

**Memorandum of Understanding
Between the Santa Clara Valley Water District and the City of Palo Alto, Assessing the
Feasibility of Developing
Water Reuse Alternatives**

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of _____, 2017, by and between the City of Palo Alto (“Palo Alto”), a chartered municipal corporation and the Santa Clara Valley Water District (“District”), a special district created by Legislature of the State of California. Palo Alto and the District hereinafter may be referred to individually as “Party” or collectively as “Parties.”

RECITALS

- A. 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. 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 important components of Santa Clara County’s water supply portfolio, and
- C. As a result of over four years of drought conditions throughout California, the District’s local and imported supplies have been limited, and substantial customer water use reduction was required to avoid severe groundwater depletion; and
- D. Palo Alto owns and operates a Regional Water Quality Control Plant (“RWQCP”, or “Palo Alto Non-Potable Recycled Water System”) that supplies an average flow of one million gallons per day MGD of tertiary treated recycled water meeting California’s Title 22 requirements to existing customers within its service area for non-potable reuse, and manages a recycled water program; and
- E. The RWQCP treats wastewater not only for the City of Palo Alto, but also for the Cities of Los Altos, Los Altos Hills and Mountain View as well as for Stanford University and the East Palo Alto Sanitary District (“RWQCP Partners”); and
- F. 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 20,000 AFY of purified water through a phased expansion of the Silicon Valley Advanced Water Purification Center (“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 Palo Alto, and neighboring cities. 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. The District and Palo Alto have collaborated to expand recycled water since the 1970’s; and

- H. The District and Palo Alto have been working together to evaluate plans for Palo Alto to provide the District with treated wastewater so that the District could further treat that water to meet indirect potable reuse (“IPR”) and potentially direct potable reuse (“DPR”) requirements, and subsequently convey purified water to groundwater recharge sites for infiltration, injection into aquifers that serve as supply sources for potable water, and potentially, once approved by the California State Water Resources Control Board (“SWRCB”), for use in DPR projects; and
- I. The District is interested in building, owning and operating an Advanced Water Purification Facility (“AWPF”) within the vicinity of the Palo Alto RWQCP and desires to define the project, roles, responsibilities, and activities of an investigation to potentially design, construct and operate an AWPF project; and
- J. Palo Alto and the District are currently updating the 1992 Palo Alto Recycled Water Master Plan, also known as the Northwest County Recycled Water Strategic Plan (“Strategic Plan”). The Strategic Plan includes improvements and expansion of RWQCP facilities and an evaluation of recharge and reuse for future IPR, and has a longer implementation schedule than the District’s proposed schedule for building and operating a District-owned AWPF; and
- K. The Parties intend to collaborate to evaluate additional options with the Cities of Mountain View, Sunnyvale and San Jose, such as conveying purified water from the District’s AWPF, as described in recital H above. The Parties also intend to evaluate the feasibility of the conveyance of recycled water effluent from the Palo Alto’s RWQCP to the City of Sunnyvale’s Water Pollution Control Plant (“WPCP”), and/or conveyance to an expanded SVAWPC; and
- L. The Parties desire to collaborate and engage the Cities of Mountain View, Sunnyvale, San Jose, and Santa Clara to develop a separate multi-agency MOU to explore the feasibility of building said items identified in Recital J.

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

1. **PURPOSE AND SCOPE OF MOU.** This MOU is intended to broadly describe the Parties’ commitments to study the feasibility of: (i) the District’s plan to construct and operate an Advanced Water Purification Facility; (ii) water recharge and reuse alternatives identified in the Northwest County Recycled Water Strategic Plan; and (iii) future development of Palo Alto’s Non-Potable Recycled Water System. 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 the Parties execute a signed agreement to jointly fund 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.
5. **ASSUMPTIONS RELATED TO IMPLEMENTING WATER REUSE ALTERNATIVES.** The Parties understand that the assumptions listed in (a) – (f) of this Section 5 are not intended to impose obligations onto either Party, but instead are assumptions the Parties will take into consideration as they investigate 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. In the meantime, for the purposes of this MOU, the Parties assume, without obligation, that:
 - a. In conjunction with its participation in and funding of the Strategic Plan, the District will evaluate opportunities for transfer by the RWQCP Partners to the District of up to 10 MGD of RWQCP effluent to be used for countywide expansion of recycled and purified water. Palo Alto acknowledges the District as the primary water wholesaler within the County and looks to the District to lead this planning effort.
 - b. Palo Alto may enter into agreements with any RWQCP Partner to provide transfers of any effluent to which that RWQCP Partner has a contractual share. The District acknowledges that RWQCP Partners may develop specific plans for use of their contractual shares of RWQCP effluent. Palo Alto is not currently discussing or planning to discuss, during the term of this MOU, other effluent transfers.
 - c. If circumstances beyond the control of Palo Alto adversely impact the quality or volume of source water, Palo Alto may temporarily limit the amount of source water made available to the District, but Palo Alto will use best efforts to reestablish the availability of source water;
 - d. Palo Alto is not liable for any costs or damages resulting from a temporary interruption in service or limitation of source water due to decreased influent flows, operation difficulties, or an inability of the Palo Alto RWQCP to meet NPDES requirements;

