

**Memorandum of Understanding
between the
Santa Clara Valley Water District
and the
City of Sunnyvale
for Collaborating on Assessing the Feasibility of Water Reuse Alternatives**

This Memorandum of Understanding (MOU) is made and entered into on _____ (Effective Date), by and between the City of Sunnyvale (Sunnyvale), a municipal corporation, and the Santa Clara Valley Water District (District), a special district created by Legislature of the State of California. Sunnyvale and District hereinafter may be referred to individually as “Party” or collectively as “Parties.”

RECITALS

- A. **Whereas**, the Parties desire to undertake efforts to develop certain plans and studies related to exploring opportunities to work together or with other governmental agencies to expand the production and use of recycled and purified water within Santa Clara County; and
- B. **Whereas**, the Parties understand that effective long-range planning requires a diverse water supply that supplements variable rainfall and imported water supplies, and that recycled and purified water are components of Santa Clara County’s water supply portfolio, which ensures the region’s continued economic health and quality of life; and
- C. **Whereas**, as a result of over four years of recent and current drought throughout California, the District’s surface, groundwater, and imported water supplies have been limited and substantial customer water use reductions were required to avoid severe groundwater depletion; and
- D. **Whereas**, Sunnyvale owns and operates a Water Pollution Control Plant (Sunnyvale WPCP or WPCP) that is capable of treating municipal wastewater in accordance with recycled water regulations for non-potable reuse by customers in its service area; and
- E. **Whereas**, Sunnyvale is currently in the design phase of a major upgrade to its WPCP to replace aging facilities and to meet anticipated future regulatory requirements for effluent discharge; and
- F. **Whereas**, the District is investigating the feasibility of developing up to 45,000 acre-feet per year (AFY) of purified water by the year 2025. The first phase of implementation focuses on developing at least 24,000 AFY of purified water through expansion of the Silicon Valley Advanced Water Purification Center (Expanded SVAWPC) and construction of a conveyance pipeline to the Los Gatos Recharge System. Subsequent phases of implementation may include further expansion of the SVAWPC and/or projects in Sunnyvale and the Ford Ponds area. Timing and implementation of subsequent phases will be contingent upon the District’s updated determination of water supply need, further economic analysis, and determinations of technical and regulatory feasibility; and

- G. **Whereas**, since 2014 the District and Sunnyvale have been working together in evaluating alternative plant layouts and facilities so that Sunnyvale may provide the District with treated wastewater and the District may further treat that water to meet potable reuse requirements; and
- H. **Whereas**, Sunnyvale has completed a master plan for improvements and expansion of its WPCP, which currently contemplates using conventional activated sludge (CAS) treatment, and which has an implementation schedule that may be different from the District's schedule for building and operating a District Advanced Water Purification Facility (AWPF); and
- I. **Whereas**, the Parties have evaluated three alternative plant layouts and facilities (Options 1, 2 and 3), of which Options 1 and 2 involve designing and constructing membrane bioreactor (MBR) facilities to be incorporated into the Sunnyvale WPCP upgrade. Under those two options, MBR effluent would supply water to an AWPF that the District would construct on the Sunnyvale WPCP site, which would further treat the water to meet water quality requirements for indirect potable reuse; and
- J. **Whereas**, Option 3 involves Sunnyvale making treated wastewater effluent available to a site not located at the Sunnyvale WPCP, but at a site close to the Sunnyvale WPCP, where the District would construct an AWPF for producing purified water; and
- K. **Whereas**, current District staff analysis indicates that Option 3 is the most cost effective among the three alternative plant layouts and facilities and has the added advantage of relative independence in scheduling, requiring limited coordination with Sunnyvale's upgrade work at the Sunnyvale WPCP; and
- L. **Whereas**, in addition to assisting the District with further evaluation of Options 1, 2 and 3, Sunnyvale desires to assist the District in evaluating a multi-level AWPF on the Sunnyvale WPCP site as well as evaluating other advanced water purification treatment and recycled water alternatives including: constructing a pipeline to convey treated wastewater from the Sunnyvale WPCP for treatment at the Expanded SVAWPC; constructing an intertie (or interties) to convey treated wastewater from the Sunnyvale WPCP to the South Bay Water Recycling (SBWR) system; constructing a small scale AWPF at the Sunnyvale WPCP to manage salinity of recycled water; and constructing an intertie to convey treated wastewater from Palo Alto's Regional Water Quality Control Plant (RWQCP) for advanced treatment at the Sunnyvale WPCP and/or the Expanded SVAWPC; and
- M. **Whereas**, the Parties desire to enter into this MOU to set forth the terms of their collaboration pertaining to assessing the feasibility of water use alternatives and efforts to engage the cities of Palo Alto, Mountain View, San Jose and Santa Clara to develop a multi-agency MOU to explore the feasibility of developing one or more of the alternatives identified in Recitals I through L above; and

