members being a City of San José staff member and one (1) of such members being a City of Santa Clara staff member. The designation of members may be by name or title. The designated Technical Working Group members for each Party may invite such other staff members to the meetings as they deem appropriate and the Technical Working Group may, by mutual agreement, invite third parties to the meetings.
 2. Agenda packets and meeting notices and staff support services to the Technical Working Group and Recycled Water Policy Advisory Committee will be provided at no charge or cost to the other Party by the Party scheduled to provide secretary/clerk services for the Recycled Water Policy Advisory Committee for the year.
 3. Each Party, through its members on the Technical Working Group, shall provide information at the Technical Working Group meetings on any costs that the Party expects to incur related to SBWR or the AWTF that are in excess of the amounts contained the budget recommended by the Recycled Water Policy Advisory Committee.
 4. Examples of matters that may be discussed in the Technical Working Group meetings include development of operational manuals for the AWTF consistent with the Engineers Report prepared by Black & Veatch and dated December 2009; efforts to identify and control salinity in Plant influent; identification of areas for appropriate expansion of the use of recycled water and recycled water quality goals; and assessment of whether demand for in county use of recycled water is less than available supply.

- B. Export of Secondary Treated Wastewater or Recycled Water. Prior to July 1, 2035, export of secondary treated wastewater or recycled water out of County is not allowed by either Party unless there is a signed written agreement approved by the City Council of the City of San José and the District Board. After July 1, 2035, if demand for in county use of recycled water is less than available supply, each Party may engage in negotiations for out of county export of secondary treated wastewater or recycled water once that Party provides one hundred eighty (180) days advance written notice to the other Party of the intent to engage in negotiations for out of county export of secondary treated wastewater or recycled water.
- C. Allocation of Project Cost Savings. Mutual consent of the governing bodies of the Parties shall be required for disposition of any Project Cost Savings; provided however, if there has been no consent on the disposition of such Project Cost Savings within one hundred eighty (180) days of recordation of Project Notice of Completion for the AWTF, the Project Cost Savings shall be used in lieu of funding that would otherwise be required to be provided by the Parties for the District Reserve Fund for membrane and UV lamp replacement costs.
- D. AWTF Operational Changes. Mutual consent of the governing bodies of the Parties shall be required prior to any changes in the operation of the AWTF and DPR Demonstration Facility that would materially change the operational parameters of the AWTF, as identified in the Ground Lease and Property Use Agreement, as amended, including but not limited to, any changes that would:
1. Allow District to use Plant secondary treated water in any facility other than the AWTF and DPR Demonstration Facility.
 2. Allow any expansion of the AWTF in size of capacity, including any increase in brine discharge.
 3. Provide advance treated water from the AWTF to any facility other than SBWR.
 4. Reduce the annual quantity of secondary treated water provided to the AWTF below the amount needed to meet recycled water quality goals as set by the Technical Working Group.

SECTION 6: ARTICLE 7, "FINANCIAL SUPPORT FOR COSTS OF PRODUCING AND DISTRIBUTING RECYCLED WATER", is amended to read as follows:

- A. District Support Payments Prior to Operation of AWTF. District shall make payments to City in the amount of One Million Dollars (\$1,000,000) per year to support expanding the usage of water produced by SBWR. The first payment shall be made on or before August 1, 2010, covering the fiscal year July 1, 2010-June 30, 2011, and subsequent payments shall be made on August 1st of each succeeding year until the AWTF commences operation. If the AWTF becomes operational during any fiscal year

for which a payment has been made, City shall, within sixty (60) days of such commencement of operation, refund District a share of the payment prorated to reflect the number of days from July 1st of the fiscal year for which the payment was received to the date of termination or commencement of operation, whichever is earlier, plus simple interest on such sum calculated from the date payment was received by City to the date payment is made to District, based on the yearly average return of City's investment portfolio. City shall use the funds provided by District solely to support expanding the usage of water produced by SBWR. If this Agreement is terminated by City prior to AWTF becoming operational, City shall refund to District all of the payments made by District pursuant to this section.

B. Operational Support Payments Upon Commencement of Operation of AWTF through June 30, 2030.

1. Beginning in the first full fiscal year after the AWTF becomes operational through June 30, 2030, if District's Net Operating Cost for AWTF is less than City's Net Operating Costs for SBWR, District shall make a payment to City in the amount necessary to equalize the amount paid by each Party for Total Net Operating Costs. The calculation of the equalizing District support payment shall be as illustrated in **Exhibit C** and incorporated by reference herein.
2. Beginning in the first full fiscal year after the AWTF becomes operational, if City's Net Operating Cost for SBWR are less than Two Million Dollars (\$2,000,000) and less than District's Net Operating Cost for AWTF, City shall make a payment to District to equalize the amount paid by each Party for Total Net Operating Costs; provided, however, that the total of City's Net Operating Cost and City's payment to District shall not exceed Two Million (\$2,000,000), unless there is City Net Operating Revenue, in which case, City's payment to District shall be ½ of such City's Net Operating Revenue up to District's Net Operating Cost and thereafter, City's payment to District shall be based on a percentage of the Net Operating Revenue that is equal to the ratio of the District's Capital Investment in the SBWR system and the AWTF relative to the Parties' Total Capital Investment in the SBWR system and the AWTF. The calculation of the equalizing City support payment shall be as illustrated in **Exhibit C** and incorporated by reference herein.

C. Invoicing and Payment Procedure for Operational Support Payments through June 30, 2030.

1. Commencing in the first full fiscal year after the AWTF becomes operational through June 30, 2030; the Parties shall exchange Statements of Net Operating Costs within thirty (30) days after the exchange of audited financial statements for that year as required under Article 9 below.
2. After the exchange of Statements of Net Operating Costs, an invoice shall be prepared by the Party to whom an equalizing payment is due pursuant to Section B of this Article 7 and submitted to the Party from whom payment is due pursuant to Section B of this Article 7. Payment shall be due within forty-five (45) days of receipt of invoice.

3. Routing and account instructions for electronic payment may be provided by either Party to the other Party.

D. Operational Support Payments Upon Commencement of Operation of AWTF effective July 1, 2030.

1. Commencing in Fiscal Year 2030-2031, District shall be reimbursed from City Net Operating Revenue for the District Net Operating Cost for AWTF and for maintaining a Reserve Fund. The total payment for the District Net Operating Cost and for the maintenance of a Reserve Fund relative to SBWR Recycled Water Revenue shall not exceed the percentage of the District's Capital Investment in the SBWR System and the AWTF relative to the Parties' Capital Investment in the SBWR System and the AWTF. The Reserve Fund may be expended for the specified purposes, and these expenditures shall not be included in the District's Net Operating Cost; provided that the District's expenditures from the Reserve Fund that District funded prior to July 1, 2030, may be included the District's Net Operating Cost until depleted.
2. The District shall notify the City within 120 days before the end of the fiscal year to request a modification in the payment to the extent that the Reserve Fund is insufficient to pay for eligible expenses planned for the upcoming fiscal year. The Parties must mutually agree in writing that the proposed expenditure is necessary to adjust the payment amount for the Reserve Fund.
3. Every five years, the Parties agree to evaluate the total maximum amount allowable in the Reserve Fund to maintain the AWTF, and to negotiate in good faith to amend this Agreement accordingly.

E. Invoicing and Payment Procedure for Operational Support Payments Effective July 1, 2030.

1. Commencing in Fiscal Year 2030-2031; the Parties shall exchange Statements of Net Operating Costs within thirty (30) days after the exchange of audited financial statements for that fiscal year as required under Article 9 below.
2. Within forty-five (45) days after the exchange of Statements of Net Operating Costs, the City will provide payment for the District's Net Operating Cost for AWTF and for maintaining a Reserve Fund.
3. Routing and account instructions for electronic payment may be provided by either Party to the other Party.

SECTION 7: ARTICLE 10, "TERMINATION OF AGREEMENT", is amended to be read as follows:

A. Automatic Early Termination.

1. This Agreement will automatically terminate if District has not awarded the contract for construction of the AWTF by September 30, 2011.

B. Intentionally deleted.

C. Breach of Agreement. In the event either Party to this Agreement should, at any time, claim that the other Party has in any way breached or is breaching this Agreement, the Parties shall meet and confer regarding the same within thirty days of request by either Party. If the first meet and confer session is unsuccessful, a second meet and confer session shall be scheduled within twenty days and shall be attended by a Department Head or higher level official for City and an Assistant Operating Officer or higher level official for District. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either Party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining Party has first given to the other Party written notice and a reasonable time after conclusion of said meet and confer efforts within which to cure any breach or alleged breach.

D. Remedies. In addition to all other rights and remedies that either Party may have upon termination of this Agreement, City shall be entitled to receive from District and District shall pay to City, within sixty (60) days of the date of the termination, an amount equal to the remaining balance in the District Reserve Fund for equipment and unanticipated replacement costs, which remaining balance shall include interest posted to the fiscal year balance in said account on an annual basis, based on the yearly average return of the District investment portfolio; provided, including interest thereon that are remaining in the Reserve Fund as of effective date of the termination shall be paid to District ("Reserve Fund Balance Payout").

SECTION 8: ARTICLE 12, "NOTICES", is amended to read as follows:

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either Party to the other, shall be in writing and shall be addressed as follows, or to such other place as City or District, respectively, may notify the other in writing.:

If to City, the same shall be addressed to:

Jeff Provenzano
Director of Environmental Services
City of San José
200 East Santa Clara Street, 10th Floor Tower
San José, CA. 95113

If to District, the same shall be addressed to:

Aaron Baker
Chief Operating Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118

All notices shall be sufficiently given and served upon the other Party if sent by first-class U.S. mail, postage prepaid. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as may be amended or modified.

SECTION 9: EXHIBIT A, "DEFINITIONS", is replaced with the First Amended EXHIBIT A, "DEFINITIONS".

SECTION 10: EXHIBIT B, "ADJACENT SITE", is replaced with the First Amended EXHIBIT B, "ADJACENT SITE".

SECTION 11: EXHIBIT C, "FINANCIAL SUPPORT PAYMENT ILLUSTRATIONS", is replaced with the First Amended EXHIBIT C, "FINANCIAL SUPPORT PAYMENT ILLUSTRATIONS".

SECTION 12: Except as otherwise amended herein, all other provisions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as follows.

“CITY”

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal Corporation

LEANNE BOLANO
Deputy City Attorney

TONI J. TABER, MMC
City Clerk

“DISTRICT”

APPROVED AS TO FORM

SANTA CLARA VALLEY WATER DISTRICT, a public entity

BRIAN C. HOPPER
Sr. Assistant District Counsel

MELANIE RICHARDSON, P.E.
Chief Executive Officer

FIRST AMENDED EXHIBIT A

DEFINITIONS

“Advanced Water Treatment Facility” or “AWTF” - shall mean an advanced treated recycled water facility and related facilities (AWTF), to be located on lands owned by the Plant, that will accept up to twelve (12) million gallon per day (mgd) of Plant secondary effluent for treatment through microfiltration and will provide up to 8 mgd reverse osmosis treated water for blending with the Plant’s recycled water to expand irrigation and industrial uses.