- e. Any treated wastewater provided by Palo Alto to the District will require negotiations between the District and Palo Alto. Terms and conditions for acquisition of treated wastewater will be included in an agreement to be negotiated by the Parties in the future.
- f. Palo Alto does not have sufficient information to determine whether requirements will be established by State and Federal regulatory agencies for the minimum discharge flow rates of treated effluent from the Palo Alto RWQCP to its outfall, which is connected to the San Francisco Bay, in order to meet fish, wildlife and other environmental requirements. Palo Alto, in collaboration with the District, will attempt to determine whether such requirements are intended to be established by relevant regulatory agencies, and both Parties will share any relevant findings between them.

6. JOINT EVALUATION OF POTENTIAL DISTRICT ROLE IN PALO ALTO'S NON-POTABLE RECYCLED WATER SYSTEM.

- a. The Parties agree to collaborate in determining how best to continue to serve Palo Alto's existing customers in the future, and how the costs should be shared and related to developing any Water Reuse Alternative that involves changes to the Palo Alto Non-Potable Recycled Water System.
- b. The Parties will continue to collaborate in exploring the future development of Palo Alto Non-Potable 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 Palo Alto's recycled water system, or (ii) acquisition of Palo Alto 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.

7. DEVELOPMENT OF A RESIDUALS MANAGEMENT PLAN.

- a. If District desires to implement any of the Water Reuse Alternatives that result in the generation of RO concentrate, the Parties will develop a residuals management plan describing the management of treatment residuals ("Residuals Management Plan"). In the 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. District will work with Palo Alto to identify opportunities to discharge or process treatment residuals, including conveyance systems to potentially bring RO concentrate from other locations to Palo Alto 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

Palo Alto RWQCP, if the Parties decide to do so. The District will be responsible for treating and conveying solid waste generated by the AWPf. Palo Alto will continue to be responsible for managing its existing solid waste and operating the Palo Alto RWQCP's solid waste disposal system.

8. DEVELOPMENT OF A PERMITTING PLAN.

- a. District and Palo Alto will collaborate in developing a permitting acquisition plan ("Permitting Plan"). The Permitting Plan shall identify the permits necessary for any of the Water Reuse Alternatives that the District decides to implement. It 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.
- b. The Parties agree to investigate potential environmental issues associated with reduced Palo Alto RWQCP effluent discharge into the San Francisco Bay due to Palo Alto's potential delivery of treated wastewater to the District to implement any of the Water Reuse Alternatives.

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

10. LAND AND LEASE OPTION AGREEMENT. For the Water Reuse Alternatives that involve development of an AWPf, District will investigate possible locations for siting such AWPf. Palo Alto will provide the District with information regarding permits and rights of way acquisition, including reasonable access to sites, records, and other information relevant to District's site investigations.

11. CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") COMPLIANCE. The Parties agree that the planning and feasibility studies contemplated in this MOU are exempt from CEQA requirements pursuant to Section 15262 of CEQA guidelines that exempt projects involving only feasibility or planning studies for future actions which have not been approved, adopted or funded. Depending on the Water Reuse Alternative selected, if any, the Parties will determine who will serve as CEQA lead agency. District and Palo Alto will collaborate in preparation of the CEQA document.

12. COST SHARING. Activities undertaken by either Party in furtherance of this MOU shall be at that Party's sole cost and expense, unless otherwise agreed to in writing by the Parties.

13. GRANTS AND EXTERNAL LOANS. District and Palo Alto 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 Palo Alto'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.

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

15. **GOVERNANCE COORDINATION.**

- a. District and Palo Alto staff will continue to inform the District-Palo Alto 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 Palo Alto will establish a Technical Advisory Committee (TAC) comprised of the District's Chief Executive Officer and Palo Alto'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 Palo Alto.

16. **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.

17. **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 Palo Alto:

James Keene
Palo Alto City Manager
250 Hamilton Avenue
Palo Alto, CA 94301

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.

18. **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.
19. **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.
20. **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, Palo Alto 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 20 will survive termination and expiration of this MOU.
21. **MODIFICATION.** This MOU may be modified at any time by the mutual written agreement of the Parties.
22. **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.
23. **ASSUMPTION OF RISK.** District and Palo Alto acknowledge that there is a risk entering into this MOU and that undertaking of any activities under this MOU is uncertain and that the activities contemplated by this MOU do not bind either Party to commence implementing any of the Water Reuse Alternatives.
24. **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.
25. **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 the MOU, unless the omitted language is integral to the Parties' intention and purpose of entering into this MOU.

26. **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.

27. **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.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first set forth above.

City of Palo Alto

Signature_____

Name:

Title: City Manager

Approved as to form:

Signature_____

Name:

Title: Senior Deputy City Attorney

Santa Clara Valley Water District

Signature_____

Norma J. Camacho

Interim Chief Executive Officer

Approved as to form:

Signature_____

Anthony Fulcher

Senior Assistant District Counsel

Signature_____

Name:

Title: City Clerk