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL PROMISES HEREINAFTER PROVIDED, THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE AND NATURE OF MOU.** This MOU is intended to broadly describe the Parties' commitments to study the feasibility of the alternatives identified in Recitals I through L above. Those alternatives shall be referred to collectively in this MOU as the Water Reuse Alternatives. The MOU is not intended to formalize a commitment by the Parties to implement any of the Water Reuse Alternatives, but the commitment by the Parties does extend to identify the requirements, issues, activities, resources, costs, and financing necessary to implement any of the Water Reuse Alternatives.
2. **RESPONSIBILITIES OF PARTIES.** Each Party will designate a project manager and identify additional staff contacts, and provide necessary resources to advance the work set forth in this MOU.
3. **DISTRICT'S NEW FACILITIES.** After investigating whether to implement any of the Water Reuse Alternatives, if the District decides to implement any of them, it understands that the cost of planning, designing, financing, constructing and operating any facilities comprising the Water Reuse Alternatives is to be borne by the District, unless Sunnyvale enters into a new agreement to undertake any of those costs.
4. **IDENTIFYING SITES RECEIVING THE ADVANCED TREATED RECYCLED WATER.** As part of its investigation, the District will identify land sites suitable for using purified water for groundwater infiltration, injection, and/or future facility connections suitable for implementation of direct potable reuse, subject to approval by the California Division of Drinking Water.
5. **ASSUMPTIONS RELATED TO THE FEASIBILITY OF IMPLEMENTING WATER REUSE ALTERNATIVES.** The Parties understand that the assumptions listed in a – g of this Section 5 are not intended to impose obligations onto either Party, but instead are assumptions the District will take into consideration as it investigates whether to implement any of the Water Reuse Alternatives. The Parties intend to address issues regarding commitments of source water, reverse osmosis (RO) concentrate management, land rights, and other matters related to pursuing any of the Water Reuse Alternatives in a comprehensive agreement to be negotiated by the Parties in the future (Comprehensive Agreement). For the purposes of exploring the feasibility of the Water Reuse Alternatives, the Parties shall use the following assumptions:
 - a. The Sunnyvale WPCP upgrade project will take priority over implementing any of the Water Reuse Alternatives that may impact Sunnyvale's implementation of the Sunnyvale WPCP upgrade project;
 - b. A projected average daily flow of 5 million gallons per day (mgd) of source water (effluent from the Sunnyvale WPCP dual media filters) will be made available to the District through the year 2020, and an additional 5 mgd of source water after 2020, for a total of 10 mgd. If the District determines that it wishes to increase the foregoing source water assumptions Sunnyvale will work in good faith to determine whether flows higher than these amounts can be included in this assumption;