“City’s Capital Investment in the AWTF” - shall mean the value of the AWTF and Related Facilities, as determined pursuant to the same methodology used by the City as administering agency for the Plant, for the purpose of allocating Plant costs among the cities and agencies discharging to the Plant, times a percentage having the sum of all City capital contributions toward the AWTF as the numerator and all District and City capital contributions as the denominator. For example, if the value of the AWTF and Related Facilities as of the applicable date of valuation is \$50,000,000; the sum of the City’s capital contributions is \$12,000,000; and the sum of District’s capital contributions is \$32,000,000; the City’s Capital Investment in the AWTF would be \$13,636,365.

“City’s Capital Investment in the SBWR System” - shall mean the sum of the value of all SBWR System Assets, as determined annually by the City as administering agency for the Plant, for the purpose of allocating Plant costs among the cities and agencies discharging to the Plant, less the value of District’s Capital Investment in the SBWR System.

“City’s Capital Investment in the SBWR System and the AWTF” - shall mean the sum of the City’s Capital Investment in the SBWR system and the City’s Capital Investment in the AWTF. As of June 30, 2024, the City’s Capital Investment in the SBWR System and the AWTF was \$250,234,129.

“City Net Operating Cost for SBWR” - shall mean and include any and all costs and expenses incurred by San José for the administration, operation, maintenance and repair of SBWR or the AWTF (including but not limited to, costs incurred by Plant to treat microfiltration return water and costs to investigate and remedy any effluent limit and toxicity violations of the Plant’s NPDES result from the addition of reverse osmosis concentrate (reject) from the AWTF to Plant effluent for blending prior to discharge to San Francisco Bay), less all revenue received by San José from wholesale recycled water sales. City’s Net Operating Cost for SBWR shall not exceed the amounts stated in the Draft SBWR Budget provided by City to the Recycled Water Policy Advisory Committee, except for costs attributable to unanticipated increases in supplies, material, equipment and labor rates. The methodology used to develop the following City’s Net

Operating Cost for SBWR for fiscal year 2008-09 ¹ shall be used to calculate future City Net Operating Cost for SBWR:

South Bay Water Recycling Operating Cost Based on Adopted 2008-09 Budget

Description	Personal Service	Non-Personal Services	Total
Program Administration, Permitting and Compliance	\$1,699,754	\$522,235	\$2,222,079
System Operations and Maintenance	\$968,165	\$408,535	\$1,376,700
Capital Planning and Engineering	\$171,891	\$580,252	\$752,143
Communication and Outreach		\$76,920	\$76,920
City of San Jose Overhead and Capitated Services		\$248,186	\$248,186
Total SBWR Operating Expenses	\$2,839,810	\$1,836,218	\$4,676,028
SBWR Recycled Water Revenue	Irrigation and Agriculture \$1,194,498	Industrial \$476,268	\$2,670,766
SBWR Net Operating Costs			\$2,005,261

“City Net Operating Revenue” - shall mean the amount by which City’s revenue from wholesale-recycled water sales exceeds costs and expenses incurred by San José for the administration, operation, maintenance and repair of SBWR, but shall not include any revenue received by City from District for recycled water sold to District pursuant to the Silver Creek Pipeline Agreement.

“District’s Capital Investment in the AWTF” - shall mean the value of the AWTF and Related Facilities, as determined pursuant to the same methodology used by the City as administering agency for the Plant, for the purpose of allocating Plant costs among the cities and agencies discharging to the Plant, times a percentage having the sum of all District capital contributions toward the AWTF as the numerator and all District and City capital contributions as the denominator. For example, if the value of the AWTF and Related Facilities as of the applicable date of valuation is \$50,000,000; the sum of the City’s capital contributions is \$12,000,000; and the sum of District’s capital contributions is \$32,000,000; the District’s Capital Investment in the AWTF would be \$36,363,635. The proposed expenditures from the Reserve Fund shall not be treated as District

¹ The budgeted costs for 2008-09 do not include the costs to treat microfiltration return water or to investigate or remedy any effluent limit and toxicity violations of the Plant’s NPDES result from the addition of reverse osmosis concentrate (reject) from the AWTF to Plant effluent for blending prior to discharge to San Francisco Bay. These costs will be added in the budget for the first year in which the AWTF is projected to commence operations.

capital contributions for the purposes of calculating District's Capital Investment in the AWTF.

“District's Capital Investment in the SBWR System” - shall mean the prorated value of any SBWR System Assets for which the District has provided capital funding determined according to the percentage funding provided by the District for each such asset. As of the date of execution of the Agreement, the District has no Capital Investment in the SBWR System.

“District's Capital Investment in the SBWR System and the AWTF” - shall mean the sum of the District's Capital Investment in the SBWR system and the District's Capital Investment in the AWTF. As of June 30, 2024, the District's Capital Investment in the SBWR System and the AWTF was \$65,578,130.

“District Net Operating Cost for AWTF” - shall mean and include all costs and expenses incurred by District for the administration, operation, maintenance and repair of the AWTF, less any revenue that may be received by District from wholesale recycled water sales of SBWR or AWTF water, from third parties for operation of the AWTF, but shall not include any revenue received by District from resale of recycled water sold by City to District pursuant to the Silver Creek Pipeline Agreement. The District may include the Reserve Fund as an operating cost until June 30, 2030. The District's Net Operating Cost for AWTF shall not exceed the amount stated in the Draft AWTF Budget provided by District to the Recycled Water Policy Advisory Committee, except for costs attributable to unanticipated increases supplies, material, equipment and labor. The methodology used to develop the following estimate of District's Net Operating Cost for AWTF for projected, which is explained in more detail in the Black & Veatch Draft Project Report No. 146071, dated July 2007, shall be used to calculate future District Net Operating Cost for AWTF²:

**Cost Estimate Using Average Annual Microfiltration Feed of
8.7 mgd (summer)/3.6 mgd winter**

Description	Summer Months	Winter Months	Annual Cost
Energy	\$900,000	\$260,000	\$1,160,000
Chemicals	\$230,000	\$80,000	\$310,000
Labor	\$650,000	\$470,000	\$1,120,000
Reserve Fund for equipment and unanticipated Replacement (until June 30, 2030)			\$810,000
UV Lamps Replacement			\$70,000

² The estimate assumes that District will not receive any third party revenue from operation of the AWTF. If revenue is received, it will be applied to costs before calculation of the District Net Operating Costs.

Description	Summer Months	Winter Months	Annual Cost
Miscellaneous Cost			³
Tanks			\$59,000
Parts Replacement			\$25,000
Total Annual O&M Cost (Year 2010)			\$3,554,000

“Direct Potable Reuse”, or “DPR” Water - shall mean treated recycled water that meets the requirements of Tit. 22 Cal. Code Regs. Art. 10 and is introduced either directly into a public water system or into a raw water supply immediately upstream of a water treatment plant, in accordance with Tit. 22 Cal. Code Regs. § 64669.05.

“DPR Demonstration Facility” - shall mean a (“DPR”) demonstration facility that will utilize unused secondary wastewater included within the Integration Agreement for the Plant and treating it through a new purification treatment technique consistent with DPR regulations. This DPR Demonstration Facility will treat wastewater from the Plant such that it meets all regulatory requirements for potable reuse. This includes a separate structure for an education learning center to promote outreach and education through visits of the public, students, and technical experts.

“Parties’ Capital Investment in the SBWR System and the AWTF” - shall mean the sum of the City’s Capital Investment in the SBWR System and the AWTF and the District’s Capital Investment in the SBWR System and the AWTF.

“Plant”, or “RWF”, or “WPCP” - shall mean the San José/Santa Clara Water Pollution Control Plant commonly known as the Regional Wastewater Facility.

“Silver Creek Pipeline Agreement” - shall mean the agreement between the Parties’ “Management and Operation of the South Bay Water Recycling (SBWR), including the Silver Creek Pipeline”, dated January 22, 2002.

“Reserve Fund” - shall mean the funding amount reserved for major or unforeseen costs, equipment replacement, membrane replacement, UV lamp replacement, and other costs attributable to unanticipated increases for supplies, material, equipment and labor rates not to exceed a maximum amount of \$4,000,000.

“SBWR Recycled Water Revenue” - shall mean all revenues received by the City from the sale of wholesale recycled water, but shall not include any revenue received by City from District for recycled water sold to District pursuant to the Silver Creek Pipeline Agreement.

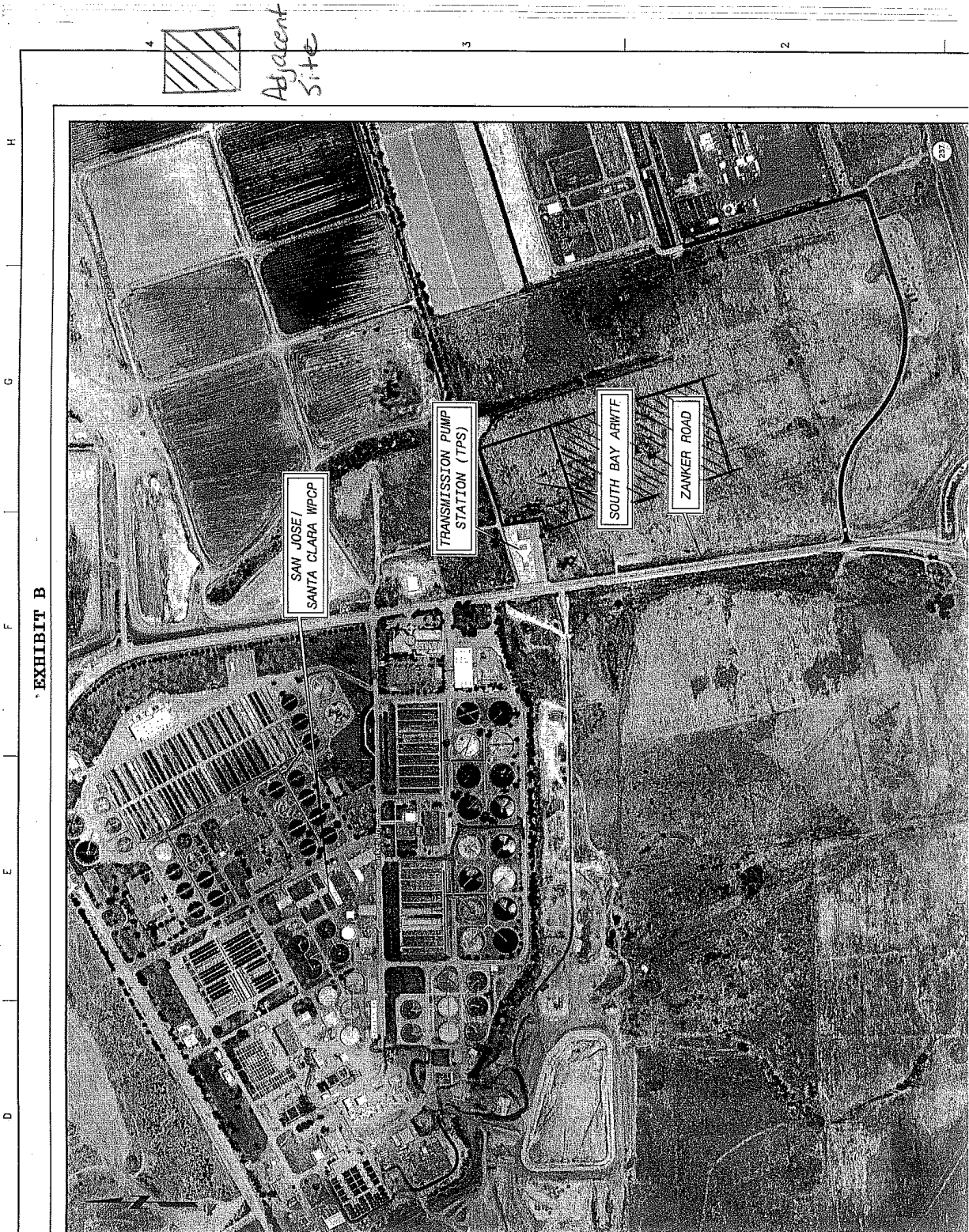
“SBWR System Assets” - shall mean all assets owned and operated by City for the wholesale distribution of recycled water, but shall not include any recycled water assets