- c. Though the above assumption for projected average daily flow of source water to be made available to the District is a good faith estimate, events beyond the control of Sunnyvale may adversely impact the quality or volume of source water, which may necessitate a temporary limit on the amount of source water made available to the District and the District will need to make its own estimates as to how any temporary limits on the amount of source water available to the District will impact the feasibility of the Water Reuse Alternatives. In making such an estimate the District may assume that Sunnyvale will use best efforts to reestablish the availability of source water to the District;
- d. Sunnyvale will temporarily interrupt the provision of source water or limit the amount of source water available to District when Sunnyvale experiences decreases in influent flows, operation difficulties, or an inability of the Sunnyvale WPCP to meet NPDES requirements. The District will need to make its own estimates as to how any temporary interruptions of the amount of source water available to the District will impact the feasibility of the Water Reuse Alternatives;
- e. District will need to make its own assumptions as to whether there will be a District cost to acquire treated wastewater from Sunnyvale. Terms and conditions for acquisition of treated wastewater will be included in the Comprehensive Agreement to be negotiated by the Parties in the future;
- f. During the term of this MOU, Sunnyvale will not enter into any agreement to provide treated wastewater effluent to another entity or project that could materially (defined as more than 0.2 mgd) reduce the amount of source water assumed to be available to the District in Section 5 b to d, without District's consent; and
- g. Sunnyvale does not have sufficient information at this time to determine whether requirements will be established by State and Federal regulatory agencies for the minimum discharge flow of treated effluent from the Sunnyvale WPCP to its outfall, which is connected to the San Francisco Bay, in order to meet fish, wildlife and other environmental requirements. The Parties will in collaboration determine whether such requirements are intended to be established by regulatory agencies responsible for these areas. The District will include the conclusions of this determination as a factor in deciding whether to proceed with the design and construction of a Water Reuse project.

6. DEVELOPMENT OF A RESIDUALS MANAGEMENT PLAN.

- a. If District desires to implement any of the Water Reuse Alternatives, District and Sunnyvale will develop a residuals management plan describing the management of treatment residuals (Residuals Management Plan). In the Parties' development of this Residuals Management Plan, it is assumed that the District or its contractors will be responsible for processing and managing treatment residuals, including RO concentrate, related to the development of the District AWWP. If a Sunnyvale AWWP is developed for the purpose of reducing the salinity of Sunnyvale's non-potable recycled water, it is assumed that Sunnyvale will be responsible for managing treatment residuals from that facility. District will work with Sunnyvale to identify and design facilities to discharge or process treatment residuals, including conveyance systems to potentially bring RO concentrate from other locations to Sunnyvale

for treatment, discharge facilities, and receiving sites such as engineered wetlands, ponds or the San Francisco Bay. The Residuals Management Plan will identify the composition, quantity, and point of connection that will apply to the treatment residuals.

- b. The Residuals Management Plan shall also describe a process for the treatment and disposal of solid waste produced by the AWPf, and the conveyance of that treated solid waste to the Sunnyvale WPCP. The District will be responsible for treating and conveying solid waste generated by the AWPf. Sunnyvale will be responsible for managing and operating the Sunnyvale WPCP's solid waste disposal system. The operational and disposal costs related to the residuals and solids generated at the AWPf will be the responsibility of the District.

7. DEVELOPMENT OF A PERMITTING PLAN.

- a. The Parties agree to investigate the potential environmental issues associated with reduced Sunnyvale WPCP effluent discharge into the San Francisco Bay due to Sunnyvale's planned delivery of treated wastewater to the District to implement any of the Water Reuse Alternatives.
- b. The Parties agree to investigate potential environmental issues due to the loss of existing open space if the District determines that Option 3 is the preferred option to construct an AWPf on Sunnyvale's decommissioned landfill located near the Sunnyvale WPCP site. The Parties will enter into negotiations to develop a process to retire this open space including the compensation needed resulting from this loss of open space.
- c. District and Sunnyvale will collaborate in developing a permitting acquisition plan (Permitting Plan). The Permitting Plan shall identify the permits necessary for the District's preferred option to construct an AWPf. The Permitting Plan shall also describe each Party's responsibility for pursuing such permits, including the preparation and filing of any and all applications necessary to secure the permits.

- 8. **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE.** The Parties agree that the feasibility studies contemplated in this MOU are exempt from California Environmental Quality Act ("CEQA") requirements pursuant to Section 15262 of the CEQA Guidelines that exempt projects involving only feasibility or planning studies for future actions which have not been approved, adopted, or funded. This MOU is intended to broadly describe the Parties' commitments to study the feasibility of the alternatives identified in Recitals I through L above. Sunnyvale and the District mutually acknowledge that this MOU is not comprehensive or definitive, and that this MOU does not commit or obligate either party to any particular course of action with respect to any of the Water Reuse Alternatives. Sunnyvale and District do not intend to be bound with respect to the approval of a lease to Sunnyvale lands for the siting of an AWPf and its approval and construction, or the delivery of source water from the Sunnyvale WPCP, or the availability of outfall capacity from the Sunnyvale WPCP to discharge RO concentrate, until, among other things, any required environmental review, including any required public hearings, are completed in compliance with the CEQA. Depending on the Water Reuse Alternative selected, if any, the Parties will determine who will serve as the CEQA lead agency. District and Sunnyvale will collaborate in the preparation of the appropriate CEQA documentation.