³ Other costs incurred for operation of the AWTF that are specifically described and included in the approved budget.

owned and operated by water retailers or by the District pursuant to the Silver Creek Pipeline Agreement.

“Total Net Operating Costs” - shall mean City’s Net Operating Cost for SBWR, plus District’s Net Operating Cost for AWTF.

FIRST AMENDED EXHIBIT B



FIRST AMENDED EXHIBIT C

FINANCIAL SUPPORT PAYMENT ILLUSTRATIONS

The following financial support payment calculations effective through June 30, 2030 are provided for illustration purposes:

Total Net Operating Loss Scenarios

District's Net Operating Costs for AWTF	\$3.5 Million
City's Net Operating Cost for SBWR	\$2.5 Million
Total Net Operating Costs	\$6 Million
No payment by either Party	

District's Net Operating Costs for AWTF	\$3,500,000
City's Net Operating Cost for SBWR	\$1,500,000
Total Net Operating Costs	\$5,000,000
City's Payment to District	\$500,000

Total Net Operating Revenue Scenario

District's Net Operating Costs for AWTF	\$4,500,000
City's Net Operating Revenue for SBWR (City's Operating Revenue of \$10,000,000 – City's Operating Costs for SBWR of \$4,500,000)	\$5,500,000
District's Capital Investment in AWTF and SBWR	\$50,000,000
City's Capital Investment in AWTF and SBWR	\$250,000,000
Parties' Total Capital Investment in AWTF and SBWR	\$300,000,000
City's Operating Cost Support Payment to District (1/2 of City Net Operating Revenue)	\$2,750,000
City's Excess Revenue Payment to District (16.66% of balance of City's Net Operating Revenue after City's Operating Costs Support Payment)	\$458,333.15
City's Retained Excess Revenue (83.34% of balance of City's Net Operating Revenue after City's Operating Costs Support Payment)	\$2,291,666.90

EXHIBIT E
FORM OF AMENDED O&M AGREEMENT

**AMENDED AND RESTATED
AGREEMENT BETWEEN THE CITY OF SAN JOSE
AND THE SANTA CLARA VALLEY WATER DISTRICT
FOR OPERATION AND MAINTENANCE
OF THE SILICON VALLEY ADVANCED WATER PURIFICATION CENTER**

This First Amended and Restated Agreement (Agreement) is entered into this ____ day of [INSERT], 2025, by the City of San José (“City”) and the Santa Clara Valley Water District (District), for the Operation and Maintenance of the Silicon Valley Advanced Water Purification Center (the “Amendment”). The District and the City are sometimes collectively referred to in this Amendment as the “Parties” and individually referred to as the “Party”.

RECITALS

- A. On October 23, 2012, the Parties entered into an agreement entitled “Agreement between the City of San Jose and the Santa Clara Valley Water District for Operation and Maintenance of the Silicon Valley Advanced Purification Center”.
- B. The Advanced Water Treatment Facility (“AWTF”) formally named the Silicon Valley Advanced Water Purification Center (“SVAWPC”), started operations in March 2014 to treat up to twelve (12) million gallons per day (mgd) of Plant secondary effluent, to increase the production of non-potable recycled water through microfiltration; enhance the quality of non-potable recycled water quality through the provision of up to eight (8) mgd of reverse osmosis treated water for blending with the Plant’s existing recycled water; and offset the demand for development of new sources of water supply for Santa Clara County.
- C. District wishes to construct and operate a Direct Potable Reuse (“DPR”) Demonstration Facility to demonstrate safety and feasibility of DPR, with the goal to eventually construct and operate a Full-Scale DPR Facility to provide benefits for the potable water supply to the City and County of Santa Clara.
- D. The DPR Demonstration Facility will have a projected capacity production of up to 0.5 million gallons per day (mgd) of purified water that may be blended with existing recycled water produced by the San José/Santa Clara Water Pollution Control Plant (“Plant”). The DPR Demonstration Facility will result in the production of reverse osmosis concentrate (“ROC”) which the Parties intend to be comingled with the current ROC stream from the AWTF and discharged through the outfall of the Plant.
- E. The Parties desire to amend the Agreement to adjust the Parties’ roles and responsibilities with respect to the operation and maintenance of the AWTF, with respect to this DPR Demonstration Facility.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 DEFINITIONS.

For the purpose of this Agreement, the definitions contained in First Revised Exhibit A of this Agreement shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Agreement but instead defined in the Ground Lease Agreement or Integration Agreement, then the definition of such word or phrase in the Ground Lease Agreement or Integration Agreement, as applicable, shall control.

ARTICLE 2 TERM.

The term of this Agreement shall be from the date set forth in the introductory paragraph of this Agreement through June 30, 2065, or upon termination of the Ground Lease Agreement or Integration Agreement, whichever is earlier in time.

ARTICLE 3 DISTRICT OPERATION AND MAINTENANCE OBLIGATIONS.

A. Production of Advanced Treated Recycled Water and DPR Demonstration Facility Product Water.

1. District shall operate and maintain the SVAWPC and DPR Demonstration Facility to collectively accept up to twelve (12) mgd of Secondary Effluent from the WPCP. Up to 0.5 mgd of the twelve (12) mgd of Secondary Effluent shall be for the DPR Demonstration Facility. The Parties reserve the right to mutually assess and quantify the increase in the Secondary Effluent capacity in the event that additional reverse osmosis membranes are added, provided the Secondary Effluent complies with the standards set forth in Table 1 of Exhibit B.

2. District shall operate and maintain the SVAWPC to produce Product Water.

3. District shall operate and maintain the DPR Demonstration Facility to produce DPR Demonstration Facility Product Water to demonstrate the safety and feasibility of DPR.

4. District shall blend recycled water produced by WPCP ("Tertiary Effluent") with Product Water in accordance with Exhibit E of the Ground Lease, to produce Blended Product Water.

5. DPR Demonstration Facility Product Water may fluctuate. District intends to use up to ten (10) percent of DPR Demonstration Facility Product Water on an average monthly basis for DPR bottling and outreach purposes and commits to provide the balance of the DPR Demonstration Facility Product Water to blend with Tertiary Effluent produced by WPCP in accordance with Subsection 4.

6. District shall establish reasonable operating procedures and maintenance schedules; and provide all tools, equipment, vehicles, materials, supplies and qualified personnel reasonably necessary to operate and maintain the SVAWPC.

7. District shall obtain and maintain a valid water reclamation permit from the Regional Water Quality Control Board ("Regional Board") pursuant to review by the California Department of Public Health ("CDPH") to operate and maintain the SVAWPC and DPR Demonstration Facility, as required by the Regional Board.

8. City recognizes that factors beyond the control of District could cause operational difficulties at the SVAWPC and DPR Demonstration Facility resulting in the need to temporarily reduce or halt the production of SVAWPC Product Water and/or DPR Demonstration Facility Product Water to City. District shall use its best efforts to re-establish the production of SVAWPC Product Water and/or DPR Demonstration Facility Product Water, of a suitable quality and quantity as soon as reasonably possible and shall re-establish City's supply of such water accordingly.

B. SVAWPC and DPR Demonstration Facility Wastewater Discharge.

1. District shall operate and maintain the SVAWPC and DPR Demonstration Facility to ensure that wastewater discharged by the SVAWPC and DPR Demonstration Facility to the WPCP chlorine contact tanks complies with the limitations set forth in Table 3.A of First Revised Exhibit B ("Reverse Osmosis Reject").

2. District shall operate and maintain the SVAWPC and DPR Demonstration Facility to ensure that wastewater discharge from the SVAWPC and DPR Demonstration Facility to the emergency basin overflow structure tanks complies with the limitations set forth in Table 3.A of First Revised Exhibit B ("Waste Stream Discharge").

The SVAWPC Waste Stream Discharge to the emergency basin overflow structure may include the following:

- a. Membrane filtration backwash waste
- b. Membrane filtration clean-in-place neutralized waste
- c. Membrane filtration maintenance neutralized waste
- d. Reverse osmosis clean-in-place neutralized waste
- e. Reverse osmosis membrane flush water
- f. Miscellaneous process drains
- g. Strainer backwash waste
- h. Process building sanitary waste
- i. Process building floor drains
- j. Chemical storage containment area rain water
- k. Storm water flows

The DPR Pilot and Demonstration Facility Waste Stream Discharge to the emergency basin overflow structure may include the following:

- a. Membrane filtration backwash waste
- b. Membrane filtration clean-in-place neutralized waste

- c. Membrane filtration maintenance neutralized waste
- d. Reverse osmosis clean-in-place neutralized waste
- e. Reverse osmosis membrane flush water
- f. Miscellaneous process drains
- g. Strainer backwash waste
- h. Demonstration Facility sanitary waste
- i. Demonstration Facility floor drains
- j. Chemical storage containment area rainwater
- k. Storm water flows
- l. DRP Pilot Facility Product Water

3. District shall not contribute to or cause to be contributed to the WPCP wastewater treatment system ("WPCP System") any waste or any pollutant that could:

- a. Causes Interference with the WPCP System; or
- b. Damages the WPCP system; or
- c. Results in or significantly contribute to a violation of WPCP effluent limitations, whether narrative or numeric, including acute and chronic toxicity, or any other requirement of City's National Pollutant Discharge Elimination System ("NPDES") permit in effect at any time.

4. District shall not create any hazard to the public safety, the environment, or to WPCP's personnel.

5. District shall not discharge, or cause to be discharged, to the WPCP System any of the following:

- a. Any solid or viscous substance in quantities that is capable of causing obstruction in the flow in the WPCP System, that could interfere with the proper operation of the WPCP System or the treatment of sanitary sewage or industrial waste, or that would require unusual attention or expense to handle, process or treat.
- b. Flammable liquid, solid, vapor, or gas or other substance including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 deg F (60 deg C) using the test methods specified in 40 Code of Federal Regulations (CFR) § 261.21.
- c. Liquid, solid, vapor, gas, or other substance having or developing a temperature of 150 deg F or more, or which may cause the temperature of the WPCP System to exceed 104 deg F (40 deg C).
- d. Solid, liquid, vapor, gas, or other substance which is so malodorous or noxious that their discharge into the sanitary sewer system would cause a public nuisance.
- e. Any substance which results in the presence of toxic gases, fumes or vapors in the WPCP System or on the WPCP premises in a quantity that may cause acute health and/or safety problems for workers on the WPCP premises.
- f. Any radioactive wastes, except by persons authorized to discharge, and the discharge is in strict conformance with (California Radiation

Control Regulations, title 17, Chapter 5, Subchapter 4, Section 30100 et seq.), and federal regulations and recommendations for safe disposal of such waste.

- g. Any industrial waste containing the toxic substances specified under San Jose Municipal Code Section 15.14.585.A; toxic or poisonous substances or any other pollutant, including biochemical oxygen demand, in sufficient quantity to injure or cause an Interference with WPCP System or pass through the WPCP System, or in sufficient quantity to constitute a hazard to humans or animals, or in sufficient quantity to create a hazard for humans, or aquatic life in any waters receiving effluent from the sanitary sewer system, or which may create a hazard in the use or disposal of sewage sludge.

If the District violates Article 3(B)(5), the District shall immediately cease any discharge from the SVAWPC and DPR Demonstration Facility to the WPCP System. Each parties' liability for any damages arising from a violation of Article 3(B)(5) shall be consistent with Section 16 of the Amended Ground Lease Agreement.

6. District is prohibited from allowing Slug Discharges from entering the WPCP System. District shall operate and maintain the SVAWPC and DPR Demonstration Facility in a manner that would protect the WPCP System from Slug Discharges of restricted materials, or other substances regulated under the City's NPDES Permits.

7. District shall immediately cease discharge of waste streams to the WPCP upon notice from City that the discharge may be adversely impacting the WPCP wastewater treatment process, or the ability of the WPCP to meet the requirements of the NPDES Permits.

C. Sampling and Monitoring.

1. District shall conduct SVAWPC and DPR Pilot and Demonstration Facility (as specified in First Revised Exhibit B Table 2A. and Table 3A) wastewater discharge monitoring and provide monitoring information to the City to supplement its NPDES Monitoring and Reporting Program. The purpose of this monitoring is to assess potential impacts associated with the discharge of Reverse Osmosis Reject on the City's ability to comply with NPDES permits requirements. The Parties agree that amendments to, changes in interpretation of, or other changes to the City's NPDES permits may require the District to modify monitoring of the SVAWPC and DPR Demonstration Facility wastewater discharge.

2. District shall adhere to the initial schedule for sampling and analyses provided in Table 3.A of First Revised Exhibit B. The schedule for sampling and analyses shall also be incorporated into the SVAWPC Operation and Maintenance Manual. The Parties may mutually agree to written modification of Table 3.A of First Revised Exhibit B. District also agrees to conduct monitoring efforts not mandated by the City's NPDES permits of the SVAWPC and DPR Pilot and Demonstration Facility (as specified in First Revised Exhibit B Table 2A and Table 3A)) wastewater discharge at reasonable detection

levels to provide tracking of potential impacts on the City wastewater treatment system and/or ability to comply with NPDES permits requirements due to discharge of the SVAWPC and DPR Demonstration Facility wastewater discharge to the WPCP.

3. District shall establish, implement, and maintain a water quality monitoring program to collect and test representative samples of Product Water and Blended Product Water to verify compliance with specifications set forth in Table 2 of First Revised Exhibit B.

4. District shall establish, implement, and maintain a water quality monitoring program to collect and test representative samples from wastewater discharged by the SVAWPC and DPR Pilot and Demonstration Facility (as specified in First Revised Exhibit B Table 2A. and Table 3A.) to verify compliance with specifications set forth in Table 3.A of First Revised Exhibit B.

5. The locations for sampling and monitoring shall be as described in First Revised Exhibit B. Sample collections shall be coordinated with the City's monitoring efforts to facilitate accurate and timely reporting of monitoring information.

6. District shall provide the City with reasonable access to sample locations on the Product Water and DPR Pilot and Demonstration Facility Product Water streams from SVAWPC and DPR Pilot and Demonstration Facility and wastewater discharge from SVAWPC and DPR Pilot and Demonstration Facility to conduct independent monitoring for confirmation of District monitoring information.

7. In the first two years following Commencement of Operation of the SVAWPC, as defined under First Revised Exhibit A, District shall perform the sampling required under Table 3.A of First Revised Exhibit B at twice the frequency specified with the exception noted for Table 3.A for sampling of asbestos, chromium VI, PCBs and dioxin which will be done at the normal frequency shown in the table. The Parties shall jointly review the data from the monitoring program during the first year following Commencement of Operation and modify the monitoring program with the goal of reducing monitoring efforts not mandated by the City's NPDES permits to a level that would still track the potential impact of Reverse Osmosis Discharge on the WPCP System. No later than two years after Commencement of Operations, the frequency of monitoring efforts not mandated by the City's NPDES permits shall be reduced at all locations to the frequency specified in Table 3.A of First Revised Exhibit B, with the exception of monitoring for constituents governed by Section C.8 below.

8. The DPR Pilot and Demonstration Facility

During the period of operation of the DPR Pilot Facility, District shall perform the sampling required under Table 3.A of First Revised Exhibit B at the frequency specified with the exception noted for Table 3.A for sampling of asbestos and dioxin. The Parties shall jointly review the data from the monitoring program during the first year following operation of the Pilot Facility and modify the monitoring program with the goal of reducing monitoring efforts not mandated by the City's NPDES permits to a level that would still track the potential impact of Reverse

Osmosis Discharge on the WPCP System. Notwithstanding the above and prior to the operation of the DPR Demonstration Facility, the Parties shall discuss a mutually agreeable sampling and reporting schedule for the DPR Demonstration Facility, provided reverse osmosis impacts to WPCP continues to be monitored.

9. The Parties shall conduct additional and accelerated monitoring as described in this Section 9 in the event that the discharge at the WPCP discharge point approaches or exceeds any effluent limitation or toxicity requirements in the City's NPDES Permits. Constituents that approach or exceed a NPDES permit effluent limitation will be sampled and analyzed daily 1) by the City in the WPCP final effluent, and 2) by the District in the Reverse Osmosis Reject. Daily sampling may be discontinued once two successive WPCP final effluent samples demonstrate that the discharge no longer contains constituent(s) above the effluent limitation(s), and the frequency of monitoring may resume to the frequency specified in Table 3.A of First Revised Exhibit B.

The City will initiate accelerated bioassay testing as soon as practicable if the WPCP final effluent exceeds the acute or chronic toxicity effluent limits. The testing will continue back to back until the WPCP final effluent complies with effluent limits consistent with the City's NPDES Permits monitoring requirements.

The Reverse Osmosis Reject shall also be tested if the WPCP final effluent exceeds the acute or chronic toxicity effluent limits, or other conditions that trigger the requirement to institute additional toxicity monitoring. The Reverse Osmosis Reject shall be blended with potable water using methods consistent with the Environmental Protection Agency's methods.

9. To the extent practicable, the Parties shall coordinate toxicity testing schedules to maximize the usefulness of the District's test data in assessing impacts on the WPCP final effluent.

D. Documentation and Reporting.

1. District shall obtain all applicable permits to produce unrestricted quality recycled water that meets the quality standards set forth under Title 22 of the California Code of Regulations by the California Department of Public Health (the "CDPH"), and/or by the Regional Water Quality Control Board (the "RWQCB"). Within thirty (30) days of securing such permits, the District shall use reasonable efforts to provide the City with a copy of those permits along with the documentation submitted to the CDPH and RWQCB to secure the permits.

2. The operation and maintenance practices of the SVAWPC and DPR Demonstration Facility are subject to the City's NPDES Permits requirements. The City's NPDES Permits require the City to submit any planned changes, and/or significant changes to operation and maintenance, to the Regional Water Quality Control Board (the "RWQCB") within specified time periods. The District agrees to submit the following plans, including amendments, to the City prior to start-up and testing consistent with the schedule set forth in First Revised Exhibit C, attached hereto and incorporated by reference herein. To the extent that these plans or plan changes could reasonably subject City to potential

regulatory enforcement action by the RWQCB, the District and City mutually agree to prioritize remedies, to promptly address any and all necessary modifications to the plans, to reasonably ensure the City will not potentially be in violation of the NPDES Permits. The City acknowledges that these plans may be modified once start-up and testing begins, and the District agrees to submit revisions according to the Deliverable Due Dates table contained in First Revised Exhibit C of this Agreement.

- a. **Staffing Plan** - including description of how the day to day operation of the SVAWPC and DPR Demonstration Facility will be staffed (both on-site and remotely). The Staffing Plan should include a delineation of all personnel employed, with job titles and appropriate recycled water treatment plant operator certification requirements identified for each personnel. The Staffing Plan should also include an organization chart identifying lines of authority, with names and telephone numbers for all personnel. The person responsible for communicating with the Deputy Director of Wastewater or designee on a day-to-day basis should be identified, as well as how City staff will be informed of water quality problems (both Product Water and brine waste). The staffing plan shall comply with all federal and state requirements including all requirements in the City's NPDES permits.
- b. **Operations and Maintenance Manual** - including unit process descriptions and layouts, piping diagram(s), operations considerations, safety, management information system, reports and record keeping, process instrumentation, chemical storage handling and feeding, electrical system, utilities, brine management, maintenance considerations, and other items as appropriate.
- c. **Start-up and Testing Plan** - including a communications plan between District and City staff (e.g. regular weekly/daily/monthly meetings for the first month/6 months/year), description of where test water will be conveyed prior to producing product water, chronic toxicity testing procedures, procedures for demonstrating sufficient quality product water and brine are being produced, and other operational considerations.
- d. **Chronic Toxicity Compliance Demonstration Plan** - including description of the testing that will demonstrate that waste streams produced by the SVAWPC and DPR Demonstration Facility, including Reverse Osmosis Reject, will not cause or contribute to chronic toxicity in WPCP final effluent.
- e. **Pollution Prevention Plan** - including source reduction and other practices that will reduce the amount of pollutants entering a waste stream prior to out-of-process recycling, treatment, or disposal.
- f. **Asset Management Program** - including parts inventory, calibration timing for applicable equipment, routine maintenance schedules, chemical supply, rehabilitation and replacement schedule, computerized maintenance and management system employed, and other considerations as required by the NPDES permits.
- g. **Contingency Plan for Operation Under Emergency Conditions** - including chain of command, backup provisions, notification procedures, emergency

conditions that could impact SVAWPC and DPR Demonstration Facility treatment operations, spill prevention planning, and other considerations.