9. DEVELOPMENT OF A WATER QUALITY MONITORING PLAN. The Parties agree to enter into negotiations to develop a Water Quality Monitoring Plan to conduct sampling and laboratory analyses necessary to monitor and determine water quality related to the Water Reuse Alternatives that the District selects as its preferred option. In the Plan, Sunnyvale will be responsible for sampling and laboratory analyses of source water supplied by the Sunnyvale WPCP while District will be responsible for sampling and laboratory analyses of water being processed within and by any AWPf implemented by District. Parties will share water quality and processing data associated with District's operation of an AWPf.

10. PERMITS AND RIGHT OF ENTRY. During the term of this MOU:

- a. Sunnyvale will facilitate obtaining permits necessary for the District to complete its assessment of the feasibility of the Water Reuse Alternatives.
- b. District may, subject to the issuance of a temporary permit or other document issued by Sunnyvale and the provision of insurance certificates in forms satisfactory to Sunnyvale's Risk Manager, enter sites owned by Sunnyvale to conduct tests and studies preliminary studies (including engineering, environmental, and geotechnical) to determine the feasibility of the Water Reuse Alternatives and possible locations for siting the AWPf on the Sunnyvale WPCP site or land off the Sunnyvale WPCP, site such as Sunnyvale's decommissioned landfill site located near the Sunnyvale WPCP site.

11. ADDITIONAL INFORMATION. The Parties may, during the term of this MOU, request additional information, data and records relevant to District's site investigations from one another. The Parties shall provide such additional information, data and records, if reasonably available, in a reasonably timely manner.

12. LAND AND LEASE OPTION AGREEMENT. If District and Sunnyvale find the decommissioned landfill site, including the nine-acre closed landfill site that is generally shown in Attachment A of this MOU, which is incorporated herein by this reference, suitable for construction of an AWPf, then District and Sunnyvale, subject to CEQA and all other legal requirements, will conduct preliminary studies (including engineering, environmental, and geotechnical) to determine the suitability of locating the AWPf on such site. If the landfill site is found to be suitable by District and Sunnyvale, the Parties, subject to CEQA and all other legal requirements, shall endeavor to enter into a land lease option agreement that provides District with a right to a long-term lease of the site for the purpose of constructing, operating and maintaining an AWPf. District will work with Sunnyvale to identify and acquire the necessary rights of way for the transmission pipes conveying source water from the Sunnyvale WPCP to the AWPf site, and disposing of AWPf RO concentrate by delivery to the Sunnyvale WPCP outfall, if this alternative proves to be feasible and is included in the Comprehensive Agreement. The parties intend that the future lease option agreement include a description of the preliminary AWPf layout, site dimensions, access and exit routes, potential compensation, areas designated for Sunnyvale's use, if any, and other applicable terms and conditions that are mutually acceptable.

District and Sunnyvale shall also work together to evaluate the feasibility of using Sunnyvale's oxidation ponds 1 and 2 (oxidation ponds) for RO concentrate management after

the oxidation ponds are no longer needed by Sunnyvale, or if the RO concentrate management allows concurrent use of the oxidation ponds, as treatment facilities. If Sunnyvale's oxidation ponds are found to be suitable by District for RO concentrate management, the Parties, subject to CEQA and all other legal requirements, shall endeavor to enter into a land lease option agreement that provides District with a right to a long-term lease of Sunnyvale oxidation ponds for the purpose of constructing, operating and maintaining RO concentrate treatment facilities.

- 13. COST SHARING.** Activities undertaken by the Parties in furtherance of this MOU shall be funded as shown on Table 1, unless otherwise agreed to in writing by both Parties.

Table 1.