The District shall retain a professional engineer registered in the State of California with demonstrated expertise in wastewater treatment, recycled water and environmental compliance, to conduct an evaluation of the above plans for technical consistency with all applicable state and federal laws and regulations, including any impact on NPDES Permits compliance. The professional engineer shall certify that all information provided is true and accurate. The certification shall indicate that the plans do comply with all applicable state and federal laws and regulations. Each original document, and subsequent revisions, shall include the Certification Statement shown below:

CERTIFICATION STATEMENT

I certify under penalty of law that this document and any attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

CERTIFIED BY:

_____ Name (please print)	_____ Email	_____ Title
_____ Signature	_____ Date	_____ Phone

PREPARED BY:

_____ Name (please print)	_____ Email	_____ Title
_____ Signature	_____ Date	_____ Phone

3. The District shall provide monthly and annual reports to the City documenting compliance with the monitoring, sampling, and water quality and wastewater discharge requirements set forth in Tables 2A, 2B, 2C, and 3A of First Revised Exhibit B.
4. The District shall require the SVAWPC and DPR Demonstration Facility operators to keep daily logs of SVAWPC and DPR Demonstration Facility operations and maintenance pursuant to reasonable industry standards. Upon reasonable notice, the District shall provide the City access to the daily logs for review, as needed. The District shall provide a summary report of the operation

and maintenance activities at the SVAWPC and DPR Demonstration Facility to the City's WPCP Chief Plant Operator on a quarterly basis, or other mutually agreed upon period. The District shall provide the City with written notification of any known reasonable potential or actual violation, of the Water Recycling Criteria specified in Chapter 3 of Title 22 of the California Code of Regulations, within two (2) hours of the District learning of the potential or actual violation. In addition, the District shall provide a written report of how the District resolved or intends to resolve the issue within seventy-two (72) hours of learning of the potential or actual violation. The District agrees to share DPR Pilot and Demonstration Facility data with City.

5. The District shall provide City with any updates to the Staffing Plan, Operations and Maintenance Manual, Pollution Prevention Plan, Asset Management Program and Contingency Plan for Operation under Emergency Conditions on an annual basis on or before January 1st. In the event that District wishes to implement significant modifications to SVAWPC and DPR Demonstration Facility operation and maintenance practices, the District shall provide a description of intended modifications to the City prior to implementing such changes. District shall comply with the requirements of the Ground Lease Agreement prior to construction of major capital improvements to, or removal of major equipment from the facility.

6. The District shall prepare and submit to the California Department of Public Health and/or RWQCB all regulatory reports required by these agencies for the operation and maintenance of the SVAWPC and DPR Demonstration Facility. The Parties shall coordinate activities regarding the schedule and format of the regulatory reports, and a copy of the reports shall be provided to the City.

ARTICLE 4 CITY OPERATION AND MAINTENANCE OBLIGATIONS.

A. Provision of Secondary Water and Recycled Water.

1. The City shall supply the District with up to twelve (12) mgd of Secondary Effluent.

2. The City shall supply Tertiary Effluent to the District for blending with Product Water and DPR Demonstration Facility Product Water, as, specified in First Revised Exhibit B Table 2A. and Table 3A., in accordance with Exhibit E of the Ground Lease Agreement.

3. The District understands and acknowledges that the City is charged with the responsibility of operating the WPCP and WPCP sewage systems in a manner which the City determines to be most beneficial to the users of the WPCP and that factors beyond the control of the City could cause operational difficulties at the WPCP or in the sewage system resulting in the need to temporarily reduce or suspend the provision of Secondary Effluent to the SVAWPC and DPR Demonstration Facility. The rights of the District to Secondary Effluent pertain only to the Secondary Effluent produced by the WPCP and delivered to the SVAWPC and DPR Demonstration Facility. Nothing contained herein shall

be construed to qualify in any manner the City's right to operate the WPCP at such level as it determines, in its absolute discretion to be appropriate, or to discontinue the operation of the WPCP. Any right of the District to Secondary Effluent shall be subordinate to the rights and responsibilities of the City as herein set forth. In the event that the City temporarily reduces or suspends provision of Secondary Effluent to District, the City shall use its best efforts to re-establish the production of Secondary Effluent of a suitable quality and quantity as soon as reasonably possible, and shall re-establish District's supply of such water accordingly. The City understands and acknowledges that its failure to supply the District with an adequate volume and quality of Secondary Effluent to enable the District to meet the operational parameters specified in Exhibit E of the Ground Lease Agreement, suspends the District's obligations for satisfying those operational parameters until such time the City can provide the District with a sufficient volume of Secondary Effluent.

4. Upon request of the District, the City shall provide the District with any Secondary Effluent, or Tertiary Effluent quality monitoring data collected by the City.

5. The City shall provide the District with reasonable access to sample Secondary Effluent delivered to the SVAWPC and DPR Demonstration Facility.

6. The City shall immediately cease providing the District with Secondary Effluent upon discovery by either party that the Secondary Effluent: (i) has either contributed to, caused or has the potential to cause the District to violate Article 3(B)(5), (ii) contains flammable liquid, solid, vapor, or gas or other substance that poses a fire or explosive hazard, (iii) could interfere with the proper operation of the SVAWPC or would require unusual attention or expense to handle, process or treat, (iv) could result in the voiding of the warranty of any component, part or equipment of the SVAWPC; or (v) contains contaminants in sufficient quantity to constitute a hazard to humans from physical contact or inhalation, including the operators of the SVAWPC. Whosoever makes the determination that such a situation exists shall provide a written explanation of the facts, circumstances and reasons why the Secondary Effluent supply was suspended. The parties will then endeavor to resolve any concerns regarding the Secondary Effluent.

7. The City agrees to provide the District with Material Safety Data sheets, application points, and dose ranges for chemicals applied in the WPCP treatment process for chemicals added to the treatment process prior to the SVAWPC's receipt of effluent. The City agrees to provide the District updates to this information seven (7) calendar days, or as soon as practicable, prior to the application of new chemical(s), provided that advance notice is reasonably feasible. The District reserves the right to discontinue operation of the SVAWPC, if it determines that the cost to modify the operation of the SVAWPC in response to the addition of chemical(s) is not in the District's financial interest, or that the chemical(s) are detrimental to the functioning of the SVAWPC. If the District discontinues operation of the SVAWPC for the above reasons, the City and District agree to meet and endeavor to reach a mutually acceptable solution.

B. Acceptance of SVAWPC and DPR Demonstration Facility Waste Streams.

1. The City shall accept up to 1.5 mgd of Waste Stream Discharge from the SVAWPC and DPR Demonstration Facility to the WPCP emergency basin overflow structure.
2. The City shall accept up to 2 mgd of Reverse Osmosis Reject from the SVAWPC and DPR Demonstration Facility to the WPCP chlorine contact tanks structure.
3. The City shall accept all water used to test and start up the SVAWPC in accordance with the Start Up and Testing Plan certified pursuant to Article 3(D)(2), provided the water quality meets the requirements set forth in Table 3.A of First Revised Exhibit B. The Parties shall closely coordinate start-up of the SVAWPC.
4. The City shall accept all water used to test and start up the DPR Pilot and Demonstration Facility, provided the water quality meets the requirements set forth in Table 3.A of First Revised Exhibit B. The Parties shall closely coordinate start-up of the DPR Demonstration Facility.

4. The locations for acceptance of waste stream discharge and Reverse Osmosis Reject may be subject to change at the City's sole discretion provided the City first submits written notification to the District, and the Parties have mutually agreed to changes to the monitoring program due to the change in location(s). The City reserves the right to change locations without notice to the District in the event that the City reasonably believes it must do so to maintain compliance with the NPDES permits. The Parties, however, shall mutually agree to modifications to the monitoring program within a reasonable time after the change in location(s).

C. Permits.

1. The City shall maintain valid National Pollutant Discharge Elimination System ("NPDES") permits authorizing the WPCP's discharge of treated wastewater to South San Francisco Bay.
2. The City shall maintain a valid Water Reclamation Permit from the RWQCB authorizing the WPCP to operate and maintain SBWR.
3. The City shall maintain a valid permit from the RWQCB authorizing the WPCP to produce the Tertiary Effluent.

ARTICLE 5 COMMUNICATIONS AND COORDINATION

A. Meetings. The Parties agree to designate personnel to meet on a regular basis to review operational and maintenance issues associated with meeting the requirements of this Agreement. During the first two years following Commencement of Operation, the designated staff shall meet monthly, and thereafter on a periodic basis to be determined by

mutual consent of the Parties. Notwithstanding the above, each Party reserves the right to raise operational issues as provided for under the Integration Agreement

B. Public Tours. Public tours must not interfere with the safe and secure operation of SVAWPC.

C. Operational Communications. The Parties must have the ability to communicate to each other regarding operational issues, and in case of emergency 24-hours per day. The District shall provide City with the District's SVAWPC and DPR Demonstration Facility emergency contact number prior to operating the SVWAPC. City personnel can be reached at (408) 635-4000. The Parties shall provide each other any updates to the contact information.

D. Customer Communications. The Parties shall coordinate development of a communication plan to inform SBWR customers of the planned start-up date and initial operations of the SVAWPC and DPR Demonstration Facility.

ARTICLE 6 MISCELLANEOUS.

A. Qualified Personnel. The District shall operate the SVAWPC and DPR Demonstration Facility with qualified District personnel or contractors, or both District personnel and contractors.

B. Costs. All costs, including indirect and direct costs, incurred by the Parties to undertake the obligations specified in this Agreement for the administration, operation, maintenance and repair of the SVAWPC, or SBWR are operating costs subject to Article 7 of the Integration Agreement.

C. Insurance. District agrees to have and maintain the policies set forth in Section 17 of the Ground Lease Agreement. All policies, endorsements, certificates, and/or binders shall be subject to review and approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Should the Risk Manager recommend any change in any coverage such recommendation shall be discussed by the Technical Working Group and reviewed by the Recycled Water Policy Advisory Committee.

D. Assignment. No Party shall assign, sublet, or transfer this Agreement or any of the rights or interests in this Agreement without the written consent of the other Party.

E. Consent. Unless expressly provided otherwise, whenever in this Agreement the approval or consent of a Party is required, such approval or consent shall be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent.

F. Controlling Law. Except as federal law may apply, the Parties agree that this Agreement shall be governed and construed by and according to the laws of the State of California.

G. Relationship to Other Agreements. This Agreement is intended to supplement the terms and conditions of the Ground Lease Agreement, and the Integration Agreement by providing additional parameters as to each Party's obligations for operation and maintenance of the SVAWPC and DPR Demonstration Facility. To the extent that a term and condition of this Agreement conflicts with the Ground Lease Agreement, or the Integration Agreement, the terms and conditions of the Ground Lease Agreement, or Integration Agreement shall prevail.

H. Exhibits and Addenda. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein. The Exhibits attached to this Agreement are:

First Revised Exhibit A	Definitions
First Revised Exhibit B	Water Quality Requirements
First Revised Exhibit C	Deliverable Due Dates

I. Force Majeure. For purposes of this Agreement the term "Force Majeure" shall mean earthquake, fire or other casualty, flood, landslide, epidemic, unforeseeable adverse weather, "acts of God", war, civil disturbance, court ordered injunction, intervention by civil or military authorities or government, strikes, lockouts, boycotts or other labor disputes, to the extent any of the foregoing are beyond the reasonable control of either the City or District and which cause such Party to be delayed or hindered in or prevented from the performance of any covenant or obligation under this Agreement.

J. Headings. The headings of the paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

K. Independent Contractor. City and District, in the performance of the tasks to be performed by each, shall each act as and be an independent contractor and not an agent or employee of the other. As independent contractors, both City and District shall be responsible for tasks performed by their agents, contractors or employees, including the payment of any and all compensation, or the provision of any benefits due said agents, contractors or employees. City and District each agree to indemnify and hold harmless the other Party from any claim that may be made by its agents, employee or contractors for benefits or compensation.

L. Interpretation. This Agreement shall be deemed to have been prepared equally by both Parties, and its individual provisions shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

M. Material Considerations. Each and every term, condition, covenant and provision of this Agreement shall be deemed to be a material part of the consideration for the entry into this Agreement, and any breach hereof by either Party shall be deemed to be a material breach. Each term and provision of the Agreement to be performed by a Party shall be construed to be both a covenant and a condition.

N. Modification of the Agreement. This Agreement shall not be modified, unless the Parties first agree to and approve of such modification in writing in the form of an amendment to this Agreement.

O. Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine gender.

P. Successor and Assigns. The provision of this Agreement shall, subject to the provisions concerning transfer, apply to and bind the successors and assigns of the Parties hereto.

Q. Validity of Existing Agreements. Execution of this Agreement does not modify, invalidate or supersede any prior agreements made between the Parties.

R. Venue. In the event that suit shall be brought by either Party hereunder, the Parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San Jose, California.

ARTICLE 7 NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either Party to the other, shall be in writing and shall be addressed as follows, or to such other place as City or District, respectively, may notify the other in writing:

If to City, the same shall be addressed to:

Jeff Provenzano
Director of Environmental Services
City of San Jose
200 East Santa Clara Street, 10th floor tower
San Jose, CA 95113

With a copy to:

Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th floor tower
San Jose, CA 95113

If to District, the same shall be addressed to:

Aaron Baker
Chief Operating Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

With a copy to the:

Office of the District Counsel
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

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

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal Corporation

LEANNE BOLANO
Deputy City Attorney

SARAH ZARATE
Director, City Manager's Office

APPROVED AS TO FORM

SANTA CLARA VALLEY WATER DISTRICT,
a Special District established by the California
Legislature

BRIAN HOPPER
Senior Assistant District Counsel

RICK L. CALLENDER, Esq.
Chief Executive Officer

FIRST REVISED EXHIBIT A

DEFINITIONS

“Blended Product Water” means water that meets the specifications contained Table 2.C of First Revised Exhibit B of this Agreement, and consistent with the requirements of Title 22 of the California Code of Regulations and the SBWR Permit for unrestricted quality recycled water. All references to permits or regulatory requirements in this Agreement hereafter shall also include regulations and/or permits as they may be amended or superseded by other equivalent regulatory requirements throughout the term of this Agreement. This will include DPR Demonstration Facility Product Water that meets the requirements of Title 22 of the California Code of Regulations.

“Commencement of Operations” means the first day of the operation of the SVAWPC, by the District or an approved subcontractor, for 10 consecutive days in a consistent and reliable manner to produce water that meets the product water quality specifications set forth in First Revised Exhibit B of this Agreement in an amount equal to: (i) the amount of water produced by two full treatment trains of the SVAWPC (MF, RO, UV) at design capacity of 2.67 MGD per train, or (ii) SBWR’s then-current demand, whichever is lesser.

After the Commencement of Operations, the District shall employ reasonable efforts to operate the SVAWPC for 10 consecutive days prior to the SVAWPC summer operation period in a consistent and reliable manner to meet the product water quality specifications set forth in First Revised Exhibit B in an amount equal to: (i) the “Projected Year 2010 Flows” specified in Table 1 (SBWR Supply Sources – Summer Operation) of Exhibit E of the Ground Lease Agreement, or (ii) the amount of flow accepted by the City, whichever is lesser.

“Days” unless otherwise specified, shall mean calendar day.

“Direct potable reuse”, or “purified water” – shall mean treated recycled water that meets the requirements of Tit. 22 Cal. Code Regs. Art. 10 and is introduced either directly into a public water system or into a raw water supply immediately upstream of a water treatment plant, in accordance with Tit. 22 Cal. Code Regs. § 64669.05.

“DPR Pilot Facility” – shall mean a direct potable reuse (“DPR”) pilot facility that will utilize unused secondary wastewater and treating it through a new purification treatment technique. The DPR Pilot Facility will have a treatment capacity of approximately 200 gallons per minute (200 gpm) and will not be permitted for nonpotable or potable reuse. DPR Pilot Facility Product Water will be discharged to the WPCP.

“DPR Demonstration Facility” – shall mean a direct potable reuse (“DPR”) demonstration facility that will utilize unused secondary or tertiary wastewater and treating it through a new purification treatment technique consistent with DPR regulations. This DPR Demonstration Facility will treat wastewater from the Plant such that it meets regulatory requirements for potable reuse. This facility may include a separate structure for an education learning center to promote outreach and education through visits of the

public, students, and technical experts. The DPR Demonstration Facility will have a treatment capacity of up to five hundred gallons per minute (500 gpm). DPR Demonstration Facility product water will meet the requirements of Title 22 of the California Code of Regulations for nonpotable reuse and will primarily be blended with Tertiary Effluent with a smaller volume utilized for education and outreach purposes.

“DPR Pilot Facility Product Water” means the water produced and discharged to WPCP from the pilot-scale treatment technology. The Pilot portion of the project is anticipated to operate for 2-3 years from the date of execution of this amendment.

“DPR Demonstration Facility Product Water” shall mean treated recycled water that meets the requirements of Tit. 22 Cal. Code Regs. for nonpotable reuse and is to be blended with SVAWPC Product Water or be bottled for educational and outreach purposes.

“Interference” means a discharge which alone, or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the processes or operation of the WPCP System, or causes or significantly contributes to a violation of any requirement of the NPDES permit; and includes prevention of biosolids use or disposal by WPCP under state and federal law.

“mgd” means million gallons per day.

“mg/L” means milligrams per liter.

“Plant Commissioning Test” or “PCT” means a minimum 30 day commissioning testing period of the SVAWPC (performed by the District, an approved contractor, or both) that commences immediately after the District accepts as satisfactory the acceptance testing conducted by the SVAWPC construction contractor.

“Product Water” means water that meets the minimum state Water Recycling Criteria under Chapter 3 of Title 22 of the California Code of Regulations, the “Unrestricted Quality Reclaimed Water” (“Disinfected Tertiary”) specifications contained in San Francisco Bay Area Regional Water Quality Control Board Order Number 95-117 (“SBWR Permit”) and Table 2 of First Revised Exhibit B of this Agreement. All references to permits or regulatory requirements in this Agreement hereafter shall also include regulations and/or permits as they may be amended or superseded by other equivalent regulatory requirements throughout the term of this Agreement.

“Reverse Osmosis Reject” or “ROR” means water discharged by the SVAWPC or DPR Demonstration Facility to the WPCP that complies with the limitations set forth in Table 3.A of Exhibit B, and includes waste streams from reverse osmosis membrane treatment process.

“Secondary Effluent” means water from the WPCP that meets the Secondary Effluent Quality Criteria stated in Table 1 of First Revised Exhibit B.

“Slug Discharge” means any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or non-customary batch discharge, which has a reasonable potential to cause Interference or pass-through or in any other way cause a violation of applicable permit conditions.

“TDS” means total dissolved solids in the recycled water measured in mg/L.

“Technical Working Group” means the staff level working group formed by the Parties pursuant to the Recycled Water Facilities and Programs Integration Agreement.

“Tertiary Effluent” means recycled water produced by the WPCP after wastewater treatment including screening and grit removal, primary sedimentation, secondary treatment by the activated sludge process, secondary clarification, filtration, disinfection, and dechlorination.

“ug/L” means micrograms per liter.

“Waste Stream Discharge” means discharge from the SVAWPC and DPR Demonstration Facility to the WPCP emergency basin overflow structure that conforms to the water quality requirements set forth in Table 3.A of First Revised Exhibit B of this Agreement, and may include waste streams from the automatic strainers, MF/UF reverse filtration, MF/UF Clean-In-Place (CIP) System, RO CIP System and RO shutdown flush, as well as storm water flows.

“WPCP”, or “Plant”, or “RWF” means the San José/Santa Clara Water Pollution Control Plant commonly known as the Regional Wastewater Facility, and its equipment and personnel, located at 700 Los Esteros Road, San Jose, Santa Clara County, California.

FIRST REVISED EXHIBIT B

WATER QUALITY REQUIREMENTS

**Table 1. San Jose/Santa Clara Water Pollution Control Plant
Secondary Effluent Quality Criteria**

Parameter	Criterion
TSS	up to 20 mg/L
pH	5.5 – 8.5
Temperature	50 – 80 deg. F

Table 2. SVAWPC Product Water and Blended Product Quality Standards and Monitoring Requirements

Table 2A. Product Water and Blended Product Water

Constituent or Parameter	Type of Sample	Criterion	Application	Basis for Requirement
pH	Continuous	$6.5 \leq \text{pH} \leq 8.5$	At any time	Title 22/NPDES
Turbidity	Continuous	0.2 NTU	No more than 5% of the time within a 24-hour period	Title 22/NPDES
		0.5 NTU	At any time	
Total Coliform ⁽¹⁾	Grab, daily	2.2 MPN/100 mL	7-day median	Title 22/NPDES
		23 MPN/100 mL	Any sample	
Dissolved Oxygen	Continuous	>1.0 mg/L	At any time	Title 22/NPDES
Dissolved Sulfide	Continuous	<0.1 mg/L	At any time	Title 22/NPDES
Conductivity	Continuous			City/SBWR
Flow	Continuous			Title 22/NPDES
Chlorine Residual	Continuous	5mg/L minimum; 10 mg/L maximum	At any time	Title 22/NPDES

Note 1. In the event that DISTRICT shall measure coliform by other than the multiple tube fermentation method producing a result in “most probable number,” they shall document to CDPH the equivalence of the alternate method. Should DISTRICT determine over time that, due to consistency or other reason, certain constituents did not need to be sampled, DISTRICT may implement a revised sampling protocol subject to approval by the WPCP.