Activity	District Share	Sunnyvale Share	Lead Agency
<u>Feasibility Studies</u>			
Identifying sites receiving the advanced treated recycled water as described in Section 4	100%	0%	District
Studies to determine available source water quantity from WPCP as described in Section 5b and 5g	80%	20%	District
Management of treatment residuals from District facilities as described in Section 6	100%	0%	District
Management of treatment residuals from Sunnyvale AWPf as described in Section 6a	0%	100%	Sunnyvale
Preliminary studies to determine feasibility of District AWPf site as described in Section 10 and 12	100%	0%	District
Preliminary studies to determine feasibility of Sunnyvale AWPf site as described in Section 6	0%	100%	Sunnyvale
<u>Permitting</u>			
Permitting for WPCP upgrade project	0%	100%	Sunnyvale

Permitting Plan for District AWPf as described in Section 7	100%	0%	District
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Monitoring

Water quality monitoring of source water from WPCP as described in Section 9	0%	100%	Sunnyvale
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Water quality monitoring for District's AWPf as described in Section 9	100%	0%	District
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Management

CEQA for selected Water Reuse Alternative(s) as described in Section 8	90%	10%	District
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Joint evaluation of potential District role in Sunnyvale's non-potable recycled water system as described in Section 19	50%	50%	Sunnyvale
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14. GRANTS AND EXTERNAL LOANS. District and Sunnyvale will collaborate to identify and evaluate possible state and federal grants for the planning, designing or constructing a Water Reuse Alternative including, but not limited to, transmission facilities for recycled water, sites for groundwater infiltration and injection, residuals and RO concentrate management facilities, and other related improvements to Sunnyvale's existing Title 22 non-potable recycled water system. For funding opportunities that are deemed reasonably feasible, the Parties will work together in preparation and support of grant and loan applications and if successful in negotiation of financing agreements.

15. TERM. The term of this MOU commences on the Effective Date and expires on the earlier of: December 31, 2020, or the date both Parties execute the comprehensive agreement referenced in Section 5 of this MOU.

16. TERMINATION.

- a. Termination for Breach of MOU: If either Party believes that the other Party has failed in any material respect to perform its obligations under this MOU, then that Party may provide written notice to the breaching party describing the alleged failure in reasonable detail. If the breaching Party does not cure or begin to cure the material failure within 60 calendar days after receiving such written notice, then the non-breaching Party may terminate this MOU by written notice to the breaching Party.

- b. Termination for Infeasibility. Additionally, either Party may terminate this MOU upon thirty days written notice to the other following a determination that the Water Reuse Alternatives are infeasible due to cost, environmental restrictions, regulatory or legal restrictions, size, or similar concerns.
- c. Failure to Appropriate Funding. The District or City may terminate this MOU immediately upon written notice to the other that the City Council or Board of Directors, respectively, has failed to appropriate funds for that party's cost sharing obligations under this MOU.

17. DISPUTES. Either Party may give the other Party written notice of any dispute. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this MOU promptly by negotiations between the District's Chief Executive Officer or designee, and the City Manager, or designee, on behalf of Sunnyvale. Within twenty calendar days after receipt of the notice of dispute, these executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and attempt to resolve the dispute. If the matter has not been resolved within ninety calendar days of the first meeting, either Party may initiate mediation. The Parties shall select a mediator. If they cannot agree on a mediator, the Party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed eight hours, unless the Parties agree to extend said time. The costs of the mediator shall be borne by the Parties equally. Mediation under this Section is a condition precedent to filing an action in any court. All negotiations and any mediation conducted pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations to which Sections 1119 and 1152 of the California Evidence Code shall apply, and Sections 1119 And 1152 are incorporated herein by reference. Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.

18. COORDINATION.

- a. District and Sunnyvale staff will continue to inform the District-Sunnyvale Joint Recycled Water Committee, including providing timely updates on concepts, proposals, issues, requirements, work progress, schedules, budgets, and work products on all aspects of Water Reuse Alternatives affecting both Parties.
- b. District and Sunnyvale will establish a Technical Advisory Committee (TAC) comprised of the District's Chief Executive Officer and Sunnyvale's City Manager, or their designees (collectively the Executive Managers), and other experts and individuals, as mutually agreed to by the Executive Managers to review work products and make recommendations to the District and Sunnyvale.