Note 2. The Pilot Facility will not be subject to this table.

Note 3. Valley Water reserves the right to conduct testing to meet the requirements set forth in Tit. 22 Cal. Code Regs. Art. 10

Table 2B. SVAWPC Product Water

Constituent or Parameter	Type of Sample	Criterion	Application	Basis for Requirement
UV Dosage RO Permeate	Continuous	$\geq 50 \text{ mJ/cm}^2$	At any time	City/SBWR
UV Dosage MF Filtrate	Continuous	$\geq 80 \text{ mJ/cm}^2$	At any time	City/ SBWR
TDS	Continuous	<60 mg/L	At any time	City/SBWR

Table 2C. SVAWPC Blended Product Water

Constituent or Parameter	Type of Sample	Criterion	Application	Basis for Requirement
TDS	Continuous	500±50 mg/L	This 500 mg/l TDS is a rolling annual average based on a 28 mgd Max.	City/SBWR

All sampling and monitoring will use approved USEPA Methods with Minimum Levels as specified in RWQCB guidance dated August 6, 2001.

Monitoring Locations

Product Water – located at any point in the pipe which delivers Product Water to the Transmission Pump Station for blending, and downstream of any SVAWPC treatment or storage unit, blending point, or point of use.

Blended Product Water – located at any point after Product Water is completely blended with Tertiary Effluent, and statistically representative of Blended Product Water serving SBWR Customers.

**Table 3. SVAWPC Waste Streams and Reverse Osmosis Reject Waste Streams
Wastewater Discharge Standards and Monitoring Requirements**

Table 3A. SVAWPC Waste Stream and Reverse Osmosis Reject (ROR)

Constituent or Parameter	Type of Sample	Criterion	Application	Basis for Requirement
pH	Continuous	$6.0 \leq \text{pH} \leq 12.5$	Waste Stream	City
		$6.5 \leq \text{pH} \leq 8.5$	ROR	
Turbidity	Grab, Monthly	10 NTU	At any time	City
Ammonia	Composite, Monthly	N/A	Waste Stream and ROR	City/NPDES
Antimony	Grab, Monthly	5,000 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Arsenic	Grab, Monthly	1,000 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Beryllium	Grab, Monthly	750 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Cadmium	Grab, Monthly	700 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Chromium Total	Grab, Monthly	1,000 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Copper	Grab, Monthly	2,300 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Cyanide	Grab, Quarterly	500 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Lead	Grab, Monthly	400 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Mercury	Grab, Monthly	10ug/L	Waste Stream and ROR	SJMC § 15.14.585
Nickel	Grab, Monthly	500 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Nitrate	Composite, Monthly	N/A	Waste Stream and ROR	City/NPDES
Nitrite	Composite, Monthly	N/A	Waste Stream and ROR	City/NPDES
Oil and Grease	Grab, Quarterly	150,000 ug/L	Waste Stream and ROR	City
Phenols	Grab, Quarterly	30,000 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Phosphorus	Composite, Monthly	N/A	Waste Stream and ROR	City/NPDES

Selenium	Grab, Monthly	1,000 ug/L	Waste Stream and ROR	SJMC § 15.14.585
Silver	Grab, Monthly	700 ug/L	At any time	SJMC § 15.14.585
Zinc	Grab, Monthly	2,600 ug/L	Waste Stream and ROR	SJMC § 15.14.585
All other CA Toxics Rule (CTR) Priority Pollutants*	Grab, Semi-annual			City
* Monitoring Only: All sampling shall be done at twice the frequency noted for the first two years following Commencement of Operations except for Asbestos, Chromium (VI), Dioxin, and PCBs which will be done at the normal frequency shown in the table.				

All sampling and monitoring will use approved USEPA Methods with Minimum Levels as specified in RWQCB guidance dated August 6, 2001.

Monitoring Locations

SVAWPC Waste Stream – located at any point in the discharge pipe which delivers SVAWPC Waste Stream to the WPCP, and downstream of any SVAWPC treatment or storage unit, or wastewater blending point.

Reverse Osmosis Reject – located at any point in the discharge pipe which delivers Reverse Osmosis Reject to the WPCP, and downstream of any SVAWPC treatment or storage unit, or wastewater blending point.

DPR Demonstration Facility Waste Stream – located at any point in the discharge pipe which delivers DPR Demonstration Facility Waste Stream to the WPCP, and downstream of any SVAWPC treatment or storage unit, or wastewater blending point.

DPR Demonstration Facility Reverse Osmosis Reject – located at any point in the discharge pipe which delivers Reverse Osmosis Reject to the WPCP, and downstream of any DPR Demonstration Facility treatment or storage unit, or wastewater blending point.

After both Parties agree that the DPR Demonstration Facility waste streams have been adequately characterized, the waste streams from SVAWPC and DPR Demonstration Facility can be monitored as a single waste stream.

Table 3B. CTR Constituents to Be Monitored			Controlling Water Quality Criterion for Surface			
CTR #	Constituent	CAS	Basis	Criterion Concentration (ug/L or noted)	Minimum Reporting Level	Suggested Test
INORGANICS						
1	Antimony	7440360	Primary MCL	6	5	EPA 6020/200.8
2	Arsenic	7440382	Ambient Water Quality	0.018	1	EPA
15	Asbestos*	1332214	National Toxics Rule/ Primary MCL	7 MFL	0.22 MFL >10um	EPA/600/R-93/116(PCM)
3	Beryllium	7440417	Primary MCL	4	1	EPA 6020/200.8
4	Cadmium	7440439	Public Health Goal	0.07	0.25	EPA 1638/200.8
5a	Chromium (total)	7440473	Primary MCL	50	2	EPA 6020/200.8
5b	Chromium (VI)*	18540299	Public Health Goal	0.2	5	EPA 7199/1636
6	Copper	7440508	National Toxics Rule	4.1 (6)	0.5	EPA 6020/200.8
14	Cyanide	57125	National Toxics Rule	5.2	5	EPA 9012A
7	Lead	7439921	Calif. Toxics Rule	0.92 (6)	0.5	EPA 1638
8	Mercury	7439976	National Toxics Rule		0.0005	EPA 1669/1631
9	Nickel	7440020	Calif. Toxics Rule	24 (6)	5	EPA 6020/200.8
10	Selenium	7782492	Calif. Toxics Rule	5	5	EPA 6020/200.8
11	Silver	7440224	Calif. Toxics Rule	0.71 (6)	1	EPA 6020/200.8
12	Thallium	7440280	National Toxics Rule	1.7	1	EPA 6020/200.8
13	Zinc	7440666	Calif. Toxics Rule	54/ 16 (6)	10	EPA 6020/200.8
VOLATILE ORGANICS						
28	1,1-Dichloroethane	75343	Primary MCL	5	1	EPA 8260B
30	1,1-Dichloroethene	75354	National Toxics Rule	0.057	0.5	EPA 8260B
41	1,1,1-Trichloroethane	71556	Primary MCL	200	2	EPA 8260B
42	1,1,2-Trichloroethane	79005	National Toxics Rule	0.6	0.5	EPA 8260B
37	1,1,2,2-Tetrachloroethane	79345	National Toxics Rule	0.17	0.5	EPA 8260B
75	1,2-Dichlorobenzene	95501	Taste & Odor	10	2	EPA 8260B
29	1,2-Dichloroethane	107062	National Toxics Rule	0.38	0.5	EPA 8260B
31	1,2-Dichloropropane	78875	Calif. Toxics Rule	0.52	0.5	EPA 8260B
101	1,2,4-Trichlorobenzene	120821	Public Health Goal	5	5	EPA 8260B
76	1,3-Dichlorobenzene	541731	Taste & Odor	10	2	EPA 8260B
32	1,3-Dichloropropene	542756	Primary MCL	0.5	0.5	EPA 8260B
77	1,4-Dichlorobenzene	106467	Primary MCL	5	2	EPA 8260B
17	Acrolein	107028	Aquatic Toxicity	21	5	EPA 8260B
18	Acrylonitrile	107131	National Toxics Rule	0.059	2	EPA 8260B
19	Benzene	71432	Primary MCL	1	0.5	EPA 8260B
20	Bromoform	75252	Calif. Toxics Rule	4.3	2	EPA 8260B
34	Bromomethane	74839	Calif. Toxics Rule	48	2	EPA 8260B
21	Carbon tetrachloride	56235	National Toxics Rule	0.25	0.5	EPA 8260B
22	Chlorobenzene (mono chlorobenzene)	108907	Taste & Odor	50	2	EPA 8260B
24	Chloroethane	75003	Taste & Odor	16	2	EPA 8260B
25	2- Chloroethyl vinyl ether	110758	Aquatic Toxicity	122 (2)	1	EPA 8260B
26	Chloroform	67663	OEHHA Cancer Risk	1.1	0.5	EPA 8260B
35	Chloromethane	74873	USEPA Health Advisory	3	2.0	EPA 8260B
23	Dibromochloromethane	124481	Calif. Toxics Rule	0.41	0.5	EPA 8260B
27	Dichlorobromomethane	75274	Calif. Toxics Rule	0.56	0.5	EPA 8260B
36	Dichloromethane	75092	Calif. Toxics Rule	4.7	2	EPA 8260B
33	Ethylbenzene	100414	Taste & Odor	29	2	EPA 8260B