19. JOINT EVALUATION OF POTENTIAL DISTRICT ROLE IN SUNNYVALE'S NON-POTABLE RECYCLED WATER SYSTEM.

- a. Sunnyvale currently owns and operates a non-potable recycled water system (Sunnyvale Non-Potable Recycled Water System) that supplies an average daily flow of 1 mgd of

recycled water that meets CA Title 22 requirements to existing customers within its service area. The Parties agree to collaborate in determining how best to continue to serve these existing customers in the future, and how the costs should be shared related to developing any Water Reuse Alternative that involves changes to Sunnyvale Non-Potable Recycled Water System.

- b. The Parties will continue to collaborate in exploring the future development of the Wolfe Road Recycled Water System for delivering recycled water to customers in Santa Clara County and in determining the service requirements for potential new recycled water customers to be connected to that system.
- c. The Parties will evaluate (i) continuation of the ownership, operation, and maintenance of the distribution component of Sunnyvale's recycled water system, or (ii) acquisition of Sunnyvale Non-Potable Recycled Water System by the District with the subsequent transfer of responsibilities for supplying and operating it by the District. The Parties shall mutually agree to a timeframe for this evaluation.

20. NOTICES. All notices or instruments required to be given or delivered by law or this MOU shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to Sunnyvale:

Deanna J. Santana
City Manager
456 West Olive Avenue
Sunnyvale, CA 94088

If to District:

Norma J. Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway, San Jose, CA 95118

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

21. AUTHORITY. Each Party represents that the persons who execute this MOU have the authority to do so on behalf of the organization they represent. No other authority is granted as part of this MOU.

22. WAIVER. Nothing contained in this MOU will be construed as a waiver of any immunities or defenses that a Party may have under applicable provisions of law. This provision will survive expiration or termination of this MOU.

23. MUTUAL INDEMNIFICATION. In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the Parties pursuant to Government

Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, Sunnyvale and District agree that pursuant to Government Code Section 895.4, each Party shall fully indemnify and hold the other Party, its officers, governing board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this MOU. No Party, nor any board member, council member, officer, employee, or agent, thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, board members, council members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other Party under this MOU. The obligations set forth in this Section 23 will survive termination and expiration of this MOU.

- 24. ASSUMPTION OF RISK.** District and Sunnyvale acknowledge that there is a risk entering into this MOU and that undertaking of any activities or the payment of any costs under this MOU is uncertain and that the activities contemplated by this MOU do not suggest that District may ever commence implementing any of the Water Reuse Alternatives.
- 25. MODIFICATION.** This MOU may be modified at any time by the mutual written agreement of the Parties.
- 26. NON-DISCRIMINATION.** In connection with this MOU, no Party will discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, marital status, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other basis prohibited by state or federal law.
- 27. COMPLETE AND CURRENT AGREEMENT.** This MOU represents the entire understanding of the Parties with respect to the matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to the matters in this MOU.
- 28. WAIVER.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.
- 29. AMBIGUITY.** The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this MOU reviewed by their respective legal counsel, and that the terms and conditions of this MOU are not to be construed against any party on the basis of such party's draftsmanship thereof.
- 30. SEVERABILITY.** If any provision in this MOU is found by a court of law to be illegal or unenforceable, the MOU will remain in full force and effect as if that provision, section or paragraph were not written into this MOU, unless the omitted language is integral to the Parties' intention and purpose of entering into this MOU.

31. NO THIRD PARTY BENEFICIARIES. Nothing in this MOU, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this MOU.

32. ASSIGNMENT. District acknowledges that Sunnyvale desires to enter into this MOU because of the prior experience and qualifications of District. Therefore, District shall not assign, sell, or otherwise transfer any rights (collectively “assignment”) under this MOU without the prior written consent of Sunnyvale. No assignment shall be effective until the Sunnyvale City Council approves the assignment.

33. COUNTERPARTS. The parties may execute this MOU in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

This MOU will be effective as of the last date signed below.

**City of Sunnyvale,
a municipal corporation**

Deanna J. Santana
City Manager

Date

Approved as to form:

John A. Nagel, City Attorney

**Santa Clara Valley Water District,
a Special District**

Norma Camacho
Interim Chief Executive Officer

Date

Approved as to form:

Anthony Fulcher, Senior Assistant District Counsel

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