Table 3B. CTR Constituents to Be Monitored			Controlling Water Quality Criterion for Surface			
CTR #	Constituent	CAS	Basis	Criterion Concentration (ug/L or noted)	Minimum Reporting Level	Suggested Test
88	Hexachlorobenzene	118741	Calif. Toxics Rule	0.00075	1	EPA 8260B
89	Hexachlorobutadiene	87683	National Toxics Rule	0.44	1	EPA 8260B
91	Hexachloroethane	67721	National Toxics Rule	1.9	1	EPA 8260B
94	Naphthalene	91203	USEPA IRIS	14	10	EPA 8260B
38	Tetrachloroethene	127184	National Toxics Rule	0.8	0.5	EPA 8260B
39	Toluene	108883	Taste & Odor	42	2	EPA 8260B
40	trans-1,2-Dichloroethylene	156605	Primary MCL	10	1	EPA 8260B
43	Trichloroethene	79016	National Toxics Rule	2.7	2	EPA 8260B
44	Vinyl chloride	75014	Primary MCL	0.5	0.5	EPA 8260B
SEMI-VOLATILE ORGANICS						
60	1,2-Benzanthracene	56553	Calif. Toxics Rule	0.0044	5	EPA 8270C
85	1,2-Diphenylhydrazine	122667	National Toxics Rule	0.04	1	EPA 8270C
45	2-Chlorophenol	95578	Taste and Odor	0.1	2	EPA 8270C
46	2,4-Dichlorophenol	120832	Taste and Odor	0.3	1	EPA 8270C
47	2,4-Dimethylphenol	105679	Calif. Toxics Rule	540	2	EPA 8270C
49	2,4-Dinitrophenol	51285	National Toxics Rule	70	5	EPA 8270C
82	2,4-Dinitrotoluene	121142	National Toxics Rule	0.11	5	EPA 8270C
55	2,4,6-Trichlorophenol	88062	Taste and Odor	2	10	EPA 8270C
83	2,6-Dinitrotoluene	606202	USEPA IRIS	0.05	5	EPA 8270C
50	2-Nitrophenol	25154557	Aquatic Toxicity	150 (3)	10	EPA 8270C
71	2-Chloronaphthalene	91587	Aquatic Toxicity	1600 (4)	10	EPA 8270C
78	3,3'-Dichlorobenzidine	91941	National Toxics Rule	0.04	5	EPA 8270C
62	3,4-Benzofluoranthene	205992	Calif. Toxics Rule	0.0044	10	EPA 8270C
52	4-Chloro-3-methylphenol	59507	Aquatic Toxicity	30	5	EPA 8270C
48	4,6-Dinitro-2-methylphenol	534521	National Toxics Rule	13.4	10	EPA 8270C
51	4-Nitrophenol	100027	USEPA Health Advisory	60	10	EPA 8270C
69	4-Bromophenyl phenyl ether	101553	Aquatic Toxicity	122	10	EPA 8270C
72	4-Chlorophenyl phenyl ether	7005723	Aquatic Toxicity	122 (2)	5	EPA 8270C
56	Acenaphthene	83329	Taste and Odor	20	1	EPA 8270C
57	Acenaphthylene	208968	No Criteria Available		10	EPA 8270C
58	Anthracene	120127	Calif. Toxics Rule	9,600	10	EPA 8270C
59	Benzidine	92875	National Toxics Rule	0.00012	5	EPA 8270C
61	Benzo(a)pyrene (3,4-Benzopyrene)	50328	Calif. Toxics Rule	0.0044	2	EPA 8270C
63	Benzo(g,h,i)perylene	191242	No Criteria Available		5	EPA 8270C
64	Benzo(k)fluoranthene	207089	Calif. Toxics Rule	0.0044	2	EPA 8270C
65	Bis(2-chloroethoxy) methane	111911	No Criteria Available		5	EPA 8270C
66	Bis(2-chloroethyl) ether	111444	National Toxics Rule	0.031	1	EPA 8270C
67	Bis(2-chloroisopropyl) ether	39638329	Aquatic Toxicity	122 (2)	10	EPA 8270C
68	Bis(2-ethylhexyl) phthalate	117817	National Toxics Rule	1.8	5	EPA 8270C
70	Butyl benzyl phthalate	85687	Aquatic Toxicity	3 (5)	10	EPA 8270C
73	Chrysene	218019	Calif. Toxics Rule	0.0044	5	EPA 8270C
81	Di-n-butylphthalate	84742	Aquatic Toxicity	3 (5)	10	EPA 8270C
84	Di-n-octylphthalate	117840	Aquatic Toxicity	3 (5)	10	EPA 8270C
74	Dibenzo(a,h)-anthracene	53703	Calif. Toxics Rule	0.0044	0.1	EPA 8270C
79	Diethyl phthalate	84662	Aquatic Toxicity	3 (5)	2	EPA 8270C
80	Dimethyl phthalate	131113	Aquatic Toxicity	3 (5)	2	EPA 8270C
86	Fluoranthene	206440	Calif. Toxics Rule	300	10	EPA 8270C

Table 3B. CTR Constituents to Be Monitored			Controlling Water Quality Criterion for Surface			
CTR #	Constituent	CAS	Basis	Criterion Concentration (ug/L or noted)	Minimum Reporting Level	Suggested Test
87	Fluorene	86737	Calif. Toxics Rule	1300	10	EPA 8270C
90	Hexachlorocyclopentadiene	77474	Taste and Odor	1	5	EPA 8270C
92	Indeno(1,2,3-c,d)pyrene	193395	Calif. Toxics Rule	0.0044	0.05	EPA 8270C
93	Isophorone	78591	National Toxics Rule	8.4	1	EPA 8270C
98	N-Nitrosodiphenylamine	86306	National Toxics Rule	5	1	EPA 8270C
96	N-Nitrosodimethylamine	62759	National Toxics Rule	0.00069	5	EPA 8270C
97	N-Nitrosodi-n-propylamine	621647	Calif. Toxics Rule	0.005	5	EPA 8270C
95	Nitrobenzene	98953	National Toxics Rule	17	10	EPA 8270C
53	Pentachlorophenol	87865	Calif. Toxics Rule	0.28	1	EPA 8270C
99	Phenanthrene	85018	No Criteria Available		5	EPA 8270C
54	Phenol	108952	Taste and Odor	5	1	EPA 8270C
100	Pyrene	129000	Calif. Toxics Rule	960	10	EPA 8270C
PESTICIDES - PCBs						
110	4,4'-DDD	72548	Calif. Toxics Rule	0.00083	0.05	EPA 8081A
109	4,4'-DDE	72559	Calif. Toxics Rule	0.00059	0.05	EPA 8081A
108	4,4'-DDT	50293	Calif. Toxics Rule	0.00059	0.01	EPA 8081A
112	alpha-Endosulfan	959988	National Toxics Rule	0.056 (7)	0.02	EPA 8081A
103	alpha-Hexachlorocyclohexane (BHC)	319846	Calif. Toxics Rule	0.0039	0.01	EPA 8081A
102	Aldrin	309002	Calif. Toxics Rule	0.00013	0.005	EPA 8081A
113	beta-Endosulfan	33213659	Calif. Toxics Rule	0.056 (7)	0.01	EPA 8081A
104	beta-Hexachlorocyclohexane	319857	Calif. Toxics Rule	0.014	0.005	EPA 8081A
107	Chlordane	57749	Calif. Toxics Rule	0.00057	0.1	EPA 8081A
106	delta-Hexachlorocyclohexane	319868	No Criteria Available		0.005	EPA 8081A
111	Dieldrin	60571	Calif. Toxics Rule	0.00014	0.01	EPA 8081A
114	Endosulfan sulfate	1031078	Ambient Water Quality	0.056	0.05	EPA 8081A
115	Endrin	72208	Calif. Toxics Rule	0.036	0.01	EPA 8081A
116	Endrin Aldehyde	7421934	Calif. Toxics Rule	0.76	0.01	EPA 8081A
117	Heptachlor	76448	Calif. Toxics Rule	0.00021	0.01	EPA 8081A
118	Heptachlor Epoxide	1024573	Calif. Toxics Rule	0.0001	0.01	EPA 8081A
105	Lindane (gamma-	58899	Calif. Toxics Rule	0.019	0.02	EPA 8081A
119	PCB-1016*	12674112	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
120	PCB-1221*	11104282	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
121	PCB-1232*	11141165	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
122	PCB-1242*	53469219	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
123	PCB-1248*	12672296	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
124	PCB-1254*	11097691	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
125	PCB-1260*	11096825	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
126	Toxaphene*	8001352	Calif. Toxics Rule	0.0002	0.5	EPA8081A
16	2,3,7,8- TCDD (Dioxin)*	1746016	Calif. Toxics Rule	1.3E-08	5.00E-06	EPA 8290 (HRGC) MS

* Not monitor during startup and first two years of the operations. Then, monitor as identified in Table 3A.

NOTES:

- (1) The Criterion Concentrations serve only as a point of reference for the selection of the appropriate analytical method. They do not indicate a regulatory decision that the cited concentration is either necessary or sufficient for full protection of beneficial uses. Available technology may require that effluent limits be set lower than these values.

- (2) For haloethers.
- (3) For nitrophenols.
- (4) For chlorinated naphthalenes.
- (5) For phthalate esters.
- (6) Freshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/L) in the water body. Values displayed correspond to a total hardness of 40 mg/L.
- (7) Criteria for sum of alpha- and beta- forms.
- (8) Criteria for sum of all PCBs.

FIRST REVISED EXHIBIT C

DELIVERABLE SUBMITTAL SCHEDULE

	Document	Submittal Schedule*
a	Staffing Plan	60 Days prior to the PCT; 30 days prior to any change; annual if no change
b	Operations and Maintenance Manual	30 Days prior to the PCT; revisions within 30 days of change; annual if no change
c	Start-up and Testing Plan	60 Days prior to the PCT
d	Chronic Toxicity Compliance Demonstration Plan	45 Days prior to the PCT
e	Pollution Prevention Plan	45 Days prior to the PCT; 30 days prior to any change; annual if no change
f	Asset Management Program	Within 60 Days following "Commencement of Operations"; revisions within 60 days of change; annual if no change
g	Contingency Plan for Operation under Emergency Conditions	60 Days prior to the PCT; 30 days prior to any change; annual if no change

* Amendments to the documents for the DPR Demonstration Facility shall be submitted 30 Days prior to PCT for the DPR Demonstration Facility.

EXHIBIT F

Recording Requested by:
Santa Clara Valley Water District, a
California Special District

When recorded, return to:
Santa Clara Valley Water District
Office of the District Counsel
5750 Almaden Expressway
San José, CA 95118

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT (“Memorandum”) is made and entered into this ____ day of _____, 2025 (the “Effective Date”), by and between the City of San José, a municipal corporation (“**San Jose**”) and City of Santa Clara, a municipal corporation (“**Santa Clara**” and with San Jose, the “**Owners**”) and the Santa Clara Valley Water District, a California Special District (“**Valley Water**”).

1. Option Agreement. The provisions set forth in an Option Agreement for First Amendment to Ground Lease and Property Use Agreement between the parties hereto, dated _____, (“**Option Agreement**”) are incorporated by reference into this Memorandum. Under the Option Agreement, the Owners have granted Valley Water an option to amend that certain Ground Lease and Property Use Agreement, dated July 1, 2010, under the terms and conditions set forth in the Option Agreement. The Option Agreement is on file with the City Clerk’s Office of the City of San José.
2. Premises. The Premises that are the subject of the Option Agreement are as more particularly described in Exhibit A attached hereto.
3. The Option Agreement term commenced on _____, and shall terminate three years thereafter, subject to early termination in accordance with the Option Agreement.

The purpose of this Memorandum is to give notice of the existence of the Option Agreement, which itself constitutes the agreement between the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date.

APPROVED AS TO FORM:

CITY OF SAN JOSE

By: _____
Leanne C. Bolaño
Deputy City Attorney

By: _____
Toni Taber, MMC
City Clerk

APPROVED AS TO FORM:

SANTA CLARA VALLEY WATER DISTRICT

By: _____
E. Ray Ruiz
Assistant District Counsel

By: _____
Melanie Richardson
Interim Chief Executive Officer

APPROVED AS TO FORM:

CITY OF SANTA CLARA

By: _____
Glen Googins
City Attorney

By: _____

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